STERLING & TUCKER

‘IMI A LOA‘A
“Discover”

July August 2018

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Photo taken by Macy Uyehara

From the Attorney’s Pen…

by Richard J. Sakoda, JD

As Sterling & Tucker clients you most likely already have estate planning documents which will allow individuals you have chosen to handle your affairs should you become incapacitated. Not only have you taken steps to see that you are cared for, you have provided your loved ones with the tools to take care of you.

What about your loved ones? Do they have appropriate estate planning documents so that someone can handle their affairs should they become incapacitated? Think about it. If your parent, sibling, child or close friend becomes incapacitated, their “problem” (being incapacitated) becomes someone else’s problem. As a loved one, you are probably not willing to walk away from the situation, so their problem may be your problem since you feel the need to help them.

If an incapacitated loved one does not have estate planning documents, they create a great deal of stress among family and friends who find themselves unable to take care of the situation. The lack of documents may trigger expensive and time consuming court proceedings for guardianship (personal care) and/or conservatorship (financial management). They may also trigger fights over who will manage their affairs if some members of the family feel that other members may or will take advantage of the situation, or simply would not do an adequate job.

One common situation is the sibling, uncle or aunt who is of modest means. They may rent rather than own real property, have a motor vehicle, and their investments consist of a savings and checking account. Having little in the way of assets, they don’t feel the need for estate planning documents or may not wish to spend money getting them. Realistically, they may not need a trust or even a will, but a power of attorney and medical directives would greatly assist their family if they become incapacitated. The power of attorney would allow someone to access their accounts to pay their bills, deal with their landlord to terminate the rental, sell their motor vehicle and deal with their auto insurance company, file their tax returns, deal with their employer (perhaps signing for them to take early retirement), apply for government assistance (like Medicaid), and take care of many other matters. The medical directives provide authority to manage their care. If they don’t have a power of attorney and medical directives, a combined guardianship and conservatorship proceeding may easily run upwards of $10,000 in legal fees and costs.

Another common situation is the unmarried child, possibly one going to college. Even young people have accidents or get sick. If your child ends up in the campus clinic or a local hospital (whether in Hawaii or another state), you may find that you are unable to obtain information due to federal medical privacy laws (“HIPAA”) or make medical decisions for your child. You may also be unable to get information from the college or university due to federal education privacy laws. And, as noted above for the sibling, uncle or aunt of modest means, there may be other matters you need to take care of, but can’t. It can be very frightening to be unable to find out information or do anything after your child’s college roommate calls you to tell you that your child was taken to the hospital.

One last VERY IMPORTANT note. Up until recently, the Hawaii Department of Human Services (“DHS”) has allowed any person interested in the care of an incapacitated individual to sign an application for Medicaid. THIS IS NO LONGER THE RULE. DHS now requires that you have legal authority. A power of attorney will generally suffice, but if the incapacitated person does not have one, they now require that you go to court and have a guardian appointed who can then sign the application. So, it becomes extra important that your older relatives have a power of attorney in case you need to apply for medical assistance or long-term care for them.

With Much Aloha,

Richard J. Sakoda

Paying Off Your Mortgage: A Time to Celebrate and Document

by Lauren Sheppard, JD

There are few events in life more satisfying than making your final mortgage payment. This occasion is often the culmination of decades of hard work and constitutes an important step in your financial planning and security. There are however, several actions that you should take in conjunction with this joyous event.

First, it is important that you save all documents relating to the satisfaction of your mortgage. Upon making your final payment, your mortgage company or bank will likely send you a letter of congratulations which confirms that you have paid your mortgage in full. This letter, along with any other confirming documents, should be saved and maintained in your files. Additionally, if your mortgage is assigned to a different mortgage company or bank prior to your pay-off, you should also keep all documents regarding that transfer.

Second, you should confirm that your mortgage company or bank has filed a release of mortgage with the State of Hawaii Bureau of Conveyances and obtain a filed copy of the release for your records. You can make this request directly to your mortgage company or bank or you can call the Bureau at (808) 587-0147 or visit their office in the Kalanimoku Building located at 1151 Punchbowl St. #120, Honolulu, HI 96813. Following-up to confirm the filing of the release and obtaining a filed copy for your records will be much easier if done immediately. We have encountered situations where mortgage companies or banks have failed to file a release of mortgage and if the company or bank is no longer in business when such an error is discovered, remedying the situation can be very difficult.

Lastly, you should check your most recent title report to confirm that the release of mortgage is included in the report. Title reports are obtained from escrow companies and are often completed when a property is transferred or sold. The title report verifies the status of your title to the property and will indicate any issues with the title. We recommend that our clients obtain a title report at the time they transfer their property into their trust. If a title report has been run after you have paid-off your mortgage, the release of mortgage should be indicated on the report. In some instances, a title report will indicate that a further validation of the release is required. This notation is an attempt by the escrow company to confirm that your release of mortgage is in fact valid. This authentication process is sometimes necessary due to individuals filing sham release documents in the past. If such a notation is present on your title report, you should call the escrow company in order to validate your release. Providing copies of your pay-off letter or documentation should be sufficient to confirm the release. Once you have completed the confirmation process, the escrow company should provide an updated title report indicating the confirmation.

Taking the time to properly confirm your release of mortgage and maintaining the documents in your records will allow you to truly enjoy this celebratory occasion. If you have any questions about the issues raised in this article please do not hesitate to contact our office for additional information.

How Did the Federal Tax Reform Act Affect Hawaii State Taxpayers?

by Tracy Watkins, CPA

After the Tax Cuts and Jobs Act ("TCJA") was signed into law last December, Hawaii accountants worked on clients' 2017 tax returns as they awaited the adjournment of the 29th Hawaii State Legislature to find out if similar sweeping changes were in store for Hawaii taxpayers in 2018.

With the IRS still reviewing and interpreting the changes to be implemented under the TCJA, it is no surprise that Hawaii did not adopt these changes. The Federal law changed the standard deductions and eliminated the exemptions for individual taxpayers – the Hawaii standard deduction, personal exemption and tax rates were not changed. In addition, Hawaii taxpayers will still a need to keep track of certain itemized deductions such as home equity interest, casualty and theft losses, and other miscellaneous deductions subject to the two percent of adjusted gross income- all of which were eliminated or severely limited under TCJA. Another departure from the federal provision includes the limitation on itemized deductions for state and local tax.

Significant to note regarding the estate tax exemption for Hawaii – where in the past the state estate tax law followed the federal estate tax law, the Hawaii estate tax exemption will stay at the pre-TCJA levels. This means that the actual amount exempt from federal estate tax for decedents dying after December 31, 2017 will be $11.2 million per person, while the Hawaii exemption will be between $5.49 to $5.6 million (one half of the Federal amount).

Keep in touch with your tax preparer and keep tabs on how the Federal and State tax law changes affect you in the upcoming years.

What's Happening in Maui?

by Terri Owada

Sterling & Tucker is constantly evolving to meet the estate planning needs of the people of Hawaii best we can. One of the many benefits of being a client of our firm is that we consistently share the concept of our perpetual presence, regardless of who your attorney is. Changes are inevitable, simply because life happens.

Michelle Scully Hobus , who joined Sterling & Tucker, LLP in 2004, has stretched her welcoming arms from Oahu to Hilo, and then to Maui. Recently, she has chosen to keep her feet in the sand on Oahu, while leaving behind a heavy-hearted footprint wedged in her clients' hearts in Maui.

Fortunately, Lauren Sheppard has filled Michelle's big shoes very well and is doing a fantastic job taking care of our clients in Maui. Like Kanani Makaimoku transitioning into Hilo nearly five years ago, Lauren has quickly represented Sterling & Tucker with her professionalism, knowledge, and warmth.

MOVING? ...or making any changes in your contact information?

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You may call or email us with your updated address, phone number, or email address.

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Saturday, July 14
10:00 AM
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410 Atkinson Drive

KAPOLEI
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Thursday, July 12
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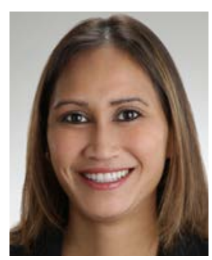
• If you're married, proper planning can shield twice as much from federal estate taxes.	• If you're married without proper tax planning, your family may owe federal estate taxes of 40%.
• You'll avoid a conservatorship if you become incapacitated - so your estate will be run as you see fit.	• If you become incapacitated, or unable to sign documents, a court may assign a conservator to run your estate as he or she sees fit.


Richard J. Sakoda, JD


Michelle Scully Hobus, JD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If you are interested in saving for retirement, Individual Retirement Accounts (IRA) can help you. IRAs are the simplest of retirement accounts. Roth IRAs also offer tax free growth.

IRAs are the obvious choice if you are not eligible to contribute to any other retirement plan through your employment, such as a 401(k) or 403(b), Thrift Savings Plan or other Deferred Compensation Plans. Young people in the early years of their career typically fall into this category. IRAs are also the obvious choice if you are participating in a retirement plan through your employment and your contributions during the year have reached the maximum allowed, and you want to save *even more* for retirement, and this article was written with you in mind. Older people who are trying to catch up with retirement savings typically fall into this category.

You do have to earn income from employment or self-employment to be eligible to contribute to an IRA, and your annual contribution cannot exceed the lesser of your (joint) income for the year or $5,500 ($6,500 if you are 50 or over).

Why save in a retirement account instead of a non-retirement account? The answer is simple: IRAs give you tax savings. However, you should evaluate how the tax advantages apply to you specifically. Also, this article does not cover all of the rules and restrictions for IRAs, although I have included many in other articles in this IRA series.

When you put money into a retirement account, you get a tax deduction for your contribution, which reduces your taxes. In addition, as long as the savings remain in the retirement account, the earnings grow tax-deferred.

A Roth IRA has different tax advantages: earnings and growth are not just tax-deferred, they are tax-free, meaning the earnings and growth will never be taxed; however, you do not get a tax deduction for your contributions. The opportunity for tax free growth makes the Roth quite attractive, so much so that you should consider one even if you have saved enough and don't need to save for retirement. Outside of a Roth, the only opportunity for tax- free growth is municipal bonds.

While the owner of the IRA (or their spouse) must have earnings in the year contributions are made, the contribution does not have to come from the earnings. You can use other money that you have saved, or money that you inherited or were gifted, or money that your parents or grandparents give you to put into an IRA. Grandparents should consider giving in this way if they are making mon-

Continued on Page 7

Continued from Page 6

etary gifts, since grandchildren might be more deterred from spending the gift if it is in a retirement account.

The owner of the IRA cannot add more to the account once they reach age 70, but this age restriction does not apply to Roth IRAs. The owner of an IRA must start taking required minimum distributions (RMD) from their IRAs once they reach 70 ½, but this RMD rules do not apply to Roth IRAs.

Let's cover the income restrictions and the consequences that flow from exceeding the income limits, and then conclude with a recommendation.

If you are not eligible to participate in another retirement plan, you can contribute to an IRA and take the deduction regardless of how much income you make if you are single, but if you are married and your spouse is eligible to participate in another retirement plan, then your deduction is reduced if your joint adjusted gross income is over $186,000; and if it is over $196,000, you get no deduction.

If you are eligible to participate in another plan, you can contribute to an IRA regardless of how much you make, but your deduction is reduced if your adjusted gross income exceeds $101,000; and if it is over $121,000, you get no deduction ($63,000 and $73,000 for singles).

You can contribute to a Roth as long as your income is below $196,000, but between $189,000 and $199,000 the maximum allowed contribution is phased out ($120,000 and $135,000 for singles).

Consequently, if you are married and your income is between $121,000 and $189,000, it makes no sense to contribute to a regular IRA because you don't get the deduction and you are still eligible for a Roth, so a Roth is better for you ($73,000 and $120,000 for singles).

On the other hand, if your income is over $199,000, you can't contribute to a Roth, so a regular (nondeductible) IRA is your only choice ($135,000 for singles).

If your income is too high to make a Roth contribution and you therefore make a nondeductible contribution to a regular IRA, some of you can do this: contribute the money to a regular IRA but get no deduction, and immediately convert it to a Roth. You can complete the conversion tax-free because you received no deduction from the IRA contribution, so your basis is equal to your contribution, and if you do the Roth conversion before you invest the contribution, you will have no gain on the IRA-to-Roth conversion. HOWEVER, you get this result ONLY if you have NO other IRAs (you can have other retirement accounts, but not IRAs). If you have other IRAs, all of these other IRAs will be counted in the Roth conversion, so you will probably owe some tax on the conversion.

It's amazing how a little thing like an IRA can create so much to think about.

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