



4300 B Street, Suite 400

Anchorage, Alaska 99503

TEL 907.522.2272

EMAIL generations@foleypearson.com

WEB www.foleypearson.com

Announcements

Correction to Update on Notarization Requirements

In January we updated you on the notary journal requirements under the new notarization law, which took effect January 1, 2021. We have excellent news; those requirements only apply to remote online notarization. This means that we are able to continue offering notarial services with relatively little fuss, just as we have in the past. Please remember to bring a valid ID, such as a driver's license, with you to notarization appointments.



Legislative Update

Bill is on the board and Chelsea is a member of the Alaska Trust and Estate Professionals (ATEP), an organization devoted to promoting and improving trust and estate legislation in Alaska. In conjunction with their peers, Bill and Chelsea have been working to advance two bills that will impact the future of estate planning in Alaska. One is a technical fix to the Alaska Community Property Statute, and the other will allow for electronic Wills. We hope that the final legislation will be enacted in time for our next newsletter and we can give you a more comprehensive update. Stay tuned!



Generations

FOLEY & PEARSON NEWSLETTER

Estate Planning Workshops



Foley & Pearson offers two workshops via teleconference every month for people who want to know more about wills, insurance, trusts, children's trusts, probate, estate taxes, and more.

There is no charge and no obligation.

More information can be found online at foleypearson.com

Call us to RSVP at 522-2272.



Implementing Portability Into Your Estate Planning

By Bill Pearson

The estate tax has changed and will continue to evolve over time. The same goes for the estate planning tools available to clients. In 2010, Congress implemented an estate planning tool called a "portability election," whereby a surviving spouse could use the deceased spouse's unused estate tax exclusion. This allowed a couple that failed to plan for the estate tax with traditional trust-based planning to potentially have a second bite at the apple by filing an estate tax return and making the portability election to carry over the deceased spouse's exemption amount.

A portability election allows the surviving spouse to carry over the deceased spouse's exemption amount in the year the deceased spouse dies. If a spouse died in 2019 when the estate tax exemption amount was \$11.4 million, for example, the surviving spouse could carry over the deceased spouse's unused \$11.4 million exemption. Why would a surviving spouse do this? Under current law, the estate tax is set to revert in 2026 to \$5 million



(adjusted to inflation, which is projected to be around \$7 million). A couple with a net worth in the \$5-\$11 million range—i.e., clients that currently are not subject to estate taxation—should think about implementing portability as a part of their estate planning when considering the possible future growth of their portfolio.

Given the substantial increase in the estate tax exemption amount over the past few years, a number of clients in the \$5-\$11 million range have engaged in planning with either a probate avoidance trust, where everything passes to the surviving spouse, or a

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PORTABILITY

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“disclaimer trust” plan, where the surviving spouse has the ability to disclaim assets within nine months of the death of the first spouse. Disclaimed assets

For more than a decade, the portability election has been a powerful estate planning tool.

in a disclaimer trust pass to an estate tax planning credit shelter trust (typically referred to as a Family Trust in our planning documents). Both of these options make sense, given the current estate tax exemption, but like any plan, they require review as circumstances change. Implementing a portability election, especially when combined with disclaimer trust planning, provides clients in this range with powerful flexibility.

While portability is a compelling estate planning tool, there are a few downsides. One is that it is predicated on the surviving spouse being the last spouse, and does not account for re-

marriage. If the surviving spouse remarries, the portability election can be jeopardized. Further, the portability election does not shield property from additional estate taxes on the appreciation of that property after the first spouse’s death. This is a disadvantage when compared to traditional trust-based plans implementing a fractional funding formula (where one-half of the trust passes to the credit shelter trust), which allow future appreciation to grow estate tax free in the credit shelter trust after the death of the first spouse.



For more than a decade, the portability election has been a powerful estate planning tool. But, like any tool, proper implementation is crucial. We are in an area of continued estate tax uncertainty. The next time you have a trust review, make sure to ask us whether portability might make sense for your estate planning.



Welcome, Liz



We are thrilled to welcome the newest member of the F&P Team, receptionist Liz Bechtol. Liz was born and raised in Anchorage and spent her summers in Seward, Homer, and Canada. She graduated from Dimond High School in 2010 and continued to UAA, where she studied foreign languages, criminal justice, and psychology.

Liz enjoys spending her time traveling, painting abstract art, buying too many plants and crystals, and enjoying the outdoors with her little black cat, Thirteen. Outside, she can usually be found paddleboarding, kayaking, biking, or hiking, with Thirteen tagging safely along. Liz’s art can be found at Zip Kombucha during May, the downtown Kaladi Bros. during June, and the Jewel Lake Kaladi Bros. during July.



Adaptation in Light of COVID-19

By Bill Pearson

Any paradigm shift brings disruption and opportunity. The shutdowns and social distancing of the last year from the COVID-19 pandemic have certainly qualified. The very nature of an estate planning practice is hands-on and requires direct client-to-attorney interface. This interaction is important to build trust and to help the attorney truly understand the client’s estate planning needs. In March of last year, we were scrambling to figure out how to effectively meet with clients in an era of videoconferencing. While the State of Alaska passed emergency legislation for video-conference signing of Wills, this legislation did not apply to Powers of Attorney and did not allow for remote online notarization.

Over the last year—despite rain, sleet, snow, and sometimes all three—we have done drive-through signings in the parking lot and implemented video-conference signing protocols when warranted. Through it all, I have a number of takeaways.

1. In-person client meetings matter, and are truly the best way to establish the relationship. While certain processes can be

remote, such as the initial asset intake or the occasional review, for the relationship to truly be an attorney-client relationship, we need to interact in person.

To better serve our clients, *Generations* reviews can be conducted in-person, over the phone, or by videoconference.

2. We can implement a hybrid. Given item number 1, when the relationship has already been established, ongoing reviews can be accommodated remotely. The COVID-19 pandemic forced us to implement better remote systems, and for *Generations* clients that spend winters out-of-state, these systems will allow us to better serve our clients going forward. Therefore, *Generations* reviews can be conducted in-person, over the phone, or by videoconference.

3. Our estate planning workshop will stay remote. I think the

largest change due to COVID-19 will be that our estate planning workshop—the first interaction for a potential client or a memory refresher for a current client—will stay a videoconference. We have found this medium to be convenient for potential and existing clients alike. This year, we also held our successor trustee workshop via video-conference and we found this was a much more effective means to include clients’ families and successor trustees that could not always make it when the workshop was only held live. We have also set up a Facebook page where we share the newsletter and other updates. Make sure to like us on Facebook!



4. The biggest takeaway is that our firm, much like all of you, will be juggling the use of multimedia going forward. Thank you for working with us during these unprecedented times and we look forward to seeing you soon.

