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Extending an UTMA

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Amanda isn't savvy enough write back that she wants to terminate the account and take the money immediately. The other option is to wait six years to see if Amanda's behavior improves, and to give notice in the six-month period before Amanda reaches age 25. This is a troubling choice, because Amanda is bound to be a little wiser as she gets older, increasing the likelihood that Amanda will compel the distribution.

Our personal experience is that parents are able to exercise substantial control over children who are 17 or 18. At that age, it is very likely that the term can be extended with a properly drafted notice that is also

delivered with an appropriate explanation to the child.

On the other hand, if a custodian waits until near the end of the term of the trust, when a child is nearing age 25 and more independent, it may not be as easy to convince the child to agree to extend the term. Still, many children remain dependent on parents well into their mid-to-late 20s, which can give a parent substantial control of the situation. If a child is reasonable and practical, they will probably go along with the extension of the UTMA account term.

In either case, we recommend that clients consult with an attorney so that the notice can be properly drafted and so that the brokerage firm or bank is given proper notification that the statutory process has been completed, allowing the UTMA to be extended to a later date.

Bridging Generations
Spring 2014
A Newsletter from Foley, Foley & Pearson, P.C.

Generations

For our clients and our professional estate planning partners

Broken Wills
of the Rich and Famous

Earlier this year, Phillip Seymour Hoffman made headlines when he unexpectedly passed away from drug-related issues. His death also generated some raised eyebrows in financial circles because his estate plan turned out to be very costly for his heirs, both financially and emotionally.

mistakes made by others, including mistakes made by the rich and famous.

According to an article written in February 2014 by Dan Caplinger of the Associated Press, Mr. Hoffman executed his Will back in 2004. The Will established a trust for his oldest child with a portion of

Few of us will ever have estates as large or complex as Philip Seymour Hoffman's, but we can all learn from the

his $35 million estate, and the rest of the estate passed to his longtime

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Generations Program to Expand Services

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*Foley, Foley & Pearson is proud to have pioneered the ongoing estate planning maintenance service that we call **Generations**. **Generations** has been a success for our clients for 15 years and continues to provide the assurance that your estate plan is always up-to-date.*

*In 2015, we will be expanding the **Generations** Program by offering different levels of service. Keep watching our Newsletter and mailings for news about the details of **Generations** in 2015 and beyond.*

Foley, Foley & Pearson remains committed to providing the highest level of estate planning services and ongoing support for our clients and their families. We will be here when you need us.

Broken Wills

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partner, Mimi O'Donnell, who was also the mother of all three of his children. While this plan seems reasonable on its face, consider the actual consequences.

Marry Your Sweetheart

For individuals passing away in 2014, federal estate tax law provides an exemption for the first $5.34 million that is distributed to anyone other than a U.S. citizen spouse. Everything over $5.34 million is taxed at a 40% rate. That means that Mr. Hoffman's heirs are faced with a federal

> If he had married her, there would have been no federal taxes due.

tax bill of $12 million. If Mr. Hoffman had married Ms. O'Donnell, there would have been no taxes due to the federal government.

Estate and gift tax laws are generally more favorable to married couples than to unmarried domestic partners. Even if the combined estate of a couple is under $5 million, the administration of an estate and subsequent tax planning for the surviving partner can be more advantageous if the couple were married. This fact is also true now for same-sex partnerships, based upon a United States Supreme Court Decision from 2013 that struck down the Federal Defense of Marriage Act (DOMA) and found that same-sex partners who were married under the law of any state were entitled to the same tax advantages as any married couple.

Update Your Plan

When Mr. Hoffman signed his Will, he had only one child. He and Ms. O'Donnell had two more children after the Will was signed who were not mentioned in the Will. This created an ambiguity in the Will that makes it uncertain whether the younger children will share in any of the distributions enjoyed by the older child.

Many Wills expressly provide for afterborn or adopted children and some states have laws that will expressly include new children in the plan. But it is a good idea to review and update your plan when there are births, deaths, divorces, or other changes in your family that would result in a change of your desires regarding your intended heirs.

Keep Things Confidential

Using a Will as your primary document means that your estate plan will become public at the time of your death. This means that for the rich and famous Mr. Hoffman, the media has had a field day reporting on the problems facing his partner and children. If Mr. Hoffman had used a revocable living trust as his primary planning tool, his financial affairs would have remained confidential. You are probably not a movie star or a public figure, but you might still like to have your financial affairs remain private at the time of your death.

Take the Time and Effort

Establishing and maintaining a good estate plan takes time and effort. It appears that estate planning wasn't a very high priority for Mr. Hoffman, and his family will pay the price. It is easy to ignore, postpone, and procrastinate on estate planning. Foley, Foley & Pearson takes great pride in helping and encouraging our clients to establish and maintain quality estate plans. Our bi-monthly workshop, streamlined planning process, and ***Generations*** maintenance

> If you are a ***Generations*** client, congratulate yourself.

program are designed to make it as easy as possible for people to set up and maintain their plans. If you are one of our ***Generations*** clients, take a minute to congratulate yourself. If this article has reminded you that your plan needs to be changed or updated, give us a call.

Extending a Uniform Transfer to Minor Act *Account*

Uniform Transfer to Minor Act accounts (UTMAs) have become a popular way for parents, grandparents, guardians, or friends to hold money for minor children.

In Alaska, UTMAs are particularly popular for families who want to accumulate and invest Alaska Permanent Fund Dividend (PFD) checks for children to be used for their education. These accounts are statutory trusts created and governed by state law.

At the time the account is opened, a custodian selects an age—no older than 25—when the custodianship will end and the account is transferred the child. But what happens if a child is still not mature enough to manage the account when he or she reaches the age originally selected for the termination of the UTMA?

Many parents have discovered that their child is not prepared to manage the account as they reach 18, 21, or even 25 years of age. These parents and grandparents become frantic as the date approaches to transfer potentially thousands of dollars to children who are unprepared to handle the money.

Fortunately, in 2013 the Alaska Legislature modified the Alaska laws related to UTMAs and established a process that provides the custodian of an Alaska UTMA with the option to extend the time for disbursement past the original termination age, and even past the original statutory maximum of age 25.

Here is how the process works: A custodian may extend the custodial term by giving the minor written notice of the custodian's intent to extend the term. The notice must specify the duration of the extension and inform the minor of the minor's right to compel immediate distribution of the account. The notice must be given either during the six-month period immediately prior to the last day of the custodial term, or during the six-month period that begins on the minor's 18th birthday. If the minor does not give the custodian notice within 90 days that he or she intends to compel immediate distribution of the account, then the term is extended to the date specified by the custodian.

This procedure sounds workable until it is applied to a real-life situation. Let's examine how this process could potentially work out.

Example Scenario:

In 1997, Mary Livingston established an UTMA for her daughter, Amanda, with the custodial term scheduled to end on Amanda's 25th birthday. Amanda will turn 18 on July 15, 2014. Mary has been depositing Amanda's PFD checks into the UTMA account. In addition, Amanda's grandparents have made periodic gifts to Amanda to assist with her future educational needs, and these gifts have also been deposited into the UTMA account. The UTMA account is now worth $80,000.

> Mary is worried about what her rebellious daughter will do with the money.

Amanda has not done well in school and has become rebellious and difficult for her parents to deal with; she is using drugs and spending time with peers who are not a good influence on her. Mary is concerned that Amanda is unlikely to go to college and may never get her life in order. The investments in the account might continue to grow to $100,000 or more in the next seven years, and Mary is worried about what Amanda will do with the money. Mary wants to extend the term of the UTMA until age 35.

Under the statute, Mary can give Amanda written notice that the UTMA will be extended to age 35. But Amanda also has to be given notice that she has the right to compel immediate distribution of the account. So when should Mary give Amanda notice?

Mary could give Amanda notice the day after she turns 18 and hope that

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