

TWO THINGS CERTAIN®

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ESTATE PLANNING RESOLUTION FIELD GUIDE FOR 2011

BY: JEREMY C. JOHNSON

Happy New Year to all of the friends, family and clients of JGB! Our law firm was fortunate to have a successful 2010 because of your support and referrals. We plan on building on that success in 2011 and beyond. As 2010 came to a close, we were routinely asked, "What should we be concerned about with regard to our estate plan for 2011?" Given the high frequency of this question, we decided to devote our January newsletter to help you get squared away for a successful 2011.

Changes In The Family

"Have you had any recent changes in the family that would impact your estate planning goals and objectives?" This is the very first question that we often ask clients during estate planning review appointments, and it is as good of a place as any to start our discussion. During this new year, be more aware of family dynamics and the impact that a birth, death, marriage and/or divorce may have on your estate plan. Maybe the Successor Trustee you selected 5 years ago was the perfect choice then; but now, he/she has had a debilitating health event that would preclude them from serving in any practical sense as your fiduciary. Or, do you have a child who is now in a rocky marriage, separated or divorced? Have you considered how this may impact the distribution of an inheritance? Have you discovered that your grandchild has a special need and will likely need to receive some form of government resource to supplement his/her care? If so, it is imperative to make certain that your estate plan shields

that grandchild from being disqualified from their vital government resource if he/she inherits from you. The majority of the changes to existing estate plans have little to do with the volatility of the law itself and more to do with the volatility of the human condition. The best defense against these perils is a good offense. Be proactive with your estate plan. Schedule periodic reviews with your attorney so that you can review your family circumstances. Remember, it is easy for you to discount some small fact or issue regarding your family dynamics as inconsequential or irrelevant; when, however, a trained and experienced estate planning attorney may identify and illuminate the potential dangers and practical solutions regarding the same. Family dynamics/circumstances often operate in direct correlation to how successfully an estate plan is administered.

Changes in Residence/Trust Funding/Assets

During the initial relationship with an estate planning attorney, most clients are very enthusiastic about funding their trust properly. Hopefully their attorney has impressed upon them the importance of proper funding; highlighting the follies of those who have not listened to the attorney's warnings and have ended up with probate messes for their families. However, as time passes, their enthusiasm for maintaining a funded trust may diminish in direct correlation. Often described at our firm as the law of funding entropy, client assets that are not periodically reviewed and

ESTATE PLANNING SEMINARS:

Hampton

Embassy Suites

1700 Coliseum Dr.

*Jan. 25, 10 am &
2 pm*

Newport News

Point Plaza Suites

at City Center

*950 J. Clyde Morris
Blvd.*

Jan. 27, 2 pm & 7 pm

757-220-9800

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***“BEGIN AT
ONCE TO LIVE,
AND COUNT
EACH DAY AS A
SEPARATE LIFE.”***

- SENECA (4 B.C.
- 65 A.D.)
ROMAN
PHILOSOPHER

GENERAL DISCLAIMER:

This newsletter is intended to be used for informational purposes only and should not be construed as personal legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship.

CIRCULAR 230

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U.S. Treasury Department Regulations require that we advise you that unless otherwise expressly indicated, any federal tax advice contained herein is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

marshaled/reallocated with regard to an estate plan often fall into chaos. Any good trust plan must be reviewed at least annually to ensure that the client’s assets are still properly coordinated with the trust. This review should be designed not only to confirm the funding has already been accomplished; but also to be certain that after acquired assets are brought properly into the plan. People change accounts, financial institutions, real estate, life insurance policies and small business investment without often considering the impact upon their trust funding. Be certain that you are one of the informed, one of the vigilant, who systematically reviews his/her funding for proper coordination with his/her estate plan. JGB clients enjoy our assistance during their periodic document review meetings as an extra level of funding coordination review.

Changes In Your Health

Monitor your health, both physical and mental. If you find out that you have an illness that may impact your capacity, such as a terminal ailment, be certain to meet with your estate planning attorney as soon as possible so that your estate plan can be reviewed and adjusted, if necessary, while you still have the ability to make the adjustments on your own terms. The attorney’s relationship with his/her client should be sacrosanct; allowing the client the comfort to express their most hidden concerns, fears and issues. If your estate planning attorney knows that you may be subject to some form of diminished capacity moving forward, he/she will be more likely to pay attention to the smallest details during your periodic meetings that may indicate a rapidly approaching downward slide. As such, your attorney will be better prepared to assist your family in transitioning you to the next phase of your estate plan when any disability provisions drafted into your documents may need to become active. Additionally, if your attorney is aware of a terminal ailment, he/she will be able to explore additional time-sensitive estate planning options, such as accelerated gifting or immediate successor trustee appointments. Do not hesitate to discuss your current health with your trusted estate planning attorney. You enjoy the ‘attorney-client privilege’ with



your attorney. As such, your attorney is required to maintain your privacy as a priority.

Keep Children/Family Informed

Generally speaking, it is typically a good idea to make sure your children know that you have an estate plan, where to find the documents, and the name and contact information of your attorney. Obviously, exceptions to this rule would include disinherited and/or unstable children. We have found that when clients choose to share some basic information about their estate plan with their children, the administration of the estate plan typically proceeds more smoothly. In fact, many of our clients have begun to bring their children by our office to meet us. Most people are suspicious of attorneys as a class – and often with good reason. However, we have observed that when we meet the children of our clients prior to a death/disability of a client, these children are more comfortable taking guidance and instruction from us. This results in a much smoother transition of authority and contributing to the overall success of the estate plan. Even if your children are smart, strong, well organized people, do not discount the emotional toll of losing a parent and its impact on making clear and rational decisions. In many cases, without the grounding, calm and objective analysis and advice of a trusted family attorney, the children may make irrevocable decisions and live with the consequences for the remainder of their lives. Foster at least a basic relationship between your children and your trusted attorney to promote a stable



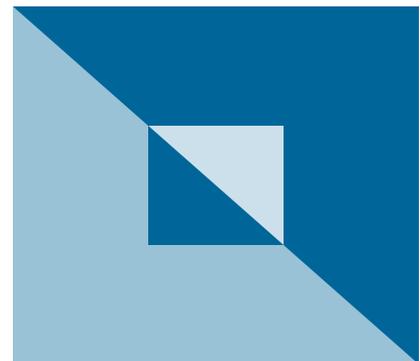
implementation of your estate plan.

Lead By Example

Use your experience in planning your own estate to encourage your children and/or grandchildren to do the same. Everyone's estate planning needs to evolve over time. However, the risk of disability and death remain a constant. Encourage your family members to examine what types of estate planning options are appropriate for their circumstances now. Any well considered, well drafted, estate plan should have the flexibility to be adjusted to meet the new needs and goals that will undoubtedly occur over time. We have had a number of client families who choose to use JGB as a form of a legal 'family office;' where we have built interlocking estate plans for 3 generations at a time. Multi-generational estate planning can do a great deal to contribute to the long term success of a family's legacy and stability through the years, having a positive impact on descendants that you may never even have the opportunity to meet. Lead by example. Encourage your family to explore their own estate planning options.

Conclusion

Any good estate plan should be treated as a living thing that requires care and maintenance over time. You should not expect to build an estate plan, put it on the shelf untouched for 20 years, and then expect it to operate flawlessly upon your death and disability. Rather, take proactive action with regard to your estate plan. Review it yourself at least annually. Form a lasting relationship with a trusted estate planning attorney. Periodically review your estate plan and funding with your attorney. Encourage your children to take a basic interest in your estate plan and move them towards completing their own estate plan to protect themselves and their nuclear families. At JGB, we advise our clients to meet with us at least once every 2 to 3 years for a review. If it has been more than 3 years since you last met with your JGB attorney, take a proactive step and call Lauren at 757-220-9800 to schedule a review appointment.





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WILLS, TRUSTS, ESTATES &
BUSINESS LAW

COMMUNITY NOTE...

PENINSULA AGENCY ON AGING, INC. (PAA)

Peninsula Agency on Aging, Inc. (PAA), located at 739 Thimble Shoals Blvd., Suite 1006, Newport News, VA (757-873-0541), relies on financial support from the community including individuals, corporations, United Way, foundations, churches and civic organizations.

A quote from the Older American Act, passed in 1965, states our goal best: "...to secure and maintain maximum independence and dignity in a home environment for older individuals, to remove individual and social barriers to economic and personal independence, and to provide a continuum of care for the vulnerable elderly."

The mission of Peninsula Agency on Aging, Inc. is to support the independence and quality of life of Peninsula residents primarily 60 years and over by advocating, arranging, or providing vital human services.

PAA and its Endowment Board are committed to advocating for policies and resources to enhance the quality of life for seniors and family caregivers. With baby boomers now reaching senior status, PAA is dedicated to increasing information and services that have stood the test of time like in-home care, dining centers, transportation, and meals on wheels.

To learn more about PAA, its Endowment Board and its service to the community, or to learn how to make a donation, please visit www.PAAinc.org.

ABOUT THE AUTHOR

Jeremy lives in Williamsburg with his wife, Amy, two daughters, Paige and Brynn, golden retriever, Dixie and cat, Bella. After meeting in law school, Jeremy and Amy spent the start of their professional and personal relationship in Boston, before moving to the gentler climate of Williamsburg, in 2004. Having grown up on Cape Cod, Jeremy enjoys spending his free time on the Outer Banks with his family. An avid sportsman, Jeremy can often be found SCUBA diving, salt water fishing or shooting Skeet/Trap.

Jeremy earned his BA (English) from the University of Massachusetts at Amherst, his Juris Doctor from Western New England College School of Law, and his LL.M. (Taxation) from Boston University School of Law.

Jeremy is a member of the Virginia and Massachusetts Bars and he serves as the Treasurer of the Virginia Peninsula Estate Planning Counsel and he is a Board Member for the Peninsula Agency on Aging Endowment Fund.

