

Fall 2018

# Estate Planning newsletter

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## HOW TO ACCESS A SAFE DEPOSIT BOX UPON DEATH

Commonly, documents such as a will, insurance policies, and burial plan documents may be contained in the contents of a safe deposit box. Access to the safe deposit box documents may be accomplished in a number of ways; unfortunately, some of the methods may take time and delay other post death activities and decisions. This article explores various methods to obtain access to a safe deposit box

The easiest and quickest way to allow someone access to a safe deposit box is to provide access to that individual through the rental contract with the safe deposit box holder.

This can be accomplished by having the individual provide a signature card and either providing them with a duplicate key or access to the location where the key is kept. The downside to providing this type of access to an individual is that the access is not limited to after death. Therefore, if the individual is provided with a key and permitted access



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## HOW TO ACCESS A SAFE DEPOSIT BOX UPON DEATH continued from pg 1

to the safe deposit box they can access the box prior to time of death and prior to when the safe deposit box renter may intend for them to have access to the box. Some safe deposit box holders allow designation of a successor upon death.

In Minnesota for estates with total assets of less than \$75,000.00 an affidavit of collection can be used to access the safe deposit box. The affidavit of collection of personal property can be used if the person is a blood relative to the person who died (known as the decedent), or has a legal interest in the decedent's property. To use the affidavit of collection the total value of all property where ever located minus any liens and encumbrances on the property most not be greater than \$75,000.00. The affidavit can be used whether or not the person who died had a Will. The safe deposit box must be listed only in the name of the person who died. The draw back to this method is the limitation on the value of the total estate and the fact that the affidavit cannot be used until thirty days have passed from the date of death. The affidavit is a simple one page form and must be presented to the holder of the safe deposit box along with a certified copy of the death certificate of the decedent.

A third method of accessing a safe deposit box is to present the holder of the safe deposit box with an affidavit in support of search. This affidavit can be used solely to access the safe deposit box and while copies of certain documents can be obtained the method does not allow the user to obtain the originals of any materials within the box. The affidavit can be used to search contents of the box for such things as a will, burial plan, funeral insurance, a deed to a burial lot, or documents containing burial instructions. The affidavit may be used by a person named a personal representative in a will, a person who immediately prior to the death had the right of access to the box, a surviving spouse, a beneficiary under the will, an heir of the person who died if there is no will, or a person who is designated by the person who died in a writing provided to the safe deposit box holder prior to death.

If the affidavit in support of search is used, the holder of the safe deposit box will open it in the presence of the person presenting the affidavit. If a will is present, it may be copied and the original will be delivered to the court administrator of the county where the decedent lived. Copies of cemetery deeds or other burial documents can be photocopied as well. Other documents or items in the safe deposit box will be inventoried and the inventory provided to the county where decedent resided at the time of death. The affidavit in support of search requires evidence of the death which typically

consists of a death certificate or statement in the lieu of death which can be provided by the funeral home while waiting for the death certificate to be issued if access is needed prior to the issue of the death certificate.

An additional method for access to a safe deposit box is for the executor or personal representative of an estate to present letters testamentary or letters of general administration issued by the court to the holder of the safe deposit box. This method requires petitioning the court to have someone appointed as the personal representative or executor of the decedent. If a petition is filed informally, it will typically take six weeks to two months to be appointed. A formal petition can be filed in order to attempt to expedite the appointment, however, this also may take a number of weeks as notice and publication is required.

Accessing documents in a safe deposit box can take some time after the death of an individual if appropriate pre-death planning is not undertaken. As with all estate planning activities, appropriate communication to those appointed to take care of your affairs after your death should be undertaken so that survivors know where to look for important documents and materials and how to access that information. ■



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## ASSET PLANNING FOR THE DIGITAL AGE

In the old days, family members could be reasonably sure that when the time came to administer their loved one's estates, there would be a paper trail to follow to find assets like bank accounts, investment accounts, stocks, and other valuable property. Such paper trails are becoming rarer, as more and more people begin to rely on online statements, store their valuable personal papers in the cloud, and do their banking and investment online.

In fact, these days it is not uncommon for someone's digital footprint to make up a significant part of their estate. Between data stored on personal devices like phones and laptops, social media accounts like Facebook and Instagram, cloud storage, digital media purchases, e-mail accounts, and digital photo storage, a large array of personal and financial data would be missing if we ignored a person's digital assets.

In the past, users had to rely upon the terms of service for each individual digital asset to determine whether and how they would give authority to a personal representative to access that asset following death or incapacity. This ad hoc process was confusing and could leave family members without any ability to access valuable or sentimental data. The Uniform Law Commission, working with technology companies like Google, Facebook, and Yahoo, developed the Revised Uniform Fiduciary Access to Digital Assets Act ("RUFADAA") in order to standardize the process.

In August 2016, Minnesota adopted the RUFADAA. The law provides that the custodian of a digital asset (the person or company which maintains or stores a digital asset) may provide an online tool for users to designate a recipient, or to direct

the custodian which assets make or may not be disclosed to the designated recipient. If the user chooses not to use the online tool, or if no tool is available, the user may still designate a recipient of digital assets with a valid will, trust, or power of attorney.

As part of your estate plan, you should always make sure that your documents make reference to your digital assets. To assist your designated recipient, it is also a good idea to make a comprehensive list of all of your digital assets, including all account names and numbers, important digital files, and log in information. Part of your digital inventory should include a list of all of your passwords, which you should keep in a secure location and update regularly. If there are any digital accounts that you want to limit access to, or if you want to restrict your fiduciaries from receiving online communications, like e-mails, those restrictions should be clear from your estate planning documents. ■



*Gislason & Hunter LLP & CliftonLarsonAllen  
Invite You to Attend a Complimentary Seminar*

## What Now? The New World of Farm and Business Succession Planning.

**Thursday, December 6, 2018**

**Courtyard Marriott  
901 Raintree Road  
Mankato, MN 56001**

### Registration:

This is a complimentary seminar but you must register by **November 30**.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

**RSVP: [jdonner@gislason.com](mailto:jdonner@gislason.com)**

### Schedule:

**11 am** - 2017 Tax Reform  
– What Actually Happened?

**Noon** - Complimentary Lunch

**1 pm** - 2017 Tax Reform  
– What do I do Now?

**1:45 pm** - State & Local Tax Update

**2:15 pm** - The Planning Toolbox  
– entity options, 199A reforms, valuation etc.

**3:15 pm** - Question and Answer panel

**3:30 pm** - Social



# ESTATE PLANNING FOR YOUR BLENDED FAMILY



By Christopher J. Kamath  
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Blended families are more common in the United States than you might imagine. Generally, but not always, a blended family is formed when two people get remarried and one or both spouses bring children from a previous marriage into the new family. According to a survey conducted by the Pew Research Center, forty-two percent of Americans have at least one step relative.

Estate planning can be especially tricky for blended families. I should know, I'm part of a blended family myself. Each family member has his or her own personality, emotions, and expectations. Your biological children's interests may differ from that of your stepchildren and even your spouse. Even the closest families can find relationships strained or permanently ruined by the jealousy, mistrust, and anger that comes from what is perceived as an unfair bequest.

The following scenarios help illustrate common issues facing blended families:

Case 1: Everything to Surviving Spouse. Ellen and Mike are married with two children. Ellen also has two children from a previous marriage. After a few years together, Ellen and Mike execute simple wills leaving all their property to the surviving spouse. Upon the death of the surviving spouse, all remaining property is supposed to pass to the four children in equal shares. However, after Ellen dies, Mike and his stepchildren become estranged. He executes a new will leaving everything, including the property he inherited from Ellen, to his biological children.

Case 2: Everything to Children. Jenny is sixty years old with two children from a previous marriage; Garrett is in his fifties with no children. At the time of their marriage, Jenny has \$3,000,000 in assets, while Garrett has only \$500,000 in assets. Recognizing the different levels of wealth brought into the marriage and not wanting her children to accidentally get disinherited, Jenny executes a Will leaving all of her to her two children. The couple share living expenses equally over the next twenty years while traveling and living life to the fullest. Upon her death, all of Jenny's remaining assets pass to her children outright. Garrett's remaining assets are modest and unlikely to provide for his full retirement.

If you're a part of a blended family, you may be asking yourself how you can successfully navigate the complex emotional and financial issues facing your family. The answer is communication, preparation and specialized planning. Depending on your family's situation, specialized planning may include a prenuptial agreement, will, trust, or some combination of the above.

## PRENUPTIAL AGREEMENTS

Although not used often in the estate planning context, a prenuptial agreement (called an antenuptial agreement in Minnesota) can be a valuable tool. Minnesota law permits prenuptial agreements to determine a spouse's rights to marital and non-marital property following divorce and/or death of a spouse. For example, a well drafted prenuptial agreement can be used to eliminate a spouse's right to take an elective

share of your estate in lieu of receiving property under your will. This can be especially important when one spouse enters into a second marriage with significant property and wants to leave that property to his or her children from a previous marriage.

## WILLS

A will is an essential part of an estate plan for any family. If you don't have a valid will, your assets will be automatically distributed according to the default rules under Minnesota's intestate laws. The default rules do not allow for specialized planning needs of blended families and may result in unfair dispositions of property.

Estate planners can do so much more with a will than merely directing specific assets to specific beneficiaries. For example, your Will can incorporate provisions that place conditions on gifts, grant life estate interests, grant options to purchase property, set up trusts for specific beneficiaries, or give beneficiaries the right of first refusal to rent property.

## TRUSTS

Remarried couples often use trusts to transfer wealth to future generations. Trusts are flexible and can be set up during your life (an inter vivos trust) or funded after your death in accordance with your will (a testamentary trust). Rather than leaving all of your assets directly to your spouse, you can give your spouse the right to all trust income for life with the remaining assets passing to your children upon the surviving spouse's death. This technique would have solved Garrett's retirement issue in Case 2, but at the cost of delaying distribution of the children's inheritance. Depending on the value of your estate, it may be appropriate to set up a marital trust for the spouse with only part of the estate's assets.

Trusts can also be used to shield assets from creditors. For example, a testamentary trust that gives the trustee discretion to distribute assets to your spouse or child will generally prevent the creditors of both from coming after the property. This is because the trust owns the assets, not the beneficiaries; however, giving a beneficiary the right to demand trust property will defeat creditor protection and give the creditor power to reach the beneficiaries' interest in the trust property.

## CONCLUSION

One of the biggest mistakes people make is not planning ahead. In any given blended family, there exists "your" property, "my" property, and "our" property. Planning goals may be further complicated by "your" children, "my" children, and "our" children. Your family can successfully navigate these challenges if you engage in open communication and advanced planning. ■





## *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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*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.*

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