

New Dimensions in Estate & Trust Planning

*An Article to Benefit Clients & Friends
of*

FERRIS & ASSOCIATES
A PROFESSIONAL CORPORATION
Attorneys and Counselors at Law

Trust & Estate Planning ♦ Probate & Estate Administration ♦ Business Formation & Planning

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FEDERAL & STATE LAW CHANGES AFFECTING EVERY ESTATE PLAN

THE ESTATE TAX COMPROMISE.

After weeks of heated congressional debate, the new “temporary” estate tax law has been signed by the President, effective January 1, 2011. The new law reinstates the estate tax in 2011 and 2012 at a maximum rate of 35% with a \$5 million exemption per person. The new rules will sunset after 2012. Beginning in 2013, there will be a \$1 million dollar per person exclusion with a 55% estate and gift tax rate unless further legislation is enacted at that time. Here are some additional estate and gift tax changes: (1) the lifetime gift tax and generation skipping transfer tax exemptions for 2011 and 2012 are the same as the estate tax exemption - \$5 million per person (\$10 million per couple) and the gift tax rate in excess of the exemption is 35%. In addition, each person still has his or her \$13,000 annual gift tax

exclusion per donee (\$26,000 for a couple); (2) A new estate tax “portability” rule allows any unused exemption to be passed to a surviving spouse. So, a married couple can exempt up to \$10 million at the death of the first spouse; (3) An estate of a decedent who died in 2010 (no Federal Estate Tax and no “Step-up” in cost basis of decedent’s assets) can now elect to use the 2010 law or the new 2011 rules. So, 2010 estates that are under \$5 million will generally elect 2011 rules to get the full step-up cost basis equal to the fair market value of a decedent’s assets. This eliminates the capital gains tax, if an asset is sold by beneficiaries at the fair market value determined at death; (4) The new “Portability” Rule is a significant tax opportunity for families with larger estates of a couple who both die in the years of 2011 and

2012. The new rule will end on January 1, 2013.

In general, “portability” would allow a surviving spouse to elect to take advantage of the unused portion of the estate tax exemption amount of his or her predeceased spouse, thereby providing the surviving spouse (and family) with a larger exemption amount from estate taxes. However, the deceased spousal unused exemption amount is only available to the surviving spouse if an election is made on the Estate Tax Return (Form 706) at the death of the first spouse to die. The election on Form 706 must be made nine (9) months after the death of the first spouse.

What to do now? **Do not procrastinate!** The uncertainty created by the current political and tax environment and return to 2001 rules beginning 2013 calls for a periodic review of every estate plan. Always remember, estate taxes are avoidable on almost every estate but the estate tax cannot be ignored.

The New Virginia Power of Attorney Act. People are living longer. Due to medical advances, the fastest growing segment of the U.S. population is individuals over the age of 65. However, with increased age comes the increased likelihood that an individual will suffer some sort of disability or incapacity during which they will require assistance with the management of their affairs.

The Virginia Power of Attorney is a tool which allows an individual to appoint an agent to manage their property, finances and personal affairs.

In July 2010, Virginia adopted the Power of Attorney Act to address problems with documents executed prior to 2010. The New Virginia Power of Attorney (1) improves portability; (2) encourages acceptance of powers of attorney by third parties (i.e. bank, insurance, etc) by providing protection for good faith acceptance of a power of attorney by third parties; (3) includes remedies if a third party refuses, absent good faith, to honor or accept

the power of attorney; and (4) includes safeguards, remedies and sanctions for abuse by an agent.

The New Virginia Power of Attorney provides you with more protections than we have been able to provide in the past.

Can a “TRUST” be a designated beneficiary of your IRA? Since 2002, a “TRUST” that meets the IRS’s “Conduit Trust” rules can be a beneficiary of an IRA or other qualified retirement plan. Most clients of the Firm will have their **Revocable Living Trust** as either the primary or the contingent beneficiary of their IRA depending on their family situation. Why? At death, the IRA account is converted to an **inherited IRA trust** which acts as the “conduit” for the beneficiary of the trust, instead of being paid outright to the IRA beneficiary. This allows the IRA owner to control the distribution of such funds while allowing for the “stretch” of the income taxation of the IRA account over a greater period of time (usually the life expectancy of the oldest trust beneficiary). In addition, an inherited IRA remaining in the trust will protect funds from the beneficiary’s possible failed marriage, lawsuit, unwise spending or predators. For more information on this subject, please see our website, www.ferrisandassociates.com, click ONLINE LIBRARY, and choose **Inherited IRA Trusts**.

Any changes in the Health Care Law? Yes! In 2005, the Health Insurance Portability and Accountability Act (HIPAA) mandated that your Agent (spouse or family member) have a signed written release to access your medical records in case of disability or emergency. Then, in July 2009, the Virginia Health Care Decision Act incorporated into one document the Health Care Power of Attorney, Living Will and Anatomical Gift Form – called the Advance Medical Directive. Whether or not you name an agent in your Advance Medical Directive, you also may use your Advance Medical Directive to give specific instructions

about all forms of health care you do or do not want.

Any changes in the trust law? Yes! In 2004 Virginia changed its **trust law** to allow inheritances to remain in your trust, fully accessible to children or beneficiaries during their lifetime, yet protected from the children's predators, creditors, mismanagement, greedy in-laws, failed marriages and Federal Estate Taxes at the child's death. This State law change allows for the establishment of a subtrust for each child at the Trustmaker's death that can last in perpetuity on a multi-generation basis just for bloodline descendants.

Why do your children need inheritance protection? Studies show that most people usually spend their inheritance within 18 months after receiving it. Obviously, this is not always the case and many children will be savers and not spenders. In most instances, however, people are not saving what they need for retirement. This is not because they do not want to save but because they cannot earn enough to fund their current lifestyles. Clients will often ask the question "How do we explain to our children why we have used Multi-Generation planning for our wealth transfer plan?" First, we suggest that you begin with a guiding principle explanation of your family's values, what life lessons you have learned over the years, what your spiritual values are and your philosophy about money and its use. Remember, transferring your family "**VALUES**" through the generations is just as important as transferring your wealth. Then, simply say, you will inherit enough money to get all of the education you need, and perhaps help pay a mortgage on your home or start a successful business. But, you will have to continue to work hard, have your own career or

important duties as a homemaker and shop on your OWN dollar. Our wealth will be there for your NEEDS not your WANTS!

Finally, it is a truism to say we live in a "**constantly changing environment.**" For example: changes in the Estate Tax Law that may adversely affect an estate tax plan, major legislation or administration developments in the future that could affect the **INTENT** of an estate plan. If such changes do occur during life and you are unable to modify your trust prior to death, there is now relief under a new Virginia Statute. Under the Uniform Trust Code adopted by Virginia in 2005, the Successor Trustee (or beneficiary) of a trust at the death of a Trustmaker can now appoint a third party (CPA, Attorney, Financial Advisor or Corporate Trustee) to respond to changes in the law or correct any errors or ambiguities found in a trust document that are inconsistent with the document's **intent**. In other words, the third party, called a TRUST PROTECTOR, can introduce flexibility and responsiveness to future needs or legislative changes to estate planning documents in our "**CHANGING ENVIRONMENT.**"

If you need to consult with one of our firm's attorneys about your estate plan and what impact, if any, these Federal and State law changes may have on your plan, we invite you to call us at (757) 220-8114. And, consistent with our firm's past practice, there is no legal fee charged for the review conference.

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