



Trusts & Estates News

November 2006

News Legislation on Disposal of a Decedent's Remains

New legislation dealing with the disposal of a decedent's remains became law, effective August 2, 2006. This new legislation can be found in §§ 4200-4202 of New York's Public Health Law.

Prior to the enactment of this new law, the Public Health Law did not clearly set forth who had priority in determining a decedent's burial or who had the ability to give specific instructions regarding the disposition of a decedent's remains. As a result, disputes arose over who had the right to determine the disposition of a decedent's remains. Typically, such disputes arose in second marriage situations, where the surviving spouse wanted to have control of the remains of his/her spouse, while the children from the first marriage wanted the parent to be buried with the first spouse. Conflict also occurred where the decedent was not married but had a domestic partner. The domestic partner's wishes for the decedent's remains often differed from how the decedent's family wanted to dispose of the decedent's remains. Additionally, disputes arose amongst siblings about how to dispose of a parent's remains. This new legislation addresses these issues and provides direction as to who has the right to determine the disposition of a decedent's remains.

Section 4201(2)(a) of New York's Public Health Law sets forth the order of priority as to who has the right to control and dispose of a decedent's remains. The statute provides that a person designated in a written instrument executed by a decedent has first priority in controlling the disposal of a decedent's remains. If the decedent has not designated such an agent in writing, the decedent's surviving spouse then has priority. If the decedent has not designated an agent in writing nor has a surviving spouse, the order of priority is as follows: the decedent's surviving domestic partner, any of the decedent's surviving children (at least 18 years of age), either of the decedent's surviving parents, any of the decedent's siblings (at least 18 years of age), a guardian appointed for the decedent, or a fiduciary of the estate of the decedent.

Clearly, if you want to minimize disputes over how your remains will be disposed, we recommend that you execute a written instrument designating the individual you wish to have control the disposal of your remains. Such a writing should also provide any special instructions to your agent for disposing of your remains. Additional instructions could include: whether you want to be buried or cremated, what type of funeral services you request, which funeral home you would like to use, etc. You could also designate a successor agent to handle the disposal of your remains in the event that the agent you appointed predeceases you, resigns, or is unable to act. This writing

Continued on Page 2

New Charitable Giving With IRA's

The Pension Protection Act of 2006 expands the opportunities for charitable giving with IRA funds. Under the new Act which applies for 2006 and 2007, charitable donations from IRA's are tax-free for donors who are seventy and one-half or older. The IRA distribution must be paid directly to qualifying tax exempt charities and not pass through the hands of the donor.

The qualified distribution from the IRA directly to the charity is treated as a tax-free distribution and is excluded from the donor's taxable income. While there is no charitable deduction for the contribution, the net tax effect is essentially the same as a 100 per cent write-off. This new charitable giving tool will be most attractive to taxpayers who do not itemize deductions. With a qualified charitable distribution, the non-itemizer may now make charitable donations and reduce his or her income tax liability at the same time.

If you plan to take advantage of this new rule, you should contact your broker or account manager soon to make sure that your 2006 distributions are properly directed to the charities of your choice.

New Legislation on Disposal of a Decedent's Remains

Continued from Page 1

should be signed by you, two witnesses, and your agent in acceptance of the appointment. With this, you can be assured that your wishes will be carried out.

In order to ensure your remains are disposed of in accordance with your wishes, we recommend that you put in writing how you would like your remains disposed of and designate an agent to carry out your wishes.

Annual Exclusion Gifts

Effective January 1, 2006, the federal gift tax annual exclusion amount, the amount you can give to an individual in one calendar year without gift tax liability, increased from \$11,000 to \$12,000. A separate annual exclusion applies to each person to whom you make a gift. Therefore, an individual can give away up to \$12,000 each to any number of people in 2006, and none of the gifts will be taxable. If you are married and your spouse agrees to split the gift, you can give up to \$24,000 to any individual in 2006 without making a taxable gift.

For example, a husband and wife with a sizeable estate and four children, can give each child \$24,000 this year, reducing the size of their combined estates by \$96,000.

No gift tax return is required for gifts of cash under \$12,000. Annual exclusion gifts of stock and other assets usually require a gift tax filing. Documents supporting the value of the gifts may also be required.

New York State no longer has a gift tax and no New York filing is required in any event.

Transfer-on-Death Securities Registration

The New York Legislature enacted the Transfer-On-Death Security Registration Act (the "Act") effective January 1, 2006. The Act allows a securities owner to register his or her securities in transfer-on-death ("TOD") form so that the securities will be transferred directly to a named beneficiary when the owner dies. As such, the TOD securities are inherited without being part of the owner's probate estate allowing ease of transfer.

Having made the TOD registration, the owner still retains all normal rights of ownership. The owner remains able to transfer or sell the securities and negotiate dividend checks without the signature of the beneficiary. The TOD beneficiary has no rights with respect to the securities, and no instructions can be accepted from, or information provided to the beneficiary during the life of the owner. The TOD is a useful tool for the owner who wants to simplify his estate administration by avoiding probate, and at the same time, retain 100% control of his securities. By contrast, joint account ownership, a long-used way to avoid probate, provides both joint owners full account access, something the initial owner may want to avoid. The TOD will often be a better option.

The owner makes a TOD transfer using the phrase "transfer on death" or "payable on death" after the name of the registered owner and before the name of the beneficiary on the registration papers. Brokerage firms now have Transfer on Death forms in which the owner may name a primary and secondary designation for a TOD transfer. The TOD designation is revocable and may be changed by the owner at any time. When the owner dies, the broker will complete the TOD transfer to the beneficiary with proper proof of the owner's death.

Before making a TOD registration, it is important to consider how this will impact your estate planning. For instance, a TOD transfer could create administrative problems if too much of your wealth is passing outside of your estate. The TOD transfer could also skew your overall estate distribution to your heirs in a manner you did not intend. You should seek expert advice when considering a TOD transfer to fully understand how it may impact your overall planning.

HANCOCK & ESTABROOK, LLP
COUNSELORS AT LAW

Trusts & Estates Law Practice Group Attorneys:

Cora A. Alsante, Michael L. Corp, Marion Hancock Fish, Martin L. Fried, Mary C. King & Jennifer M. Reschke

"Trusts & Estates Law News" is published periodically and is the sole property of Hancock & Estabrook, LLP, with all rights reserved. The articles contained herein are for informational purposes only and are not intended as legal advice.