

# **CYNTHIA L. BARRETT, P.C.**

**760 Crown Plaza  
1500 SW First Avenue  
Portland, OR 97201  
(503) 294-0080**

## ADVANCED ESTATE AND LIFETIME PLANNING FOR DOMESTIC PARTNERS

### **1. Domestic Partners and Pension/IRA/Tax Deferred Annuity/NonQualified Plans**

Pension benefits, Individual Retirement Accounts, Tax Deferred Annuities and nonqualified plans are included in a decedent's taxable estate, and the domestic partner needs to name a beneficiary to take these assets or the benefits pass to the person named in the plan documents. Most domestic partners do not understand how these assets create an income tax liability to the payee, or how that tax rate can be reduced by appropriate planning.

Some domestic partner may have named "my estate" or "my living trust" as a taker on these accounts, not realizing that the estate has fewer pension/IRA payout options (an individual payee can stretch out receipt over many tax years), and the estate/trust income tax rate is higher than the individual tax rate. A thorough discussion of this income tax problem should be part of the estate planning meeting.

Most advisors do NOT recommend that an estate or living trust be the beneficiary of these income tax deferred assets, unless the client chooses to have the heirs pay more income tax than necessary. Most clients, when this income tax problem is pointed out to them, will obtain change of beneficiary forms and bring them to the next estate planning meeting to go over with the lawyer.

In some taxable estate planning situations, the lawyer can recommend that plan assets be paid to a trust, but the trust must meet the requirements of new Proposed Regulations 1.401(a)(9)-(1) Q & A D-5 (issued 12/30/97). Estate planners are now learning how to meet the requirements permitting payment to a trust.

The typical domestic partner client with a taxable estate and a living trust may have never heard of this problem. The estate planner must slog through the situation with a client and determine whether the client wants more expensive tax planning techniques.

### **2. Non-Probate Assets - how can beneficiary designations and survivorship property be made congruent with the plan?**

Some partners think they should avoid probate like the plague, and walk in the lawyer's office with everything held by right of survivorship (the classic joint ownership). If they have a taxable estate (\$675,000 in 2000), the lawyer shudders (see tax planning issues below). But some domestic partners own only a few assets by survivorship. Defining what they own, the form of ownership, and what they want done with those assets during life and after death are all part of estate planning for the domestic partner.

### **3. Property with two names**

Some clients think that having two names on title ensures a survivor having complete ownership of an asset. Automobiles, motor homes, bank and investment accounts can be held in two names easily - on forms supplied by Oregon Department of Motor Vehicles and financial services companies. However, all of these accounts are not "survivorship" in nature, that is, the forms may establish a tenancy in common so that probate of the deceased partner's half will still be necessary at death. I cannot tell the meaning of two names on a document unless I see it, and sometimes, I send the client to the issuing institution for information about the survivorship implications of two names on an asset.

Whether the asset should be a survivorship asset, and avoid probate, is the next question- but clients need to understand what the actual form of title means, so the client can make a choice and change the account or auto registration. With domestic partners, the issuing institution is not likely to cut the survivor some slack and permit transfer at death if there is any question at all - spouses and children of dying account holders, in contrast, are treated somewhat informally after death of the joint holder.

### **4. Property held in one name but with beneficiary designations**

If longtime domestic partners have less than \$500,000 in total assets accumulated together during the relationship, and little prospects for growth in assets, perhaps joint ownership with survivorship, backed by a will, might be a good estate planning technique.

But if I see that the partners have different estate planning goals, or their assets are approaching the taxable estate limits (\$675,000 credit exemption equivalent in 2000, rising to \$1,000,000 in 2006), then I recommend the partners hold investment assets separately, and arrange for non-probate transfers on death by beneficiary designation.

Partners can hold accounts separately, but avoid probate by setting up the accounts in a death transfer form. Banks in Oregon have "pay on death" sorts of accounts. Brokerages and other financial institutions have "transfer on death" accounts. Some brain dead financial institutions do not have special forms to set up these TOD accounts. But most financial institutions are now permitting TOD routinely. Where the client does not know how to set up such an account, you might download s TOD account application forms from the financial institution's web site or telephone a representative during the estate planning interview about the permitted account formats.

### **5. Estate Tax Avoidance**

The current (2000) credit shelter exemption of \$675,000 will increase to \$1,000,000 in 2006. Because domestic partners do not have the benefit of the marital deduction for transfers to each other at death, domestic partners should initiate death tax planning sooner and in more elaborate ways than with married couples.

What are the usual array of tax planning opportunities used by single persons with taxable estates?

1. Irrevocable life insurance trusts;
2. Sliver gifting to obtain fractional interest valuation discounts;

3. Qualified personal residence trusts;
4. Annual exclusion gifts;
5. Splitting of the assets between the two partners by judicious use of the annual exclusion and credit shelter of the wealthier partner;
6. Split interest charitable gifts
  - 6.1 Charitable gift annuities - two lives or deferred one life, possibly Payable to a trust for the financially less sophisticated partner;
  - 6.2 Charitable remainder trusts - stream of payments to one or more Permissible payees

A useful resource outlining some of the problems, and solutions, for domestic partners estate planning with taxable estates is part of the well-regarded BNA Tax Management Portfolio Series: Horwood and Zaluda, 813 T.M., , *Estate Planning for the Unmarried Adult* (1997).

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