Did Vermont Just Make Estate Planning Easier?

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Estate Planning 101

Many lawyers have been promoting living trusts to save estate taxes, coupled with the added benefit of avoiding the probate court. The primary focus was saving federal taxes and, secondarily, Vermont estate taxes. The tax savings for married couples focused on doubling the exemption.

Then the tax rules started to change. The federal exemption increased and allowed "portability" of the exemption, and a trust was no longer needed to double the exemption. Now, a married couple holding all assets in joint name, based on the exemptions available in 2019, would face no taxes for estates equal to or under $22,800,000 (in 2026 it will revert back to an inflation adjusted "old" exemption, but estates will still be sheltered in the 12 million range).

Trusts were still promoted to save the Vermont estate tax, and Vermont does not allow "portability". For example, based on the existing exemption of $2,750,00, trusts could save all Vermont estate taxes for married couples up to $5,500,000, but joint accounts will not allow the doubling of the exemption.

Vermont still does not allow portability, but our legislators just increased the exemption. In 2020 it will be $4,250,000, and $5,000,000 in 2021. Moving forward, in Vermont, the living trust may no longer be needed if the projected estate is below 5 million. The estate plan may be as simple as having a joint account. No longer will we need multi-page incomprehensible trusts documents of legalese? Yes and No.

Estate Planning 201

Many years ago I met a newly married couple. The wife's first husband had died prematurely and she received an inheritance. She then met and married a man who reminded me of the actor Cary Grant because he dressed like Cary Grant. For those that might not know Cary Grant, his selection of suits in the movies of the forties were timeless...even in the eighties.

The couple opened up an investment account in joint name. A few months later I received a call from "Gary" requesting a sizable distribution. Joint Accounts, unless specifically stated otherwise, allow either owner to withdraw. I pondered. Should I call his wife? Does this suggest I don't trust him? Pondering may sometimes be a positive trait for procrastination. In this case, it saved the day. A few days later, while walking downtown, I met his wife. I mentioned the pending but unfulfilled distribution. She knew nothing about it and it was her money. The relationship ended.

Spouses often create joint accounts. Either can withdraw and, upon the first death, the balance will now be held by the survivor. But are joint accounts effective for spouses? It makes it easy for one spouse to pay the bills for both spouses, and it avoids the probate process for joint assets when the first spouse dies, assuming that that he is not "Gary". Well, yes and no.

Estate Planning 301

Spousal joint accounts may lose half of the "step up in basis" for assets that have grown in value in contrast to holding the asset in the sole name of the owner. If a non-spouse is the joint owner, the damage may be greater. But this is the subject of class 301, perhaps covered in a later newsletter.

Estate Planning 201

Should you have significant assets in a joint account? Based on my past experience, the answer is: don't do it. You may have a higher risk of those who "take the money and run". It will probably not be the spouse or the child.

It may be the second spouse, or creditors. Each joint owner has the equivalent of 100% ownership that will be vulnerable. Joint accounts may have little risk for small checking accounts, but any account with significant value should be handled differently.

Titling the account jointly simply to avoid probate can be achieved without using a joint account. Aside from the risk of those who "take the money and run", if one child is selected as a joint owner for the sole purpose of paying the bills, upon the death of the parent, the other children will not receive the assets unless the joint owner child makes a gift to them to reflect the intention of the parent.

In order to avoid probate without the risk of a joint account, Vermont has two laws that help you avoid probate and avoid using joint accounts: Payable-on-death (POD) designations for banks and trust companies and Transfer-on-death (TOD) registration for securities with brokers. Both will let you be the only owner until death.

Estate Planning 301

When you title an account in joint name with someone other than your spouse, you are actually making a gift of half of its value. You may have to file a gift tax return (Class 301).

Estate Planning 201

Hopefully, you are convinced that placing assets in joint name with children isn't a good idea.

So what should you do if you want your child to be able to transact business on your accounts – particularly if you become disabled and unable to manage your own affairs?

In Vermont we have several ways, and each one is designed to address this issue:

- A durable power of attorney which would allow you to give to a trusted person the authority to transact business affairs on your behalf. You should consult with your estate-planning attorney to determine whether it currently meets your needs.
- Consider a Joint Fiduciary Account (8 V.S.A. § 14212).
- Living Trusts. They don't just pay out. They take care of the next generation, including Special Needs Trusts (Class 401).

Estate Planning 401

Special Needs Trusts are subject to changing laws and the best teacher would be an attorney who specializes in this field.

Estate Planning 101

Often the best choice for a trustee is a corporate trustee. Individual trustees sometimes take the money and run. Corporate trustees are regulated, so you don't have to worry that they will take the money and run. That said, give the beneficiaries the ability to change the corporate trustee to another corporate trustee. As corporate trustees consolidate, they will not take the money and run; corporate trustees don't run....but often they will increase fees and reduce services.