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FUNDING REVOCABLE LIVING TRUSTS

Individuals and couples include revocable living trusts as part of their estate plan for a variety of reasons including probate avoidance, privacy, added incapacity protection, and estate tax planning (for couples).

For such an estate plan to be effective, all assets which would be subject to probate need to be retitled into the name of the trust.

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THIS MAY BETH IS CONFERENCING IN PUERTO RICO



On May 3-5, 2023, Beth will attend the annual conference of the National Academy of Elder Law Attorneys (“NAELA”) in San Juan, Puerto Rico.

As a member of the

conference committee, Beth will oversee helping first-time attendees feel welcome, help introduce speakers at the beginning of their sessions, and fill in wherever necessary to make sure the conference runs smoothly.

In addition to her conference duties, Beth looks forward to learning more about a wide variety of topics including the SECURE Act, cyber security, and the latest research regarding dementia.

Beth will be sure to pass along what she learns.

WHAT WASHINGTON’S BAN ON THE SALE OF AR-15S AND OTHER SEMI-AUTOMATIC RIFLES MEANS FOR ESTATE PLANS



On Tuesday, April 25, 2023, Governor Inslee signed into law House Bill 1240, which made Washington the 10th state to ban the sale of AR-15s and other semi-automatic rifles.

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Examples of such assets include real property; investment accounts; savings bonds; CDs; stocks; time share interests; bank accounts; interests in a partnership, corporation, or LLC; oil, gas, and mineral rights; and unsecured loans. In Washington, tangible personal property (vehicles, jewelry, household items, clothing, tools, art, etc.) is included in revocable trusts automatically via a general trust provision.

If it is discovered following the death of someone who had a Trust that one of the above assets was not properly retitled to the Trust, a probate may be required. This, of course, requires additional expense and may thwart the desire for privacy because of the requirement to provide notice of the probate to individuals who were specifically excluded as trust beneficiaries.

It is also possible for assets to pass to the Trust via beneficiary designation, including non-qualified annuities, life insurance, or investment accounts.

It is most common to not name the beneficiary of a 401K or IRA as a revocable trust, especially if the beneficiary is the survivor spouse or adult children.

It is possible, however, to name a Trust as the beneficiary of a 401K or IRA with the same required minimum distribution requirements if the Trust contains qualifying language. Naming a Trust as the beneficiary should be considered when there is a minor or disabled beneficiary. In addition, a Trust can be the beneficiary of an IRA or 401K when it is a second marriage, and the account owner wants his or her spouse to receive the required minimum distributions but also assure that his or her children receive the remainder should the survivor spouse die with funds remaining in the 401K or IRA. Note that in most cases the decedent's interest in the 401K rolls over to an inherited IRA.

It is important that your Durable Power of Attorney document allows for your agent to transfer assets or change beneficiary designations to your Trust if necessary.

Yes, transferring all the above assets to a Trust takes time and effort; however, a 'fully-funded' Trust is certainly a gift to your named Trustee – and trust beneficiaries -- as it will make your estate a lot less time-consuming and expensive to administer.

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By the next day, two federal lawsuits were filed in opposition to this new law; thus, the permanence of the law is still to be determined.

Section 3, Subsection 2 of the House Bill 1240 gives exceptions to the prohibition of manufacturing, importing, distributing, selling, or offering for sale any assault weapons.

One of the exceptions is transferring ownership of such a weapon upon death to a beneficiary. One of the requirements for this exception is that the beneficiary must be able to prove the decedent was the legal owner of the weapon, ideally by being in possession of a receipt which clearly shows the decedent was the legal owner of the weapon.

Another feasible way to establish that the decedent was the legal owner is for the weapon to be specifically bequeathed to the beneficiary through a provision in a Trust or a Will.

Under the current law, a beneficiary can only sell or transfer an inherited assault

weapon to a licensed dealer, a federally licensed gunsmith for purposes of repair, or to a law enforcement agency for the purpose of permanently relinquishing the weapon.

Since July 1, 2019, it has been the law in our state that ownership of inherited pistols and semi-automatic rifles must be transferred through a licensed dealer within sixty days of the owner's death. It is also the law in our state that certain persons cannot possess firearms. For example, there are prohibitions related to ownership by someone under the age of twenty-one. Thus, there should be a plan for interim safe possession should someone want to name a beneficiary who is under the age of twenty-one.

In short, legal gun ownership requires responsibility and a working knowledge of related state and federal laws. Please contact our office should you wish to include provisions in your estate plan relating to the transfer of firearms or need a referral to a licensed dealer.