31st NPC Annual Conference

February 12-14, 2020
Houston, TX

BUSINESS CONTINUATION PLANNING

Presented by:

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Michael C. Riddle, JD

Mike graduated from the University of Houston Law School in 1972 and began his practice of law as a gift and estate tax attorney for the IRS. In 1991, Mike became Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate. He has practiced law in Harris and surrounding counties for almost 40 years and is currently the Managing Partner of Riddle & Butts, LLP. His practice areas include Estate Planning, Charitable Gift Planning, Asset Protection, Business Continuation Planning, and Estate Administration. He was a guest speaker for the White House Conference on Aging, and he spoke before the International Association of Financial Planners in Washington, D.C. Mike has been a guest speaker for 35 years on Christian radio station KHCB 105.7 FM. Mike served as the Parliamentarian and Chair of the Finance Committee of the Harris County Republican Party. He has served and is serving on various non-profit boards including U.S. Pastors Council and Jerusalem Seminary. Married to former Texas State Representative Debbie Riddle, Mike has three children and fourteen grandchildren. Mike is a member of Grace Church the Woodlands where he serves as a Home Group leader.

Christine Butts, JD

Christine Butts is a 1993 graduate of the University of Texas at Austin where she obtained her BBA in International Business. In 1996, she graduated from the University of Houston Law School. Christine is Board Certified in Probate and Estate Planning by the Texas Board of Legal Specialization. As a law student, Christine was publishing editor of the Houston Journal of International Law. Christine limits her practice of law to the following areas: probate, estate planning, business entities, and charitable organizations. Christine served Harris County as Judge of Probate Court 4 from 2011 to 2018 and, now back in practice, remains dedicated to the mission of serving families in times of crisis when that crisis involves the loss or incapacity of a loved one. Though she no longer serves as a probate judge for Harris County, she serves as the president-elect for the National College of Probate Judges. Christine is a member of the Junior League of Houston. Christine and her husband, Donald Butts, have four children, live in Spring.
Part I

- Choosing an Executor/Trustee
- Wills vs. Trusts
- Advanced Estate Planning
- Charitable Planning Strategies

No Will
Unknown who will be appointed executor
Who gets what in the estate?
Who is in charge?
Arguments between beneficiaries
Potential for lawsuits
Heartaches, sorrow, and stress
WHAT IS AN EXECUTOR?

- Fiduciary to the beneficiaries of the estate
- Serves in an unappreciated position
- Stuck between a rock and a hard place with having to administer the estate and satisfy the beneficiaries of the estate

Character aspects desired in an Executor:

1. Honesty
2. Sense of Duty
3. Compassion
4. Determination
5. Resolution
6. Ability to stay the distance
WHAT IS A TRUSTEE

- Fiduciary to the beneficiaries of the trust
- Serves in an unappreciated position
- Stuck between a rock and a hard place with having to administer the trust according to the terms of the trust and satisfy the beneficiaries of the trust
- Character aspects desired in a Trustee:
  1. Honesty
  2. Sense of Duty
  3. Compassion
  4. Determination
  5. Resolution
  6. Ability to stay the distance

Who should you name as Executor/Trustee?

POTENTIAL PROBLEM SITUATIONS THAT MAY DEVELOP

1. Naming children in charge due to order of birth
2. Naming two or more individuals to serve as Co-Executors/Trustees
3. Not naming backup individuals to serve as Executor/Trustee
4. Naming someone as an Executor/Trustee because of a “promise” to do so
Who should you name as Executor/Trustee?

POTENTIAL SOLUTIONS

1. Name individual most qualified to serve as Executor/Trustee
2. Do not name Co-Executors/Trustees
3. Name at least three backups to the position if you can
4. Choose an honest person (i.e. a CPA or Attorney)
5. Choose an independent Trust Company

Will vs. Trust: Which is Best?

<table>
<thead>
<tr>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Will</td>
<td>Who you name as beneficiary of your estate is a public record on your death because Will must be filed for probate</td>
</tr>
<tr>
<td>(a) Easy to create</td>
<td>(b) The cost of probate with issues may be very, very expensive</td>
</tr>
<tr>
<td>(b) Costs less than a trust to create</td>
<td>(c) It is easy to contest a Will filed for probate on your death. If a contest is filed before a Will is admitted to probate, then the probate assets may be frozen until a court decides the winner of the contest</td>
</tr>
<tr>
<td>(c) Probate, normally, is quick and easy</td>
<td>(d) It is easy for a creditor to file a claim against an estate thereby causing title of property to become clouded until such claim has been resolved</td>
</tr>
<tr>
<td>(d) The cost of probate, normally, is not that expensive</td>
<td></td>
</tr>
</tbody>
</table>
WILL VS. TRUST: WHICH IS BEST?
Cont’d

<table>
<thead>
<tr>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
</table>
| Trust | (a) Who you give your estate to and what they receive is private  
(b) Avoids cost of probates  
(c) Harder to contest  
(d) No delay in successor Trustee obtaining control of your assets, paying your debts, and distributing your estate  
(e) Harder for a creditor to file a claim against your estate because there is no probate  
(f) Assets inside trust are not controlled by court appointed guardian. Successor Trustee controls assets in trust upon your incapacity/death | (a) Little more difficult to create than a Will because there is more legal work in initially funding the trust  
(b) More costly to set up than a Will |

LIMITED PARTNERSHIP
Overview of Benefits

- Mechanism for the efficient management of your assets coupled with a management succession strategy
- Protects assets within the partnership from the judgment creditors of the limited partners
- Value of assets in the limited partnership have potential ability to be compressed for estate, gift and generation skipping transfer tax purposes
- Ability to transfer equity interests in assets without transferring control of such assets
When assets are placed in a limited partnership, the client no longer owns such assets directly. Rather, the client receives limited partnership interests in exchange for such contribution. If the client is later sued and a judgment is obtained against the client, the creditor may not execute the judgment against the assets of the limited partnership. The creditor may only become an assignee of any income to be distributed from the partnership through the client’s partnership interests.

The only remedy under statute that a judgment creditor may receive against the interest of a limited partner in a limited partnership is a charging order against such interest. Under the revised English rule, the creditor’s remedy against a partner was limited to receiving the partner’s share of the partnership’s profits and surplus. Further, when a creditor receives a charging order against such Limited partner’s interest, the creditor’s interest is limited to that of an assignee. Therefore, the creditor may not become a limited partner unless all other partners consent, which is highly unlikely. The creditor cannot vote on partnership matters, inspect or copy records, or even obtain from the general partner business and tax information regarding the affairs of the limited partnership.
LIMITED PARTNERSHIP
Compression of Value

Limited partnership interests may be discounted based on their lack of marketability, lack of control and lack of liquidity.

The availability of discounts in value on limited partnership interests currently exists because a limited partner is subject to restrictions on transfers, control, and distribution demands.

EXAMPLE OF ADVANCED ESTATE PLANNING TO SAVE MORE ESTATE TAXES
LIMITED PARTNERSHIPS: EXAMPLES OF HOW TO USE THEM

TYPICAL ESTATE

<table>
<thead>
<tr>
<th>Asset</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>HOME</td>
<td>$300,000</td>
</tr>
<tr>
<td>INVESTMENT REAL ESTATE</td>
<td>$1,200,000</td>
</tr>
<tr>
<td>CASH</td>
<td>$550,000</td>
</tr>
<tr>
<td>POOL CONSTRUCTION BUSINESS</td>
<td>$1,900,000</td>
</tr>
<tr>
<td>RETIREMENT PLANS</td>
<td>$750,000</td>
</tr>
<tr>
<td>LIFE INSURANCE</td>
<td>$500,000</td>
</tr>
<tr>
<td>AUTOS, FURN., &amp; PERSONAL EFFECTS</td>
<td>$100,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$5,300,000</td>
</tr>
</tbody>
</table>

Estate Plan of John and Mary Washington

Limited Partnerships

<table>
<thead>
<tr>
<th>Partnership</th>
<th>Value</th>
<th>Discount</th>
<th>Discounted Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Washington Investment, LP</td>
<td>$500,000</td>
<td>$(150,000)</td>
<td>$350,000</td>
</tr>
<tr>
<td>Washington Real Estate, LP</td>
<td>$1,200,000</td>
<td>$(360,000)</td>
<td>$840,000</td>
</tr>
<tr>
<td>Business Interests, LP</td>
<td>$1,900,000</td>
<td>$(570,000)</td>
<td>$1,330,000</td>
</tr>
</tbody>
</table>

George & Martha Washington

<table>
<thead>
<tr>
<th>Ownership</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>99% of LLC</td>
<td>($3,500 x 99% = $3,458)</td>
</tr>
<tr>
<td>1% of LLC</td>
<td>($84 x 99% = $82)</td>
</tr>
<tr>
<td>1% of LLC</td>
<td>($133)</td>
</tr>
<tr>
<td>Total</td>
<td>($4,573)</td>
</tr>
</tbody>
</table>

George & Martha Washington

<table>
<thead>
<tr>
<th>Ownership</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>99% of Limited Partnership</td>
<td>($3,458 x 99% = $3,422)</td>
</tr>
<tr>
<td>1% of Limited Partnership</td>
<td>($82)</td>
</tr>
<tr>
<td>1% of Limited Partnership</td>
<td>($133)</td>
</tr>
<tr>
<td>Total</td>
<td>($3,637)</td>
</tr>
</tbody>
</table>
Estate Plan of George Washington and Martha Washington
Tax Planned Revocable Living Trust, Investment Trust, Limited Partnership, Limited Liability Companies

George Washington and Martha Washington
Revocable Living Trust

Death of George Washington

Residence (equity)
Checking
Washington Mgmt, LLC (99%)
Washington Investments, LP (99%)
Washington Real Estate, LP (99%)
Business Interests, LP (99%)
Total

George's 1/2
$150,000
$25,000
$12,474
$413,800
$658,350
$1,434,874

Martha's 1/2
$150,000
$25,000
$12,474
$413,800
$658,350
$1,434,874

Death of Martha Washington

Auto., Farm, & Pers.
OUTRIGHT to Surviving Spouse: $100,000

To Children, IN TRUST, in separate, equal shares, remainder to their descendants;

H Term Life Insurance:
(out of estate after 3 years)
$500,000
1% Mgmt. LLC int.
$252
Total: $500,252

Part II
QTIP/Bypass Trust*
Survivor’s 1/2
Personal assets
$1,434,874
$100,000 (A.F.P.E.)
$1,534,874

Total: $3,719,748

Retirement Plans/Annuities
H IRA: $750,000
Total: $750,000

Pour Over Will
Spouse

All to SPOUSE IN TRUST, remainder to children, IN TRUST, in separate, equal shares.

Part I

Summary of Estate Tax Results: (calculated after death of surviving spouse utilizing 2020 $11,580,000 exemption equivalent which amount is indexed for inflation and thus will increase in future years and assuming LI out of estate in 2023)

Total Value of Estate (before planning): $5,300,000
Estimated Total to Beneficiaries (2023): $5,300,000

Estimated Estate Tax in 2020 (before planning): $-0-

Estimated Total Value of Estate (2023) (after planning): $3,719,748

Survivor's 1/2
+ Personal assets
$1,434,874
$100,000 (A.F.P.E.)
$1,534,874

George Washington 2020 Investment Trust
(Grantor Trust)

Estate Plan of George Washington and Martha Washington
Tax Planned Revocable Living Trust, Investment Trust, Limited Partnership, Limited Liability Companies

George Washington
2020 Investment Trust
(Grantor Trust)

George's 1/2
Martha's 1/2

* Inside the estate of the first spouse to die in excess of the exemption equivalent.

IF YOU WANTED TO FURTHER ZERO OUT ANY ESTATE TAX IN AN ESTATE YOU CAN DO SO BY CREATING A TESTAMENTARY CHARITABLE LEAD ANNUITY TRUST (CLAT)
EXAMPLES OF WAYS TO MAKE CHARITABLE GIFTS

METHODS BY WHICH CHARITABLE GIFTS CAN BE MADE

- Cash
- Last Will and Testament
- Stock (public or private)
- Retirement Plan Assets
- Life Insurance
- Real Estate
- Annuities
- Charitable Remainder Trusts
- Charitable Lead Trusts
- 501(c)(3) Charitable Organization
- Private Foundation
- Donor Advised Fund