

In Brief Presents Get to Know Us: Barna, Guzy & Steffen Estate & Tax Planning/Probate & Trust Administration Team

ATTORNEYS

Richard A. Merrill

Dick practices in the areas of Estate Planning, Probate and Estate Administration, Trust Administration, Wills and Trusts. Dick has over 35 years of experience in Estate Planning, Probate Law and Trust Administration. He has been at BGS since 1976. His experience and background enable him to understand his clients' needs and resolve issues in a timely and cost effective manner.

William F. Huefner

Bill focuses his practice on Estate & Gift Taxation, Estate Planning, Guardianship & Conservatorships, Probate and Estate Administration, Trusts, Wills and Tax Dispute Resolution. He's a certified public accountant and worked for the IRS as a revenue agent for five years. Bill is a

shareholder and sits on the Board of Directors as well as being the chairman of BGS' marketing committee.

Douglas J. Dehn

Doug has practiced in Estate Planning, Probate and Trust Administration and Real Estate & Business Organizations for over 30 years. He joined the Estate and Tax team at BGS in 2005. When Doug is not hard at work in the office, he and his wife Catherine enjoy traveling to see their daughter Ellie's performances as a professional opera singer.

PARALEGAL

Dianne E. Fancher

Dianne joined BGS in 1989 and has over 25 years of experience in the legal profession. She specializes in Estate Planning, Probate and Trust Administration.

SECRETARIES

Marcy J. Hamberg

Marcy enjoys working in a section of law where she is able to help people from all walks of life every day. She is committed to helping serve clients in a friendly and proficient manner. Marcy has been with BGS for more than 20 years, working in Estate Planning for the past 8 years.

Connie L. Lonsky

Connie has been with BGS for 27 years and has been a legal secretary for a total of 32 years. Her experience, professionalism and attention to detail are an asset to both the clients and attorneys in this department.

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Back Row: Richard Merrill, William Huefner, Doug Dehn
Front Row: Connie Lonsky, Marcy Hamberg, Dianne Fancher

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IN BRIEFSM

Estate Planning Review: Choosing a Will or a Trust

By Doug Dehn



Should I have a Will or a Trust? This is a common client interview starting point. The answer is not always simple. Discussion ensues as to what the pros and cons are as to Wills and Revocable Living Trusts (RLTs).

Wills may simply name your beneficiaries, personal representative and alternates and contain other basic terms. A Will may also contain a Contingent Trust for the benefit of children or grandchildren, a Disclaimer Trust for estate tax planning purposes, or both.

An RLT, designed to avoid probate and insure privacy, also designates beneficiaries, successor trustees and alternates. An RLT may also contain a Contingent Trust, a Disclaimer Trust, or both.

Because there are relatively simple steps with a Will, most people decide to use Wills and not Revocable Living Trusts. However, RLTs do have very legitimate purposes. First, if a client owns property in more than one state, the use of an RLT will avoid an ancillary (extra) probate in that second or third state. Most states have probate systems that are more complicated, time consuming and expensive than Minnesota. The avoidance of an ancillary probate is one of the primary reasons for using RLTs. Secondly, using an RLT ensures privacy. Some clients prefer RLTs to avoid the possibility of the public knowing about his or her affairs. Thirdly, an RLT quite often names the person setting up the trust (Grantor or Settlor) and another, typically a spouse or an adult child, as a co-trustee. Successor trustees are named to handle the affairs of an incapacitated Grantor and upon the death of the Grantor. The trust simply keeps running after incapacity or death.

Using a Will means that the Will, after a death, would be filed with the Probate Court and administered under the Probate Court system. Some clients believe that a Will eliminates probate, but this is not true. The Probate Courts are public and technically anyone can review a probate file.

Compared to most states, Minnesota has quite a simple probate system. Most probates are handled on an informal basis, meaning that an Application

and the original Will are filed with the court and the personal representative is appointed, all without a court appearance. An Inventory is filed showing what assets the decedent had on hand in his or her own name. Of course, there are many types of properties that are not probate in nature, namely, joint tenancy property and other contractual, beneficiary-driven assets, including life insurance, pay-on-death accounts, transfer-on-death accounts, IRAs, 401(k)s, 403(b)s, etc.

Most married couples own their assets in both names as joint tenants. Upon the first death, the survivor files a death certificate with the holder of the joint or other non-probate asset. Real estate is cleared by filing an Affidavit of Survivorship, with an attached certified copy of the Death Certificate, with the County offices. Most married couples who have Wills do not use the Will on the first death but upon the second death. The key is this: what did the decedent own in his or her name alone at the time of death? Beneficiary-driven assets simply have alternate beneficiaries.

RLTs do not work unless they are properly funded. This means that most assets must be transferred or deeded into the RLT, which acts like a small company to hold the assets. Beneficiary-driven assets are not typically put into an RLT. Some clients do not like the idea of transferring their assets and living within this trust entity the rest of their lives where trust and trustee issues are dealt with. To others, the extra work is not a concern. Trusts always cost more than Wills initially, but can save time and some expense later.

Whether Wills or RLTs are used, statutory, durable Powers of Attorney (POA) should be entered into. These revocable POAs allow a named party and successors to handle the affairs of the client during his or her lifetime.

Both Wills and RLTs may contain contingent trusts for the benefit of their children or grandchildren. A typical situation for a contingent trust could be parents who do not want the children (or grandchildren) to take a full inheritance through a Will or RLT at age 18 (for fear of the purchase of the "red Corvette," etc.). Some parents wish to have some control of an inheritance after age 18 such as to provide for post-secondary education, with two or three later

distributions. Trusts are fine tuned to the specific wishes of a client. Some parents want their beneficiary-driven assets, including insurance, to be funneled through this plan so that the children do not take directly all funds at age 18. However, a 401(k) or traditional IRA are not usually funneled through the contingent trust plan due to the income tax benefit of stretching the payout over the term of the child beneficiary's lifetime.

Estate tax planning terms are inserted into both Wills and RLTs as needed, usually through a Disclaimer Trust. The current Minnesota Estate Tax (on the second death) is paid on estates in excess of \$1,000,000.00, and the Federal Estate Tax (on the second death) is paid on estates in excess of \$2,000,000.00. There is no tax on the first death if everything goes to a surviving spouse. Congress is likely to act on the Federal Estate Tax this next session. The Minnesota legislature is not likely to make changes in the near future. Although these dollar exemptions may seem large, be mindful that estates include all of the assets of a decedent, including life insurance proceeds and other beneficiary-driven assets.

In summary, whether a client elects to use a Will or a Revocable Living Trust, it is important to plan for the inevitable. It is satisfying for me to see my clients breathe that "sigh of relief" when they finally finish that long put-off, but extremely important, responsibility.

Doug Dehn is an attorney in the Estate & Tax Planning, Probate & Trust Administration department. For more information regarding Wills or Revocable Living Trusts, please contact Doug Dehn at 763-783-5128 or e-mail: ddehn@bgs.com.

Best Wishes for a Happy New Year from BGS!

If one of your New Year's resolutions is taking care of personal legal documents you've been putting off, please call our attorneys at Barna, Guzy & Steffen Ltd. Attorneys in our Estate & Tax Planning, Probate & Trust Administration department will help you complete these documents and give you peace of mind.

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A BALL OF FIRE: A CHANGED LIFE

By John Buchman



Jeff Bailey was 24 years old on May 7, 2001, when he was helping install traffic advisory signs for a road reconstruction project in Blaine, MN. Another employee was operating the boom truck and came too close to an

uninsulated 7,200 volt power line. Jeff had been instructed to place the metal signs on posts previously placed in the ground beneath the power lines. When the boom truck touched the lines, a witness saw a ball of fire around the power line and the trailer's tires start on fire.

The electricity went through Jeff and stopped his heart. Heroic efforts by the police restarted his heart. However, his heart was stopped too long and he suffered wide spread brain damage because of the loss of oxygen.

Jeff's injuries robbed him of the ability to make any new friends, learn new jobs, or to remember most anything from day-to-day. He is, in many ways, like the Drew Barrymore character in "50 First Dates." Jeff cannot remember two years of his life and does not remember why he fell in love with his fiancé or the daughter who was born shortly after his injuries occurred.

As a result, Jeff needs 24-hour a day supervision and is under guardianship since he is vulnerable. He cannot work in any competitive job since he requires constant supervision and cannot learn new tasks or safety procedures. His injuries impair his ability to plan and also to look out for his safety. He can no longer drive and he cannot operate any kind of machinery that could injure himself or others. He has lost approximately \$1.5 million dollars in future earnings.

Jeff receives some workers' compensation benefits but most of the wage loss benefits have run out given the changes made in the workers' compensation laws.

Jeff's aunt lives with him to provide the supervision that his doctors have ordered. His aunt raised him since his parents were not capable of doing so. Tragically, Jeff had also suffered a gun shot wound as a child growing up.

Jeff's Injuries Could Have Easily Been Prevented

The injuries were due to the failure of the general contractor, the power company and Jeff's own employer to perform easy, well accepted procedures. Injuries like Jeff's are the second leading cause of death on construction sites in the United States. Yet, all the safety professionals involved took the risk for granted and ignored established industry practices and a number of clear warning signs that would have easily prevented Jeff's injuries.

The general contractor, Forest Lake Contracting, did not follow applicable OSHA laws and its safety officer did not conduct safety inspections that their own hired experts said he should have.

"Jeff's injuries robbed him of the ability to live a normal life...it was an honor and privilege to represent [him] in this matter"

The power company left a crucial safety meeting before it was over and did not install protective coverings even though it was aware that there are only a few areas that would need such coverings. After Jeff was hurt, the power company installed such sleeves in a matter of minutes. Jeff's employer did not provide his crew with proper safety equipment and did not designate a spotter to help Jeff and his co-employee avoid the power line while the boom was being operated.

Feuds Among the Defendants Delayed the Settlement and Increased Costs for Everyone

One of the most frustrating aspects was the delay in obtaining fair resolution for Mr. Bailey because of the infighting among the Defendants. The Defendants recognized the severity of Mr. Bailey's injuries but argued over how much each should pay. Two of the Defendants also argued over competing claims that each must pay for the fault of the other because of the language in the contract. These delays and internal disputes cost all of the parties several hundred thousand dollars in unnecessary fees and costs, and increased the cost of the settlement.

Most Lawsuits are Not what are Portrayed in the Media

The media often portrays that there are too many frivolous lawsuits. The McDonalds hot coffee case is one such example. However, such media attention gives a distorted view to people who believe most lawsuits filed are similarly frivolous. To the contrary, court records demonstrate that there are no more lawsuits today than there were 10 years ago and the average verdict has, if anything, gone down over the last 10 years. Lawsuits such as the one for Jeff were the only way that he could obtain some compensation for the tremendous losses that he has suffered. It was our honor and privilege to represent Jeff Bailey in this matter.

John Buchman is a shareholder at Barna, Guzy & Steffen, Ltd. and practices in the areas of Personal Injury and Products Liability. John has over 20 years of experience handling complex cases. If you would like more information regarding the above article or any personal injury request, please call John directly at 763-783-5121 or email jbuchman@bgs.com

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BGS SERVICES

New Year's Resolutions Resolved: Information on Completing Your Living Will and Annual Gifting

By William F. Huefner



Living Wills

I frequently have clients come into my office to discuss the preparation of a Living Will. However, by statute, we no longer prepare "Living Wills" in Minnesota. Prior to August, 1998, we used to prepare Living Wills and Health Care Powers of Attorney in order to provide people with the means to specify what type of care they wanted in the event they were in a terminal condition and to appoint someone who could make medical decisions for them if they were unable. However, since August, 1998, we now prepare Health Care Directives. Health Care Directives cover two situations. First, it gives us the right to appoint someone to make medical decisions on our behalf in the event we are unable to make our own decisions due to some medical incapacity. A Health Care Directive also provides instructions to our family and our physicians as to what type of care we would like to receive in the event the individual is either in a terminal condition or in a long-term vegetative state. This is the individual's opportunity to state their wishes so their families do not have to make a decision at a difficult time.

In addition, we always put provisions in Health Care Directives to cover privacy information. Many of us receive a lot of information from our banks and various agencies to say they do not share information with individuals who are not authorized to receive that information. Much of this falls under the Health Insurance Portability and Accountability Act (HIPAA). This also applies to physicians and limits the information that a physician can disclose to someone. We have had clients with old Health Care Powers of Attorney run into situations in which their agent was not specifically appointed as the HIPAA agent, and the physicians declined to provide information to the agent. As such, we always make sure that we enclose HIPAA provisions in all of our Health Care Directives.

If you have an old Health Care Power of Attorney or an old Living Will, you may wish to consider whether it should be updated at

this time. If you have a Health Care Directive that does not contain HIPAA provisions, you also may wish to consider whether that should be updated.

Annual Gifting

I am sure many of you remember the old rule that you were allowed to gift away \$10,000.00 per year to anyone you wanted without having any gift tax consequences. Many people remember the \$10,000.00 amount even though that amount has changed several times. Currently, the Internal Revenue Service allows each of us to give away up to \$12,000.00, to as many people as we want, without the donor having to incur any gift tax. If a gift is made in excess of \$12,000.00, then there is an obligation to file a Gift Tax Return to report the gift to the Internal Revenue Service. In addition, the IRS allows us to gift up to \$1,000,000.00 in our lifetime without incurring any gift tax. A gift in excess of \$12,000.00 reduces the amount we are allowed to pass at death free of Estate Tax.

Whenever I discuss annual gifting with my clients, many of them are aware that they do not have to pay a gift tax when making a gift of \$12,000.00. However, many of them believe that the recipient is required to pay income tax. This, quite simply, is not true. The recipient of a gift is not required to pay any tax upon receipt of the gift. If there is any gift tax due, due to the size of the gift, then the tax is paid by the donor. At year end, many of my clients are looking to do their gifting. We believe it is a better idea to look at making gifts early in the year rather than waiting until the last minute to see if it can be done. Frequently, if you wait until the end of the year to make gifts, they simply do not happen, and you have wasted your ability to make a gift during that calendar year. If you would like to discuss year-end gifting, please give us a call.

Bill Huefner is a shareholder at Barna, Guzy & Steffen and practices Estate & Tax Planning, Probate & Trust Administration. If you have a question regarding a Living Will or Annual Gifting laws, please contact Bill directly at 763-783-5160 or email bhuefner@bgs.com.

BGS PEOPLE

Special Olympics Bowling Tournament

Attorney Thomas Kettleon is currently the Volunteer Chair for Special Olympics Minnesota Area 11. Tom recruited fellow BGS attorney Angela Samec and legal secretary Margaret Micek as volunteers for the Special Olympics Bowling Tournament at Brunswick Eden Prairie Lanes. The event took place October 22, 2006 and was a rewarding afternoon for volunteers and athletes alike.



YMCA Gala

Barna, Guzy & Steffen Ltd. sponsored the Emma B. Howe YMCA Gala on October 23rd at the TPC. BGS attorney Karen Kurth is on the Y Board and helped plan the event which was fundraiser for the Y-Partners program. Y-Partners is an annual support campaign which provides financial assistance to people of all ages who otherwise could not afford YMCA membership or services. This gala's theme was the "games people play." The list of games included "Deal or No Deal," "Jeopardy," "Beat the Clock," and "High Rollers."

BGS Welcomes:

Tammy J. Schemmel

Attorney in Employment Law and Business Litigation

Bobbi Lassen

Accounts Receivable Assistant in Administration