Spring 2018

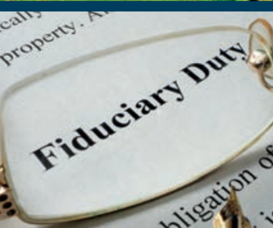
Estate Planning newsletter

Expertise
Common Sense
Integrity
Fairness
Hard Work

shared values. firm results.

INSIDE THIS ISSUE

pg. 1
Tax Reform: Changes Big & Small



pg. 4
Who's On Your Team: The Roles of Feduciaries in Your Estate Plan

pg. 8
Reality Check: Why Millennials Need An Estate Plan

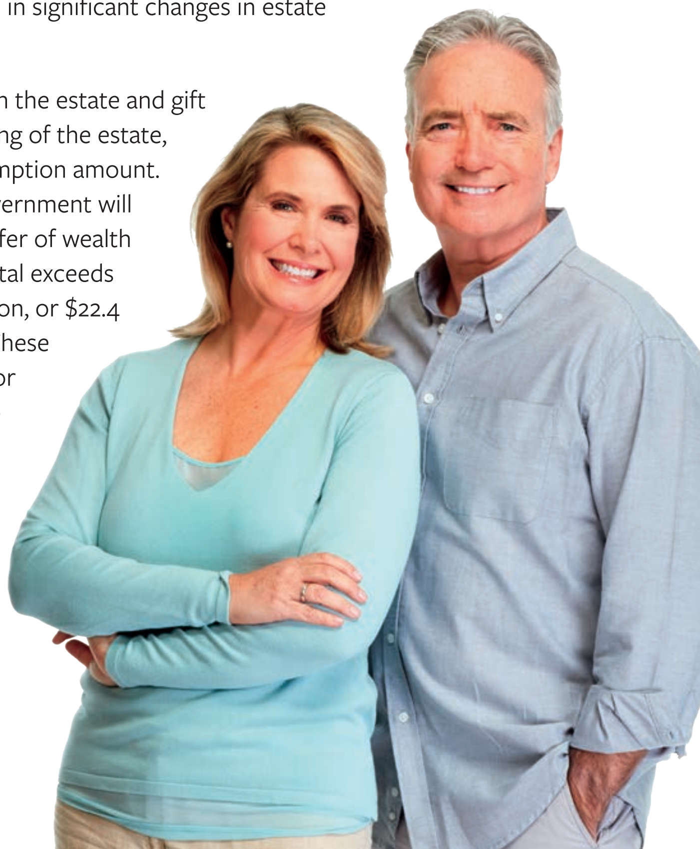
pg. 11
New Tax Law Substantially Modifies Spousal Maintenance (Alimony) in Minnesota

GISLASON & HUNTER LLP
ATTORNEYS AT LAW
www.gislason.com

TAX REFORM: CHANGES BIG & SMALL

In December, Congress passed, and President Trump signed, the 2017 Tax Cuts and Jobs Act. This new law brought to reality the first major reform of the Internal Revenue Code in a generation. Major changes include substantial reduction of corporate tax rates, reduction of individual income tax rates, limits on the deductibility of state and local taxes (including property taxes), changes in the deductibility of mortgage interest, and an increased standard deduction. All of these examples, and the bulk of the rest of the new law, represent changes in the Federal income tax. In addition, the 2017 Act ushered in significant changes in estate and gift tax.

The biggest change in the estate and gift tax area is the doubling of the estate, GST, and gift tax exemption amount. Now, the Federal government will start taxing the transfer of wealth only if the lifetime total exceeds $11.2 million per person, or $22.4 million per couple. These figures are indexed for inflation and apply to estates for persons dying and gifts made by persons between December 31, 2017, and January 1, 2026.



continued on pg 2

TAX REFORM: CHANGES BIG & SMALL continued from pg 1

So, the good news on reduction in estate and gift tax changes is limited – the increase is only in effect for ten years. In 2026, absent further legislation, the lifetime total will revert to $5.6 million, or $11.2 million per couple (subject to indexing).

It is anticipated that a sizeable number of individuals and couples who would previously have paid estate taxes will now avoid tax. For individuals and families who have used most or all of their lifetime gifting amount, the changes represent an opportunity with regard to gift and succession planning.

Individuals, farmers, and business owners may want to consider whether the expansion in the amount of the gift tax exemption will allow for tax-free transfers of appreciating assets to the following generation. This is particularly the case where the next generation is, or plans to be, actively engaged in the continuation of the farm or business. Various entity structuring and trust tools can be employed to balance the interests of the present generation and the successor generation with regard to management control and maintaining income, while taking advantage of the increased tax exemption amounts. Each family, farm, and business circumstance is different so individual consultation is essential.

For farms and businesses where the ultimate end strategy is sale, due to the fact that there is no identified family successor, other strategies and considerations may take precedence. The 2017 tax reform law did not change the rules with regard to the "step-up" in basis available when assets pass at death. In certain circumstances, such as where there is substantial appreciation in value and the intent is to sell, there may be a better tax result when the transfer of assets occurs after death, rather than during lifetime.

Another update for 2018 relates to the annual gift exclusion amount, which has been set at $14,000 per person per year in recent years. Indexing rules apply to this amount in $1,000 increments and enough inflation has accumulated to increase annual gifting amount to for 2018 Individuals may now make gifts of $15,000 per year, or $30,000 per couple per year, to an unlimited number of family members or other recipients. Regular use of annual exclusion gifts can be a powerful tool in reducing an otherwise taxable estate.

Finally, the 2017 Tax Cuts and Jobs Act applies only at the federal level. It enacted no changes in Minnesota's estate tax law. Minnesota's estate tax still applies to assets above $2.4 million per person and that amount will increase to $3 million per person over the next two years. While the Minnesota estate tax rate is lower, appropriate planning to manage and reduce Minnesota estate taxes will still be required in many circumstances where the federal estate tax is no longer an issue.

Tax reform means change. Some changes, like the doubling of estate tax exclusion amount are larger, but may impact only a small number of tax payers; others like the change in the annual gift amount are small, but will affect larger numbers. It seems the tax landscape never quite achieves stability so regular consultation with your tax and legal advisors remains important. ■

By Wade R. Wacholz
763-225-6000
wwacholz@gislason.com

By Kaitlin M. Pals
507-354-3111
kpals@gislason.com

WHO'S ON YOUR TEAM: THE ROLES OF FIDUCIARIES IN YOUR ESTATE PLAN

One of the hardest decisions in estate planning is choosing who you want to help you or your heirs in the event of your death or disability. Here are some tips on how to put together your team for a worst-case scenario.

The Players

If a worst-case scenario happens to you, your team members will take on one or more fiduciary roles. A fiduciary is a person with a legal duty to take care of assets for the benefit of another person, or to take care of another person's well-being, always giving the other person's welfare priority over the fiduciary's own interests. The most common fiduciaries are Personal Representatives, Trustees, Guardians and Conservators.

continued on pg 6 and 7

WHO'S ON YOUR TEAM: THE ROLES OF FIDUCIARIES IN YOUR ESTATE PLAN

continued from pg 5

Personal Representative

The Personal Representative is the person in charge of making sure your wishes for your property are carried out after your death. He or she usually submits your Will to court to start the process of administering your assets, which is called probate.

The Personal Representative makes sure your estate pays its bills, files tax returns and makes decisions regarding your property until the probate process ends and your remaining assets are distributed to your heirs. The Personal Representative's job typically lasts for a year or less, but she usually has a lot of work to do to wrap up your affairs during that time.

Trustee

A Trustee is the fiduciary in charge of assets in a trust. A Trustee's job is similar to a Personal Representative, except his duties often last for several years.

There are many different reasons your estate plan may include putting assets in a trust. One common example is a trust for the benefit of young children. A Will or other estate planning document may create a trust to hold property for the benefit of children who would otherwise inherit property before they are mature enough to manage it on their own. The Trustee manages the trust's property for the children's benefit, making sure that the assets are invested appropriately. The Trustee may also make decisions about when and how to distribute income or principal from the trust to the beneficiaries.

The Trustee's job ends when the trust makes its final distribution to the beneficiaries. Depending on the trust, it may last for a couple of years or for decades.

Guardian

A Guardian is in charge of the well-being of a minor child or disabled person (called a "ward"). The Guardian decides where the ward lives and goes to school and how they are raised.

The Guardian is not financially responsible for the ward. The Guardian works with the Trustee or Conservator to determine the ward's needs and coordinate how distributions are paid out. If there are not sufficient funds for the ward's care, the Guardian may apply for government aid on the ward's behalf.

The Guardian's responsibilities end when the child turns 18, or in the case of a disabled person, if and when the disability ends.

Conservator

A Conservator is in charge of the assets of a minor child or disabled person if those assets are not held in a trust. Whereas a Trustee usually does not have to interact with the court system unless there is a dispute, a Conservator must make regular reports to a judge detailing exactly how the ward's assets are being spent and invested.

Like the Guardian, the Conservator's job ends when the child turns 18, or if the person is disabled, when the disability ends or when the person dies.

How Your Fiduciaries are Chosen

You can and should nominate who you want to serve as your fiduciaries in the event of death or disability. Your Will should include nominations for who should serve as Personal Representative of your estate, Trustee of any trusts created under your Will, and Guardian of your children if they are minors. Health Care Directives are used to nominate who you want to serve as your Guardian if you are disabled, and Powers of Attorney usually name who you want to act as your Conservator if you need one.

If you don't provide directions in your estate plan, these important roles are usually filled by whoever volunteers to take on the job. Personal Representatives, Guardians and Conservators are appointed by a judge. If more than one person asks the judge to give them the job, the law gives priority to certain relatives, unless the judge determines that the appointment would not be consistent with the ward's best interests.

Who Should I Have in My Line-Up?

- Personal Representatives, Trustees and Conservators need to be capable of keeping organized financial records, meeting deadlines and seeking advice from accountants, attorneys and other professionals.

- If your estate will include farm or small business assets, it's very helpful to have a Personal Representative and Trustee who understands the business. If your nominee does not have that knowledge, make sure you provide guidance on who they should reach out to for advice, such as key employees or trusted farm managers.

continued from pg 6

• You can name more than one person to act as co-Personal Representatives or co-Trustees. This can be a great option if you don't have one person in your line-up with all the necessary skills, but you have two (or more) whose skills complement each other. Unless your Will states otherwise, co-Personal Representatives or co-Trustees make decisions based on majority vote.

• It's very common to name the same person or persons as your Personal Representative and Trustee.

• It's less common—and potentially more problematic—to name the same person as both Guardian and Trustee. The Trustee has a duty to properly administer trust property. If the Trustee mismanages property or uses it for his own benefit, the beneficiary and the beneficiary's Guardian are often the only people able to sue the Trustee to fix the problem. Naming the same person as both Guardian and Trustee makes it difficult to ensure the Trustee is doing his job.

• Your choices are not set in stone. It's OK to name someone to a fiduciary role now, even if they might not be the best fit ten or twenty years from now due to age or other circumstances. Just remember to update your Will regularly.

• Name alternates whenever you can. You never know whether your first choice will be willing and able to step into the role if and when they are needed.

• Sometimes it's just as important to make sure a particular person is not one of your fiduciaries. For example, while divorced parents have little control over their ex-spouse gaining full custody of their children if one parent dies, you can make sure that an ex has no control over your children's inheritance from you.

• If you don't have someone appropriate to take on one of these roles, there are professionals who provide fiduciary services for a fee. Interview potential professional fiduciaries to make sure you're comfortable with their asset management philosophies and fee structures.

• Talk to the people you nominate as fiduciaries, to make sure they feel equal to the role and aren't taken by surprise if they ever are called upon. ■

By Chris J. Kamath
507-387-1115
ckamath@gislason.com

REALITY CHECK: WHY MILLENNIALS NEED AN ESTATE PLAN

According to a recent study conducted by Princeton Survey Research Associates International, 78% of Millennials (ages 18-36) do not have an estate plan. One of the major reasons cited by Millennials for not taking the time to create even a basic Will is that they do not have any significant assets worth protecting. However, there are many reasons to engage in estate planning besides wealth preservation, such as directing assets to intended beneficiaries, providing a safety-net for cherished pets, managing your digital estate after death, designating a guardian for your children, and providing direction for your medical care during times of incapacity.

MILLENNIALS HAVE ASSETS

No matter what stage of life you are at, you have an estate and can benefit from basic estate planning. For younger clients, assets usually include a vehicle, jewelry, electronics, and home furnishings. In addition, most of us Millennials have started saving for retirement either personally or through employer-sponsored programs. And depending on your goals and personal situation, you may have already purchased a home or plan on doing so in the near future.

Unfortunately, it is equally likely that you have accumulated a significant amount of student loan debt. Indeed, ever-rising tuition and the poor job market following the recession have created a situation where your debts may exceed your assets. Nevertheless, federal student loans are generally discharged on the death of a borrower, so you may still be able to pass a large portion of your estate to family and friends.

So you're convinced that you have assets worth transferring. How do you make sure those assets get to the right people? If you don't have an estate plan, your assets will be automatically distributed according to the default rules under Minnesota's intestate laws. For example, the property of a person who dies without a spouse or children surviving passes directly to their parents. For Millennials who are living with a significant other, but have yet to get married, the harsh reality is that your partner could be left with nothing if you don't have a plan in place.

As a result, every Millennial should consider having a basic Will drawn up. Such a document will help ensure that unmarried partners and other important people are treated fairly upon your passing.

continued on pg 10

REALITY CHECK: WHY MILLENNIALS NEED AN ESTATE PLAN

continued from pg 9

PROVIDING FOR YOUR PETS

Planning for the care and wellbeing of pets is becoming more important today than ever before. A few minutes online will demonstrate that the world is obsessed with pets. The web is littered (no pun intended) with cat memes, pet fail videos, and other pet related posts. According to data released by the research firm GfK, approximately 51.6% of all U.S. households own a cat or dog.

Like planning for any human dependent, it is important to ask yourself what would happen to my pet if I were to pass away unexpectedly. Who would care for my pet? Would they know what kind of food to give him or her? Would they play with, exercise, and love my pet the way that I do?

While you may view your pet as family, the law treats animals as property, which is why specifying care for a pet in your estate plan is particularly important. A Will is the appropriate place to address these concerns. Not only can you name a guardian for your pet, you can spell out specific instructions for your pet's care, and even provide funds to help supplement the needs of your furry family member.

THE DIGITAL ESTATE

A Will can also specify who is in charge of your digital assets, such as Facebook, Twitter, and Instagram accounts. Your digital estate should be protected and planned for just like any other asset. Most of us grew up with internet and have created an online presence in some shape or form. Almost all of us have a Facebook, Twitter, or Instagram account through which we post messages, share memes, and store photos, many of which may not exist anywhere else. These items are just some of the assets that make up your digital estate, and just like tangible assets, digital assets can have a real and substantial value.

For example, Richard Prince, a painter and photographer, took other people's photographs from Instagram, without their knowledge or consent, hung them in a gallery in New York, and sold almost all of the photographs for approximately $90,000 each. See http://www.cnn.com/2015/05/27/living/richard-prince-instagram-feat/index.html. In general, under federal copyright law, you own all unique expressions committed to a fixed medium, such as photographs. Facebook, Twitter, and Instagram all have policies acknowledging that their users own the messages, posts, photographs published through their services.

To get around each original poster's ownership rights, Prince made slight alternations to the photographs. Nonetheless, this case illustrates the value of digital assets and why designating a beneficiary or executor to oversee such assets is important.

Digital assets also raise a number of privacy issues and every Millennial should select a tech-savvy executor to manage these assets, unless of course you would be okay with a parent gaining access and searching through a social media account.

INCAPACITY

In addition to creating a Will, every Millennial should think hard about executing a durable power of attorney and healthcare directive. A Will only helps plan for the management of your property after death. A power of attorney helps plan for the management of your property during periods of incapacity while you are still alive. A durable power of attorney is an instrument that grants another person authority to access your financial accounts, update account information and records, withdraw your funds, and pay your bills.

In comparison, a healthcare directive in an instrument that appoints a designated person to make medical decisions on your behalf when you are incapacitated and facing an illness or injury. A healthcare directive spells out what kind of treatment you would like, whether that treatment includes extreme life-saving measures, and may also specify how your remains should be handled. Healthcare directives not only help your family make these decisions, but also helps avoid family disagreements regarding end-of-life decisions. In particular, if you want to grant an unmarried significant other a role in these decisions, a healthcare directive is essential.

CONCLUSION

Estate planning is not just for high net-worth individuals, the elderly, or people with children. Whether you are looking to transfer assets to specific relatives or simply make sure the right person is making decisions for you if you're incapacitated, an estate plan can help ensure your wishes are respected and carried out. After all, the only guarantees in life are death and taxes. ■

NEW TAX LAW SUBSTANTIALLY MODIFIES SPOUSAL MAINTENANCE (ALIMONY) IN MINNESOTA

In late December 2017, President Donald Trump signed into law the Tax Cuts and Jobs Act of 2017. In addition to modifying the income tax brackets and numerous other tax provisions, the law significantly modified how spousal maintenance (alimony) payments are taxed at the federal level.

For any Minnesota divorce finalized after December 31, 2018, spousal maintenance will no longer be taxable to the recipient or tax deductible for the payor. The "current law," where spousal maintenance is taxable to the recipient and tax deductible for the payor remains in effect for divorce matters finalized prior to January 1, 2019. Parties who divorce before January 1, 2019 though can have the new law apply to modifications occurring after January 1, 2019, if the modification document expressly provides that the new law applies.

This change is important for divorcing parties because the ability to shift income tax burdens from a higher taxed party to a lower taxed party has been a valuable tool in increasing total cash available incident to divorce. That tool will no longer be available. Because of this change in law, more and more people with significant income who are contemplating divorce may seek to finalize their divorce before January 1, 2019.

Andrew M. Tatge is a partner and chair of the Family Law and Divorce Practice Group at Gislason & Hunter LLP (www.gislason.com). He regularly represents farmers, business owners, professionals, and other high income and high net worth individuals (or their spouses) in divorce and related actions. He also writes and speaks regularly on divorce issues related to business owners and family farm and he regularly presents a seminar on Divorce for Farmers on behalf of the National Business Institute. Andrew can be reached at atatge@gislason.com or (507) 387-1115. This information is general in nature and should not be construed for tax or legal advice.

www.gislason.com

Guarding what matters most.

Family Law expertise for your most important moments and assets.

Every family's legal issues are unique and deserve the best legal expertise and attention available. At Gislason & Hunter, we strive to develop customized strategies for your family's particular legal needs and help you prioritize your goals to efficiently achieve a favorable outcome for what matters most.

- **Divorce, Legal Separation and Annulments**
- **Adoptions & Assisted Reproductive Technology**
- **Personal, Business and Farm Asset Protection**
- **Custody, Parenting Time and Child Support**

FAMILY LAW ATTORNEYS

Kaitlin M. Pals, Brittany R. King-Asamoa and Andrew M. Tatge

GISLASON & HUNTER LLP

ATTORNEYS AT LAW

We've got the expertise to help you. Call 866-760-3429 to schedule a meeting with one of our Family Law Attorneys.

Gislason & Hunter Estate Planning Services

Estate Planning is important to ensure the orderly transfer of family assets, as well as to protect those assets from unnecessary taxation. The Gislason & Hunter Estate Planning Practice Group offers a variety of services to assist you in creating the best plan for you, your family, your business or your farm.

Some of the many services our attorneys offer include the following:

- Drafting wills, trusts, codicils and powers of attorney
- Preparing health care directives and living wills
- Creating family business succession plans with emphasis on each family's particular goals and values
- Farm estate and succession planning
- Evaluating estate and gift tax issues and structuring planning options to minimize tax obligations
- Administering and assisting clients with probate proceedings, conservatorships and guardianships
- Advising on Medicaid, Medicare, nursing home and elder law issues
- Handling disputed estate and probate matters in litigation, arbitration or mediation formats

Gislason & Hunter Wills, Trusts, Estate Planning & Probate Practice Group:

Daniel A. Beckman	dbeckman@gislason.com
Reed H. Glawe	rglawe@gislason.com
David Hoelmer	dhoelmer@gislason.com
Kaitlin M. Pals	kpals@gislason.com
Abby Pettit	apettit@gislason.com
Andrew M. Tatge	atatge@gislason.com
Wade R. Wacholz	wwacholz@gislason.com
Andrew A. Willaert	awillaert@gislason.com
C. Thomas Wilson	twilson@gislason.com
Sara N. Wilson	swilson@gislason.com
Chris Kamath	ckamath@gislason.com

This publication is not intended to be responsive to any individual situation or concerns as the contents of this newsletter is intended for general informational purposes only. Readers are urged not to act upon the information contained in this publication without first consulting competent legal advice regarding implications of a particular factual situation. Questions and additional information can be submitted to your Gislason & Hunter Attorney.

LOCATIONS

Minneapolis Office
Golden Hills Office Center
701 Xenia Avenue S, Suite 500
Minneapolis, MN 55416
763-225-6000

Des Moines Office
Bank of America Building
317 Sixth Avenue, Suite 1400
Des Moines, IA 50309
515-244-6199

Mankato Office
Landkamer Building
124 E Walnut Street, Suite 200
Mankato, MN 56001
507-387-1115

New Ulm Office
2700 South Broadway
New Ulm, MN 56073
507-354-3111

www.gislason.com

GISLASON & HUNTER LLP
ATTORNEYS AT LAW
www.gislason.com