

Observations of a Trusts and Estate Attorney – Post Pandemic



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Estate planning trends over the past two years cannot be limited to just a few topics. There is a spectrum of diverse sub-categories within estate planning that practitioners address regularly in an effort to help clients navigate the numerous world and life events we may be facing. Below are some high-level observations that our Trusts & Estates Team at Lippes Mathias has made over the course of the last two years, as well as several trends we continue to see around us in the legal community of estate planning.

1. Role of the Revocable Trust

The entire world essentially shutdown in March of 2020, and to a degree, the New York State Courts did as well. In Western New York and its surrounding counties, we were fortunate to have our judges and court staff working tirelessly at home and still assisting with emergency filings and some standard matters when necessary. Nonetheless, court closures, banks working from home, etc., created delays that were unprecedented before the pandemic. Delays, coupled with clients wants and needs for privacy with more information accessible on the internet, have seen us trend toward drafting and funding revocable trusts. Although revocable trusts do not offer asset protection from tax planning or elder planning needs (long term care medical expenses), they do offer estate

probate avoidance and assurance that estate plans are carried out in a way that is as streamlined as possible while minimizing the cost of time, money, and privacy.

Planning Tip – be sure that your revocable trust is funded properly to ensure probate avoidance happens.

2. Tax Planning

Tax planning is a highly popular topic, both within estate planning and in many other areas of law and everyday discourse as the current administration discusses major adjustments to taxation in the United States. Some of the biggest projected changes that estate planning attorneys are paying attention to are related to estate tax, gift tax and grantor trust tax. Although no one knows what the final changes will be and when they are coming, our team continues to hold ongoing discussions with clients in an effort to prepare for forthcoming changes.

Planning Tip – engage an estate planning attorney before year-end or before projected changes are set to happen – this will give both you, the client, and your attorney enough time to make appropriate changes to your estate plan.

3. Difference in “Your Average Client”

Following the onset of the COVID-19 pandemic, our team has observed a shift among the clients we serve; there is no longer such a thing as a “typical” estate planning client – our post-pandemic clients span all ages, scales of wealth and health concerns. Taking this growing shift into account, knowledge of foundational estate planning and basic estate planning documents has become especially important. In the past when we as practitioners have attempted to spread the word about estate planning, we have often lost traction among those feeling invincible, too young, or not wealthy enough to begin the estate planning process.

Opening current and future clients’ eyes to the true benefits of a last will and testament, the implications of a beneficiary designation, and the knowledge of how a client’s assets are titled, are just a few ways that estate planning attorneys can make clients aware of the overall importance of putting an estate plan together.

Planning Tip – when meeting with an estate planning attorney for the first time, be sure to have a general idea of your assets, how they are titled and any beneficiary designation governing distribution.

4. The New York State Durable Power of Attorney Document

On June 13, 2021, the new durable power of attorney document under New York State’s General Obligations Law was introduced. Most notably, the new durable power of attorney document removed the Statutory Gift Rider, revised the gifting abilities of an agent on behalf of a principal, and implemented additional liabilities for banks and other financial institutions’ acceptance or rejection of the document when executed properly.

Planning Tip – in addition to a power of attorney, having a valid health care proxy is also necessary. Power of attorney governs legal and financial decisions while a health care proxy governs medical decisions. Both documents serve a distinct and important function within your estate plan.

Whether you are a client that has never thought of putting a will together, or a client who could potentially be affected by changes in the tax laws, be sure to reach out to an estate planning attorney to discuss ongoing trends

and to find out if anything on this list fits into your estate planning goals. Life is ever-changing, and with the correct approach, your estate plan can be ever-changing as well.