O’NEIL CANNON SERVES AS LEGAL ADVISOR TO DIAMOND VOGEL, INC. IN ACQUISITION OF SUBSIDIARY OF THE SHERWIN-WILLIAMS COMPANY

O’Neil Cannon advised Diamond Vogel, Inc. in its recent acquisition of N92 Menomonee Falls, LLC, a subsidiary of The Sherwin-Williams Company. The acquired business, founded in 1951 as Raabe Paint Company, is based in Menomonee Falls, Wisconsin. It employs approximately 100 employees and manufactures color-match touch up paint, custom aerosol, and other specialty coatings.

According to Jeff Powell, Diamond Vogel’s President and CEO, the acquisition allows Diamond Vogel to accelerate its aerosol growth strategy. In addition, the Menomonee Falls team’s expertise in aerosol manufacturing adds depth and breadth to Diamond Vogel’s already existing aerosol manufacturing capabilities. Diamond Vogel, Inc., based in Orange City, Iowa, is a manufacturer of high-quality paint and coatings. Diamond Vogel also has manufacturing operations in Sheboygan Falls, Wisconsin because of its previous acquisition of Faase Paint Company’s aerosol manufacturing business.

The O’Neil Cannon deal team was led by Attorney Jim DeJong with assistance provided by O’Neil Cannon attorneys Britany Morrison, JB Koenings, Joseph Gumina, Nick Chmurski, and Sam Nelson.

TAX AND WEALTH ADVISOR ALERT: SELECTING A FIDUCIARY – ONE OF THE MOST IMPORTANT DECISIONS IN AN ESTATE PLAN

When creating an estate plan, one of the most critical decisions you will make is selecting a personal representative and trustee, also known as “fiduciaries.” A fiduciary is a person or institution entrusted with the responsibility of managing assets and carrying out the terms of your estate plan. Choosing the right fiduciary is essential, as they will play a significant role in ensuring your assets are managed and distributed according to your wishes. This blog post explores the various options available for selecting a personal representative and trustee in your estate plan.

Family Member

Many people choose a family member to act as their personal representative and trustee. This option has several advantages, including the fact that a family member is likely to have a personal connection to you and your family, and they may be better able to understand your wishes. However, it is important to consider the potential drawbacks of selecting a family member as your fiduciary. Family members may lack the necessary expertise to manage complex assets or make difficult decisions, and they may also be emotionally invested in the outcome of the estate plan, which can lead to conflicts of interest.

Corporate Fiduciary

Another option is to select a corporate fiduciary as your personal representative and trustee. Corporate fiduciaries have experience managing assets and carrying out the terms of estate plans, which can be an advantage in complex situations. Additionally, corporate fiduciaries have the resources to handle complex financial matters and the ability to remain impartial when carrying out your wishes. However, a corporate fiduciary may have limited knowledge of your personal wishes, the needs of your family, and may lack a personal relationship with your family.

Lawyers or Accountants

A lawyer can also act as your personal representative and trustee in your estate plan. Lawyers have a deep understanding of the legal and financial aspects of estate planning and can provide valuable guidance and support throughout the process. Furthermore, lawyers are trained to remain impartial and objective, ensuring that your wishes are carried out according to your intentions. However, a lawyer may have limited knowledge of your personal wishes or the needs of your family, and may lack a personal relationship with your family. An accountant can also act as your personal representative and trustee in your estate plan. Accountants have experience in managing financial matters, preparing tax returns, and financial record keeping, and can provide valuable guidance and support in estate planning matters.

Selecting a personal representative or trustee is one of the most important decisions you can make in your estate plan. It is important to consider all options so that you select the best fiduciary to carry out your wishes in your estate plan.

TAX AND WEALTH ADVISOR ALERT: CHARITABLE REMAINDER TRUSTS, A DYNAMIC ESTATE PLANNING TOOL TO REDUCE TAXES AND DO GOOD

Charitable Remainder Trusts (CRTs) are a powerful tool for those looking to support their favorite causes while also securing a steady income stream for themselves or their loved ones. These trusts are essentially a way to give cash or other property to an irrevocable trust, with the donor receiving an income stream for a set term of years or for life, while the remaining assets go to the named charity at the end of the trust term.

One of the biggest benefits of CRTs is the immediate income tax charitable deduction that donors receive when they fund the trust. This deduction is based on the present value of the assets that will eventually go to the charity and can be a significant reduction in the donor's overall tax burden.

Another great feature of CRTs is that they can be structured to defer the payment stream, making them an effective income stream during retirement. Additionally, donors can couple a CRT with a Donor-Advised Fund (DAF) to have even more control over how their charitable dollars are invested and distributed.

For donors with highly appreciated assets, CRTs are an excellent way to defer capital gains taxes. When appreciated property is contributed to a CRT, the capital gains tax is deferred until the time that it is distributed out to the income beneficiary, allowing the donor to diversify their position in a tax-effective manner.

Funds or property contributed to a CRT may be removed from the donor's estate for estate tax purposes which may reduce estate taxes in some cases. However, there may be gift tax consequences if the donor names a non-spouse non-charitable beneficiary to receive the income from the CRT.

It's important to note that with a CRT, the individual recipient of the distributions from the CRT during the term of the CRT must pay tax on such distributions, and it is categorized into four tiers: (1) income and dividends; (2) capital gains; (3) tax-exempt income; and (4) return of principal.

In summary, CRTs coupled with a DAF can be a great option for donors seeking a current or future income stream. It is recommended that clients work with a qualified estate planning attorney to confirm that a CRT will provide the expected results from a tax and administration perspective.

TAX AND WEALTH ADVISOR ALERT: DONOR-ADVISED FUNDS, A GREAT WAY TO DO CHARITABLE GIVING

Donor-advised funds, or DAFs, are a popular way for individuals to support charitable organizations they care about while also receiving potential tax benefits. A DAF is essentially a charitable investment account that allows individuals to make a tax-deductible donation and then invest those account funds for tax-free growth. The individual can then recommend grants to virtually any IRS-qualified public charity.

Creating a DAF is simple and straightforward. First, an individual must establish a “giving account” with a public charity. Many financial institutions and community foundations may also be the sponsoring organizations of these accounts. Second, the individual must make a donation of cash, securities, or other assets to the giving account. This donation is generally eligible for an immediate tax deduction. Finally, the funds in the giving account can then be invested for tax-free growth.

One of the benefits of a DAF is that it allows individuals to see their donation grow over time. Most sponsoring organizations offer a variety of investment options for the charitable dollars in the giving account. This means that individuals can choose an investment strategy that aligns with their goals and risk tolerance.

Another benefit of a DAF is that individuals can support virtually any IRS-qualified public charity with grant recommendations from the account. This includes local homeless shelters, alma maters, religious institutions, and more. The public charity sponsoring the account will conduct due diligence to ensure that the funds are used for charitable purposes.

In conclusion, DAFs are a great way to support charities you care about while also receiving tax benefits. They are easy to set up, offer tax-free growth, and give you the flexibility to support virtually any IRS-qualified public charity at a pace that is comfortable for you. If you are looking for a way to make a meaningful impact on the causes you care about, a DAF may be an excellent option for you.

CHRISTA WITTENBERG ELECTED TO THE FIRM'S BOARD OF DIRECTORS

O'Neil Cannon is pleased to announce that Attorney Christa Wittenberg was recently elected to serve on the firm's Board of Directors, beginning on July 1. Christa has been with the firm since 2014 as a member of the Litigation Practice Group, where she assists businesses and individuals with pursuing and defending a variety of complex civil litigation matters. Christa is the Chairperson for the Communications Committee at the State Bar of Wisconsin and is a member of the Boards of Directors of LOTUS Legal Clinic, the Association for Women Lawyers, and the Eastern District of Wisconsin Bar Association. She looks forward to applying her leadership skills and her passion for service to ensure that O'Neil Cannon maintains its status as a premier law firm and continues to serve its clients effectively and efficiently.

Christa will be filling the seat of Attorney Dean Laing, who will be stepping down from the firm's Board of Directors after 33 years in that position. Dean is also the immediate past President and Managing Shareholder of the firm, having served in those roles from 2015-2020. He will continue with the firm as a shareholder. The firm is extremely grateful for Dean's strong leadership over the years.

TAX AND WEALTH ADVISOR ALERT: QUALIFIED PERSONAL RESIDENCE TRUSTS – A PLANNING TECHNIQUE TO SAVE THE FAMILY HOME FROM ESTATE TAXES

A Qualified Personal Residence Trust (QPRT) allows a homeowner to transfer their personal residence to a trust for a specified period of time, after which the residence is transferred back to the homeowner or to a designated beneficiary. QPRTs are often used as a tax-saving strategy for homeowners who want to reduce the value of their estate for estate tax purposes.

One of the main benefits of a QPRT is the ability to remove the value of a personal residence from the homeowner's estate. By transferring the residence to a trust for a specified period of time, the homeowner is able to reduce the value of their estate and, as a result, reduce the amount of estate taxes that will be due upon their death.

Another benefit of a QPRT is the ability to maintain the use of the residence during the term

of the trust. The homeowner can continue to live in the residence and pay a reduced rent to the trust for the use of the residence. This allows the homeowner to continue to enjoy the residence while also reducing the value of their estate. QPRTs are subject to certain rules and limitations, such as a requirement that the term of the trust cannot exceed the life expectancy of the homeowner and that the fair market rent must be paid to the trust for the use of the residence.

Overall, a QPRT can be a useful tool for homeowners looking to reduce the value of their estate for estate tax purposes while also maintaining the use of their personal residence.

TAX AND WEALTH ADVISOR ALERT: IRREVOCABLE LIFE INSURANCE TRUST, A TECHNIQUE TO ELIMINATE ESTATE TAXES ON LIFE INSURANCE PROCEEDS AND TO PROVIDE LIQUIDITY TO AN ESTATE PLAN

An Irrevocable Life Insurance Trust (ILIT) is a special kind of trust that is designed to own life insurance. The key characteristic of an ILIT is that it is irrevocable, meaning that it cannot be changed or dissolved once it is created. This characteristic is important because it allows the trust assets to be removed from the estate of the person who creates it, which can help to reduce estate taxes.

An ILIT requires at least one trustee to manage the trust and a beneficiary to receive the proceeds of the life insurance policy. The person who creates the trust, known as the grantor, will typically transfer a life insurance policy into the trust and pay the premiums on the policy. The beneficiary of the trust is typically the family of the grantor.

One of the main benefits of an ILIT is that the proceeds from the life insurance policy are not subject to estate taxes. This can help to reduce the overall tax burden on one’s estate and ensure that more of the assets are passed on to one’s intended beneficiaries.

Another benefit of an ILIT is that it can provide a source of liquidity for one’s estate. The proceeds from the life insurance policy can be used to pay any outstanding debts, taxes, or other expenses that may arise after the grantor’s death.

In order for an ILIT to be effective, it is important that the grantor does not retain any incidents of ownership over the life insurance policy. This includes foregoing the rights to

change the beneficiary, borrow against the policy, or cancel the policy. If the grantor retains any of these rights, the life insurance policy will be considered part of the grantor's estate and subject to estate taxes.

In summary, an ILIT is a type of trust that is used to hold a life insurance policy and can help to reduce estate taxes by removing the policy from the grantor's estate. It requires a trustee to manage the trust and a beneficiary to receive the proceeds of the life insurance policy, and it can provide a source of liquidity for the estate. It is important to keep in mind that the grantor should not retain any incidents of ownership over the life insurance policy for the ILIT to be effective.

THE RECENT DEATH OF LISA MARIE PRESLEY LEADS TO BREWING TRUST DISPUTE

Inheritance Disputes are Common Even Among the Wealthy

An inheritance dispute appears to be brewing following the recent death of Elvis Presley's only child, Lisa Marie. According to various news outlets, Lisa Marie appointed her mother, Priscilla Presley, and her then manager, Barry Siegel, as co-trustees of her trust in 1993. Following Lisa Marie's death on January 12, 2023, Priscilla discovered an amendment to the trust purportedly signed in 2016 that replaced both Priscilla and Barry Siegel as co-trustees.

According to Priscilla, there are various reasons the 2016 amendment may be invalid. One of these reasons is because the purported trust amendment was not delivered to Priscilla during Lisa Marie's lifetime as required under the terms of the original trust. Priscilla also raised concerns over the authenticity of the document and the signatures on the document itself.

Ultimately, a California court will be tasked with sorting through these issues that may pit a grandmother against her grandchildren.

Disputing an Amendment to a Trust in Wisconsin

The Wisconsin Trust Code recognizes the right for the settlor of a revocable trust to amend that trust. The capacity necessary to amend a trust is the same as the capacity required to make a will. The Wisconsin Trust Code holds that the terms of a trust prevail over any provision of the Wisconsin Trust Code unless certain exceptions exist.

It is not clear on the face of the Wisconsin Trust Code how a Wisconsin court would treat the specific claim Priscilla Presley appears to be making – that the amendment is not valid

because it was not delivered to her as required by the terms of the trust. The Wisconsin Trust Code states that a settlor "may revoke or amend a revocable trust" by "substantial compliance with the method provided in the terms of the trust." Here, a Wisconsin court would have to review the terms of the Presley trust and determine whether the other components of the amendment without delivery to Priscilla amounted to "substantial compliance."

If a trust does not provide a method to revoke or amend a trust, Wisconsin recognizes one may be able to revoke or amend a trust by referencing the trust or the trust property as part of a will or codicil or by "[a]ny other method manifesting clear and convincing evidence of the settlor's intent."

Challenging or seeking to uphold a trust amendment can be complicated and fact intensive. These issues also oftentimes deal with dynamic family relationships. If you are a trustee and a beneficiary is seeking to challenge a trust amendment or a beneficiary who has questions involving a trust amendment, it may be best to reach out to an attorney with experience handling matters under the Wisconsin Trust Code.

Trevor C. Lippman is a shareholder at the law firm of O'Neil Cannon. Trevor assists clients with all matters related to inheritance disputes, including questions surrounding the creation and administration of trusts and wills. Since graduating from University of Wisconsin Law School in 2013, Trevor has assisted hundreds of clients navigate the difficult waters involved in elderly financial abuse allegations and inheritance litigation. Trevor prides himself on protecting the rightful legacies of those who have passed on and seeks to understand each client's unique concerns. To schedule an initial consultation with Trevor, call 414.276.5000 or email Trevor directly at trevor.lippman@wilaw.com.

SPOUSAL LIFETIME ACCESS TRUSTS, A POWERFUL ESTATE PLANNING TOOL FOR COMPLEX ESTATES

The Spousal Lifetime Access Trust (SLAT) is a type of irrevocable trust that allows married couples to transfer assets to their spouse and other family members while removing those assets from their combined estates. This type of trust can help high net worth individuals take advantage of the federal lifetime gift and estate tax exclusion, which is currently $12.92 million per person in 2023, or $25.84 million per married couple, while still retaining limited access to the assets, if needed.

A SLAT is created by one spouse (the “donor” spouse) gifting property to an irrevocable trust for the benefit of the other spouse (the “non-donor” spouse). The non-donor spouse is the primary beneficiary of the trust and can request distributions from the trustee, if needed, during their lifetime. However, most advisors recommend that the non-donor spouse not request distributions from the SLAT unless it is absolutely necessary to maintain their accustomed standard of living.

The donor’s transfer of assets to the SLAT is considered a taxable gift, but gift tax may not be owed if the donor utilizes their Federal gift and estate tax exclusion. The assets and any future appreciation is removed from the donor’s taxable estate and the trust is excluded from the non-donor’s taxable estate as well.

A SLAT can offer many benefits such as:

- Allows married couples to reduce the size of their estate while retaining limited access to the assets.
- Allows the donor to indirectly benefit from the property gifted to the trust, as long as the non-donor spouse is living and remains married to the donor.
- The non-donor spouse can request distributions from the trustee of the trust to maintain their accustomed standard of living.
- Appreciation of the assets outside the donor’s estate for the benefit of their descendants.

SLATs are a sophisticated estate planning tool and should be created with the assistance of a qualified attorney. They can provide significant benefits to married couples looking to transfer wealth to the next generation while still retaining access to the assets.

THE WILAW QUARTERLY NEWSLETTER

Newsletter Article Highlights:

- IRS Postpones $600 Payment Processor 1099-K Reporting Requirement
- How Do Wisconsin’s New LLC Laws Impact My Company?
- Legal Planning for your College Student
- Religious Accommodation in Employment Will Have Its Day at the High Court

Firm News:

- Super Lawyers Recognizes 25 O’Neil Cannon Attorneys
- Grant Killoran Joins the Board of Directors of Milwaukee Film, Inc.
- Attorney Seth Dizard Recently Featured in Super Lawyers

- O’Neil Cannon Ranked in 2023 “Best Law Firms”

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