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NEWSLETTER ~ JUNE 2010

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Power of Attorney Legislation Headed to the Governor – On June 1, 2010, the New York State Senate passed a technical corrections bill amending the power of attorney legislation that went into effect last year. Bill S7288A passed the Senate with 61 Senators voting yes and one abstaining. The bill had been passed by the Assembly several times, most recently on May 11, 2010, and now awaits the Governor's signature.

The bill is a technical corrections bill because it amends the power of attorney law largely by clarifying existing language and making the provisions of the law uniform throughout.

The bill clarifies that only powers of attorney for tax, financial and estate planning purposes are covered by the law and that several other types of powers of attorney are excluded from its extremely rigid requirements. This is a welcome change that removes the uncertainty surrounding other powers of attorney commonly used for business and commercial purposes.

The legislation further clarifies that under the statute revocation of previously executed powers of attorney is no longer automatic. This mitigates the potential for a principal to unwittingly revoke a power of attorney and unravel carefully prepared estate, tax and financial planning.

Many practitioners have expressed disappointment that the bill does not go further to correct the many perceived flaws in the statute. Only time will tell if this is the final technical corrections bill. Stay tuned.

Mark Stenseth

Goodbye to the GRAT – The Grantor Retained Annuity Trust (“GRAT”) – long an effective estate planning tool –

appears likely to become a thing of the past. The House passed a small business tax bill on June 15, 2010 that, if enacted, will prohibit GRATs with: (1) terms of less than 10 years; (2) annuity payments to the grantor decreasing relative to any prior year during the first 10 year term; and (3) those that have \$0 gift tax values. These are some of the characteristics that make the GRAT so useful. President Obama supports the restrictions, so the only obstacle is the Senate.

GRATs may be funded with almost any type of asset. GRATs can essentially freeze the value of a person's assets transferred to the GRAT, provide a stream of income to the grantor, transfer appreciation of the assets on a gift and estate tax-free basis and, provided the grantor outlives the term of the GRAT, transfer the assets from the grantor's estate to the trust's beneficiaries at a significant transfer tax discount. If the performance of the GRAT's assets exceeds the applicable IRS interest rate (3.2% as of June 2010), the excess is essentially passed to the GRAT's beneficiaries estate and gift tax free.

Generally, to reap the greatest benefits, a GRAT is structured so that the term of the trust is fairly short (two to five years) and so that the gift tax value of the remainder interest passing to its beneficiaries is as close to \$0 as possible. The payout rate and/or the trust term can be modified to change the value of the reportable gift. However, if the bill becomes law, these options will be restricted.

If you have done a GRAT or think that a GRAT may be right for your estate planning and asset protection goals, please contact your MacLean Law Firm counselor or your legal and tax advisors promptly.

Ian W. MacLean

Building and Protecting Wealth Through Self-Directed IRAs - Planning for retirement often involves IRA investments to provide income tax deferred growth. Most traditional IRAs are managed by banks or brokerage houses that often restrict the IRA owner to investment products offered by the financial institution.

What many investors do not know is that IRA investment choices are not so limited. The Internal Revenue Code does not list what you may invest in, but merely lists those assets that an IRA may *not* invest in, which include: (1) life insurance contracts; (2) most collectibles; and (3) S corporations (because an IRA is not a permissible shareholder). Certain self-dealing transactions conducted between the IRA and "disqualified persons" are also prohibited. Disqualified persons include (1) the IRA owner, (2) the IRA service providers, (3) family members of the IRA owner, and (4) any business entity in which a disqualified person has a 50% or greater interest.

These restricted transactions aside, IRAs can be invested in a wide range of "non-traditional" assets using a "Self-Directed IRA" and a select number of Self-Directed IRA custodians. A Self-Directed IRA owner may instruct the custodian to invest in non-traditional assets such as real property, business entities like LLCs, mortgages, promissory notes and other types of securities, allowing for more personalized and flexible investments. Many of these investments can provide greater or more stable returns than typical IRA investments. While most of these Self-Directed IRA custodians charge fees per transaction or as a percentage of the asset value of the investment, the returns and stability often make the transaction costs well worth the effort.

Depending upon your retirement goals, a Self-Directed IRA may be a suitable

part of your estate planning and asset protection plan. If you have questions about how a Self-Directed IRA can help you plan for your retirement, please speak with us or your tax or financial advisor.

Jean L. Chou

Small Business Jobs and Credit Act Passed by the House of Representatives – The House of Representatives passed H.R. 5297 on June 17, 2010. This bill creates the Small Business Lending Fund Program which will initially use \$30 billion and possibly up to \$300 billion to lend to small and medium community banks that will in turn lend money to and make capital investments in small businesses.

The Fund will have performance-based incentives and safeguards designed to ensure that the money is in fact being lent to small businesses. The impetus for this legislation is summed up nicely by Indiana Congressman Baron Hill who voted for the bill: "Small businesses have created two-thirds of the new jobs over the last 15 years."

Mark Stenseth

MacLean Law Firm News – The MacLean Law Firm is doing its best to prove Congressman Hill correct. The firm has recently hired Jean L. Chou, Esq. as an associate attorney and Judy Jacoby as a summer associate law clerk.

Elder Law Acronym List Additions – The following acronyms are additions to the Elder Law Acronym List first published in the February 2010 newsletter.

CPSE – Committee on Special Education
IFSP – Individualized Family Service Plan

MAC- Medicare Appeals Council
NAMI – Net Available Monthly Income
NOMNC – Notice of Medicare Non-Coverage – notice of appeal right under Medicaid Advantage
OMH – Office of Mental Health
PCCM – Primary Care Case Manager
PHL - Public Health Law
SSL – Social Services Law

Additions to this list will be published in future newsletters. Please contact us for a complete list or if you have any questions about Elder Law issues.

This Newsletter is not legal advice. For more information, to request a consultation, or to engage the law firm, please contact us at 212-682-1555 or by email at info@maclean-law.com.

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