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Re: Annual Update from KSW Law

Dear valued client,

We are writing to inform you of changes in the law and how you should update your estate plan to ensure it continues working for you and your family.

Please check our website KSW-LAW.com, and much of this letter's information may be found there along with other resources discussing various estate planning topics in greater depth.

Powers of Attorney

The New Hampshire legislature periodically amends the laws governing both financial and health care powers of attorney (which are the documents that empower your chosen relative or trusted friend to make decisions on your behalf, and which are critical if you can no longer make complicated decisions for yourself).

The legislature last substantially updated the financial power of attorney law in 2018, and if you have not already done so, please give us a call or send us an email to discuss this issue.

In the summer of 2019, New Hampshire adopted the Revised Uniform Fiduciary Access to Digital Assets Act, which provides a framework for permitting your power of attorney, or your executor or trustee upon your death, to manage your "digital assets," such as your email or social media accounts. As these digital assets become increasingly important to our affairs, we advise our clients to amend their documents accordingly.

Regarding health care powers of attorney, the legislature revamped the law in the summer of 2021 and made significant changes to the "standard" form.

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 whenever the legislature enacts a significant amendment in this area and regularly even without changes to the law. It is also important that as you get older, you consider naming a secondary power of attorney to make sure there is someone to assist you in the event a person of your age is unable to do it.

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 important that young adults sign powers of attorney to make sure they get assistance if necessary. 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.

Remember that someone acting as your power of attorney usually cannot access your trust accounts. As you get older and want your adult children to have access, it is a good idea to amend your trust and add them or one of them as a co-trustee with you.

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 \$13,061,000.00 or \$26,122,000.00 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 \$18,000.00 dollars per person, per year without being included in that person's lifetime gift tax exemption.

The rules in this area become further complicated when a spouse remarries. Therefore, a widow or widower contemplating a new marriage should consult our office regarding any possible estate tax consequences.

Although the current federal estate tax exemption is so large that most folks 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).

Many of our clients have estate plans originally drafted decades ago when the federal estate tax exemption was significantly less than it is today. 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 \$6,800,000.00 and Massachusetts recently increased its estate tax exemption to \$2,000,000.00. 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 plan 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, which people often confuse with revocable 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. We have written a guide to estate planning and that book is posted on the website. It contains all the current numbers for assets and income for the Medicaid qualification process.

Corporate Transparency Act

For clients who have LLCs or corporations, starting in 2024, you will need to register with the secretary of state and the US Treasury. Please contact us if you need assistance with that.

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 DOES 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. To do this, 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 deed transfers, and please contact our office if you have any questions on this topic.

We have resumed doing seminars on estate planning topics. You can check the website for dates and locations.

We still offer annual fee arrangements so that you can have an annual meeting with us and do routine updates for a single annual charge. We highly encourage your doing this as it ensures that we look at things every year and react to changes as necessary.

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.

Sincerely,

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