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Private Client

Annual Estate Planning Newsletter: Part Six

Action Item: This is the sixth and final installment of our Annual Estate Planning Newsletter, and focuses on estate planning matters not related to tax planning. We urge you to review this installment to ensure that your 2016 estate and tax planning is in order.

1. Revocable Trust. The revocable trust is a valuable estate planning technique for both single and married clients, used primarily to avoid the inconvenience and extra costs of a probate administration of an estate upon death (multiple probate administrations would be required if you own property in other states). The same estate tax savings techniques available by Will can be employed via the revocable living trust. Many of the post-death income tax advantages previously available to probate estates have been eliminated, thus making the revocable trust even more attractive for wealthier clients. We usually suggest that our California clients use revocable trusts rather than Wills as their primary estate planning vehicles.

2. Durable Powers. It has become more important to plan for the risk of lifetime incapacity. A Durable Power of Attorney can provide for lifetime asset management, especially if your estate plan does not include a revocable living trust. An Advance Health Care Directive permits

you to designate someone to make health care decisions on your behalf if you become unable to do so, and also can be used to make known your desires that artificial life-prolonging measures be or not be employed on your behalf. Appropriate health care documents for your children (both minors and adults) also should be completed. In addition, **you should consider executing an appropriate authorization for use and disclosure of health information that otherwise would be protected and thus unavailable under the federal Health Insurance Portability and Accountability Act (“HIPAA”).**

3. Digital Assets. This is an often overlooked category of assets that you should consider when creating an estate plan. Many people have many digital accounts, and those accounts may be inaccessible when the person becomes incapacitated or dies. Automatic payments from bank accounts would continue until the bank is notified.

In some cases, digital assets can be left to a decedent’s beneficiaries; in other cases, a person has only a license to use assets, and the license ends at death so that no other person can use them.

Treasured family photos might be kept only in digital format. A service provider often will not disclose a deceased person’s passwords to his or her Personal Representative; and there are very few laws to help in this situation. The providers’ “terms of service” agreements often include provisions about what will happen in the event of death.

The digital asset owner should consider whether to leave important information about digital accounts with a trusted person or in a location in which the information may be found. An estate plan can designate a “digital fiduciary” who would be given the right to access digital information, such as login names and passwords, but this designation may not be honored by all websites. Login names and passwords can be kept in a digital password vault: this information should be revised regularly so that it remains current.

4. Deposit Insurance. The FDIC bank deposit insurance limit is \$250,000 per account. Generally, all retirement accounts of a single “participant” at a particular bank are insured up to \$250,000. All accounts held by a revocable trust are insured on a “per settlor per beneficiary” basis. For example, a single revocable trust established by a married couple that provides that, on the death of the first spouse, the assets will remain in the trust for the benefit of the surviving spouse for life, and that on the death of the surviving spouse, the assets will be divided into equal shares for their three children, will be insured while both spouses are living for \$1,500,000 at each bank in which the trust maintains accounts (husband is treated as having three \$250,000 beneficiaries, and wife is treated as having three \$250,000 beneficiaries). This rule will apply regardless of the relationship between the trust creators and the beneficiaries; previous law provided for this protection only to certain close family members.

5. Regulatory Notice. We are providing this letter and the enclosure as a commentary on current legal issues as a service to our clients and friends; neither should be considered legal advice, which depends on the unique facts of each situation. Receipt of this letter and the enclosure does not establish an attorney-client relationship. © 2016, BLANK ROME LLP.

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The attorneys in Blank Rome’s Private Client Group have extensive experience in implementing cutting-edge estate planning techniques to take advantage of these unique opportunities and challenges. Please contact us to assist you in reviewing and updating your estate plan.

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