

CHAMBERLAIN, HRDLICKA, WHITE, WILLIAMS & AUGHTRY

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

191 PEACHTREE STREET, N.E. - 34TH FLOOR

ATLANTA, GEORGIA 30303-1747

(404) 659-1410 (800) 800-0745

FAX (404) 659-1852

JAMES M. KANE
Attorney

Direct Dial: 404.658.5422

james.kane@chamberlainlaw.com

HOUSTON
PHILADELPHIA
SAN ANTONIO
DENVER

December 19, 2011

To the Parents of Adult Children --

Re: Your Estate Planning and Your Adult Children

This is a **promotional letter** and is not specific legal or tax advice for the reader. It is designed in general terms for adult children to present to their own parents so as to help bring about an important discussion that all parents need to have with their adult children.

Specifically, a discussion about estate planning the parents can put into place for their children that will benefit their children most favorably for (i) asset protection and (ii) estate tax purposes.

This is not an easy discussion and is typically not addressed in families for many reasons. However, a failure to discuss and deal with these questions head-on frequently results in lost opportunities for better protection of the property and estate tax savings.

Thus, the above two factors center primarily on giving your children (i) asset protection for the property they will receive from you and (ii) keeping your property from being subject to your children's own estate tax when they die. This is called generation-skipping tax planning (GST).

The above two benefits are themselves gifts for your children.

In order to put into place these benefits, the parents' estate planning documents must provide that their property (after both parents' deaths) will pass in trust to their children, not outright.

The following are additional comments in line with the above two benefits:

- (1) **Your Documents Become You** – Your (for you parents) estate planning documents will become your *alter ego* when you die *or if you later become incapacitated*.

For example, if your death (or incapacity) were to occur on a Tuesday. Beginning on Wednesday, all financial, property, tax, legal, business, etc., matters that you would have handled personally will now be handled according to the directive and instructions in these documents.

But, if your documents are non-existent, incomplete, or include gaps that do not cover certain circumstance, your family will have to respond to the gap by seeking court oversight for the gap. This is a reason well-drafted documents are much longer than most clients imagine, as compared, for example, to having merely a one-page Will listing who gets your property. The documents typically include an abundance of what-if provisions as reasonably necessary for your situation in order to avoid having to get the courts involved.

- (2) **Trusts for Your Children** – If your property passes outright to your children (rather than in trust), there is no asset protection for the property.

Children who get property outright end up with absolute control over the property. Complete *carte blanche*. This outright ownership exposes the property to claims from third parties. Your children also can give the property to anyone, including a new spouse, someone else's children, friends, etc. They also can lose it in a divorce or bankruptcy much easier if not in trust.

By contrast, the alternative to outright ownership is have the property held in trust under the written trust provisions of your estate planning documents, rather than having the property pass outright to your children. These trusts for your children will come into operation **only after both your deaths**.

Your children can each be the trustee of his or her own trust. This is quite typical.

All of the trust instructions, etc., will be written as part of your estate planning documents.

No new trust documents will have to be prepared at your death.

(3) **Asset Protection is Itself a Gift to Your Children --**

The use of trusts for your children will greatly help protect the property from second marriages, divorce, children from someone else's marriage, lawsuits, bankruptcy, etc.

A very compelling real-world illustration of this trust protection of property was presented in a recent Atlanta estate planning seminar.¹ These are good examples of the practical benefit of trusts:

Example 1: Donna, having inherited \$750,000 from her parent's estate, carefully places the inherited funds in a Paine Webber investment account. Donna has the account titled in her name as her "sole and separate property," to segregate the assets from her and her husband Steve's other assets. Donna and Steve have been married five years, their marriage is solid, and they have a young child. Steve has decided start a business, and has negotiated a \$575,000 loan from First State Bank. Steve tells Donna that the bank won't make the loan unless Donna co-signs the note (or, perhaps, unless the loan is secured by Donna's Paine Webber account), and Steve ask her to co-sign.

Example 2: Same facts as in Ex. 1, except that the \$750,000 Donna inherited was left in a trust of which Donna is also the trustee. The trust contains a spendthrift

¹ University of Texas Law School Professor Stanley M. Johanson at the 2011 Southern Federal Tax Institute in Atlanta, September 23, 2011.

clause. Again, Donna co-signs Steve's note. She is personally liable on the obligations, but the trust assets cannot be reached because of the spendthrift clause.

Example 3: Same facts as in Ex. 2, except that Steve, instead of attempting to borrow money from the bank, asks Donna, as trustee, to either (i) loan the funds to Steve or (ii) invest trust funds in his business. Here, Donna has no choice but to point out that, in view of her fiduciary duties as a trustee, (i) a loan to a relative would constitute impermissible self-dealing, and (ii) investing trust funds in a start-up company would be an imprudent investment not within the "prudent investor" standard.

*

*

*

Finally, I do not represent you (the parents) at this time and this promotional letter is not legal advice nor does it constitute an attorney-client relationship with the parents or anyone else who has a copy of this letter. I will, however, be more than glad to assist with your estate planning, subject to our mutual written letter of engagement, etc.

Sincerely,

**Mailed by e-mail only
date 12-19-11 JMK**

James M. Kane, Atlanta
james.kane@chamberlainlaw.com

JMK:ts
1375010.1