

# MILLER, MONSON, PESHEL, POLACEK & HOSHAW

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

## NEWSLETTER

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### MILLER, MONSON, PESHEL, POLACEK & HOSHAW ANNOUNCES NEW ASSOCIATE

Miller, Monson, Peshel, Polacek & Hoshaw is pleased to announce that Michele R. Shipp has joined the firm as an associate.

Ms. Shipp brings to Miller, Monson, Peshel, Polacek & Hoshaw experience in estate planning, trust administration and business transactions. She earned a B.A. in Political Science and Music History from University of San Diego and her *Juris Doctor* from Santa Clara University School of Law.

### ESTATE PLANNING & PLANS: A TIME FOR REVIEW?

BRADFORD N. DEWAN, ESQ.



Unless you have recently updated your estate plan, it could be obsolete and may not achieve your goals. Every time the law changes, or family or other situations change, your estate plan should be reviewed.

The following issues require your attention on a regular basis:

**The Beneficiary Designations of your tax-deferred retirement plans** (IRAs, 401(k)s, 403(b)s – for convenience, we refer to all these types of assets as IRAs) need to be reviewed by you and your attorney.

Currently the main issues to consider with tax deferred retirement plans are:

1. **Minimizing income taxes** for a beneficiary inheriting an IRA. If your beneficiary designation form is not completed correctly (or completely) the beneficiary might be required to withdraw the funds and pay income tax on the entire amount all at once or within a very short period.
2. **Minimizing or avoiding estate taxes.** If proceeds from your IRA are needed to pay estate taxes, up to 90% of the tax deferred account could disappear to pay both income and any estate tax. Estate taxes can be significantly reduced with proper planning.
3. **Control.** Would you be concerned if you knew that your IRA might end up in your daughter-in-law's new husband's estate and went down that blood line

instead of to your descendants? Would you be concerned if your spouse re-married on your death and named her new husband as beneficiary of the IRA your spouse inherited from you and the IRA assets ended up going down the blood line of his or her new spouse? Do you have a spendthrift child or a special needs child whom you would like to benefit from the IRA but you have determined that the distributions need to be restricted?

**4. Durable Power of Attorney for Financial Matters.** It may well happen that you may become incompetent just when certain decisions need to be made regarding your IRA or the IRA you are inheriting from your spouse. By specifying these actions or decisions in your Durable Power of Attorney, your designated agent will be able make these decisions on your behalf for your benefit and also for your heirs.

**5. Per Stirpes vs. Per Capita.** Yes, these are legal terms. But they point out the following issue. If one of your children predeceased you, would you want the IRA funds to go only to your surviving children? Or, would you want the share of the IRA that would have gone to the deceased child to pass to his or her children (your grandchildren)? Many beneficiary forms do not allow the second scenario but require the first (i.e. all to surviving children). If you intend for the second scenario (grandchildren to receive share of predeceased parent), then your beneficiary form may need to be amended.

It is easy to miss these details when completing your beneficiary designation form. Failure to focus on these details can easily result in unintended consequences, including some described above. The Standalone IRA Trust is a new vehicle that can help solve the income tax, estate tax and control issues associated with an inherited IRA.

**Lifetime Asset Protection Trusts.** You will be doing your heirs a large favor if you leave their inheritance in a trust for them instead of leaving it to them outright. If the assets are left outright

to your heirs it will be very difficult for them to attain the type of protection from lawsuits, divorces and bankruptcy that they can receive by you simply leaving the assets to them in a trust. When properly structured, such a trust will not limit their use of, nor their benefit from, the assets in the trust.

**Asset Protection.** The law continues to change regarding the level of protection - from lawsuits, divorce, bankruptcy, etc. - that can be provide by a typical support trust, the family revocable living trust, or any other trust designed to make distributions to a beneficiary. If asset protection is an estate planning goal, the provisions in these trusts need to be reviewed for possible changes and updates.

**Inheriting Assets.** If you are likely to inherit significant assets, then consideration needs to be given to whether you would prefer that such assets, whatever they might be, not be distributed to you outright, but, instead, be contributed into a trust where you are the beneficiary and potentially the trustee as well. This is something to discuss with your parents or others from whom you anticipate an inheritance.

**Have you refinanced your home?** If so, did your lender require you to transfer the property out of your family trust to you personally? If the answer is yes, has the property been transferred back into the family trust? If not, the home might have to go through probate. One of your new years resolutions should be to confirm that all of your assets are held in trust (or create a trust of you do not have one!).

**Estate taxes and the married couple.** With the increase in the credit which each of us has which essentially pays some or all of our estate tax (2 Million in 2008 and 3.5 Million in 2009), the number of options for the structure of the family living trust has increased. It is possible to build in flexibility so that the surviving spouse has the ability to determine just how much of the deceased spouse's applicable exclusion amount really needs to be used in order to avoid an estate tax on the second death. Essentially, the new structures allow for a postponement of the decisions regarding the amount of assets needed to fund the various

subtrusts created on the first death. By building one of these structures into the trust, more assets can be subject to the surviving spouse's complete discretion and not subject to limitations on access.

**Single person.** Single individuals have a taxable estate if their net worth exceeds the estate tax exemption amount (currently \$2,000,000). It is likely that their revocable living trust does not need any changes so long as it was prepared in the relatively recent past. But various techniques and strategies could be implemented to reduce the estate tax liability if the estate has a value in excess of \$2,000,000.

**Valuation of your estate.** It is important to keep track of the fair market value of the assets that will be included in the estate of you and your spouse. By monitoring the size of your estate you will be able to determine if an estate tax is likely or whether it can be avoided, or at least reduced, by good tax planning. Also, as noted above, if, as a result of the increasing exemption amount, there is uncertainty as to whether an estate tax will be imposed, then your revocable living trust can be restructured so that certain tax related decisions can be deferred and left to the surviving spouse to make, thus achieving greater flexibility.

**The Health Insurance Portability and Accountability Act of 1996 ("HIPAA").** HIPAA has made it very difficult to obtain a person's medical records without specific authority being granted to a designated agent or agents. Consequently, it is of utmost importance that your estate plan contains a document that has the required language in order for your designated agent or agents to gain access to your medical records when you are not able to make medical decisions for yourself.

**Review and Analysis of Life Insurance Policies.** Many individuals and spouses have purchased life insurance policies over the years. Sometimes the purchase has been directly by the insured and other times an irrevocable trust

was established to purchase and own the policy. Those policies that have been in place for several years should be reviewed to determine if they are still serving the intended purpose and if they are functioning (i.e. investment return on cash values) as projected. Additionally, the cost of life insurance has decreased over the years as life longevity has increased. Consequently, policy premiums may be able to be reduced, or additional insurance purchased at the same cost as is being currently paid.

As indicated by the issues raised above, the environment in which we create our estate plan is not static. Rather, it is in a fairly constant state of flux. Thus, regular review of estate plans is needed in order to be assured that goals and objectives will be realized.



**PLANNING FOR YOUR PET**  
MICHELE R. SHIPP, ESQ

For many Americans the family pet is really a family member. A pet can offer unconditional love and acceptance. When planning your estate, you might consider including planning for your pet.

Thousands of pets are orphaned in the United States each year because their owner does not specifically provide for them. Many families either forget about this responsibility or just hope someone else will take over pet care. In order to avoid this you can consider the following:

## **DURING LIFE**

If you should become incapacitated during life, someone will need to help care for your pet. A durable power of attorney for financial management permits you to appoint an agent who can step into your shoes and make payments for your pet's benefit. Additional provisions can be drafted granting the agent authority to place your pet into a new and loving home.

## AFTER LIFE PLANNING

1. **Gift of Pet.** In your Will or Trust you can direct your executor or trustee to gift your pet. This approach permits you to name specific individuals or families that would be eligible to receive your pet. Talk with your family and friends now in order to identify a willing individual or family for pet placement.

Make sure to consider the type of pet and the suitability of the potential household. Some pets require lots of activity and attention. A suitable household would offer typically companionship and the ability to exercise with the pet daily. An unsuitable home might be with someone who works all day and has less interaction with your pet.

2. **Funding a "Pet Trust".** A Pet Trust provides funds to a trustee with instructions either to care for your pet and/or identify a new home. A trustee can be either an individual or a charity serving the needs of orphaned animals. There are many animal centers that provide placement for animals into new homes, including centers that specialize in certain kinds of pets, like cats or parrots. Such centers provide temporary housing for your pet until a family can be identified, or may be able to provide permanent placement. Please research your own community for the adoption programs available.

3. **Specific Cash Gift.** You can also provide a specific dollar amount to a beneficiary and request such money be used for the pet's care. However, making sure the money goes for the pet's care rather than to the beneficiary is always a concern. Because each family is different this approach is not always recommended.

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