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Legal Updates

Connecticut Has a New Power of Attorney Act

A financial Power of Attorney ("POA") is a document by which an individual can grant another individual (an "agent") authority to act on his or her behalf with respect to financial matters. POAs can be very powerful and useful estate planning tools, and we often recommend that our clients execute POAs, as these documents are regularly used by individuals and financial institutions in a wide variety of personal and business transactions.

The new Connecticut Uniform Power of Attorney Act, effective October 1st, expands current law by explicitly providing individuals with the ability to grant their agents a broader range of powers focused on estate planning. These new estate planning powers, which include the ability to make gifts, update retirement benefits, and change the terms of certain types of trust agreements, are optional, and individuals can customize their POAs to their personal needs and wishes.

The new Act also addresses a common problem under current law: a financial institution's refusal to accept "older" POAs or POAs that do not comply with the institution's internal requirements. The new Act now provides both the institution and the agent with procedures for accepting and enforcing the provisions of a POA.

The Act makes clear that existing POAs will still be effective and recognized. However, as clients update their other estate planning documents, we will discuss updating existing POAs and how best to customize a POA for each client's particular circumstances.

Protect Your Digital Assets

The law has been slow to keep up with advances in technology, including how to deal with the digital assets of a deceased individual. By digital assets, we mean all electronically stored information, including emails, text messages, social media accounts, word documents and spreadsheets, digital music, and other items. For some, this has created problems, as the tech industry has been reluctant, if not outright resistant, to granting anyone (including a designated fiduciary) access to a decedent's digital assets.

To address this issue, Connecticut, like many other states, has adopted what is formally called the Revised Uniform Fiduciary Access to Digital Access Act (or RUFADAA). This new

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law provides guidance on how individuals may grant or, alternatively, prohibit access to their digital assets after they have died. As clients update their estate plans, we will incorporate these changes into their new documents. Please let your estate planning attorney know whether you have any questions regarding this new legislation.

Proposed IRS Regulations Impacting Family-Owned Businesses

In August, the IRS issued proposed regulations that, if made final, will effectively negate the ability of family controlled businesses to discount the value of transferred ownership interests.

The IRS has long contested valuation discounts due to restrictions on transfer in governing documents, and, in most cases, IRS challenges have been unsuccessful. Tax Courts have ruled, time and again that, in valuing the transferred interest, the IRS cannot simply ignore the entity. The IRS has been especially hostile to non-operating, family-owned entities, which hold passive investments (stock and bond portfolios, for example) and therefore, the fact that the proposed regulations do not distinguish between operating and non-operating businesses in the application of the rules is surprising.

Family-controlled businesses are those in which family members, broadly defined, control greater than 50% of the equity. The effective date of the regulations will be thirty days after they are made final, which will be no sooner than December 2, 2016 and may, in fact, be significantly later. Although there is much uncertainty around whether the proposed regulations will in fact be adopted, if you are considering transferring interests in a family entity or other family business, you should contact your estate planning attorney to discuss this topic further.

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