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Client Newsletter



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**New South Carolina Legislation Dealing with
Formula Clauses
in Wills and Trust Agreements
or
Cha-ching! Cha-ching! Can You Hear
Those Cash
Registers of Legal Fees Ring?**

In our January newsletter, which you may want to review if you have not already done so, we pointed out the problems with formula clauses in wills and trust agreements that are based upon the existence of an estate tax. Since the Federal Government did not solve the problem many states, including South Carolina, have enacted legislation in an attempt to resolve the issue.

However, for South Carolina decedent's dying in 2010 with certain types of wills and trusts, their family, personal representative or trustee may have

to institute an action (i.e., lawsuit) in the probate court to construe the document. Otherwise, the personal representative or trustee may run the risk of being sued for breach of fiduciary duty. The beneficiaries may also need to bring an action because in most cases no matter what action the personal representative or trustee takes, some beneficiaries will be benefited and others will be hurt.

In a situation which is harmonious, it may also be possible to enter into a family settlement agreement and prevent the lawsuit. The problem here is that it may be difficult to protect minors or unborn beneficiaries.

There is also a strict 12 month time limit from the date of death of the decedent to bring the action. Unfortunately this creates a full employment opportunity for lawyers, which is why we titled the article as we have. There are also other factors with the new legislation that will tend to increase legal fees.

The problem can be solved for those who are alive, but who could die in 2010, by properly updating your documents, now. If you want to meet to discuss matters, please let us know.

For a complete explanation and analysis of the new law, please go to The Howell Blog on our website at www.HiltonHeadEstatePlanning.com.

**Complimentary Estate Planning Binder
and
One Hour Trust Funding Consultation**

For our clients for whom we have prepared Revocable Trust Agreements and who are serving as their own Trustee or Co-Trustee, we offer a complimentary durable binder with an index for photocopies of all of your estate planning documents. It also helps document whether or not your trust has been fully funded and contains a detailed index for organizing your information. We will also provide you with a free

Disclaimer

This newsletter is intended for the exclusive use of our clients who live in South Carolina. You have received this newsletter because, according to our file, we did estate planning work for you in the past and your primary residence is in South Carolina. If this is not correct, or we have mailed this newsletter to the wrong person, or if you have hired another attorney to take care of your estate planning work, or if you have moved out of state, or if you would otherwise like to be removed from our client mailing list, please let us know so that we can take you off of our client mailing list and/or move you to the proper list.

three-hole punch, if you do not already have one. Supplies are limited.

We recommend that in addition to photocopies of your estate planning documents, that you place copies of the information in the binder for each of your assets, to document that the asset is properly titled in the name of your Trustee. You start with a copy of an asset summary sheet, which will be in the binder. You should fill it out, sign and date it and then place in the binder.

You can then place a copy of your bank and stock brokerage account statements in the binder, along with a copy of the deed to your house, title to your automobile(s), copies of life insurance policies and annuities with the latest beneficiary designations in the binder, and pension, IRA and 401(k) information, just to name a few. You also need to include information on your homeowner's and automobile liability insurance policies showing that the Trustee is insured. We recommend that you update the information no less often than yearly.

We also strongly recommend that you obtain written confirmation every 2-3 years from your insurance companies, stock brokers, banks, and other companies with whom you have life insurance policies, annuities, IRAs, Roth IRAs, 401(k)s, or other pension type assets, as to whom the primary and contingent beneficiaries are. We have found that who our clients believe the beneficiaries to be, is often wrong when written confirmation is obtained. There are a variety of reasons why this can happen and you should not run the risk.

You should obtain written confirmation every 2-3 years unless it is automatically provided to you on a yearly or more frequent basis. You should never rely on information that is any older than 2-3 years or that is given to you verbally.

We have found that clients who keep these estate planning binders up to date have quicker estate planning conferences and updates. Also, after

your death, the settlement of your trust and/or estate should go more smoothly because your Personal Representative or Trustee has most of the information that is needed to get started right at their finger tips, which they can then provide to us. This can also save you, your estate, and your trust, legal fees, by reducing some of our time.

We have also found that our clients' families appreciate having the binder as a road map to the administration of the estate and/or the settlement of the trust. Similar considerations apply if you ever become disabled and someone needs to take over the management of your assets.

If you do not already have one of the binders, please call and let us know and we will have one ready when you arrive to pick up the binder. If needed, you can also schedule an appointment to bring in your documentation and we will go over the book and the information with you to make sure that it is up to date and you understand what needs to go into it.

The binder is free and so is up to one (1) hour of our time if: (1) you fill out an asset summary sheet and place as much back up documentation as you have, or can reasonably find, into the binder documenting your assets and value and (2) drop the binder with the information off at our office no less than 24 hours prior to the conference. This is so that we can review it prior to the meeting and be prepared. You need to call and arrange a time to pick up the binder and at the same time you need to set up a time to bring it back with the necessary information. This offer is good for conferences held on or before September 15, 2010.

Please keep in mind that you can only drop off and leave photocopies. Our staff is not allowed to accept any original documents. If you need us to copy any of the papers for you, please let us know prior to bringing in the information and we will schedule a time to do so.

We have found that the conference is much more effective if we review the information prior to the

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No portion of this material should be construed as legal, accounting or financial advice. It is merely intended as general educational information and does not necessarily represent the planning that should be done in your particular situation. If you want to use any of the techniques described herein, please contact our office before proceeding.

conference. Otherwise, the one (1) hour of free conference time will not be nearly as productive. Any time after the one (1) hour that you need will be at our normal hourly rates.

The pre-conference review of the material, assuming there is nothing unusual or unexpected that doesn't take more than 15 minutes, is also free and is in addition to the one (1) hour of free conference time. Anything over 15 minutes reduces your one (1) hour of free conference time.

If you are married, you will also need to re-sign our Conflict of Interest Memorandum for Clients Being Represented Jointly. Sometimes we refer to this as a Dual Representation Letter and you would have signed one at least when we first worked on your estate planning. These can be found in the returning client packages on our website, or you can obtain one when we meet. One of our attorneys will also need to discuss the memorandum with both clients prior to any substantive conversations.

If during the conference, you have any other questions about your estate planning or how it is impacted by the current status of the estate tax law and/or the new South Carolina statute on formula clauses, we will also answer them. This is also at no charge, within the above time limits.

Please call soon, if you want to take advantage of this offer. Supplies are limited as are the number of free consultations.

**New South Carolina Law Rebuttably Presumes
That
Certain Tangible Personal Property
is Owned as Joint Tenants with Right of
Survivorship
by a Husband and Wife Upon the Death of First
Spouse**

South Carolina recently passed a new law, which provides that untitled tangible personal property, such as household and personal effects, is presumed to be owned by a husband and wife as

joint tenants with right of survivorship. There are 5 exceptions, and the presumption can also be overcome or rebutted by sufficient evidence to prove that it is more likely than not, that the property was owned in a manner other than as joint tenants with right of survivorship.

The law is mainly positive. For a more complete analysis and explanation of the new law, please go to The Howell Blog on our website at www.HiltonHeadEstatePlanning.com.

Do You Want to Avoid Probate?

Do you have a Trust?

If the answer is yes to both questions, then you must properly fund your Trust.

Call us for details about a free one (1) hour consultation to discuss funding your trust or read this newsletter for details.

**Is Your Estate Plan Up-To-Date
with Respect to Current and
Proposed Federal and
South Carolina Estate Tax Laws?**

Call us for details about a free one (1) hour consultation to review your estate plan and estate planning documents or read this newsletter for details.

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