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Client Bulletin



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“Top Lawyers”

Columbus CEO, which uses Martindale-Hubbell’s® peer review rating system to determine the top lawyers in Central Ohio, listed eight Delaware County private practice attorneys, six with offices in the City of Delaware and two with offices in Polaris. The “Top Lawyers” list again included this law firm’s Dennis Pergram and Steve Martin. Dennis was listed with the practice areas of Labor and Employment, Litigation, and Appellate, while Steve was listed with the practice areas of Real Estate, Zoning, Planning and Land Use, and Contracts.

Federal Estate Tax and Gift Tax Exemption Information

Beginning January 1, 2011, the Internal Revenue Service has allowed for a portability election for estates of decedents survived by a spouse to pass any of the deceased spouse’s unused estate tax or gift tax exemption to the surviving spouse. This option eliminates the need for spouses to retitle property and create trusts solely for the purpose of taking advantage of each spouse’s exclusion amount. The IRS expects that most estates of people who are married will want to make the portability election, even if they are not required to file an estate tax return.

The only way to make the election is by properly and timely filing an estate tax return on IRS Form 706. There are filing thresholds to meet the applicable exclusion amount: \$5,000,000 (2010-2011), \$5,120,000 (2012), \$5,250,000 (2013), and \$5,340,000 (2014). Those estates that did not elect portability in recent years are getting a second chance by the IRS to retroactively make the election. Many executors did not realize they had to elect portability on a Form 706 in a timely manner even if the assets of the estate were below the filing threshold.

Estates that were too small to file a Form 706 for deaths in 2011, 2012 and 2013 are now getting the option to make a late portability election. The person filing the Form 706 on behalf of the decedent’s estate must state at the top of the Form 706 that the return is “FILED PURSUANT TO REV. PROC. 2014-18 TO ELECT PORTABILITY UNDER § 2010(c) (5)(A).” For purposes of electing portability, the taxpayer’s Form 706 will be considered to have been timely filed and the taxpayer will receive an estate tax closing letter acknowledging receipt of the Form 706. The Form 706 retroactively electing portability must be filed by December 31, 2014.

Continued . . .

Changes to Health Care Power of Attorney Law Allow Easier Access to Information

The General Assembly's passage of House Bill 126 has resulted in changes, effective March 20, 2014, to Ohio's health care power of attorney law (Ohio Revised Code § 1337.12). The law as previously written allowed for the person chosen as the "attorney in fact" to make health care decisions for the "principal" only once the attending physician made the determination that the principal has lost the capacity to make his or her own health care decisions. The previous requirement that the attending physician must determine the principal to be incompetent was problematic for the reason that the attorney in fact had no authority under the health care power of attorney to obtain information concerning the principal's health. This often hindered the attorney in fact's ability to help the principal make health care decisions. There are times when the principal may want assistance from the attorney in fact even though he or she may not be considered to have lost the capacity to make informed health care decisions. Under the law as previously written, the attorney in fact could not access such information.

The new law allows the principal in a health care power of attorney to authorize the attorney in fact to obtain information concerning the principal's health, including information considered protected under HIPAA. The principal may choose to have the attorney in fact's authority to commence immediately upon the execution of the instrument or at any subsequent time, regardless of whether the principal has lost the capacity to make informed health care decisions. This change will eliminate many of the problems in obtaining information caused by the law as previously written.

There has been an addition to the statute allowing a person, the principal, to nominate a guardian of the principal's person, estate, or both, in a durable power of attorney for consideration by a court if proceedings for the appointment of a guardian are commenced at a later time. The principal may also authorize the person nominated as the guardian or the attorney in fact to nominate a successor guardian for consideration by the court. The court will make the appointment in accordance with the nomination, except for good cause shown for disqualification. If an additional nomination is made after the initial nomination, the prior nomination is revoked and the most recent nomination is the one to be considered by the court. A durable power of attorney for health care containing a nomination for guardian may be filed with the Probate Court for safekeeping, and the Probate Court shall designate the nomination as the nomination of a standby guardian. This addition to the statute can be used as another avenue for obtaining a guardian or to greatly diminish the likelihood of contested guardianship proceedings.

The changes made to the health care power of attorney law by House Bill 126 will allow for more convenience and control when it comes to making decisions regarding health care. The principal now has more freedom to permit his or her attorney in fact to provide him or her with assistance, which can relieve a great deal of stress in times of need.

Notice

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

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