Jones Law Office

SPRING 2020 NEWSLETTER

Greetings! from the Attorneys and Staff at Jones Law Office. Spring has arrived in Minnesota, although we are certainly experiencing a Spring like never before. We hope you are staying healthy and well.

We have compiled a newsletter with information that we think may be of interest to our clients.

As always, we are here to assist you with all of your estate and business planning needs.

Highlights

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COVID-19 UPDATE

Out of consideration for your health and the health of our team, Jones Law Office has decided to suspend most in-person meetings for the time being. Instead, we will be holding (continued on Page 2)

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REVISITING YOUR PLAN POST-THE SECURE ACT

Congress passed the SECURE Act in December 2019 in an effort to reform retirement legislation. The Act includes policy changes that are designed to increase (cont'd on Page 2)

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OUR NEW CLIENT MAINTENANCE PROGRAM

To bring additional value to our clients, we are offering a new Client Maintenance Program. For details, see Page 6

Our Team is committed to offering you the same level of Service, but we are also doing our part in the community by offering to our staff who are able to work remotely to do so.

COVID-19 UPDATE

(continued from Page 1)
teleconferences or video conferences when possible and sharing documents through email or mail. Please call us to set up your remote conference.
For those signing documents, until further notice, we will still meet with you to sign or perform a remote signing if possible. If you are not feeling well, please let us know prior to any in-office appointment so that we may reschedule to a later date.

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access to workplace retirement plans and expand retirement savings. The SECURE Act promotes retirement savings by eliminating the prohibition for those over age 70.5 from contributing to a traditional IRA (provided they have compensation). The Act also delays RMDs (Required Minimum Distributions) until the age of 72, although those who turned 70 before July 1, 2019, must still begin theirs under the prior law. Finally, under the SECURE Act, 529, money can be used to pay down student debt, up to $10,000 (lifetime cap).

Under the old law, individuals inheriting an IRA were able to “stretch” the distributions over their lifetimes, only requiring the withdrawal of the RMD amount based off of heir’s life expectancy. The SECURE Act replaces that scheme with one that limits who is entitled to “stretch” distributions and otherwise requires that the entire inherited IRA be distributed by the end of the tax year of the 10th anniversary of the owner’s death. There is no requirement for annual distributions, but all of the money must come out by the required date.

The new Act defines five categories of beneficiaries who are still allowed under the new Act to inherit an IRA and stretch the IRA payouts over their lifetimes rather than 10 years. They are: 1) Surviving Spouses, 2) Minor Children of an account owner, until they reach the state law age of majority, 3) Disabled beneficiaries, 4) Chronically ill beneficiaries, and 5) Beneficiaries less than ten years younger than the account owner.

Under prior law, trusts could inherit an IRA and the RMDs from the account could pass through the trust to the beneficiary (i.e., a conduit or see-through trust). Under the SECURE Act, conduit trusts should continue to work; however, unless the beneficiary is in one of the five categories mentioned above, the payout must still occur within 10 years.

NOTICE:

Due to reduction of in-office staff, as a result of COVID-19 and school closures, our office phone may go unanswered at times during this ever-changing situation.

Please be assured we are checking voicemail every few hours, and in the event you must leave a message, someone will get back to you within 24 hours.

Please feel free to email info@joneslawmn.com instead, or email your attorney or their paralegal directly.

Joint Tenancy and Transfers on Death: Probate Avoidance that Comes with Risk

Occasionally we meet with new clients who come into the meeting and attempt to place an order. They don't need a Revocable Trust, they'll say, because their financial advisor, banker, friend or family member told them to designate a beneficiary or add a joint owner on to their assets and they'll be set.

The value of working with an experienced estate planning attorney is that we are trained to evaluate every individual client scenario, to assess the risks and benefits of any particular action, and to inform and advise our clients as to the best way to achieve not just one goal, for example, avoiding probate, *but all* of their goals, for example, avoiding probate *and* leaving assets to their children in trust for various reasons.

Joint Ownership and Hidden Risks

Joint ownership means that two individuals co-own an asset with rights of survivorship. When the first owner dies, the survivor owns one hundred percent of the asset. If Mom places Daughter as a joint tenant on her account to avoid probate, when Mom passes away, the account belongs entirely to Daughter, and Daughter has no legal obligation to use any of that money for Mom's estate expenses, funeral expenses, or taxes, nor does Daughter have any obligation to share that account with siblings. Additionally, adding Daughter to Mom's asset exposes Mom to Daughter's risks.

Transfer On Death Designation and Hidden Risks

Transfer on Death (TOD) designations are another way to avoid probate. However, many people who want to avoid probate, also intend that if one of their children predecease them, that child's share is to pass on to his or her children. If those children are minors, they will inherit the entire asset at the age of 18. If Mom has a $500,000 asset that she designates as TOD to Son and Daughter, per stirpes, and Daughter predeceases Mom, if Mom fails to update the beneficiary designation, then upon Mom's death, Daughter's share passes to Daughter's children who are only 17 and 15. The money would be managed by the children's guardian and upon each of those children attaining age 18, they would receive $125,000, outright.

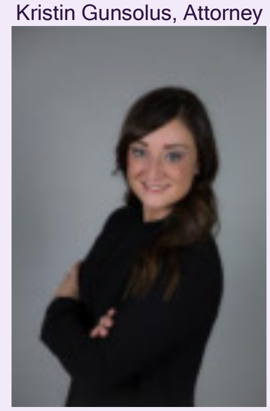
These are just a few examples of issues that may arise when an estate plan is built on beneficiary designations. While they are a useful tool in many cases, you should have a thorough discussion of the consequences and potential outcomes as part of your planning process.

Meet our Estate Planning Team

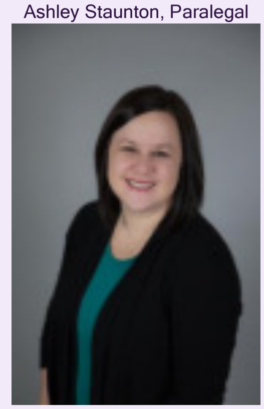
Stacey Jones, Attorney/Owner

Richard Kakeldey, Attorney

Kristin Gunsolus, Attorney



Ashley Staunton, Paralegal



Five Reasons to Establish a Revocable Trust

1. Plan for Disability. Unlike a Will, a Revocable Trust allows you to plan for incapacity. This can be especially useful for small business owners. A trust is an effective way to ensure that the grantor's assets will be used for his or her benefit in the event he or she becomes incapable of managing his or her own affairs.
2. Enjoy Flexibility. A Revocable Trust is a flexible instrument that can be changed as the grantor's estate planning needs change. The grantor can freely add or remove property during his or her lifetime and amend or revoke the trust. The grantor can choose to name a co-trustee to serve with him or her and the grantor maintains control over the trust assets.
3. Avoid Probate. Generally speaking, a properly funded trust will keep the grantor's estate out of probate. This is one of the prevailing reasons individuals utilize a Revocable Trust. While the emergence of simplistic estate planning tools, for example, Transfer on Death Deeds and Payable On Death designations, have given individuals a means to avoid probate without the need for a trust, for any individual whose estate is subject to estate tax or the estate plan includes a minor heir, a desire for asset management or ownership interests in a business, a Revocable Trust is typically the most suitable tool.
4. Immediate Availability of Assets Upon Death. Successor trustees are able to almost immediately access the trust assets upon the death of the grantor. This eases the financial burden on the administrators of an estate when there are expenses such as funeral costs, debt service, or medical expenses that need to be paid. If an estate is subject to probate, it can take two to four months for the Personal Representative to be appointed and Letters Testamentary issued.
5. Asset Management. Trusts offer an asset management feature that Wills do not. The grantor can direct when and how his or her beneficiaries will inherit, for example, at what ages or upon what conditions. Real estate can be held long-term for beneficiaries to enjoy the income stream derived therefrom. There is a continuity in the management of investable assets since the successor trustee can step in to manage the trust accounts upon the disability or death of the grantor without the need for account transfers or reregistering securities.

A Revocable Trust is a valuable estate planning tool for many individuals. Talk to your estate planning attorney today to discuss if a Revocable Trust is right for you

Advance Directives

When people think of estate planning, planning for death always comes to mind. But planning for incapacity during life is just as important. Individuals need to provide their loved ones the tools necessary to be able make decisions for them in the event they are unable to do so.

- A **HealthCare Directive** appoints someone to make healthcare decisions for you (this is also known as a Living Will). The directives in this document can include, but are not limited to, which hospital you will receive care at, whether you want to receive life sustaining treatment, such as intubation, and whether you wish for your organs to be donated upon your death.

  Healthcare directives that contain the proper HIPAA language also allow your loved ones to freely communicate with your doctors and insurance companies.

- A **Financial Power of Attorney** names someone to make financial decisions for you. In the event of incapacity, such as a medically induced coma, or even an extended hospital stay, a properly executed power of attorney gives your attorney-in-fact the ability to pay your bills, deposit checks, and talk to your financial advisors. The power granted under a Power of Attorney ends at death. While not legally required, it is a good practice to renew your power of attorney every ten years.

The pandemic the world is experiencing right now serves to remind us all that incapacity can occur to anyone, at any age.

2020 Estate Tax Rules: Decedents Dying in 2020

$11.58 Million - This is the Federal Unified Credit amount. The Unified Credit is the amount you are allowed to transfer during your life (i.e., gift) or upon death without incurring a federal estate tax.

Gifts over the Annual Exclusion amount ($15,000), reduce your Unified Credit amount, ultimately reducing the amount you can leave to your heirs at death tax free.

Each individual is allocated $11.58 Million. If you don't use your full exemption, you can leave the balance to your spouse through a "Portability Election".

Note, the law that set the exemption this high is scheduled to sunset on December 31, 2025, when the exemption amount will return to $5 Million, indexed for inflation.

$3.0 Million - This is the Minnesota exemption amount. Minnesota does not have a gift tax. Each individual is able to pass $3 Million* upon death without paying estate tax. Unlike the Federal Unified Credit, however, if you do not use your individual Minnesota exemption, you lose it; you cannot transfer it to your spouse. Therefore, if you are married with a combined estate at or approaching $3 Million, you need to do estate tax planning. *There is an additional exemption for small businesses and farm property that may apply in certain situations.

LLC and Partnership Owners: Changes to the Partnership Audit Rules

We have many clients who have established partnerships or LLCs taxed as partnerships for their business purposes. In December 2018, the Treasury and IRS issued final regulations implementing new Partnership Audit Rules. The purpose of the new audit rules is to increase the number of audits of partnerships and hence, generate tax revenue. Under the old rules, audits took place at the partner level, not the partnership level. This was difficult administratively for the IRS, as they had to track down all of the individual partners and try to collect any underpayment of the partnership from the partners individually.

Under the new audit rules, the Partnership is responsible for any underpayment of taxes, in the year the underpayment is discovered, UNLESS the partnership has elected out of the new rules or a "push out" election has been made.

1. The Partnership can elect completely out of the new rules each year and, in that case, be treated under the old partnership rules (the audit, deficiency, assessment and collection proceedings of the IRS audit are conducted at the partner level). This "opt-out" election needs to be done annually on the Partnership tax return. In order to opt-out, all partners MUST be individuals, C or S corps, or the estate of a deceased partner. *If any of the partners is a revocable trust, or even a disregarded entity, the Partnership cannot opt-out of the new rules*. There must be less than 100 partners; and Partnership must provide an annual statement to each partner w/in 30 days of opting out notifying them of the opt-out.
2. Be completely subject to the new audit rules, meaning the audit is completed at the partnership level and the additional tax liability, including interest/penalties, is paid by the partnership (old partners who have left may escape liability)
3. Be partially subject to the new rules. The audit is completed at the partnership level, but the tax liability is pushed out ("push-out" election) to the partners to be paid.

This is not a uniform decision: not every partnership should opt-out. If a partnership doesn't opt-out, a Trust can continue to be a partner, and the Partnership will be governed by the new rules and upon being audited, will either need to pay the tax or make the push out election at the time of audit. For administration purposes, for many small businesses that are taxed as partnerships, it likely makes sense to opt out of the new rules each taxable year. This preserves the traditional "pass through" structure of the entity while maintaining flexibility for the partnership.

There are some instances where the partnership may want be governed under the new rules: 1) Some partners may not want the IRS reviewing partner-level items unrelated to partnership operations; 2) Some situations may be more efficiently or better addressed by having the partnership items resolved under the new rules, such as when ownership changes are infrequent or when the reviewed year partners and audit year partners are otherwise the same (as in closely held or family-owned businesses); 3) There may also be cases in which the partners want all tax matters involving the partnership to be resolved at the same time and in a more predictable and consistent manner; 4) a purchaser of a partnership interest may want assurances that the seller will remain liable for assessments relating to review years.

You should review your individual situation with your CPA. There may be adjustments that need to be made to your estate and/or corporate documents, and our office is happy to collaborate with your CPA as part of your planning team.

Should You Name Your Children As Trustee?

One of the most pivotal questions in designing your revocable trust, used as part of your estate plan, is who will serve as the trustee upon your death. Clients tend to choose their children for a variety of reasons: children serve as trustee without charging a fee out of obligation, they do not want their children to feel left out, or they are uninformed of what the role of a trustee actually entails. Here are the top reasons why you should think twice before naming your children as trustee.

1. Serving as Trustee is a Liability. The job of a trustee can last for years and estate-related conflict is on the rise. Trustees can get sued, and when they do it is usually by a beneficiary. Although Minnesota allows trustees to use the trust assets to defend themselves; in some cases, there are instances where the trustee can be held responsible individually.
2. Children are often unqualified to serve as Trustee. Trustees need to have an understanding of legal, tax and investing issues and be able to deal effectively with attorneys, accountants and investment managers. If the trust owns assets that require a specific knowledge set, such as a small business, an apartment complex or agricultural ground, the trustee needs to have the expertise to be able to effectively manage those assets.
3. Conflicts of Interest. Trusts are administered outside of probate without court supervision. The trustees are left to their own devise to administer the trust as you have directed in the document. If you appoint a child, they typically also are a beneficiary so they are forced to wear two hats. The trustee needs to be honest and trustworthy, but also willing to always act in the best interest of the trust, even if that differs from the trustee’s individual interests as a beneficiary.
4. Serving as Trustee is Time Consuming. The pace of society is ever increasing, and people are busy. Do your children really want the job of Trustee? Or would they prefer it be handled by someone else? People hire out their legal work and tax preparation all the time, if not for other reasons but because they just don’t have time to do it. Often, children have their own families and careers and would prefer not to have to take on this additional role, even if they haven’t admitted it to you. Additionally, trustees aren’t necessarily paid for their time, although they can be if the trust document provides for it.

Sometimes it is more appropriate for clients to consider naming their children as beneficiaries, and leaving the job of trustee to an independent, qualified professional.

Introducing our NEW Client Maintenance Program

We are excited to offer a new Maintenance Program to our estate planning clients!

Participation in the program entitles you to the following valuable benefits:

- Estate plan check-up meeting every three years
- Updated Statutory Short Form Power of Attorney documents at no cost
- Reasonable phone calls to your attorney regarding your estate plan
- Semi-annual newsletter addressing important topics and issues.
- Attendance at scheduled seminars
- Contact us today to learn more!

Our experienced Estate Planning Attorneys understand that creating an effective estate plan is not a transaction;

It is a lifelong process.

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