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"Discover"

September
October
2018

Serving Oahu, Maui and Big Island residents since 1991.

Vol. 117

Photo taken by Cara Owada

From the Attorney's Pen...

by Lauren Sheppard, JD

To Our Valued Clients,

We hope that you are enjoying these summer months and are getting to spend extra time with the people that you love.

As many of you know, in April of this year, I began meeting with our Maui clients. I have been traveling to Maui regularly since that time and have really enjoyed getting to know so many of our neighbor island clients. I also continue to enjoy meeting with many of our Oahu clients and their families. The work that we do here at Sterling & Tucker is so very rewarding and I truly appreciate the opportunity to get to know each of my clients and assist them and their loved ones.

I would like to take this opportunity to remind you to come in and review your estate planning documents with your attorney. One of the documents that may need to be updated is your power of attorney. You will recall that your power of attorney is the document where you named your agents to make your legal and financial decisions if you are unable or unavailable. In April of 2014, the Hawaii legislature adopted the Hawaii Uniform Power of Attorney Act. Because of this change in the law, your power of attorney may need to be updated.

Your new power of attorney will have several changes in conjunction with the new law. For example, our new power of attorney document contains specific gifting powers which may be necessary in the future if you need to qualify for Medicaid. Recently, we have added language to ensure that these gifting powers can be exercised by your agent even of your agent is not your ancestor, spouse or descendant. In other words, if you have named your sibling, life partner, niece/nephew, or other relative as your agent, they will hold the same gifting authority.

The new power of attorney also contains language which authorizes your agent to access and deal with digital assets and rights. This power is important as we as a society hold increased amounts of information and assets in digital format. The new power of attorney also allows your agent to sign a transfer on death deed for your real estate. This power, which was not contained in the older version of the document, may be necessary to keep property that is not held in trust out of probate court at your death.

Please give our office a call to schedule your review meeting so that we can ensure that all of your estate planning documents are up-to-date. As always, if you have any questions about any aspect of your estate planning, please do not hesitate to contact us.

With Much Aloha,

Lauren M Sheppard

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Planning For Frequent Flyer Miles

By: The American Academy of Estate Planning Attorneys
www.aaepa.com • blog.aaepa.com

Frequent Flyer miles and other reward points can be valuable resources. Many credit card companies give tens of thousands of miles or points for opening an account and then give miles or points for each purchase. The typical frequent flyer mile is worth 1.5 cents. While this may not sound like much, a balance of 100,000 miles would be worth $1,500. It's not uncommon for people to have hundreds of thousands or more miles or points in different programs for airlines, hotels, and more. Here's a link to an estimate of the value of points in various programs.

Some who travel frequently for business or pleasure can amass a great deal of value in these programs. It may be possible to bequeath the value in those programs to others. For example, when Anthony Bourdain, the late TV chef, international traveler, and star of Anthony Bourdain: Parts Unknown died, he left a Will leaving the bulk of his estate to his 11-year-old daughter, Arlane Busia-Bourdain, but left his frequent flyer miles to his estranged wife, Ottavia Busia-Bourdain.

It's important to remember that you may or may not be able to dispose of your miles (or other rewards) at death. These are contractual rights and they are controlled by the terms of the contract, which typically specifically states that you cannot bequeath them or otherwise transfer them at death. However, despite the contracts, in practice, most airlines do allow a transfer to next of kin or as specified in a Will. So, it may be worthwhile to include them in your Will. Here is an article[1] which lists the policy of each major airline. "(The article also mentions a backdoor solution: giving login information to someone you trust who can access the account after your death - a violation of the contractual terms.)"

As frequent flyer miles and other reward program points are intangible assets, you could not dispose of them via a tangible personal property list referenced in a Will or trust. They would have to be disposed of in the Will itself. But, even so, you're relying on the company's kindness to refrain from enforcing the terms of the contract.

It's better to use those reward miles and points as you accumulate them, rather than stockpiling significant value which may be vulnerable to being forfeited at your death.

1 https://thepointsguy.com/guide/points-and-miles-after-you-die/

Required Minimum Distributions

by Laurie Young Kagamida, CPA

If you have a retirement plan or an Individual Retirement Account (IRA) and have reached age 70 ½, required minimum distributions should be a familiar term.

Required minimum distributions (RMDs) are minimum amounts that should be withdrawn from your retirement plan (including profit sharing plans, 401(k) plans, 403(b) plans and 457(b) plans) or IRA starting in the year that you reach age 70 ½. The first IRA distribution can be postponed until April 1 of the year following the year in which you reach age 70 ½. So if you reach age 70 ½ in October 2018, you can postpone your RMD until April 1, 2019. However, you will then receive the postponed RMD by April 1, 2019 as well as your RMD for tax year 2019 by December 31, 2019, resulting in two distributions in one year. Following the first RMD, you are required to receive your RMDs by December 31 of each year.

RMDs are calculated using the December 31 balance of the previous year and your life expectancy based on tables in IRS Publication 590-B. IRA custodians and pension plan administrators are required to report the RMD amount to you; however you are ultimately responsible for ensuring that you do receive the distribution. If you fail to withdraw the full amount of the RMD, there is a federal tax penalty of 50% of the undistributed RMD amount.

You may withdraw more than the RMD amount in a year. The excess, however, cannot be applied to the RMD of a future year.

If you have more than one IRA account, you would calculate the RMD from each IRA separately however the total amount may be withdrawn from one or more of the IRA accounts. If you have more than one 403(b) account, you may withdraw the total RMD from one or more of the 403(b) account. RMDs from 401(k) or 457(b) plans must be taken separately from each account.

So if you reached age 70 ½ in 2018, talk to your IRA custodian or plan administrator before year-end to make sure that you receive your RMD.

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HONOLULU

TRUST REVIEW

Wednesday, Sept 5

Saturday, Sept 8

10:00 AM

Ala Moana Hotel
Carnation Room
410 Atkinson Drive

WAIPIO

TRUST REVIEW

Thursday, Sept 6

10:00 AM

7:00 PM

Hawaii Okinawa Center
Legacy II Ballroom
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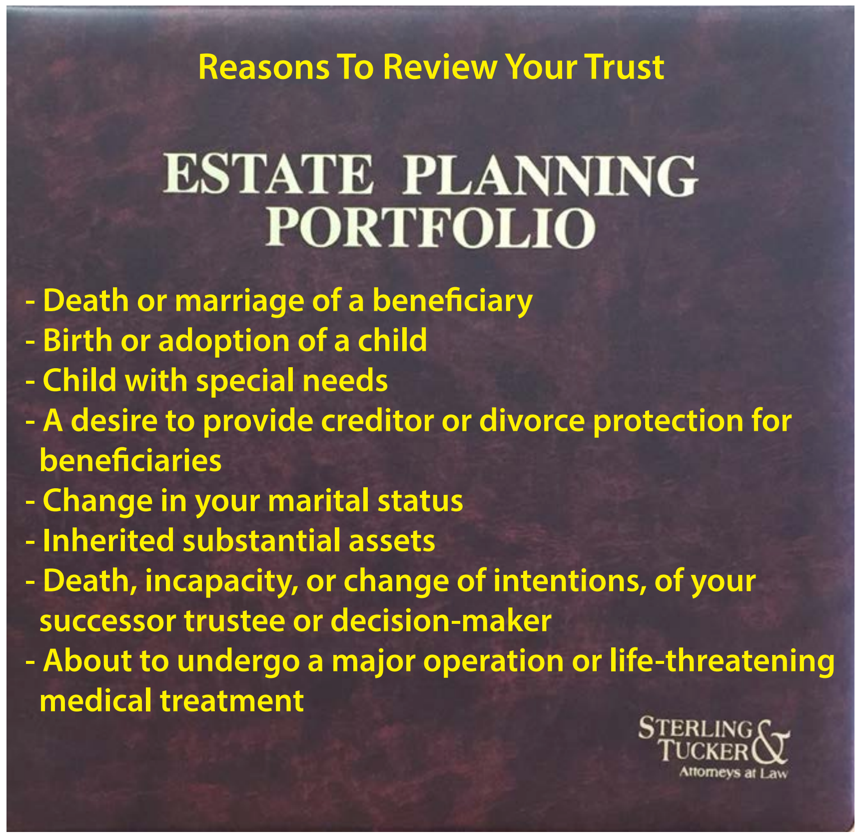

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Saturday, October 6

Tuesday, October 9

10:00 AM - 11:30 AM

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Carnation or Plumeria Room
410 Atkinson Drive

AIEA

Thursday, October 11

10:00 AM - 11:30 AM
7:00 PM - 8:30 PM

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Pearl II Room
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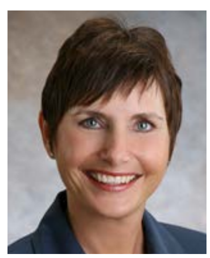
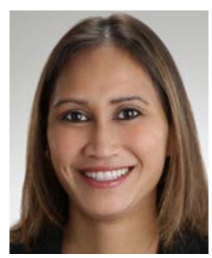
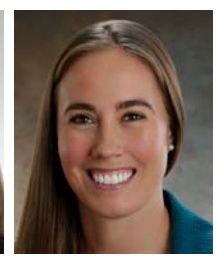
Your estate will transfer quickly to your family upon your death without the expense of probate.	Your estate may go through probate, taking months or even years, and probate fees could be substantial.
If you're married, proper planning can shield twice as much from federal estate taxes.	If you're married 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


Kanani Makaimoku, JD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The Pension Protection Act of 2006 first allowed taxpayers age 70½ and older to make tax-free charitable donations directly from their IRAs. By making a qualified charitable distribution (QCD) from an IRA directly to a qualified charitable organization, older IRA owners were allowed to exclude up to $100,000 annually from gross income. These gifts, also known as "charitable IRA rollovers," would otherwise be taxable IRA distributions. The law was originally scheduled to expire in 2007, but was extended periodically through 2014 by subsequent legislation and finally made permanent by the Protecting Americans from Tax Hikes (PATH) Act of 2015.

How QCDs work

You must be 70½ or older in order to be eligible to make QCDs. You simply instruct your IRA trustee to make a distribution directly from your IRA (other than SEP and SIMPLE IRAs) to a qualified charity. The distribution must be one that would otherwise be taxable to you. You can exclude up to $100,000 of QCDs from your gross income each year. And if you file a joint return, your spouse (if 70½ or older) can exclude an additional $100,000 of QCDs. Note: You don't get to deduct QCDs as a charitable contribution on your federal income tax return — that would be double-dipping.

QCDs count toward satisfying any required minimum distributions (RMDs) that you would otherwise have to receive from your IRA, just as if you had received an actual distribution from the plan. However, distributions that you actually receive from your IRA (including RMDs) and subsequently transfer to a charity cannot qualify as QCDs.

Assume that your RMD for 2018, which you're required to take no later than December 31, 2018, is $25,000. You receive a $5,000 cash distribution from your IRA in February 2018, which you then contribute to Charity A. In June 2018, you also make a $15,000 QCD to Charity A. You must include the $5,000 cash distribution in your 2018 gross income (but you may be entitled to a charitable deduction if you itemize your deductions, a strategy that may be less beneficial now due to passage of the Tax Cuts and Jobs Act). You exclude the $15,000 of QCDs from your 2018 gross income. Your $5,000 cash distribution plus your $15,000 QCD satisfy $20,000 of your $25,000 RMD for 2018. You'll need to withdraw another $5,000 no later than December 31, 2018, to avoid a penalty.

Assume you turned 70½ in 2018. You must take your first RMD (for 2018) no later than April 1, 2019. You must take your second RMD (for 2019) no later than December 31, 2019. Assume each RMD is $25,000. You don't take any cash distributions from your IRA in 2018 or 2019. On March 31, 2018, you make a $25,000 QCD to Charity B. Because the QCD is made prior to April 1, it satisfies your $25,000 RMD for 2018. On December 31, 2018, you make a $75,000 QCD to Charity C. Because the QCD is made by December 31, it satisfies your $25,000 RMD for 2018. You can exclude the $100,000 of QCDs from your 2018 gross income.

As indicated earlier, a QCD must be an otherwise taxable distribution from your IRA. If you've made nondeductible contributions, then normally each distribution carries with it a pro-rata amount of taxable and nontaxable dollars. However, a special rule applies to QCDs — the pro-rata rule is ignored and your taxable dollars are treated as distributed first.

Assume you have a single traditional IRA with a current value of $100,000, which includes $10,000 of nondeductible contributions. Therefore, you have a taxable balance of $90,000 and a nontaxable balance of $10,000. If you were to make a $5,000 withdrawal from your IRA, nine-tenths ($10,000/100,000) of your distribution, or $4,500, would be taxable and one-tenth ($10,000/100,000), or $500, would be nontaxable. However, if you make a $5,000 QCD, the entire $5,000 amount will be considered to come from your $90,000 taxable balance.

If you have multiple IRAs, they are aggregated when calculating the taxable and nontaxable portion of a distribution from any one IRA.

Assume you have two traditional IRAs. IRA One has a value of $50,000 and does not include any nondeductible contributions. IRA Two also has a $50,000 value but includes $10,000 of nondeductible contributions. For tax purposes you are treated as owning a single traditional IRA with a value of $100,000 and a nontaxable balance of $10,000. If you were to make a withdrawal of $50,000 from IRA Two, nine-tenths ($10,000/100,000) of your distribution, or $45,000, would be taxable and one-tenth ($10,000/100,000), or $5,000, would be nontaxable. However, if you make a $50,000 QCD from IRA Two, the entire $50,000 amount will be considered to come from your $90,000 taxable balance.

RMDs are calculated separately for each traditional IRA you own, but may be taken from any of your IRAs. Your QCD cannot be made to a private foundation, donor-advised fund, or supporting organization (as described in IRC Section 509(a)(3)). Further, the gift cannot be made in exchange for a charitable gift annuity or to a charitable remainder trust.

Why are QCDs important?
Without this special rule, taking a distribution from your IRA and donating the proceeds to a charity would be a bit more cumbersome and possibly more expensive. You would request a distribution from the IRA and then make the contribution to the charity yourself. You'd include the distribution in gross income and then take a corresponding income tax deduction for the charitable contribution. But due to IRS limits, the additional tax from the distribution may be more than the charitable deduction. And due to much higher standard deduction amounts ushered in by the Tax Cuts and Jobs Act passed in 2017, itemizing deductions may have become even less beneficial in 2018 and beyond, rendering QCDs even more potentially appealing.

QCDs avoid all this by providing an exclusion from income for the amount paid directly from your IRA to the charity — you don't report the IRA distribution in your gross income, and you don't take a deduction for the QCD.

Can I name a charity as beneficiary of my IRA?
Yes, you can name a charity as beneficiary of your IRA, but be sure to understand the advantages and disadvantages.

Generally, a spouse, child, or other individual you designate as beneficiary of a traditional IRA must pay federal income tax on any distribution received from the IRA after your death. By contrast, if you name a charity as beneficiary, the charity will not have to pay any income tax on distributions from the IRA after your death (provided that the charity qualifies as a tax-exempt charitable organization under federal law), a significant tax advantage.

After your death, distributions of your assets to a charity generally qualify for an estate tax charitable deduction. In other words, if a charity is your sole IRA beneficiary, the full value of your IRA will be deducted from your taxable estate for purposes of determining the federal estate tax (if any) that may be due. This can also be a significant advantage if you expect the value of your taxable estate to be at or above the federal estate tax exclusion amount ($11,200,000 for 2018).

Of course, there are also nontax implications. If you name a charity as sole beneficiary of your IRA, your family members and other loved ones will obviously not receive any benefit from those IRA assets when you die. If you would like to leave some of your assets to your loved ones and some assets to charity, consider leaving your taxable retirement funds to charity and other assets to your loved ones. This may offer the most tax-efficient solution, because the charity will not have to pay any tax on the retirement funds.

If retirement funds are a major portion of your assets, another option to consider is a charitable remainder trust (CRT). A CRT can be structured to receive the funds free of income tax at your death and then pay a (taxable) lifetime income to individuals of your choice. When those individuals die, the remaining trust assets pass to the charity. Finally, another option is to name the charity and one or more individuals as co-beneficiaries. (Note: There are fees and expenses associated with the creation of trusts.) The legal and tax issues discussed here can be complex. Be sure to consult an estate planning attorney for further guidance.

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Kanani Makaimoku, JD

LIVING TRUST SEMINAR

KAHULUI

Thursday, October 18
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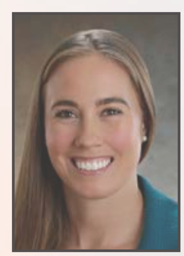
Maui Arts & Cultural Center
Haynes Meeting Room
One Cameron Way



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