

“Let our advance worrying become advance thinking and planning” – Sir Winston Churchill

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ELDER LAW TODAY

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The temperature this morning was 8° with a chill factor of minus 4° BRRRR! Hope you and yours have avoided the flu. It's really been an epidemic, hasn't it?

I want to talk about 3 subjects: some changes in the new tax law affecting estates; reducing sibling rivalry in estate planning; and “an offer you can't refuse”.

NEW TAX LAW: Under President Trump's new tax law, the new estate tax exemption is \$11,400,000.00 per person! For a married couple it's \$22,800,000.00. That's a far cry from what it was when I started practicing in 1975 when it was \$60,000.00! And as recently as 2008, the exemption was \$2,000,000.00 – so more than a 5 fold increase in the exemption in 10 years! The annual gift tax exclusion is now \$15,000.00 per person. (Meaning you can give \$15,000.00 in assets valued at fair market value to as many people as you want each year without having to file a gift tax return (form 709). It used to be when the estate tax exemption was much less, people would take advantage of the annual gift tax exclusion so as not to “consume” part of their overall estate tax exemption –but no worries now for 99% of Americans, given the huge estate tax exemption. Folks still need to understand that there are certain types of assets that are better NOT to give (but leave in their estates and pass to the intended beneficiary at death), because of the “stepped up basis rule”. An example: you bought a farm (or other asset) years ago and paid \$500.00 per acre (or you inherited it and when you inherited it, it was worth \$500.00 per acre). You want to make a gift of this farm to your children, but it's now worth \$2500.00 per acre. If you do this, your kids “income tax basis” will be your basis --\$500.00 per acre. If they decide to sell it during their lifetimes, they will have to pay capital gains tax on \$2000.00 per acre! On the other hand, if you left it to them in your Will (or revocable trust) they would get a new “stepped up basis” of \$2500.00 per acre and if they sold it for \$2500.00 or less, there would not be any tax to pay!!

SIBLING RIVALRY: When a parent dies, children may battle for years over their inheritance. Fights over mom's or dad's prized possessions –whether it be a watch with little value, a lucky five iron, or an old 22 rifle –are very common. Even if the object is of little economic value, the sentimental attachment can make it priceless in the eyes of heirs. Parents should anticipate these potential “attachments” and plan ahead to smooth over conflicts and “right” any perceived wrongs. In one bizarre case that demonstrates this issue graphically, two

sisters fought over their deceased mother's \$15.00 watch that one of them, as a child, had given their mother. Their mother had bequeathed her jewelry to “her children as they may decide”. To resolve a stalemate between the sisters, the estate's executor and an attorney, arranged a bidding process in which the daughters put dollar values on various assets to determine how the items would be apportioned. The one daughter, who had no sentimental interest in the watch, valued it at \$6000.00 just to keep it from her sister!! One way to avoid such battles is to make specific bequests to heirs after determining what is most important to each of them. If there is significant differences in value in the objects that are left to different heirs, the Will can provide for a “compensating legacy” of cash to make up for any difference.

In the case of the \$15.00 watch, the Will named both sisters as co-executrices –after a lengthy legal battle, the court eventually removed both of them and appointed a bank as executor. In a case like this, it would have been much better for the mother to have appointed an independent executor like a bank with trust powers – or perhaps an individual who is willing to take on the job. While it is true the independent executor will be charging a fee, it may be the best solution and, hopefully, keep family relationships from being destroyed.

Hard feelings can also arise when one beneficiary feels he or she is being treated unequally compared to the others. Also, hard feelings can occur if only one child is named trustee of a family trust. Or one child is named sole executor of a Will. Another area that can create hard feeling is where one child has been a primary caregiver of the parents (the other children living far off) and significant assets had been either “loaned” or “gifted” to that caregiver child. When the parents die, the children who live far off might think that the assets transferred to the “caregiver” should be treated as loans and deducted from that child's inheritance. On the other hand, the “caregiver” would likely say: “those assets were given to me because of the work that I did in helping our parents”. Bottom line, the Will of the parents should address these potential disputes so as to clarify what was intended.

The goal is to avoid surprises after a death. If the children are not going to be treated equally, let them know ahead of time what you are doing and why you are doing it.

Should I have an “anti-contest clause” (a/k/a “in terrorem” clause) in my Will to discourage a Will contest? This clause basically says if anyone contests the Will they forfeit any rights to their inheritance. It may also extend not only to the child, for example, but his or her descendants as well. While these clauses are not favored by the courts, they can be enforced and will certainly make a beneficiary think twice before launching a Will Contest.

THE DEAL YOU CAN'T REFUSE: At my seminars I advise folks to review their Wills at least every 3 to 5 years to make sure it still says what they intend to happen when they die and to make sure that there have not been any changes in their family situation (birth, death, divorce, adoption) or in the IRS tax code that could impact on their Wills or revocable trust. Here is one example: As I stated above, the estate tax exemption has increased to now over \$11,000,000.00 per person. If you are married and your Wills were drafted when the exemption was much smaller, you may have a “bypass trust” or “credit shelter trust” in your Will – which was designed to avoid “stacking” one estate on top of the other and cause a large estate tax to have to be paid at the death of the 2nd spouse. Now that the exemption is \$11M per spouse, more than likely, there is no longer a need for that trust.

But, if you don't revise your Will, when the first spouse dies, there may be no option for the executor of that first spouse's Will to do, but to have to transfer the entire first spouse to die's estate into that “bypass trust”. There will also have to be income tax returns filed each year for that trust. Bottom line: revise the Will to do away with that “bypass trust” unless there is some compelling reason for keeping it!

My associate attorney, Dean Godfrey, and I are offering a free 30 minute Will/estate plan review. We will want you to provide us in advance with your estate planning documents (e.g.: Wills; Statutory (financial) powers of attorney; Medical Powers of Attorney; HIPAA Releases; Directive to Physicians) so we can make best use of your 30 minute conference. This will be on a “first come-first served basis” so you may want to call sooner rather than later.

Enjoy the rest of the cold weather (remember, starting in May we will have much warmer weather and bemoaning that we no longer have this winter weather!!) That's it for now!

Elder Law Today is written by C. Dan Campbell, Attorney at Law, who is Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and Civil Trial Law. **This newsletter is not intended to be nor should it be construed as the giving of legal advice. Before taking any action referred to in this newsletter you should consult with an attorney who is knowledgeable in this area of law.** This newsletter is published as a service of C. Dan Campbell, P.C., 4245 Kemp Blvd., Suite 800, Wichita Falls, Texas 76308. Visit our website at: www.cdancampbell.com

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