

IF YOU WILL: *Short Takes on Estates, Taxes and Trusts*

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"IF YOU WILL: Short Takes on Estates, Taxes and Trusts" is a quarterly glance through a humorous lens at selected news items, court decisions, and/or legislative changes pertinent to estate planning. It is primarily intended to inform and entertain you. But if it causes you to pick up the phone and call us with a legal question, we won't complain; and if it inspires you to examine our more in-depth legal updates, you can view them at burnslev.com.

PETS, PROTECTORS AND PERPETUITIES: OLD RULES, NEW TOOLS

In this edition of "If You Will," we look at what's new in the world of estate planning. Contrary to the longstanding image of trust and estate work as a dry and crusty field built on layers of dusty old precedents, the legal landscape in this area is actually fertile with new laws and new ideas for maximizing the benefits of those laws for clients. What follows is a snapshot of three developing trends of possible interest to clients and friends of the firm.

Taking Care of Fluffy and Fido

Under longstanding common law - the stuff of the aforementioned dusty precedents - a non-charitable trust had to serve and benefit a specific person or persons to be valid. But just this year, Massachusetts joined the parade of states that has passed legislation enabling pet owners to establish trusts for the care of their pets after an owner's demise.

While the thought of hiring a lawyer for the benefit of Fluffy or Fido might seem amusing to some, a recent Harris Poll revealed that more than 60 percent of Americans have a pet, and more than 90 percent of those with pets consider them to be "members of the family."

So if you plan to provide for your favorite niece or nephew, why would you leave your pet out in the cold? Chances are your nephew can fend for himself much better than your pet, and you would be hard-pressed to prove who loved you more.

As a footnote to this story, we would like to point out that some people even want to spend eternity with their pets, choosing to be buried with them in pet cemeteries (which sell considerably cheaper plots). Just recently, the New York Division of Cemeteries had to enjoin the burial of humans in pet plots after more than 700 pet owners chose to rest permanently with their pets in Hartsdale Pet Cemetery. No word from Massachusetts legal authorities on that practice just yet.

Trust Protectors - Watchdogs for the Watchdogs

Another new tool that trust and estate planners are using for the benefit of their clients is the appointment of a so-called "trust protector." This tool, imported from off-shore tax havens for the super wealthy, is now being employed more often to protect the trusts of those with more ordinary means.

A trust protector acts as a kind of watchdog over your trustees, insuring that they carry out the provisions of the trust properly and that they manage its assets professionally. It can make sense for someone who wants a team of money-smart, worldly financial services experts to watch over their trust assets after death, but also wants a people-smart, loyal and caring person to watch over the trustees (some people think that a team of really sharp money experts needs watching now and then).

Nothing Lasts Forever: Even the Rule against Perpetuities

There is perhaps no rule of law in trust and estate planning that has more ancient roots than the rule against perpetuities. The rule, which limits a testator's power to earmark gifts for remote descendants, dates back to the estate of the Duke of Norfolk, which was adjudicated in 1682.

The rule, which generally was intended to prevent the tying up of estate property indefinitely, requires any bequest of property by a testator to vest before the expiration of a life in being at the time of a testator's death plus 21 years (of course, there's a whole bunch of idiosyncrasies about how that rule is applied and interpreted).

While the rule was meant to promote a public policy of insuring that property is actively used in commerce rather than restrained for undue periods of time, it has served mostly to promote litigation (the estate of one 19th century lumber baron only recently settled after more than 20 attorneys wrestled for years with the application of the rule against perpetuities to the underlying will).

That is why in recent years some states have adopted the Uniform Statutory Rule Against Perpetuities, which simplifies and defines the period for vesting to 90 years after creation of a legacy interest. Other states, including nearby Rhode Island and New Hampshire, have

repealed the common law rule entirely, paving the way for the creation of so-called “dynasty trusts” that can potentially shelter the trust beneficiaries from ever paying transfer taxes.

While the modern dynasty trust might sound like a great way to perpetually to avoid estate taxes for your heirs, it needs to be approached with care. After all, tax laws change... and just think how many beneficiaries will be reaching for a piece of the pie after many generations of children, adopted children and more remote descendants appear in the picture. Thus, the dynasty trust tool is one that presents risks and is best wielded by the hands of an experienced legal craftsman.

But that is why we’re here - to help you think through the issues, apply the right tools and give your legal arrangements the flexibility they require. Pet trusts, trust protectors and dynasty trusts are modern tools with very sharp edges. Working with them to shape a solution that is right for our clients is just what we do.

Who Needs Estate Planning and When?

For many people, the value of an estate plan will far exceed its cost due to tax savings. Furthermore, estate planning is not just for individuals who have a net worth in excess of state or federal exemptions (currently \$1 million and \$5 million respectively). The following people can greatly benefit from estate planning with experienced legal counsel:

- Individuals or couples who have dependents or beneficiaries with special needs;
- Adoptive parents, who need to make special provisions for inheritance that differ from state law provisions that apply to those without a legally enforceable plan;
- Other non-traditional families, such as those of unmarried couples or domestic partners;
- Married persons who have previous spouses or children from a prior marriage;
- Those who have special charitable goals; and
- Those who have ownership shares in a closely held business that could suffer grave disruption from an inheritance battle or significant death taxes on their estates (such people can benefit from a well-structured agreement providing for life insurance on key owners in amounts adequate to fund the purchase of a decedent’s shares, according to valuations set in advance by agreement).

Furthermore, those who have estate plans should consider revising them if their life circumstances have changed due to marriage, divorce, children, births or deaths in the family, or due to significant career changes, such as a major promotion or retirement.

[For more information, please contact your Burns & Levinson attorney.](#)

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Burns & Levinson is a full-service law firm with more than 125 attorneys based in Boston, with additional offices in Providence and New York, as well as in the Merrimack Valley/North Shore, Metrowest and South Shore areas of Massachusetts. The firm has grown steadily and strategically throughout the years and has become a premier law firm with regional, national and international clientele. The firm has expertise in corporate law, finance, venture capital, private equity, tax, bankruptcy, lending and leasing, real estate, business litigation, government investigations and white collar crime defense, intellectual property and a large private client group, including estate planning, probate and trust litigation, divorce and other family law issues. In addition, the firm has a wholly owned subsidiary office in Montreal, Quebec, to service its Canadian clients. For more information, visit Burns & Levinson at burnslev.com.

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