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# Estate Planning BULLETIN

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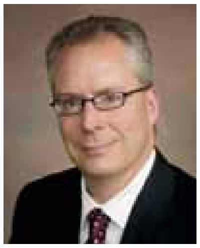
# WHY MINNESOTA COLLEGE-AGED STUDENTS NEED AN ESTATE PLAN



**By Daniel A. Beckman**
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While most eighteen year-olds do not have significant financial assets to be concerned about the typical reasons most people consider creating an estate plan, there are a number of reasons why such individuals should start the estate planning process. Many parents assume that because their children remain insured under their health insurance until their mid-twenties that they are entitled to continue to participate in their children's healthcare decisions and access their health care records. Under the Health Insurance Portability and Accountability Act of 1996 (HIPPAA) as well as Minnesota law, parents are not permitted to access their children's health care records once they reach the age of eighteen. Additionally, financial records and actions are also not accessible once their children reach age eighteen.

For the same reasons that any adult should engage in non-financial estate planning activities, such as health care directives and powers of

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Spring 2016

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attorney, college aged students should do the same. Under Minnesota law, a health care directive is a written document which informs others of the health care wishes of the creator who is called the principal. The typical health care directive will appoint another person called a health care agent who can make health care decisions if the principal is unable to do so for themselves. The typical Minnesota health care directive will also contain a HIPPAA release which grants access to the health care agent to the medical records of the principal.

There can be any number of situations why even young individuals may be unable to make their own health care decisions. In order to make informed health care decisions, it is important to have access to past health care records. Without a health care directive, a college-aged student who is away at college, potentially even in another state, may not have anybody who is able to make decisions regarding their health care if they are unable to do so. Typically, most state laws provide that a validly executed health care directive in the state of residence will be valid for someone temporarily outside the state. Therefore, Minnesota residents who attend college out of state typically can execute a Minnesota health care directive which will be recognized by health care providers in the state of attendance of college.

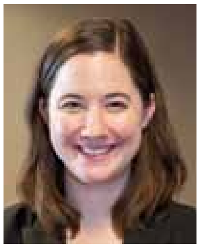
Health care directives may, but are not required to, also make decisions regarding end-of-life issues. Health care directives can direct the health care agent with respect to decisions regarding disposition of bodily remains upon death as well as whether or not someone wants to be an organ donor.

Once executed, health care directives should be provided to the principal's primary physician. If an individual is away at college a copy of the health care directive should be provided to the college health service. A copy of the health care directive should also be provided to the health care agent so they can provide it to a medical provider if necessary

Another document that a college-age student should consider is a power of attorney. Minnesota has a statutory short form power of attorney which may grant another individual called an attorney-in-fact power over financial decisions. The Minnesota statutory short form power of attorney is effective upon execution. Many young individuals may not want to grant such powers unless they are unable to make their own financial decisions. In that case, a springing power of attorney may be appropriate. A springing power of attorney "springs" into action upon some event: typically incapacitation. At that time, once the determination of incapacity is made, the power of attorney springs into action and grants the power to the attorney-in-fact to make decisions that the principal is no longer able to make on their own behalf.

While most young eighteen-year-olds may not think that they need to engage in estate planning activities since they do not own any significant assets, once they reach the age of majority and their parents are no longer legally able to make health care or financial decisions for them, health care directives and powers of attorney should be considered for those unanticipated situations which arise.

# THE BASICS OF BASIS



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When determining whether you've recognized a gain or a loss on an asset, you need to know what your basis is. Basis is most simplistically described as what the asset cost. It can also include certain taxes paid, some related costs of the purchase, and for real estate, even settlement and closing costs. Over time, your basis may go up or down, depending on the choices you make regarding depreciation or capitalization. This results in an "adjusted basis," which is the number that is ultimately used for the purposes of calculating gain or loss.

The question of basis becomes more complicated in the context of a lump sum purchase of multiple assets, which most frequently occurs in the business context. The buyer and seller often negotiate the question of how the purchase price gets divided between items like land and buildings, equipment, inventory, accounts receivable, and good will. How basis is allocated should be carefully considered by both the buyer and seller, as different allocations will result in different tax consequences. It is always a good idea to

work with your legal and financial advisors to reach an appropriate basis allocation for your situation.

But what if the owner never bought the asset, but received it as a gift or inheritance instead? No income will be recognized by the owner upon receipt of the asset, but they will need to calculate gain or loss if or when they decide to sell that asset.

In the case of gifted property, you will need to know what the donor's basis in the property was and what the fair market value of the property was at the time you received it. A gifted asset will have "carry-over" basis for the purposes of calculating gain upon sale. If you bought shares in Coca-Cola in 1980 at less than a dollar a share and gift them to a child or grandchild now, when they sell those shares they will recognize a taxable gain using your basis in that stock. Luckily, your gift also includes your duration of ownership, so even if the donee sold the stock the next day, the sale would be taxed at the long-term capital gain rate instead of at the ordinary income rate. When calculating a loss, different rules apply. The donee's basis will be the lesser of (1) the donor's basis in the asset or (2) the fair market value

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ASSETS

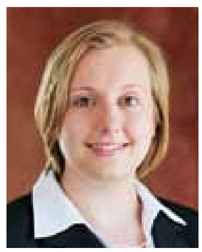
at the time of the gift. This minimizes the amount of loss that a donee can claim on a depreciated gift.

If you decide to leave that same Coca-Cola stock to your child or grandchild in your will, however, the basis will usually be the fair market value of the stock on the date of your death. This is a significant tax benefit for items which have appreciated greatly in value, and gives the beneficiary what is referred to as a "step up" in basis. That being said, the stepped up basis rules aren't universal. Inherited assets like retirement accounts or annuities, for example, will not fall into this category. In certain cases, alternate valuation dates may apply, and some farming or business assets may qualify for a different special-use valuation.

Determining whether to gift an asset or bequeath it at death will change who bears the tax burden of gain on the asset, or who will claim the loss. Gifting a highly appreciated asset will lower the total value of your estate, but the person receiving your gift will recognize a higher taxable gain. On the other hand, keeping the asset until your death so that your heirs can recognize a stepped up basis may be at odds with your estate planning objectives.

Gift planning should go hand in hand with your estate plan, and timing and the choice of assets to be gifted should be carefully considered. Because putting together an appropriate plan is complex, you should always confer with your legal and financial advisors to assist you in these matters.

# ESTATE PLANNING LEGISLATIVE UPDATE



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Estate planning law in Minnesota has been relatively static recently, but there has been a few notable changes to Federal tax law that will have a substantial impact on administering large estates: the new Form 8971 and consistent basis reporting requirements.

## New Consistent Basis Reporting and Form 8971

Congress passed a new law in 2015 adding an additional tax filing requirement for many estates. Estates required to file Form 706 Estate Tax Returns after July 31, 2015, must now also file a new tax form, Form 8971: Information Regarding Beneficiaries Acquiring Property From a Decedent—more commonly referred to as a Consistent Basis statement. The new law's goal is to make sure estate beneficiaries use the same basis when selling inherited property as is used on the Estate Tax Return. As explained in more detail in the article on page 4, The Basics of Basis, a property's basis determines how much capital gains tax must be paid upon the sale of the property.

Under the new law, if someone reports their

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basis in property on an income tax return inconsistent with how it is reported on the Form 8971, the IRS may not only assess additional capital gains tax but also a 20% accuracy penalty. Also, if property is not discovered or reported until after the period of limitations to amend the Form 8971 Consistent Basis statement has expired, that property will have a zero basis in the hands of the beneficiary. If an Estate Tax Return is required by law and none is filed, the beneficiaries will receive all property with a zero basis until the value of the property is finally determined for estate tax purposes—whether by a late-filed Form 706 or an audit.

The personal representative of the estate must file Form 8971 within 30 days after the date the Federal Estate Tax Return is filed. However, at least according to proposed Treasury Regulations, not all estates filing Form 706 Federal Estate Tax Returns have to file Form 8971 Consistent Basis statements. Estate Tax Returns that are only filed to elect portability—the rule that allows a deceased spouse to "give" their unused gift and estate tax exemption to the surviving spouse—would not be required to file Form 8971. Estates that are over the Federal exemption (currently $5.45 million) must file a Form

8791 Consistent Basis statement even if there is no tax due, though—for example, even if the decedent left everything to his surviving spouse and charity.

No one knows exactly how this new requirement will work, because even though the law went into effect several months ago, the IRS has delayed the filing deadlines for nearly the first years' worth of estate tax returns subject to the law three times. Now, estates filing Form 706 after July 31, 2015, but before June 1, 2016, must file the Consistent Basis statement by June 30, 2016.

The personal representative must also provide a copy of Schedule A of Form 8791—the portion of the Consistent Basis statement that lists the basis of the property—to each beneficiary or trust receiving property. It is very important for beneficiaries to hold onto their copies of Schedule A. If a beneficiary later sells his property, he must make sure he reports the property's basis on his income tax return the same as it is reported on the Schedule A (with permissible adjustments, like depreciation). If the beneficiary makes a gift of the property during his lifetime, he must give a copy of the Schedule A to the recipient of the gift.

## 2016 ESTATE TAXES: NUMBERS TO KNOW

Even though not much has changed recently in estate planning law, certain important estate and gift tax figures change on an annual basis. Here are the estate tax numbers you need to know for 2016:

**Federal Estate Tax Numbers to Know**

- **$14,000**: The "annual gift exclusion" amount for 2016, the same as 2015. An individual can make gifts of up to $14,000 to an unlimited number of people without paying gift tax or having to file a Federal Gift Tax Return.
- **$5.45 million**: The Federal "unified credit" for 2016. The unified credit is the amount of gifts a person can make during life and at death, not counting annual exclusion gifts, without paying Federal estate or gift tax. This is a measly $20,000 increase from 2015.
- **40%**: The current Federal estate tax rate.

**Minnesota Estate Tax Numbers to Know**

- **$1.6 million**: The amount each Minnesotan dying in 2016 can leave to heirs other than a spouse without paying Minnesota estate tax.
- **$3.4 million**: Minnesotans with eligible small business or farm property may be able to leave an additional $3.4 million tax-free to certain "qualified heirs."
- **10% to 16%**: The current Minnesota estate tax rate.

# LOCATIONS

## 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

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