Stepping Stones

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PARTRIDGE SNOW & HAHN LLP
COUNSELORS AT LAW
Closer to the issues

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Considerations as to Use of Multiple Financial Advisors

John J. Partridge

On occasion, our clients consider the use of multiple financial advisors for the maintenance, custody, and investment of funds. Often this occurs in the context of a sale of a business or when there is an inheritance or other augmentation of wealth. The following discusses factors that might be considered by clients in making a determination as to whether multiple financial advisors or a single financial advisor is most appropriate for their situation.

Understanding Your Needs and Strategy. Many clients will feel it is appropriate to have multiple advisors so long as they are themselves actively engaged in the management of their portfolios. For instance, if a client utilizes a portion of the investment portfolio for current living expenses and desires over the long term to benefit children or grandchildren through appropriate fiduciary mechanisms such as trusts, multiple advisors might be employed appropriately to deal with these sometimes conflicting needs so long as the client can monitor and evaluate performance. Use of multiple financial advisors in such an instance works so long as there is a clear mutual understanding of the client's financial needs and plans and each financial advisor understands where it fits within the client's plan.

Competition. In many aspects of life, competition is generally viewed favorably. However, competition among financial advisors may not necessarily benefit a client. Issues such as divided investment opinions, invidious comparisons on performance, desire for a greater share of asset allocation, poor communications between and among advisors and the client, and even desire for "face time" with clients may become issues for the client with multiple advisors. Compare the situation faced by individuals and families to that of a retirement system fund or charitable endowment. In such circumstances, a fund or endowment often chooses a financial advisor who allocates portions of the investment portfolio to investment managers based upon investment expertise. In other words, a third party advises and supervises, and receives a fee, for determining appropriate investment managers and the allocation of assets among various financial advisors. With multiple advisors, the client should be in a position to similarly "quarterback" the investment plan to buffer, reduce or eliminate potential issues.

Overlap of Investments. If multiple investment advisors have discrete investment horizons and objectives, dangers such as overweighting of investment assets in a particular equity or investment sector can be avoided. With open communication among advisors, investment strategies should be clarified and conflicts minimized.

Prior Long-Term Financial Advisor Relationships. When new, sometimes surprising, wealth becomes available to a client, it may be timely for a client to evaluate an existing long-term relationship with a financial advisor to determine if the financial advisor should continue to manage all or a portion of the enhanced portfolio. It may be an appropriate time to review investment history, interpersonal relationships, prepare a cost analysis, define expertise in investments, and to review investment philosophy, age of personnel, and security and stability of the entity employing the advisor.

Managing for Future Generations. Very often, a client has a fiduciary obligation under the instrument holding the assets (for instance, a trust) and, therefore, in addition to having an individual responsibility to invest assets for himself or herself, the client also has a fiduciary obligation to future generations. (Understanding those fiduciary obligations can be enhanced by speaking with experienced counsel.) In this regard, institutional financial advisors have certain advantages. They are required, as a matter of law, to consider and advise both lifetime beneficiaries and residual beneficiaries, often have a team approach, and have resources to ensure appropriate succession of advisors within the entity over generations.

We hope that the above will be helpful to you in your determination as to whether multiple financial advisors are suitable for your financial needs.

Massachusetts Adopts Uniform Trust Code

Michael A. Kehoe

The Massachusetts Uniform Trust Code ("MUTC") is here! On July 8, 2012, Governor Deval Patrick signed into law the Massachusetts Uniform Trust Code. It became effective immediately.

The MUTC continues the initiative adopted with the passage of the Massachusetts Uniform Probate Code ("MUPC"). The MUTC is designed to streamline and simplify trust administration while minimizing the need for court involvement. It also codifies the rights of beneficiaries.

The MUTC applies to all trusts in existence before, on and after its effective date. There are, however, a few provisions of the MUTC which are prospective only.

Many provisions of the MUTC are significant departures from prior law. Now allowed, through Section 11, are non-judicial settlement agreements. These involve matters such as trust interpretation, directions to trustees, trustee powers, trustee liabilities and, most importantly, approval of accounts. Meanwhile, the MUTC incorporates the "virtual representation" rules previously introduced in the MUPC. Simply put, virtual representation (barring a conflict of interest) allows parents to represent the interests of minors and unborn children and allows an interested party to represent minors, those of whom are not yet born, incapacitated beneficiaries and potential beneficiaries. This reduces the need for guardians *ad litem* and facilitates non-judicial settlement agreements.

The MUTC further liberalizes Massachusetts laws regarding modification and termination of trusts. Trusts of $200,000 or less may be terminated without the need for court involvement. Also, trust terms may be modified without court involvement if it would further the purpose of the trusts. This allows trustees and beneficiaries to "tweak" the trust to accomplish its desired goals without the need to spend money and time in a court action.

The MUTC also allows trustees to resign without court approval. More importantly, a trustee may be removed due to a breach of trust; lack of cooperation among co-trustees which substantially impairs trust administration; unfitness or persistent failure to administer the trust; or where removal is requested by "all qualified beneficiaries." Previously, the actions of resignation or removal were reserved to the courts. These provisions will save time and money.

There are many more provisions which are of interest. These include provisions that allow a majority decision of trustees to govern trust action rather than the previous unanimous requirement. Also, all trusts are presumed revocable unless the instrument expressly provides otherwise. This reverses the long-standing Massachusetts default rule. Trusts for the care of one or more animals (Pet Trusts) are allowed as well as trusts which have no beneficiaries but operate to further one or more valid purposes of the settlor (Purpose Trusts) such as a trust to maintain and care for a gravesite.

As you can see, there are many dramatic changes affecting administration of trusts and the rights of beneficiaries in Massachusetts. As always, the attorneys at Partridge Snow & Hahn LLP welcome the opportunity to assist you in reviewing your trust documents, assisting with the administration of trusts, and advising trustees and beneficiaries as to the proper course of action under the new MUTC.

Expiring Federal Gift Exemption Provides Opportunities: Creating Trusts that Survive the Reciprocal Trust Doctrine

Kathleen A. Ryan and Devon H. MacWilliam

Since December, 2010, we have authored several Client Alerts describing key provisions of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, the sweeping federal tax legislation that impacts estate, gift and generation-skipping transfer taxes and tax planning. A key provision allows each individual to give away up to $5,120,000 in 2012 without any federal gift tax. This unprecedented federal gift tax exemption is scheduled to expire at the end of this calendar year. As of January 1, 2013 —unless Congress acts to amend the law— the federal gift tax exemption will return to $1,000,000.

While some clients are deciding to make lifetime gifts to trusts for the benefit of their children or grandchildren, others may prefer establishing trusts that name a spouse as a potential beneficiary. Under the current law, each spouse may create a trust for the other spouse funded with assets up to $5,120,000, and both of these trusts (as well as the appreciation therein) may remain sheltered from future estate, gift and generation-skipping transfer taxes at the death of each spouse. These arrangements are appealing, but they also risk violating the reciprocal trust doctrine.

The reciprocal trust doctrine enables courts to "uncross" certain types of trusts. In 1969, the U.S. Supreme Court held that where donors create reciprocal trusts for each other that do not change the economic position of each donor with respect to the property, each donor's trust will be includible in that donor's gross estate at death. In this case, *United States v. Estate of Grace*, a husband created a trust providing for payment of income and principal to his wife. Shortly thereafter, the wife created a virtually identical trust naming her husband as the beneficiary. The Court found the trusts interrelated because they were substantially identical and part of a single transaction designed by the donors. The transfers violated the reciprocal trust doctrine because they left each party in the same effective "economic position as they would have been in if they had created trusts naming themselves as life beneficiaries."

Spouses may differentiate the trusts they create for each other by providing for different beneficiaries, appointing different trustees, and including a special power of appointment in one spouse's trust but not the other's.

The last time the federal transfer tax laws permitted a lifetime exclusion greater than $1,000,000 was in 1986. For transfers prior to January 1, 1990, the so-called "Gallo exclusion" permitted grandparents to gift up to $2,000,000 to each grandchild before triggering generation-skipping transfer taxes. The Gallo exclusion and the 2012 federal gift tax exemption are rare windows of opportunity that we urge our clients to consider seriously.

The Probate, Trust & Personal Planning attorneys at Partridge Snow & Hahn LLP can help carefully structure trusts for your lifetime gifts that survive the reciprocal trust doctrine. Since the federal gift tax exemption goes back to $1,000,000 on January 1, 2013, we recommend that you consult with our team sooner rather than later.

Announcments

David S. Raymon has joined the Firm as an associate in the Probate, Trust & Personal Planning Group. David provides counsel on estate, gift and income tax planning and the administration of trusts and estates. Working with the Firm's Litigation Group, David handles probate and trust litigation matters.

Marvin S. Silver has been named by *Best Lawyers in America*® in the area of Trusts and Estates and Massachusetts *Super Lawyers* in the area of Estate Planning & Probate.

John J. Partridge was also named by *Best Lawyers in America*® in the area of Corporate Governance Law and Corporate Law.

Referrals Welcome

Our firm, like other professional service firms, relies on satisfied clients as an important source of new business. We welcome and value your referrals. Thank you for your consideration.

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John J. Partridge (jjp@psh.com) advises clients and their families on asset preservation and family wealth transfer and the legal responsibilities of fiduciaries.

Michael A. Kehoe (mak@psh.com) legal advisor to diverse businesses, advises clients with respect to their personal planning needs, including estate plans, estate administration and business succession planning.

Kathleen A. Ryan (kar@psh.com) applies her knowledge of probate, trust and tax laws to advise clients on wealth transfer planning, business succession, charitable giving, and estate and trust administration issues.

Devon H. MacWilliam, a 2012 summer associate with the firm, will join us as an associate in September of 2013.

Contact your attorney in the Probate, Trust & Personal Planning Group for a consultation on how these issues may impact your situation. Our attorneys are admitted to practice in Rhode Island, Massachusetts and Florida. Through our association with Meritas, an organization of worldwide independent law firms with broad-based practices, Partridge Snow & Hahn LLP offers its clients access to quality legal services on a national and international basis.

For general comments or questions regarding this publication, you may contact Kathleen A. Ryan, kar@psh.com | 401-861-8200.

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