

**ESTATE PLANNING
ESSENTIALS**

Estate tax laws are transitory and will likely change in the future. The current federal estate tax exemption is \$2,000,000, and it is scheduled to increase to \$3,500,000 in 2009. There is an unlimited exemption amount for one year - 2010, then the exemption is scheduled to be reduced to \$1,000,000 in 2011, but there has been a recent proposal to keep the exemption at \$3,500,000. Despite the transitory nature of the estate tax law, a well-structured estate plan requires certain essential elements:

- (1) a revocable living trust;
- (2) a pour-over will;
- (3) a durable power of attorney for financial matters; and
- (4) a durable power of attorney for health care.

These basic elements are described below.

1. **Revocable Living Trust**

A revocable living trust is now a standard part of most estate plans.

For a married couple with combined assets of less than the estate tax exemption amount, with most of their assets held in joint tenancy or with a payable on death provision (such as insurance or retirement plan benefits), a revocable living trust is still appropriate so that the surviving spouse has a trust in place in the event of incapacity and to avoid probate proceedings on his or her death. This also applies to a single person.

For a married couple with combined assets that exceed the estate tax exemption amount, a living trust is generally structured so that upon the death of one spouse assets equal to the exemption amount will be used to fund a trust (a "credit shelter trust"), that shelters the exempt amount from estate tax upon the death of the second spouse. This allows each spouse to protect the amount exempt from estate tax. Presently, a married couple can shelter a total of \$4,000,000 from estate tax, but with a possible reduction in the exemption to \$1,000,000 in 2011, only \$2,000,000 would be exempt from estate tax.

The living trust should also provide for a separate trust to be created for any young beneficiary, with distribution delayed until the beneficiary reaches a certain age.

2. **Pour-Over Will**

Every estate plan also requires a will that covers any assets that are held individually. This type of will is called a "pour-over" will, as it provides that any assets held in a person's individual name at death are to be distributed to the trustee of the living trust, to be administered and distributed as provided in the trust document.

For persons with minor children, the will is also used to designate who should be the court-appointed guardian for minor children under the age of 18.

3. **Power of Attorney for Financial Matters**

The third basic element of any estate plan is a durable power of attorney for financial matters. This is used to appoint an agent to handle financial matters for the principal. This would include filing income tax

returns, or dealing with medicare, social security, or other retirement benefits. This power of attorney eliminates the need for a court supervised guardianship proceeding if a person becomes disabled. The agent can also be granted the power to make gifts, for tax planning purposes.

4. Health Care Power of Attorney

The fourth basic prong of any estate plan is a durable health care power of attorney. This document is used to designate an agent to make health care decisions if a person is disabled and allows a person to provide advance guidance on the level of medical treatment which he or she desires.

Future issues of this newsletter will cover specific estate planning issues and tax strategies.

Re-employment Rights of Employees Called Into Military Service

In the past few years, many employers have been faced with employees being called to serve in the Armed Forces, necessitating a leave of absence from work. Employers, therefore, need to be familiar with the provisions of the Federal Uniformed Services Employment and Reemployment Rights Act (also known as "USERRA"), which governs servicemembers' employment rights (and the employer's obligations) after their military service is completed.

In general, USERRA prohibits an employer from denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment to any person on the basis of their membership in a "uniformed service." The "uniformed services" includes both the Armed Forces and full-time National Guard duty.

Under USERRA, an employer is generally required to reemploy any qualified individual whose absence from work is necessitated by service in a uniformed service, as long as the employee reports back to work or submits an application for reemployment after the service is finished. USERRA provides only three reasons for which reemployment may be refused after an employee's military service ends: 1) the employer's circumstances have so changed as to make reemployment impossible or unreasonable; 2) such reemployment would impose an undue hardship on the employer; or 3) the employment was for a brief, non-recurrent period and there was no reasonable expectation that it would continue indefinitely or for a significant period.

Depending on the length of the employee's military service requirement, the employer must generally place the returning employee either in the job position he or she held at the time military service began (or one of like status, seniority and pay), or, if qualified, in any position to which he or she would have been promoted if employment had not been interrupted

by the military service (or one of like status, seniority and pay).

USERRA also restricts your ability to terminate an individual who is reemployed after military service. If the employee's military service lasted between 30 and 180 days, an employer cannot terminate the employee, except for cause, for a period of 180 days after reemployment. If the military service lasted more than 180 days, an employer cannot terminate the employee, except for cause, for a period of one year after reemployment.

In addition, after an employee's return from military service, certain provisions of USERRA require the employer to treat the employee as if the leave had not occurred. For example, the returning employee must be given the seniority (and other rights and benefits determined by seniority) that he or she had on the date service began, plus the seniority (and other rights and benefits determined by seniority) that he or she would have attained if continuously employed during the period of military service.

Similarly, a returning servicemember's eligibility under an employee pension benefit plan must generally be determined as if no break in employment had occurred, as must the vesting and nonforfeitability of the employee's accrued benefits.

This discussion has highlighted only a portion of the obligations and responsibilities conferred upon employers by USERRA. Should any questions or issues arise, feel free to contact us for guidance.