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Re: Annual Update from KSW Law

Dear valued client,

We are writing to inform you of changes in the law and how you should update your estate plan to ensure it continues working for you and your family.

Please check our website KSW-LAW.com, as much of this letter's information may be found there along with other resources discussing various estate planning topics in greater depth.

Right to Die Statute

Increasingly, states are adopting so called "right to die" or "death with dignity" laws that allow patients to receive medical assistance to end their lives when suffering a terminal disease. Such a law has been proposed in New Hampshire but has not yet been enacted. Massachusetts likewise has not adopted such a law. Maine, however, recently enacted the Maine Death with Dignity Act. The law allows a Maine resident to request medication to be self-administered with the intent of ending life, provided a strict procedure is followed. We will continue to watch what New Hampshire and Massachusetts do in this area.

Transfer on Death Deed

RSA 563-D recently took effect, allowing New Hampshire property owners to now record a "transfer on death deed" identifying a beneficiary or sequence of beneficiaries to automatically assume a property upon the owner's death. While this new law has disadvantages (for example, naming a new beneficiary would require drafting and recording a new deed, which has costs and creates a public record), for many of our clients, especially those who wish to avoid the expense and complexity of trusts, the transfer on death deed option could be a solution to evade probate administration for their real estate in certain circumstances. Specifically, the transfer on death deed option is well suited to circumstances in which the beneficiaries of the property are expected to retain ownership of the property for at least two years after the death of the previous owners. If the beneficiaries are expected to sell the property promptly upon the death of the previous owners, however, certain title insurers may decline to certify the property's title unless a probate administration occurs.

Powers of Attorney

The New Hampshire legislature last substantially updated the financial power of attorney law in 2018, and if you have not already done so, please give us a call or send us an email to discuss this issue. If your power of attorney is from Maine or Massachusetts and you continue to reside there, please come in so we can assure those documents are up to date. If you have a

document from a state in which you used to reside, it is important that we update to create a document in the state where you currently reside.

In the summer of 2019, New Hampshire adopted the Revised Uniform Fiduciary Access to Digital Assets Act, which provides a framework for permitting your power of attorney, or your executor or trustee upon your death, to manage your "digital assets," such as your email or social media accounts. As these digital assets become increasingly important to our affairs, we advise our clients to amend their documents accordingly.

The New Hampshire legislature revamped the health care proxy law in the summer of 2021 and made significant changes to the "standard" form. It is important that those documents be updated as well.

Keep in mind that a power of attorney is often most needed in difficult and possibly emergency situations and is ultimately used to convince a stranger (a bank teller or a buyer of real estate, etc.) of someone's authority to make decisions on your behalf. Because of periodic changes in the law, the older your document is the greater the chances are that this hypothetical stranger will hesitate to rely upon your power of attorney and impede the orderly administration of your affairs. For this reason alone, we advise our clients to renew their powers of attorney whenever the legislature enacts a significant amendment in this area and regularly even without changes to the law. It is also important that you name a secondary power of attorney to make sure there is someone to assist you in the event the first person you have appointed is unable to do it.

When children turn 18 and become legal adults, their parents automatically lose the ability to manage their children's financial and medical decisions or even to be informed about their children's medical conditions by health care providers. It is important that young adults sign powers of attorney to make sure they get assistance if necessary. To facilitate getting these documents done, we offer discounted rates for the preparation of powers of attorney for the children of our clients who have recently turned 18.

Remember that someone acting as your power of attorney usually cannot access your trust accounts. As you get older and want your adult children to have access, it is a good idea to amend your trust and add them or one of them as a co-trustee with you.

Estate and Gift Taxes

The federal legislature passed law this year making the increased estate tax exemption permanent. As of January 1, 2026, each person has a 15 million dollar exemption meaning any estate under that pays no federal estate tax. For married couples, the amount is 30 million. That number will be increased yearly going forward to keep in line with inflation. The annual gift tax exclusion remains at $19,000 for 2026. New Hampshire does not currently impose an estate tax. Some surrounding states (including Massachusetts and Maine) do impose an estate tax, however, which can have significant impacts on New Hampshire residents. Merely by owning real estate in these states, these taxes may impact your estate even if you are a New Hampshire resident at the time of your death. For this reason, should you own real estate in states other than New Hampshire, you should consult with our office on this matter.

Massachusetts currently has a 2 million dollar exemption but it does not automatically double it for married couples. Maine's exemption is expected to be about 6.8 million in 2026, but there is legislation pending that would reduce that to 1 million.

Many of our clients have estate plans originally drafted decades ago when the federal estate tax exemption was significantly less than it is today. Some of those plans may have included creating separate trusts for married couples. For those clients with such estate plans, we encourage you to consult with us so we can determine whether those older plans remain your best option.

The volatility in this area requires vigilance and regular consideration of your plan estate plan and is among the reasons we encourage our clients to review their plan at least every 5 years or so.

Long Term Care

Many people worry about the cost of long term or nursing home care. There are limited options to preserve assets in this area as the state and federal government do not presently prioritize preserving the wealth of someone in need of expensive care toward the end of their lives.

Importantly, ordinary revocable trusts — which constitute the vast majority of trusts we prepare for our clients — DO NOT protect assets in the event a client requires long term care. Although irrevocable trusts, which people often confuse with revocable trusts, do offer some protection in some states, they do not work well in New Hampshire. One of the best options for our clients concerned about this issue is often purchasing long term care insurance.

There are other methods used to preserve assets including gifts, but the rules surrounding such gifts are difficult. When an individual applies for Medicaid to cover the costs of long term care, the state reviews the applicant's past five years of financial records and will penalize the applicant for any gifts made within that period. There are proposals to extend this so-called "look back" period even further. There is a carveout to the look back period if an adult child lives with a parent for two years prior to the parent's application for Medicaid and provides care to the parent during that period. Under such circumstances, the parent's house can often be transferred to the child without penalty. Additionally, a person can compensate caregivers, including family members, without penalty provided certain conditions are met.

For married couples, when only one spouse requires long term care, there are more ways to preserve assets for the spouse who remains at home. A spouse can retain half of the assets up to a maximum of $162,660.00 dollars (minimum of $32,532.00), and the home up to an equity value of $730,000.00. Additionally, a spouse at home can keep the car and the personal property such as furniture and household goods. The amount over those limits must be spent but there are ways to spend it that assist the stay-at-home spouse. The spouse at home can have unlimited income but the nursing home spouse's income must be used for his or her care. If the stay-at-home spouse has little income of his or her own, the spouse at home can keep between $2,643.75 and $4,066.50 from the nursing home spouse's income. However, when the remaining spouse or a single person enters a nursing home, all assets except $2,500.00 to $7,500.00 (this amount varies slightly by state) must be spent on care before the person will qualify for Medicaid.

The law in this area changes rapidly and often. Regular discussion and advice is important. We have written a guide to estate planning and that book is posted on the website. It contains all the current numbers for assets and income for the Medicaid qualification process.

Medicaid Changes

The Big Beautiful Bill enacted in 2025 made some cuts and changes to Medicaid. Where the cuts will be made is still somewhat uncertain. We do know some of the changes and some go into effect in 2026. Renewal or recertification of benefits will go from annually to every six (6)

months. For some adults, a work requirement will be implemented. The federal government will be withdrawing its contributions to certain people who are insured under the Affordable Care Act. Some people at the poverty level as currently defined will not qualify for Medicaid but will instead be eligible for a medical plan which covers fewer medical expenses. We will be watching as congress makes final decisions on some of these issues and we will also watch to see how cuts are implemented.

Corporate Transparency Act

For clients who have LLCs or corporations, starting in 2024, there was a law that required you to register with US Treasury. The law was litigated in 2024 and put on hold. The Supreme Court lifted the suspension of the law, but the government has stated that it will not be enforcing the law. It remains a very confusing issue and whether you should file and register remains uncertain. As a domestic business, you likely do not need to file but as a foreign entity, you should. Even domestic businesses should be aware that you may have to file in the future if the government decides to enforce the law and the courts uphold it.

Massachusetts Realty (Nominee) Trusts

These trusts have often been created especially in Massachusetts to hold real estate. They have little use anymore and can create problems. Sometimes the schedule of beneficiaries is missing or does not exist which causes problems in distribution. Also, many of these trusts terminate under the terms of the trust and in that case, you need to deed the property to beneficiaries or another trust. Anyone who has such a trust should have it looked at to make sure it is as you wish and is still working for you.

General Housekeeping

As time passes, we recommend our clients reconsider whom they have appointed to roles of authority. For clients with children you opted not to empower when you originally drafted your estate plans, it may be appropriate to revisit that decision as your children continue to mature. Alternatively, if you are concerned about possible conflict within your family after your death, it might be wise to name a neutral authority as executor or trustee. You may also want to ensure your beneficiaries understand your wishes before your passing, and we are happy to attend beneficiary/family meetings to afford everyone the opportunity to ask questions.

It is also important that you always know where your originals (as opposed to copies) are stored and that they remain safe. These original documents have special importance and can usually be identified by the fact that they were signed with blue ink and have raised notary seals.

If you have a revocable trust and wish for your estate to avoid the often frustrating, costly, and time-consuming probate process, you MUST diligently title your assets to your trust during your lifetime. Simply creating a trust and naming it the beneficiary of your will DOES NOT avoid probate. To avoid probate, your assets (bank accounts, deeds, car titles, investment accounts, insurance policies, etc.) must either be titled in the name of your trust or your trust must be named as the beneficiary. To do this, you must work directly with the institution (bank, investment company, etc.) that maintains the asset. Regarding assets with recorded titles (most vehicles and real estate), the recorded title must be in the name of the trust. We are happy to assist with the deed transfers, and please contact our office if you have any questions on this topic.

We have recently created a booklet in which you can record important information from account numbers to passwords to pet instructions to friend's contact information and much more. If you would like a copy, let us know so one may be provided.

We hold seminars on estate planning topics at places like your local library. Please check the website for dates and locations on upcoming seminars in your area. If you are interested in hosting a seminar at your library or club, please contact us.

We still offer annual retainer agreements so that you can have an annual meeting with us and do routine updates for a single annual charge. We will be contacting each retainer client in the first quarter of each year to check in and see how we can help. We highly encourage you to do this as it ensures that we look at things every year and react to changes as necessary. This is especially important for clients with trusts and clients who are looking at how to plan for any possible nursing home issue.

As always, it is our honor to serve as your advisors and we look forward to seeing you and assisting you in the upcoming year.

Sincerely,

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