KEMPKLEIN LAW FIRM

Commentator

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Now that the weather has turned (finally), many of us are spending time outside, planting, weeding and maintaining our yards. Our garden beds aren't the only things requiring upkeep – estate plans need a little care and maintenance too. In this issue, Brian Jenney reminds us that it is important to revisit estate planning documents and beneficiary designations every three to five years to make sure trusts are funded properly and proper beneficiaries are in place.

Professional Reputations also require ongoing attention. Stuart Sinai looks at the potential stigmas that unwarranted complaints can inflict on investment advisors' permanent records if left unchecked.

Finally, in today's climate, it might be prudent for employers to revisit their company sexual harassment policies. Mark Filipp shares excerpts from Employment Law Answer Book that offer general guidelines for employers looking to reduce the risk and liability of sexual harassment claims.

Best Wishes,

Trust Funding and Beneficiary Designations

BRIAN R. JENNEY

Preparing and executing a proper estate plan is only part of a larger picture. After the client has worked with an attorney to formulate a specifically tailored estate plan for the client, the attorney and client must continue to work together to properly fund the client's trust.

The client's specific situation may warrant a different plan for funding, but for the most part the following guidelines should be followed.

Deeds for the client's real property should be prepared and executed to place the property into the name of the trust agreement.

Bank accounts and investment accounts should be titled in the name of the trust or at a minimum made payable on death to the trust agreement.

Life insurance beneficiary designation forms should be updated to name the trust agreement as the beneficiary.

Business interests and LLCs should be properly assigned to the client's trust and need to be in accordance with the provisions of the governing documents of the business.

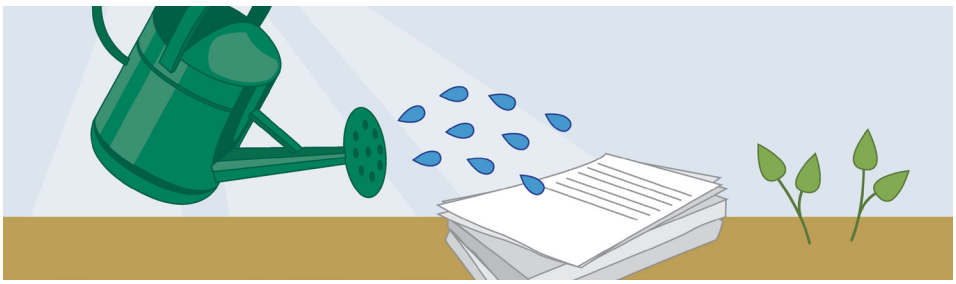
Keep in mind that joint accounts and accounts with living beneficiaries avoid probate.

Naming beneficiaries for a client's IRA and 401(k) is more complicated. IRA and 401(k) retirement plans benefit from deferred taxation, meaning that the income deposited into them as well as the earnings on the investments are not taxed until the funds are withdrawn. Surviving spouses may rollover retirement plans inherited from their deceased spouses into their own plans. The surviving spouse can defer withdrawals until after they reach age 70½ and take minimum distributions based on their age. Non-spouse beneficiaries of retirement plans must begin taking distributions immediately and they can base the distributions on their own (usually younger) ages or on the age of the deceased IRA owner.

Sometimes we need to name the client's trust as contingent beneficiary after the spouse is named as primary beneficiary. We often do this when clients have minor children or children that may not be able to handle the large funds in a retirement account. The trust must include special language that cues the IRS to see through the trust to the

intended designated beneficiaries.

Be careful when naming a charity as a partial beneficiary of a retirement account or as a beneficiary of a trust that is funded by a retirement account. The other specific named beneficiaries who are living people may not be able to stretch the distributions during their



life expectancies. The other named beneficiaries will have to withdraw the funds from the retirement account and pay the taxes within five years of the IRA owner's death.

Another situation to avoid is naming a special needs individual or his third party special needs trust as a beneficiary of a retirement account. Often I have counseled clients to make certain beneficiary designations in order to avoid qualified funds from being funded into the special needs trust by designation non-special needs children as beneficiaries of qualified money. Thus, funding the special needs trust with other assets besides the IRAs and 401(k)s. If there is still a discrepancy then life insurance should be considered.

The bottom line is that naming beneficiaries of retirement accounts is very complicated and we strongly suggest you consult your tax advisor, financial planner and attorney when making these complicated decisions.

I often urge clients to annually prepare a list of assets owned, so in the event of incapacity or death, the successor agents have a clear outline of the client's assets and are not left scrambling in the dark. If the client is comfortable sharing his or her finances with his or her children then I suggest a meeting to share the relevant information with the next generation.

If new land is purchased or a new account is opened then these new assets need to be properly funded into the trust agreement.

Estate planning documents and beneficiary designations should be reviewed every three to five years and updated accordingly. Too often we have to open a probate estate because of a lack of trust funding or there is no contingent beneficiary on a retirement account where the spouse has predeceased the retirement account owner. I also recommend that clients keep a copy of their beneficiary designation forms and often make a copy for my file.

Please contact your Kemp Klein estate planning attorney with any questions.

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Investment Advisors and Expungement

STUART SINAI

Nothing can be more devastating to acquiring new clients and maintaining present ones than unwarranted customer complaints challenging an investment advisor's honesty, treatment of clients, and reputation. A mere unverified letter from an investment advisor's client (usually a former one), or even a complaining telephone call, to your broker-dealer firm results in that complaint being automatically listed on your Financial Industry Regulatory Authority PUBLICLY-AVAILABLE BrokerCheck Report.

Not only are the great majority of these complaints abandoned, never followed through, by the client, they are also often erroneous, or as a result of a mistaken assumption or a movement in an unstable market. Yet they can remain on these Reports indefinitely under present and proposed rules. These entries on the BrokerCheck Record become poisonous statements, create false innuendo, blemishes, adversely affecting a financial advisor's most essential asset, reputation.

These entries provide competitors with ammunition to criticize, defame, ridicule to both present clients and potential new ones, implying the advisor lacks in trustworthiness, as being a scoundrel. These entries can stigmatize, "dog" for an entire career unless the advisor initiates expungement proceedings, to clear, purge them, from the record.

We have within the last 18 months, expunged 5 entries, and another 2 are being challenged in present arbitration proceedings. However, FINRA, presently in the process of making this process more difficult and costly, has proposed new rules that will likely go into effect this year substantially limiting your rights. Any advisor wishing to discuss issues feel free to call Stuart Sinai or Christopher Martella at our offices. One of us will get right back to you.

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Employment Law Q & A's

MARK R. FILIPP

The following Q & A's have been selected from Employment Law Answer Book, co-authored by Mark R. Filipp.

Q 4:101 What steps should an employer take to limit its exposure and liability to sexual harassment claims?

In any workplace, the danger that an employer will be held responsible for a sexual harassment claim is real. Moreover, even marginal claims cost the company dearly in legal fees and resources. It is naive to assume that any employer can completely do away with potential exposure and liability. Nonetheless, there are general guidelines an employer can follow to reduce the risk and liability of sexual harassment claims:

Create and disseminate a written sexual harassment policy, which provides a "user-friendly" mechanism to report known or suspected harassment situations;

Educate all employees about the company's sexual harassment policy and train supervisors and management to spot and report potentially risky situations;

Genuinely encourage employees to report instances of known or suspected harassment;

Investigate promptly and thoroughly all internal complaints alleging sexual harassment; and

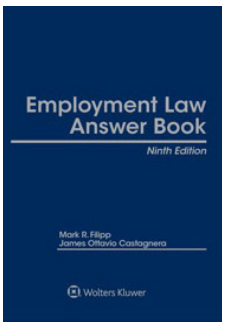
Act promptly to remedy any sexual harassment found to have occurred, including disciplining the harasser (typically, discharge).

Q 4:103 Should an employer encourage its employee to come forward with internal complaints of sexual harassment?

Yes. Liability in some instances may be imputed to the employer by virtue of either supervisory conduct or evidence that the employer should have known of the offensive conduct even if it, in fact, did not. Moreover, defending sexual harassment litigation is extremely time-consuming and costly, with a significant potential for ultimate exposure and liability. Therefore, under basic benefit/risk analysis, employers should have procedures in place that encourage employees to come forward and internally report instances of known or suspected sexual harassment. This gives the employer an opportunity to remedy the situation before it escalates to litigation.

In addition, a prompt and thorough investigation of hostile work environment claims, assuming the employer had no actual or constructive knowledge of the offensive conduct, can be an effective defense to claims of sexual harassment. As a result of Supreme Court decisions, prompt and thorough investigations are integral to maintaining affirmation defenses to hostile work environment claims. Although an employer cannot always prevent individuals from engaging in behavior that may support a claim of sexual harassment, it can encourage employees to come forward with known or suspected violations to allow the employer to take action and possibly avoid liability.

As a result, it is generally recommended that a "user-friendly" procedure be adopted for reporting instances of harassment. This would include allowing complaints to be made verbally (at least initially) and permitting employees to bypass their immediate supervisors to other designated individuals (i.e., higher-ups and human resource personnel). Although ultimately, in the investigation, great pains should be taken to reduce all discussions to writing (e.g., signed statements, signed notes, and the like) to preserve the integrity of the investigation from an evidentiary standpoint, at least initially, the procedure to lodge a complaint should be "user-friendly" so as to encourage and not discourage people from coming forward.



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Firm News

Castelli Named to 'Leaders in the Law' Class of 2018

Ralph Castelli, Jr. is one of 30 lawyers selected to the "Leaders in the Law" Class of 2018 by Michigan Lawyers Weekly. The honorees were nominated for their outstanding contributions to the practice of law in Michigan.

Sinai Article Cited as Authority on Aspects of Insider Trading

Stuart Sinai's 2002 Securities Law Journal article, "Challenge to the Validity of Rule 10b5-1," was recently cited as an authority in the latest 2018 Northwestern University Law Review by a University of Chicago professor concerning aspects of Insider Trading.

Brian R. Jenney Quoted in New York Times Article

Brian R. Jenney was quoted in the New York Times Article, "Heirs Inherit Uncertainty With New Estate Tax," on February 23, 2018. The article discusses recent changes to the estate tax law that raises the lifetime exemption from $5.49 million to per person to $11 million. The new limits come close to killing the estate tax, but are only in effect through 2025.

Seminar

Cnudde to Speak at GJC Nonprofit Organizations Update Seminar

Jeremy R. Cnudde will be speaking at George Johnson & Company's annual Nonprofit Organizations Update Seminar on creating value for non-profits through mergers and acquisitions. Cnudde will discuss when and why a non-profit should consider an M&A transaction, the potential benefits and challenges, strategic advantages and structuring alternatives and planning. The seminar will be held on Tuesday, May 22 at 8:00am in Detroit, MI.