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## **KSW LAW ANNUAL UPDATE 2023**

Dear Valued Client:

This letter outlines recent changes in the law that may impact your estate and business plans.

Please explore our website [KSW-LAW.com](https://www.ksw-law.com) for helpful forms and other information regarding various estate planning topics, including this letter and a revised book containing all the updates to the law.

### **Corporate Transparency Act**

An attractive feature to owners and operators of small corporations and LLCs is that such entities are subject to relatively little governmental scrutiny. This lack of significant oversight, however, has enabled the unscrupulous to use such entities to hide criminal wrongdoing, like money laundering. Hoping to mitigate this abuse, the federal government recently passed the Corporate Transparency Act.

Effective January 1, 2024, the Act requires any newly minted corporation, LLC, or other entity registered with a state's secretary of state (such as a limited partnership) to notify FinCEN (a division of the US Treasury) of the identity and mailing address of the entity's "beneficial owners." Any future changes to the identity or mailing address of those beneficial owners will also need to be promptly reported. All small corporations and LLCs in existence prior to January 1, 2024, must report to FinCEN before January 1, 2025.

The Act only applies to small entities, which it defines as those with 20 or fewer employees and gross receipts of less than 5 million dollars per year.

Many details regarding the content and method of reporting to FinCEN are not yet available, so it is important for our clients who own or manage small corporations, LLCs, and similar entities to monitor this developing issue. Failure to comply with these reporting requirements could result in significant fines and other punishments.

## **Secure Act**

Secure Act 2 was signed into law in December of 2022. It makes several changes to the way in which employees and their employers deal with retirement plans. In addition, it raises the age at which you must start withdrawing from your retirement plan to age 73. After 2033, that age will be 75. There are many details of the law that might affect individuals as well as employees and one of those is that individuals under age 59 ½ may withdraw \$1,000.00 per year for emergencies without penalty. It is important that you seek advice if you have any questions about your retirement plan and a plan you might have inherited.

## **Powers of Attorney**

The legislature last substantially updated the financial power of attorney law in 2018, and for several years we have encouraged our clients to redo their older financial powers of attorney to reflect these important changes. If you have not already done so, please give us a call or send us an email to discuss this issue.

The New Hampshire legislature changed the law regarding Advance Directives (health care proxy and living will) in the summer of 2021 and made significant changes to the "standard" form. Accordingly, we suggest everyone redo their health care powers if they are outdated.

Keep in mind that a power of attorney is often most needed in difficult and possibly emergency situations and is ultimately used to convince a stranger (a bank teller or a buyer of real estate, etc.) of someone's authority to make decisions on your behalf. Because of periodic changes in the law, the older your document is the greater the chances are that this hypothetical stranger will hesitate to rely upon your power of attorney and impede the orderly administration of your affairs. For this reason alone, we advise our clients to renew their powers of attorney as often as practicable.

When children turn 18 and become legal adults, their parents automatically lose the ability to manage their children's financial and medical decisions or even to be informed about their children's medical conditions by health care providers. It is critical to have a plan in place enabling someone (presumably their parents) to make decisions in an emergency or even merely for convenience to assist the adult children. To facilitate getting these documents done, we offer discounted rates for the preparation of powers of attorney for the children of our clients who have recently turned 18.

## **Estate Taxes**

New Hampshire does not currently impose an estate tax. The federal government and some surrounding states (including Massachusetts and Maine) do impose an estate tax, however, which can have significant impacts on New Hampshire residents.

The current federal estate tax exemption (or amount a person can leave to their beneficiaries tax free) is \$12,920,000.00 or \$25,840,000.00 for a married couple. At the death of the first spouse, to the extent that spouse did not use his or her entire exemption, the surviving spouse acquires the balance of the other's exemption. Importantly, surviving spouses cannot take advantage of his or her spouse's exemption unless an estate tax return is filed even though no taxes are owed at the time. Federal law also allows lifetime gifts equal to the estate tax exemption. In addition, each

person can give \$17,000 dollars per person per year without being included in that person's lifetime gift tax exemption.

Although the current federal estate tax exemption is so large that most people might think they need not concern themselves too much about it, no tax is permanent. The current law is due to expire in 2025, at which time the exemption will revert to approximately \$6,200,000.00 per person (adjusted for inflation). There are proposals to lower the exemption even further and to do so sooner than 2025.

Many of our clients have estate plans originally drafted decades ago when the federal estate tax exemption was significantly less than even many of the lower current proposals. Some of those plans may have included creating separate trusts for married couples. For those clients with such estate plans, we encourage you to consult with us so we can determine whether those older plans remain your best option.

Regarding our neighboring states, Maine has an estate tax exemption of \$6,410,000.00 and Massachusetts has an estate tax exemption of only \$1,000,000.00. Merely by owning real estate in these states, these taxes may impact your estate even if you are a New Hampshire resident at the time of your death. For this reason, should you own real estate in states other than New Hampshire, you should consult with our office on this matter.

The volatility in this area requires vigilance and regular consideration of your estate plan and is among the reasons we encourage our clients to review their plan at least every 5 years or so.

## **Long Term Care**

Many people worry about the cost of long term or nursing home care. There are limited options to preserve assets in this area as the state and federal government do not presently prioritize preserving the wealth of someone in need of expensive care toward the end of their lives.

Importantly, ordinary revocable trusts — which constitute the vast majority of trusts we prepare for our clients — ***DO NOT*** protect assets in the event a client requires long term care. Although irrevocable trusts do offer some protection in some states, they do not work well in New Hampshire. One of best option for our clients concerned about this issue is often purchasing long term care insurance.

There are other methods used to preserve assets including gifts, but the rules surrounding such gifts are difficult. When an individual applies for Medicaid to cover the costs of long term care, the state reviews the applicant's past five years of financial records and will penalize the applicant for any gifts made within that period. There are proposals to extend this so-called "look back" period even further. There is a carve out to the look back period if an adult child lives with a parent for two years prior to the parent's application for Medicaid and provides care to the parent during that period. Under such circumstances, the parent's house can often be transferred to the child without penalty. Additionally, a person can compensate caregivers, including family members, without penalty provided certain conditions are met.

For married couples, when only one spouse requires long term care, there are more ways to preserve assets for the spouse who remains at home. However, when the remaining spouse or a single person enters a nursing home, all assets except \$2,500.00 (this amount varies slightly by state) must be spent on care before the person will qualify for Medicaid.

The law in this area changes rapidly and often, so regular discussion and advice is important.

## **General Housekeeping**

As time passes, we recommend our clients reconsider whom they have appointed to roles of authority. For clients with children you opted not to empower when you originally drafted your estate plans, it may be appropriate to revisit that decision as your children continue to mature. Alternatively, if you are concerned about possible conflict within your family after your death, it might be wise to name a neutral authority as executor or trustee. You may also want to ensure your beneficiaries understand your wishes before your passing, and we are happy to attend beneficiary/family meetings to afford everyone the opportunity to ask questions.

It is also important that you always know where your originals (as opposed to copies) are stored and that they remain safe. These original documents have special importance and can usually be identified by the fact that they were signed with blue ink and have raised notary seals.

If you have a revocable trust and wish for your estate to avoid the often frustrating, costly, and time-consuming probate process, you **MUST** diligently title your assets to your trust during your lifetime. Simply creating a trust and naming it the beneficiary of your will **WILL NOT** avoid probate. To avoid probate, your assets (bank accounts, deeds, car titles, investment accounts, insurance policies, etc.) must either be titled in the name of your trust or your trust must be named as the beneficiary. For some assets, you can, and should, name individuals as beneficiaries and doing that will avoid probate. To title assets in the name of your trust, you must work directly with the institution (bank, investment company, etc.) that maintains the asset. Regarding assets with recorded titles (most vehicles and real estate), the recorded title must be in the name of the trust. We are happy to assist with the property deed transfers, so please contact our office if you have any questions on this topic.

We have resumed doing seminars on estate planning topics, so please check our website for future dates.

We continue to offer annual fee arrangements so that you can have an annual meeting with us and do routine updates for a single charge. If you have any interest or questions regarding this program, please contact our office for additional information.

As always, it is our honor to serve as your advisors and we look forward to seeing you and assisting you in the upcoming year.

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