What's Going On At Nash Nash Bean & Ford

This Month's Firm Focus

Will v. Trust–Which is Best for You!

First let's discuss what each of those documents do.

What Does a Will Do? A will is a legal document that allows you to distribute your property to those you choose. A Will allows you to designate beneficiaries to receive specific items from your estate, and other beneficiaries to receive everything else. For example, if you want your house, your car, or your antique coin collection to go to a certain person or organization, you designate that person or organization as the beneficiary. The Executor is the person you designate to carry out your wishes.

A Will also gives parents of minor children the opportunity to name a guardian. The court makes the final decision when appointing a guardian for your children after your death, but the court will usually accept your selection.

What Does a Living Trust Do? A Will comes into play only after you die, but a Living Trust can actually start benefiting you while you are still alive. You retain complete control of your assets if you use a Living Trust. You will transfer substantially all of your property into your Living Trust during your lifetime, and any omitted assets can be transferred into the Trust at the time of death through the use of a simple Pour-Over Will. You should always make a Pour-Over Will at the time that you establish a Trust.

If you should become incapacitated or disabled, the Trust is in place to manage your financial affairs, by a Successor Trustee. A Living Trust is not subject to Probate, and therefore, all provisions of the Trust will remain private.

Will vs. Living Trust

Both Wills and Trusts are devices that you can use to provide for the distribution of your estate upon your death. Deciding whether a Will or a Trust best fits your needs depends on your circumstances. A Living Trust is a popular alternative to the traditional Will, but you should weigh the advantages and disadvantages of each before deciding on one form or the other.

Let's take a look at both the Will and the Living Trust. By looking at what each does, you will be able to determine, with our help, which instrument would be best for you. Keep in mind that usually a person who has a Living Trust, also has a Will, called a Pour Over Will, which is a "safety net" assisting the Living Trust document.

Will

Subject to probate proceedings; out-of-state property is subject to a second probate; provides court supervision for handling beneficiary challenges and creditor disputes; becomes public record. Same tax-saving provisions available as with a Trust. If you become incapacitated, must use a Power of Attorney to manage assets, or a Guardianship (Living Probate) must be established. Charges to prepare a Will is usually less than a Trust, but the cost of Probate will be substantial in comparison to that of a Trust Administration.

Living Trust

Not subject to probate. Avoids the cost of an out of state probate. No automatic court supervision – remains private. Tax provisions same as available with a Will. Allows you as the Trustor to manage the Trust assets as long as you are able, and makes provisions for a Successor Trustee to take your place, if you become incapacitated. Fees to prepare a Trust may be more than a Will, but avoids the costs of probating assets that were held in the Trust.

A Living Trust also offers strategies and provisions that are of great benefit for "Brady Bunch" families; those with a special needs child or grandchild; provides protection for heirs from lawsuits, divorce, and other claims; and can plan for Medicaid and long term care.

Don't leave matters to chance and fail to draw a Will or create a Trust. If you do, a greater than necessary amount of your assets may go to expenses and to state and federal governments in taxes, and your remaining assets may go to individuals other than those loved ones who you would prefer to benefit. Whatever the reason, one thing is certain: Not making (and keeping up to date) a Will or Living Trust can be a big mistake. Successfully initiating and completing an estate plan is normally a very satisfying process and usually helps achieve some peace of mind.

Approaching Parents About Their Estate Plan

We often hear from those attending our seminars that they are there getting information because they are worried about their parents' estate plan, or lack thereof. This is understandably a hard discussion to have with parents, as the child does not want to appear greedy, and the parents fear loss of control or independence.

One of the best ways to begin this discussion is by having your own estate plan in place. Once you have executed a will, powers of attorney for property and health care, and a trust (if that fits your needs), you can begin the discussion with what you've learned from going through the process and the resulting peace of mind. You can then ask them if they have done the same planning.

Rather than beginning the discussion by asking them if they have done a will, start with asking them who would make financial or medical decisions for them, if they were temporarily disabled. If they have those documents in place, ask them if they would share where they are stored in case they were needed in an emergency. It would also be helpful to know who their attorney and financial planner is and where they keep other important documents, i.e. safe deposit box keys, insurance policies, deeds, and tax returns, etc.

If your parents do not have a plan in place, then you should suggest that they make an appointment with a qualified estate planning or elder law attorney.

Nash Nash Bean & Ford, LLP focuses its practice in the areas of estate, tax and business planning, as well as elder law, long term care and Medicaid planning issues. If plans need to be made or if existing plans need to be updated, then the time to accomplish these objectives is prior to an emergency while the parents still have the capacity to get their affairs in order.

It's Important to Review Your Estate Plan in 2010

The inactivity of Congress has made updating old estate planning documents more important than ever. In 2010, property that passes at death does not automatically receive a step-up in basis. Instead, each individual has a limited amount of property that can be "stepped-up" in value at the time of death. Property that does not receive this step-up value will be subject to tax on all increase in value ***from the date you first acquired the property***. This means that the property could be exposed to tens of thousands of dollars of income tax liability!

And, for more than 50 years it has been common to use a written mathematical formula to divide the assets of a married couple when the first spouse dies to maximize estate tax savings. Likewise formulas have been used to provide funds for charitable causes and to benefit family and friends. ***Now, in 2010 when there is no estate tax, these formulas will not work.*** If a spouse is not your sole beneficiary (for example, if you have children from a prior marriage), the existing formula could result in the disinheritance or substantial reduction of resources provided for the surviving spouse.

We need to ensure that your property is positioned to receive the maximum step-up in basis increase available under current law. This is a time that demands a new approach to your planning with new thinking and building flexibility to see that your wishes are fulfilled no matter what Congress will throw at us this year or next. We have solutions that will meet your planning objectives with the least amount of tax impact.

Call us at 309-944-2188, 309-762-9368 or 1-800-644-5345 today to schedule a review of your plan.

Join our Email Club!

We are happy to offer you:

- Our E-Newsletter filled with timely and informative articles about estate planning related topics.
- Notice of upcoming FREE public seminars.
- NNB&F Law Firm news and events.

It's easy to join…

Simply visit our website at www.nashbeanford.com and click "Contact Us" in the upper right corner.

It's that simple! Please tell your friends! AND--

The Nash Nash Bean & Ford Law Firm will NOT share your information with anyone…ever!

New Law brings relief and clarity to age-old problem

Here's a piece of legislation that might actually help! For a long time there's been an issue

involving a decedent and joint accounts. Mom is elderly, and you (child) help her out with her banking. Mom adds you to her checking account with a $50,000 balance. Did she mean for you to…

1. Write checks on her behalf, for her convenience? OR

2. Inherit the account upon her death?

You might say #2; your siblings might say #1. This can create a mess, no matter what the intent.

Risks of joint ownership on bank or investment accounts generally outweigh the advantages. The person you name as a joint owner has complete access to all the assets in the account, even if you make all the contributions. This could create a temptation for an adult child who is struggling financially.

Joint ownership also exposes your account to your child's creditors. If your child falls behind on credit-card payments, is sued, gets divorced, or neglects to pay taxes, the account assets could be frozen or taken.

If you have two children, and add both of their names to the account as joint owner, and one of them predeceases you, after your death, that account would pass to your remaining child, bypassing the grandchildren of your deceased child – which may not be what you intended.

The "Illinois Banking Convenience Account for Depositors Act" became effective January 1, 2010. Under the new law, an account owner can designate a "convenience depositor" who can access the account and make deposits to and withdrawals from the account. **The law provides that the deposits to the account do not affect the title to the money deposited, and the deposits will not be considered gifts made to the convenience depositor.** It further provides that any deposits made or interest thereon made by either the account owner or convenience depositor is credited to and the property of the original account owner.

By properly setting up a convenience account, an account holder can have the flexibility of adding a convenience depositor to assist with banking transactions and avoid the confusion created in determining if the account was meant to be a joint tenancy or a gift. **Caveat: This law has a sunset provision in 2015.**

If your intent is to have the bank or investment account pass to a child upon your death, you can set up a "payable on death" or "transfer on death" option. This will ensure that your account assets go directly to the child(ren) you name, without the delay caused by probate.

The better alternative to using a "convenience account" is to name a trusted child as your agent with durable power of attorney, and/or name the child as a Trustee of your Revocable Living Trust. Please speak to us about authorizing family members to access your accounts.

There Must be a Better Way!

Let's look at the story of Lila. Lila is 66 years old and has worked hard all her life. She and her husband, Sam, had a great life together and had two wonderful children. Lila, now a widow, loves visiting her daughter, Cindy, and spending time with her grandchildren. She was visiting Cindy and her grandchildren when she suffered a stroke. After a week in the hospital, her condition stabilized and the doctors sent her to a nursing home for recuperation, which was expected to take up to three years.

Lila had thought this would be covered by Medicare, but that only covers the first 100 days. Lila is understandably worried that she and Sam's hard earned money will be wiped out with nursing home costs, which will leave her dependent and a financial burden on her children, instead of being able to help with her grandchildren's future, as she had hoped.

There IS a better way. Lila could have planned ahead by gifting her money into an Income Only Trust. The income of the trust would have been available to Lila, but the assets themselves would not be considered available to pay the nursing home expenses and would not have to be used up. As a result, Lila would have qualified for Medicaid. While she needed the nursing home assistance, the income she received from the trust would go toward her "share of cost" for the nursing home. But, the principal of the trust would remain intact and could go to Lila's children or grandchildren at her death. Unfortunately, this strategy does not work if you wait until the last minute. Medicaid has a five-year look-back period for gifting to an

irrevocable trust. Any gifts made within that five-year period are totaled and divided by the average monthly nursing home cost to determine the "penalty period." Lila would be ineligible for Medicaid during the penalty period. If you would like to learn more about creating an Income Only Trust, call our office at 309-944-2188, 309-762-9368 or 1-800-644-5345 to set an appointment to discuss if this would be right for you.

Nash Nash Bean & Ford Happenings

Captain Drew Nash (Jim and Judi's son) is currently deployed to Afghanistan. Drew is an A-10 Warthog fighter pilot.

Upcoming Nuptials: Jim and Judi Nash announce the engagement and approaching marriage of their son, Brian Johnson to Becky Komarowski in August 2010.

Jamaica my Week! The Ford clan just returned from a Spring Break week in Jamaica. Prior to leaving, Curt's wife, Teri, broke her foot, but luckily was outfitted with an inflatable boot, rather than a cast. We all teased that the three guys, Curt and sons, Tyler and Ryan, would be waiting on Teri hand and *foot*…

New NNBF Team Member: Kathy Young joined our NNBF team on April 12th as a Legal Assistant in our Trust Administration and Probate department. She graduated from Erie High School and received her Associates Degree from Black Hawk College. Kathy has worked as an executive assistant for Deere & Company, and most recently worked in the Prophetstown School District. She is also an Advanced Director in Pampered Chef, Ltd. --- *we're looking forward to sampling some of her delicious recipes*. She and her husband, Joel, have been lifelong residents of Erie, Illinois. They have three sons, Adam (daughter-in-law, Sona), Blake and Cole. In her leisure time, she enjoys reading, traveling, exercising, scrapbooking and cooking.

Recipe: *(a quick, light dessert from Kathy)*

Hawaiian Trifle
2 loaves of cubed Angel Food Cake
1 small pkg. instant coconut cream pudding mix
1 cup milk
1 – 8 oz. container of Cool Whip
2 cups chopped strawberries
1 cup fresh pineapple sliced into small pieces

1st layer – Layer ½ of the cake cubes
2nd layer – Mix pudding, milk together until blended and fold in Cool Whip (use ½)
3rd layer – Place ½ chopped strawberries & fresh pineapple pieces, REPEAT!

If you are visiting the Windy City: "Jack's on Halsted" is a contemporary, American restaurant featuring global cuisine incorporating Asian, Mediterranean and New World. They serve healthful, excellent food and have reasonable prices. Jack's is located on the corner of Halsted and Belmont in Lakeview, in a diverse and interesting neighborhood in Chicago. *Blue Man Theater* is just steps away along with several unique shops, clubs, bars and restaurants.

We're Keeping Watch For You

Nash Nash Bean & Ford and the American Academy of Estate Planning Attorneys are keeping watch on the U.S. Congress and Illinois Legislature regarding the Federal Estate Tax and the Illinois Estate Tax updates, modifications, changes and/or "no action" posture. IF Congress does *nothing*, the individual Estate Tax "credit" which had risen to $3.5 million in 2009 would fall to $1 million in 2011 and increase the maximum tax rate to 55%!!

Hopefully, the U.S. Congress will act on these issues now and not play "political football" with an important tax decision affecting most Americans and their families/beneficiaries.