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The Living Trust

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or a durable power of attorney, one or more of the Harrison children would have had to petition the court to become Beth's guardian, which can take months and possibly invite a dispute among the children.

Example 2: Mary Masters just celebrated her 79th birthday and is finding it harder and harder to manage her financial affairs. Mary doesn't see well, which makes it hard to pay her bills, maintain her house, keep track of social security, follow her investments, and apply for her permanent fund dividend. She wants to turn everything over to her son, Bud. But if all Mary's accounts are put in Bud's name, he is free to do anything he likes with the money and home, and he might not choose to transfer shares of the property to his siblings after Mary's death. Moreover, once the assets are in Bud's name, they could be subject to

the claims of his creditors or by his wife, if he were divorced.

A better choice is for Mary to establish a revocable living trust and name Bud as her co-trustee. When all of Mary's assets have been transferred into the name of the trust, Bud has the legal authority to manage the assets, pay Mary's bills, keep track of finances, and help Mary make financial decisions. Bud doesn't need a power of attorney to manage Mary's affairs because he is a co-trustee of the trust and all of Mary's assets are owned by the trust. By making Bud a co-trustee, Mary hasn't given up her authority to make decisions about her money. Bud acts more like a "helper."

Mary has good days and bad days, but Bud doesn't have to worry about going to court to have Mary declared incompetent because he al-

ready has the power to act on Mary's behalf. As a trustee, he has a fiduciary duty to manage the property for Mary's benefit, not his own. When Mary passes away, the trust provides that Bud will pay any remaining bills and distribute the assets left in trust equally to all of Mary's children.

*If you would like to name a co-trustee on your trust before you become incapacitated, contact our office so we can review your planning and make the appropriate changes. Naming new trustees on your plan is a covered expense under our **Generations** trust maintenance program.*

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A Newsletter from **Foley & Foley, A Professional Corp.**

Generations

For our clients and our professional estate planning partners

Big Changes to the Estate Tax Congress Passes New Estate & Gift Tax Law

By Richard H. Foley, Jr.



*In the closing weeks of 2010, Congress passed the **Tax Relief, Unemployment Insurance Re-authorization and Job Creation Act of 2010**, which President Obama signed into law. In addition to extending President Bush's income tax cuts, the Bill included major changes to the Estate and Gift Tax Law in 2011 and 2012.*

\$5 Million Exemption per Person

There was a temporary repeal of all federal estate taxes in 2010, but that law was scheduled to expire on January 1,

2011, with other Bush tax cuts. The new law allows a person to pass up to \$5 million at his or her death without incurring any estate taxes. This is a substantial increase for the exemption, which rose from \$1 million in 2002 to \$3.5 million in 2009. The law also dropped the estate tax rate to 35% from a top rate of 45% in 2009.

The new \$5 million exemption applies not only to wealth passing after death, but also to lifetime gifts. Under the old law, the lifetime gift tax exemption was capped at \$1 million. The new law allows a husband and wife to pass up to \$10

This feature of the law provides unique planning opportunities...

million in wealth during their lifetimes without triggering any gift taxes. This feature of the law provides unique planning opportunities for wealthier families that want to take advantage of this sizeable exemption for gifts in anticipation of the scheduled expiration of the law.

Law Expires on January 1, 2013

While this law provides substantial tax
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Wine Tasting

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Foley & Foley will be hosting an exclusive wine tasting party for our valued *Generations* clients and Partners. Wines will be furnished by WineStyles,

We look forward to seeing you there!

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April 1, 2011
5:00pm—8:00pm

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RSVP to Julie at
522-2272.

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ATTENTION **GENERATIONS CLIENTS!**

Be sure to check our website this month to learn about our new *Generations* Partners!

www.foleyfoley.com

Estate Tax Changes

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relief for the families of people who die in 2011 and 2012 or who make large gifts in the next two years, the law is temporary and is scheduled to

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expire on January 1, 2013. One of the major problems with the estate and gift tax law over the past decade is that the law has included a looming expiration date. This will continue to be a problem, as taxpayers will still be kept in the dark about what the estate tax law will look like after 2012.



The expiration of this law in 2012 is a particular problem since 2012 is a Presidential election year. Just like in 2010, it is unlikely that Congress or the President will act until after the November elections. This leaves the

fate of the estate tax law and the extension of all of the Bush tax cuts “up in the air,” subject to last minute negotiations by a lame-duck congress and perhaps an out-going President.

Portable Exemption

Another interesting feature of the new law is called “portability.” Portability allows a surviving spouse to receive the unused portion of the deceased spouse’s \$5 million exemption and add it to their own exemption when they die. For example, if a couple has \$10 million in wealth and the husband dies, the wife can receive the entire estate of her husband and not incur any estate taxes because of the unlimited marital deduction. The surviving wife can file an estate tax return and also receive her husband’s \$5 million exemption, giving her a total exemption of \$10 million when she passes away.

Portability gives a family additional flexibility for planning upon the death of one spouse, although it may not be the best estate planning solution for many families. Moreover, there are some uncertainties in the law about what happens to the “inherited” exemption if the law expires, as well as what happens if the surviving spouse remarries.

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What Does the Change in the Federal Estate Tax Law Mean for You?

The change in the federal estate tax law will not cause a major impact to most of the Foley & Foley **Generations** clients. The estate plan that you have has been drafted to take into account anticipated changes in the federal tax exemption.

If you are single, the new law simply raised the amount of wealth you can pass estate tax free to \$5 million—at least for the next two years. If you are married, your estate plan has been drafted in a way to take maximum advantage of the new \$5 million exemption by both spouses, no matter how large your estate.

The real issue is whether families with larger estates should take advantage of the \$5 million lifetime exemption to make gifts—reducing their estate by up to \$5 million each for husband and wife—before the \$5 million exemption expires. Such gifts can be made directly to a family member or to an irrevocable trust that allows the trustmaker to be a beneficiary of the trust while removing the assets from their taxable estate. Such planning can be a powerful wealth transfer tool if properly designed and implemented.

If you would like to know more about the planning opportunities afforded by the change in the estate tax law, or if you would like to have a review of your plan in light of other changes in your estate, feel free to contact us for a planning review.

The Living Trust: A Super Power of Attorney

By Richard and Susan Foley

A living trust is like a power of attorney on steroids. The trust agreement will transfer control of your financial affairs to your successor trustees in a more efficient manner than a durable power of attorney, and it will give your trustee greater control to manage assets. A living trust is a superior disability planning solution – so long as your property has properly been re-titled into the name of your trust.



trustee to manage your assets for your benefit if you can no longer manage your own affairs. This disability planning benefit of a living trust allows loved ones to avoid filing a guardianship action in court to determine your competency and then continue reporting to the court for many years to come.

A durable power of attorney can perform a similar function, but powers of attorney rarely include specific instructions about your desires, and third parties sometimes refuse to accept a power of attorney even if they are properly signed.

Probate avoidance isn't the only benefit of a properly implemented living trust.

Here are two examples of how a living trust might be used in disability planning:

Example 1: Robert and Beth Harrison are in their mid-50s with three adult children. Robert owns a suc-

cessful wholesale business and Beth is a CPA. Robert and Beth established a joint revocable living trust and transferred all of their real estate, bank accounts, investment accounts, and business interest into the trust. Robert and Beth are co-trustees of their trust. The trust also provides that when two independent licensed physicians determine that either one of them is incapacitated, the other spouse will serve as sole trustee. If the non-incapacitated spouse cannot serve for any reason, the Harrisons have named their oldest daughter, Michelle, as successor trustee.

Robert and Beth were in a car accident. Robert was killed and Beth was critically injured and now requires full-time nursing care. The accident is a family tragedy, but the living trust allows Michelle to immediately step into control of all of the family assets and continue to manage them for Beth’s benefit. Michelle might decide to sell Robert’s wholesale business and hire another CPA firm to help wind down or purchase Beth’s accounting practice. She might also sell the family home or liquidate other assets. This will take some time to accomplish,

but the living trust transfers the legal power and authority to Michelle to deal with the family crisis, manage or sells assets and preserve the family wealth held by the trust.

If the Harrisons did not have a trust