HARMONY OF LEGACY: A 12-DAY ESTATE PLANNING CELEBRATION (DAYS 9 TO 12)

To continue our holiday series “Harmony of Legacy: A 12-Day Estate Planning Celebration,” we share with you the last days of Christmas. In case you missed the previous days you can find them here in part 1 and part 2.

Day 9: Nine Ladies Dancing = Gracefully Transferring Your Real Property at Death

Similar to the elegant and harmonious nine dancing ladies, retitling your home into the name of your Revocable Trust ensures the smooth and graceful transition of your real property to your intended beneficiaries after your death. Your Trustee will have the ability to maintain, manage, and/or sell your home upon your death. If you fail to direct the transfer of your real property during your lifetime, or even at death, the property will likely pass through a probate proceeding before making it into your Revocable Trust. If you own real property outside of Wisconsin, you also risk needing an “ancillary probate” in that particular state in order to pass the property into your Revocable Trust. Failing to retitle your real estate can be a costly “misstep” in your overall estate plan.

Day 10: Ten Lords-a-Leaping = Succession Planning for Your Business

Just as these lords leap into action, our business owners too must plan for the continuity of their business entity. More than likely, a business owner desires to transfer their business to their children. Although some business owners may not believe any planning is required, creating a succession plan for your business ensures a smooth transition of leadership, protection of business assets, and securing the prosperity of your business entity to the next generation. Effective planning now prevents potential disastrous results or depletion of assets after you have passed.

Day 11: Eleven Pipers Piping = Harmonizing Your Estate Plan with Estate Tax Avoidance Strategies

Harmonize your estate plan with effective tax strategies to minimize your tax liabilities and leave more wealth for your beneficiaries and for future generations. Starting in 2024, the gift and estate tax exemptions will increase to $13,610,000 ($27,220,000 for married couples). This allows an individual or married couple to transfer significant assets during their lifetime or at death while potentially avoiding gift or estate tax. In addition, annual tax-free gifts to individuals will increase to $18,000 per recipient from an individual (or $36,000 from a married couple). Embrace the melody and stay in tune with these high exemption levels in your 2024 gift planning. Find out more in our article Changes to Estate and Gift Tax Exemptions for 2024.

Day 12: Twelve Drummers Drumming = Celebrate and Review Your Estate Plan

On the twelfth and final day of our “12 Days of Christmas” estate planning series, we encourage you to celebrate with the beat of a drum the completion of your comprehensive estate and succession plan. Take the time to review your estate plan regularly, ensuring it still aligns with your current wishes, as well as your current circumstances. Always try to communicate with your loved ones about your goals and wishes. Celebrate the peace of mind that comes from knowing your legacy is secure and make adjustments as needed to keep your plan in harmony with the rhythm of your life.

Happy Holidays from your Estate and Business Succession Planning team here at O’Neil Cannon. We wish you and your loved ones a safe and peaceful holiday season!

HARMONY OF LEGACY: A 12-DAY ESTATE PLANNING CELEBRATION (DAYS 5 TO 8)

To continue our holiday series “Harmony of Legacy: A 12-Day Estate Planning Celebration,” we share with you four more days. In case you missed our first few verses, you can find them here.

Day 5: Five Golden Rings = Jewelry and Prized Possessions

On the fifth day of Christmas, our attention turns to our favorite things. How to divvy up jewelry and other valuable possessions can lead to disputes among family members and beneficiaries. Wisconsin law permits you to have a separate, signed, and dated document in conjunction with your will or trust through which you leave particular items to specific individuals. But remember – Wisconsin does not permit holographic wills, so do not try to leave things via this method without a complete estate plan.

Day 6: Six Geese-a-Laying = Conserving Your Family’s Legacy

Six geese-a-laying bring forth the theme of legacy preservation on our sixth day. If you strategically lay the groundwork today, you can ensure a lasting impact on your family’s prosperity and values. To preserve your wealth for future generations, consider creating a dynasty trust, which allows for the precise distribution of wealth. The “generation-skipping transfer tax” or “GSTT” can devour a large portion of your wealth before reaching your grandchildren or great-grandchildren. A dynasty trust helps you avoid estate taxes by skipping generations when transferring assets. You can provide your grandchildren, and even great-grandchildren, with the assets necessary to achieve their dreams.

Day 7: Seven Swans a Swimming = Durable Financial Powers of Attorney

Keep your financial affairs afloat with a Durable Financial Power of Attorney. This document provides protection during your lifetime if you are incapacitated and unable to make financial decisions. In a Durable Financial Power of Attorney, you appoint someone to be your agent to manage your financial affairs and act on your behalf. If you become incapacitated without a Durable Financial Power of Attorney, your family would have to go to court to have someone appointed to handle your affairs. Read more about the importance of a Durable Financial Power of Attorney.

Day 8: Eight Maids-a-Milking = A Moo-ving Guide to Health Care Powers of Attorney

As we explore the theme of giving on the eighth day, your Health Care Power of Attorney can play a vital role in ensuring your medical wishes are carried out, even if you cannot speak for yourself. Your HCPOA is an often overlooked yet crucial document. An HCPOA is a legal document in which you appoint a trusted individual as your "health care agent" to make medical decisions on your behalf if you are unable to do so. Your health care agent can ensure your medical wishes are heard and respected. HCPOAs are also important for your young-adult family members.

Stay tuned for more valuable insights in the upcoming days as we continue our "12 Days of Christmas" estate planning series!

HARMONY OF LEGACY: A 12-DAY ESTATE PLANNING CELEBRATION (DAYS 1 TO 4)

Day 1: A Partridge in a Pear Tree = The Foundation of Your Estate Plan

Welcome to our "12 Days of Christmas" Estate Planning Series. On the first day, let's start with the basics of how to protect your family tree—or those outside your family tree—with the solid foundation of an estate plan. Whether you are single or married, with children or without, everyone should have an estate plan to assist with their affairs while living and to pass their assets upon their death. What type of plan you should have depends upon a variety of factors and will involve different legal documents. Find out more in our article What is an Estate Plan?

Day 2: Two Turtle Doves = Planning for Couples

On the second day of Christmas, we focus on couples. People are often surprised to learn that Wisconsin does not recognize common law marriages. To protect a non-spousal partner, estate planning is essential. For married couples, Wisconsin is a community property state, which generally means that all debt and assets acquired or earned during marriage belong to both spouses, regardless of title. There are some exceptions and planning can be done before or after a marriage to protect assets for wealth management, divorce, and estate purposes. Our article A Brief Overview of Wisconsin's Marital Property System provides additional information.

Day 3: Three French Hens = Trusts

Three French hens symbolize trusts and protecting your nest egg for yourself and future generations. There are many types of trusts to cover varying needs. A revocable trust is the centerpiece of many estate plans and provides flexibility to provide for yourself and your loved ones. In the spirit of holiday giving, you may decide to include a Charitable Remainder Trust in your estate plan, or your estate plan may benefit from some specialized trusts such as a Spousal Lifetime Access Trust or an Irrevocable Income Only Trust.

Day 4: Four Calling Birds = Wills

On the fourth day of Christmas, we address the best-known aspect of an estate plan: the will. Many estate plans use a "pour over will," which calls out to the revocable trust and pours any estate assets into the trust. In other situations, a simple will without a trust may be all you need to distribute your assets. Regardless of the type of will, it must be properly created, and state laws differ on what is needed to create a valid will. Wisconsin law does not permit a "holographic will"—a will that is handwritten, signed, and dated by the person making it. Some states do permit such wills, but the recent Aretha Franklin case demonstrates the disputes that can arise from holographic wills.

Stay tuned for more valuable insights in the upcoming days as we continue our "12 Days of Christmas" estate planning series!

TAX AND WEALTH ADVISOR ALERT: HOW JOINT ACCOUNTS CAN RUIN YOUR ESTATE PLAN

As individuals grow older, they are often inclined to add a child to their financial accounts to assist them with paying bills and managing assets. While this strategy is convenient, it can lead to financial abuse and can also derail estate plans.

A joint account is a financial account with one or more owners, who both have rights of survivorship. Upon the death of one owner, the balance of the account passes to the surviving owner without probate, regardless of whether the surviving owner contributed to the account or not. The balance of the account will not pass according to the deceased owner's estate plan and the surviving owner has no legal duty to abide by the deceased owner's estate plan. The surviving owner can legally liquidate the account and cannot be held liable for doing so.

If you mistakenly add a joint owner to your financial account, it can be extremely difficult to prove that the joint account was instead set up as a "convenience account" for the sole purpose of making it more "convenient" for the joint owner to pay your bills and manage your assets. To prove a joint account was a convenience account, the legal presumption that the surviving owner of the joint account should receive the balance of the account must be overturned. This proof relies heavily on factual circumstances and requires a showing of clear and convincing evidence that the original owner did not have a donative intent when initially creating the joint account.

Instead of adding an individual as a joint owner of your financial account, we recommend adding your agent under your financial power of attorney. A financial power of attorney allows a person to perform financial transactions on your behalf, without having any legal ownership over your financial accounts. More importantly, a financial power of attorney also terminates upon your death. In other words, when you pass away, the account will either pass to the beneficiary listed on your account or to your estate—as originally intended. If you already have a revocable trust in place, your revocable trust can be named as the beneficiary of the account and the account will then pass to your trust upon death, thus avoiding a probate proceeding.

It is important to note that while it is better to add an agent under a financial power of attorney to a financial account, a financial power of attorney can also be dangerous in the hands of a bad actor, and it can be difficult to hold an agent accountable. It is vital to choose a trustworthy agent, such as a spouse or close family member. Avoid selecting an agent who has a history of financial trouble, drug, or gambling problems. Always consult with an estate planning attorney when establishing a financial power of attorney and adding an agent to financial accounts.

Here at O'Neil Cannon, our Estate and Succession Planning Group can create a comprehensive estate plan for you and assist you with properly retitling your bank accounts, setting up beneficiary designations, and adding your agent under your financial power of attorney as an authorized user of your accounts. Our Inheritance Litigation Group can also assist you in holding a bad actor liable if you believe that your loved one's joint account should be a considered a convenience account or if your loved one was taken advantage of by his or her agent under a financial power of attorney.

TAX AND WEALTH ADVISOR ALERT: WHAT IS AN ESTATE PLAN?

We are often asked, “What is an estate plan?” An estate plan can mean different things depending on your unique personal and financial situation. We structure your estate plan based on many things, such as whether you are single, married, or divorced; whom you want your estate to pass to upon your death; and the complexity and makeup of your assets. Some individuals may need more estate planning, some may need less.

Here is a list of the typical documents we include in an “estate plan.”

Revocable Trust

People often come to us asking for a “simple” Will. However, a Will-based estate plan is not always the best choice. A “simple” Will now may cause beneficiaries significant cost and delay, later, when the Will gets probated. This is why we often recommend that our clients establish a “Revocable Trust.”

A Revocable Trust is a trust that you create during your lifetime and acts as the “centerpiece” of your estate plan. The Trust is designed to help you manage your assets during your lifetime and to designate who will receive your property upon your death. You are the “grantor” or creator of the Trust and serve as Trustee during your lifetime, so you still retain control over the assets in your Trust. The Trust is both completely amendable and revocable during your lifetime.

Upon your death, your trust property is divided and distributed to your named beneficiaries, often your children. A share for a beneficiary can either be distributed outright and free of trust, or it can be held in trust for that beneficiary’s benefit. A share held in trust can be useful for a beneficiary to protect from creditors and divorce, or if a beneficiary is a spendthrift.

Married couples often create a “joint” Revocable Trust together. A joint Revocable Trust is a useful tool to minimize taxes and effectively manage a married couple’s assets, before and after death.

A Revocable Trust is particularly useful if you have minor children, you own your own business, or you own real property in multiple states. The Trust also makes the administration of your assets more efficient if you become incapacitated.

Last Will and Testament

Even if you have a Revocable Trust in place, it is still necessary to have a Will. This is what we refer to as a “Pour-Over Will.” The Pour-Over Will serves a few important purposes. First, in the event that you fail to re-title an asset into your revocable trust, the Pour-Over Will is designed to receive those assets upon your death and “pour” them into your Revocable Trust. Second, the Pour-Over Will is the only place you can nominate a guardian for your minor children if you were to unexpectedly pass away. Finally, the Pour-Over Will distributes your personal property, such as your furniture, household items, clothing, etc. to your intended beneficiaries.

Martial Property Agreement

For married couples, we often draft a Marital Property Agreement. This agreement allows married couples to “opt in” to Wisconsin’s marital property system by classifying most of your assets as marital property upon yours and your spouse’s deaths. The Marital Property Agreement also contains a “Washington Will Provision,” which means the surviving spouse can fund the trust upon the death of the first spouse and thus avoid probate. This agreement, however, does not address divorce and is used solely for estate planning purposes.

Durable Power of Attorney

In the event that you become incapacitated as a result of an accident or illness, you can appoint an “agent” in your Durable Power of Attorney to oversee your financial affairs. We are often asked what the difference is between an “agent” and a “trustee.” An “agent” manages the assets outside of your Revocable Trust, while a “trustee” manages the assets held by your Trust. A Durable Power of Attorney offers great flexibility in administering your financial affairs and also allows you to avoid a costly guardianship proceeding.

Health Care Power of Attorney

A Health Care Power of Attorney allows you to appoint an individual to make health care decisions on your behalf in the event that you are unable to do so yourself. The document also allows you to express your wishes regarding entering a nursing home or community-based residential facility when the need arises, as well as other important end-of-life decisions.

HIPAA Release and Authorization

The Health Insurance Portability and Accountability Act was passed into law in 1996. This Act prevents medical professionals from divulging your personal medical records to family members or other individuals. Because of this, it is often difficult for family members to gain access to your medical information in the event of an emergency. Our HIPAA Release and Authorization allows medical professionals to release your personal medical records to persons of your choosing (often family members) to help manage your care.

Deed

If you establish a Revocable Trust, an important step is re-titling your real property into the name of your Revocable Trust. Thus, upon your death, you avoid having the real estate pass through probate, and your Trustee will have the ability to maintain, manage, and/or sell your real property upon your death. This step is especially important for property owned outside of Wisconsin. If you fail to transfer your real property into your Revocable Trust, you risk needing an “ancillary” probate in the state in which your real property is located. This can be a costly and tedious step we try to avoid.