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2013 ANNUAL PLANNING NEWSLETTER

Dear Clients and Friends:

We hope you enjoy our annual newsletter. If you believe that your friends and relatives would appreciate it as well, please feel free to provide copies to them. Our newsletter is now available on our website at www.elderlaw.us. If you would prefer to receive an electronic copy of the newsletter, please contact Jayne Weddington at jweddington@elderlaw.us and indicate your preference for the e-mail version. This newsletter aims to keep clients informed of recent news and updates in the areas of elder law and estate planning.

I. Obamacare Update. Certain provisions of this legislation have become effective and have proven to be beneficial, while other vexing issues have not been resolved and are cause for concern and delay. Obviously, the website rollout has been disastrous.

Employer Mandate. The employer mandate which was to go into effect on January 1, 2014 has been delayed one year in implementation. This also carries with it the implementation of the subsidy program which was reliant upon employer sponsored data.

Exchanges. The primary problem developing with the exchanges (beyond the refusal of some states to implement their own exchanges) is the fact that in many parts of the country, there is only one company offering to enroll and offer services. One of the perceived benefits of the exchanges was to encourage competition and thus contain costs. Without at least three companies in each state, the lack of competition is problematic. If small business owners who have struggled providing insurance for employees terminate their plans, most of these employees will be eligible for subsidies. We are fortunate in Ohio as several companies have already committed to offer policies through the exchange.

Subsidies. While the administration has attempted to estimate the cost of the individual subsidies, those attempts will be tested once implemented. Approximately 60% of the working population will be eligible for federal insurance subsidies. An assessment of the actual costs of the subsidies will likely be available by the end of 2016.

II. Long Term Care Insurance Concerns. Metropolitan Life and Prudential have both stopped selling new long term care insurance policies. These companies are honoring the policies they have in place. The construction of the long term care insurance market is of concern for new enrollees and for existing enrollees. We have been recommending for some time that those under the age of 55 or perhaps even 60 consider the purchase of life insurance policies with the "long term care insurance riders." We continue to encourage that insurance model. For those over the age of 60, the long term care insurance model is still likely the only option available.

III. Long Term Care Planning with Annuities. Great News! The U.S. 6th Circuit Court (the highest federal court over Ohio) has agreed with Browning, Meyer & Ball Co., LPA that spouses of nursing home residents can increase their income by purchasing a Medicaid annuity. With this decision, couples state-wide can rest assured knowing that before their spouse's Medicaid eligibility is determined, they can purchase an annuity to increase their monthly income in addition to keeping up to $115,920 of the couples assets, AND the home and car! We are thankful that the court agreed with our position and put a stop to the State's attempt to force healthy spouses into poverty. Be aware of "seminars" that are aimed at selling these products. Contact your financial consultant and your attorney to implement this strategy.

Example: If a couple has $232,000 in assets in addition to the home, the healthy spouse can keep up to $115,920 and use the additional $116,000 to purchase a Medicaid compliant annuity, which would increase the healthy spouse's monthly income.

IV. Tax Issues.

Unified Credit. The current Unified Credit is slightly more than $5 million dollars per individual. Further, based upon the changes made at the end of 2012, "portability" is still in place. Thus, for example, if the husband passes away with $3 million and his wife has $6 million, the wife may utilize the husband's credit and shield the entire $9 million from federal estate tax. The President has proposed reducing the Unified Credit down to $3.5 million. We do not expect action on the President's proposal until 2014.

Qualified Stretch Trust. Over the last decade, many of our clients have retired with significant monies invested in qualified accounts. A qualified account is an IRA, 401k, 403b, or other account qualifying for income tax deferral. These accounts have grown to hold large amounts of money. With the decline in real estate value, these accounts often represent the largest asset for many of our clients.

While designating a spouse as beneficiary, with the children as alternate, works well in a long term marriage, the same may not be true for a second marriage or where a single person has adult children who are to receive distributions at death, or a widower

or widowed grandparent who wishes for his or her grandchildren to receive distributions when they pass. In such cases, the client may want to consider a qualified stretch trust. A qualified stretch trust instructs the trustee to pay income for life to a second spouse or to a surviving child and then the residual to children or grandchildren.

V. Ohio Legacy Trust Act. On March 27, 2013, the Ohio Legacy Trust Act became effective. The new legislation, which is part of the Ohio Asset Modernization Act, permits the creation of a Domestic Asset Protection Trust (DAPT). This makes Ohio one of 14 states to allow DAPTs, and places Ohio at the forefront of asset protection in the greater global economy.

A DAPT trust is an irrevocable trust that provides significant creditor protection, as well as greatly enhances the ability of the grantor to manage assets compared to irrevocable trusts in states that lack this progressive law. Under a DAPT, a grantor has the following powers not typically allowed for in an irrevocable trust:

1. the ability to withdraw five percent (5%) of the assets annually;
2. the ability to receive both income and principal of the trust;
3. the ability to veto distributions from the trust;
4. the right to remove and replace the trustee; and
5. the right to use trust property.

If you are a business owner, or have assets with large built-in capital gains, DAPTs allow for estate planning which can help reduce capital gains, estate taxes, and assist in business succession planning.

The Ohio Legacy Trust Act provides a unique opportunity to utilize sophisticated estate planning strategies not available in many other states. Like all estate planning strategies, there are tax benefits and consequences from such planning. Our firm will be utilizing the Legacy Trust to assist clients in asset protection, tax, and estate planning. Please make an appointment to see if this new trust can be of benefit to you.

VI. Announcements.

Student Loan Project. Our office takes great pleasure to inform you that we are offering new services with regard to funding college education and counseling regarding paying back student loans. Many of you may be preparing to send your child or grandchild away to college. The decisions regarding the receipt of federal financial aid will impact their finances upon graduation and into their adult lives. Likewise, for students who are now graduating, there are also programs which help limit the monthly payments. Additionally, every incoming college student should have a financial power of attorney, healthcare power of attorney, and a living will completed. David S. Banas, Esq. has years of extensive research and experience relating to federal and private student loan programs, and stands ready to serve our clients. We encourage you and your family members to contact David S. Banas, Esq. for a complimentary telephone consultation to determine if these services will benefit you or your family members.

Hiring and Promotions. Our long time law clerk, David Arndt, successfully passed the bar exam and has now joined our staff as an associate attorney. We are pleased that he will be continuing his career with us. Also, Mary Sharp and Karen Castricone have joined the firm as legal assistants, and Denny Shonebarger has joined as a clerk who is going to assist in the bookkeeping of our trust, probate, and guardianship files. We are excited about them joining the firm and the many skill sets they bring with them.

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