PRESTON ESTATE PLANNING
A PROFESSIONAL LAW CORPORATION

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Inside

Hayrides and Headless Horsemen

Halloween Celebrations in Sleepy Hollow

In 1790, a school teacher named Ichabod Crane was riding home alone from a harvest festival in the village of Sleepy Hollow when he encountered a mysterious rider on horseback. Crane, horrified by the horseman's missing head, turned and ran in the opposite direction. The Headless Horseman gave chase, hurling his own decapitated head at the terrified teacher. Ichabod Crane was never heard from again … or so goes "The Legend of Sleepy Hollow" by Washington Irving.

This story, first published in 1820, has become a Halloween favorite. The legend is so beloved that in 1997, the village of North Tarrytown, New York, where many events of the story take place, officially changed its name to Sleepy Hollow. Today, the town becomes one big Halloween party during the month of October.

Sleepy Hollow is home to many historic landmarks, including the Headless Horseman Bridge and the Sleepy Hollow Cemetery, where Washington Irving himself was laid to rest. Evening lantern tours of the cemetery are a popular attraction, and Irving isn't the only spooky celebrity buried there. Fans of the Gothic soap opera "Dark Shadows" will be delighted to enter the crypt of famed vampire Barnabas Collins.

Another highly anticipated stop for many guests is Sleepy Hollow's premier annual attraction, Horseman's Hollow, an experience not for the faint of heart. During the event, the 300-year-old Philipsburg Manor is transformed into a living nightmare, where vampires, witches, ghouls, and undead soldiers lurk in the shadows. They all serve the dreaded Headless Horseman and are determined to make sure guests don't leave alive!

But it's not all scares in Sleepy Hollow. There's plenty of Halloween fun for all ages. Sleepy Hollow boasts relaxing hayrides, tours of Irving's home, live readings of famous Halloween stories, performances of a brand-new musical based on Irving's spooky tale, and the Great Jack O'Lantern Blaze, an incredible exhibition of over 7,000 hand-carved pumpkins.

If you want a real Halloween experience, you can't go wrong in Sleepy Hollow. Just be careful not to lose your head!

OCTOBER 2019
Piece Of Mind
In order for you to have peace of mind, we are giving you our piece of mind.

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Lisa Miller Helps Clients Protect Their Assets

If you call our office looking for help registering assets in the name of your Trust, you will be transferred to me. My name is Lisa Miller, and I'm the Funding Coordinator.

I live with my husband and our two daughters by the ocean, where we enjoy the wonderful sea breeze. Currently, we are all involved in planning our oldest daughter's wedding, which will take place this month. It's an exciting time for our family. After the wedding, our youngest daughter will be the only child at home. My husband and I enjoy spending time together after a long day at work. We like to drive over to the harbor, park the car, and find a bench where we can just sit and relax as we watch the boats or the sea lions. It's our favorite way to unwind.

During the day, I work with the wonderful people at Preston Estate Planning. When I started working with the Preston firm, I was in our Estate Settling Department. However, I was soon assigned to work in Funding, and I love the work I do in this department. Preston Estate Planning is unique in that most estate planning firms do not offer this valuable service. Mr. Preston has created several important services for our clients, and our Funding Department is one of them.

My job as the Funding Coordinator at the Preston Firm is to help our clients properly "fund" their assets. To "fund" a Trust means to register assets in the name of a Trust. You have probably heard numerous questions and discussions about funding at our various workshops. Invariably, I will receive many phone calls after these workshops from clients who want to make sure that their assets are registered correctly. Every day, I discover various issues that need to be corrected when I review client's statements, deeds, assignments, notes, etc. It is interesting to me how many clients do not take advantage of having their assets verified to ensure that they are titled properly. I don't think clients realize how important this verification process is.

The verification process consists of two parts: making sure that what is supposed to be in the Trust is and what is not supposed to be in the Trust is not. For example, bank accounts, brokerage accounts, and deeds to property are supposed to be in the Trust. Retirement accounts such as IRAs, 401(k)s, and some annuities should not be put in a Trust. If an asset is not supposed to be in the name of the Trust, I need to make sure that it has an appropriate beneficiary designation on the assets. The appropriate beneficiary designation depends on the type of asset.

This whole process begins by sending a client a "Confidential Financial Information Questionnaire." After the clients receive the questionnaire, it is to be completed and returned to our office with copies of their financial statements and documents regarding their assets. Upon receipt, the questionnaire is then routed to my department along with the client's file. At this point, I create an Asset Detail Report by listing the assets, on the report, using the information from the questionnaire. I then indicate on that list, from the supporting documentation, whether the registration of the asset or beneficiary designation is done correctly.

I recognize that financial information is very sensitive, personal, and confidential, and that you are expecting this firm to keep your information private. We do! I treat these documents with the utmost care. Please be aware, I do not include the value of the assets on the Asset Detail Report. I simply verify that the registration is correct. If there is a problem with the registration, it is returned to you with an indication, on the supporting documentation, what exactly needs to be corrected.

Just so you are aware, there are three things I look for to determine if an asset is registered correctly. First, the names of Trustees, exactly as they appear on the Trust; second, the specific reference to the name of Trust (again, exactly as it appears on the Trust); and third, the date the Trust was originally signed. It would not be sufficient to register an asset in the name of the "Smith Trust" due to the numerous people who share that same name. By adding the names of the Trustees and the date the "Smith Trust" was signed, it becomes more identifiable. Keep in mind, it doesn't matter the order as long as those three components are there.

Once clients have "funded" their Trusts correctly and have assigned beneficiaries, they are literally, to use a popular phrase, "good to go." Remember, this is why you created the Trust in the first place, to protect the assets. The Trust can only protect those assets registered correctly. Even though funding is a lot of work up front, the assets will smoothly

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Customized Solutions

Saving a Widow Thousands of Dollars

We often encounter married couples who have cross-ownership of their annuities or life insurance. In the case of an annuity, cross-ownership means that one spouse is the owner of the annuity and the other spouse is the "annuitant." The annuitant is the measuring life for the annuity and often the younger spouse is chosen as the annuitant to extend the life of the annuity. This works great unless the wrong spouse dies first. Remember, the annuity proceeds are paid only when the annuitant dies.

Recently, we encountered just such a problem. Husband and wife had a joint Trust. The husband passed away, and, among the assets he owned individually was a $200,000 annuity contract. If the husband had been named as the annuitant on the annuity, the surviving spouse would be faced with a decision to cash out the annuity or elect a spousal continuation of the annuity contract. Unfortunately, his wife was named as the annuitant. Because the annuitant was still alive, the annuity proceeds could not be distributed. Instead, we had an annuity without a living owner. Since the owner of the annuity holds the rights to the annuity contract, the annuity contract needed a new owner. It was not long after the death that the company which issued the annuity insisted that the annuity have a new owner and that this owner was the beneficiary of the husband's estate.

Initially, we had three options.

1. We could prepare a small estate affidavit, which is a summary proceeding that allows for the distribution of personal property from deceased person to the person or entity which is entitled to that property. However, this proceeding is only available when the cumulative value of the assets in the deceased's name is $150,000 or less. In this instance, the annuity contract was worth $200,000 so this option was unavailable.

2. We could file a Spousal Property Petition with the court, which is a one-time court hearing that may be used in community property situations to confirm the surviving spouse's property interest and transfer the deceased's community property interest to the surviving spouse. However, since the couple had a joint Trust, the husband's Last Will and Testament did not leave his assets to his wife. Instead, like all "pour-over Wills," the husband's Last Will and Testament left his estate to the Trust. As a result, we could not use the Spousal Property Petition to transfer the annuity contract.

3. Finally, we could initiate a formal court probate proceeding. This would accomplish the desired result, but it would cost the surviving spouse about $2,000 in court costs and about $7,000 in statutory attorney's fees simply because the wrong spouse died first. When you consider that nothing is being distributed from the annuity contract and that all we are doing is installing a new owner of the annuity contract, this is a very expensive remedy.

Instead, I customized a fourth option for the surviving spouse, which combined the first and second options to avoid the third.

We first filed a Spousal Property Petition for the sole purpose of simply confirming that half of the value of the annuity, the sum of $100,000, was the community property of the surviving spouse. While the court thought it was unusual not to use the Petition procedure to also transfer the decedent's half of the property, the court granted the Spousal Property Petition and confirmed that half of the annuity belonged to the surviving spouse. That meant that the deceased husband only owned half of the annuity contract, or $100,000 of the $200,000 annuity contract. Since the value owned by the deceased husband was now less than $150,000, we could now use a small estate affidavit to transfer the husband's interest to the beneficiary of his Will, which was the joint Trust established by the decedent and his wife. Using the small estate affidavit, a certified copy of the court's Spousal Property Order, which confirmed that half of the annuity contract belonged to the surviving spouse and a signed assignment of the surviving spouse's community property interest to the Trust, we asked the company issuing the annuity contract to name the Trust as the new owner of the annuity. After several conversations with the legal department for the annuity company, the company ultimately agreed to name the Trust as the new owner.

Although this strategy did result in court costs of $500 and attorney fees of $2,000, our strategy did save the surviving spouse thousands of dollars in costs and attorney fees to solve the problem. At Preston Estate Planning, we will always find the best solution for you and your family.

Preston University

Avoiding Property Reassessment With Multiple Beneficiaries

In the April 2019 issue of this Newsletter, we shared how a parcel of real estate could be transferred from a parent to a child upon the parent's death without a reassessment of the property taxes. This inevitably saves the child money in the future and is authorized by California Proposition 58. This works well when there is only one child for the parent's personal residence and will also work for the non-residence of the parent so long as the cumulative assessed value of the nonresidence property is equal to or less than $1,000,000.

Will Proposition 58 prevent the reassessment of the property taxes when there is more than one child as the beneficiaries of the Trust estate? The answer is yes. There are several scenarios which arise under Proposition 58 when there are multiple children who are equal beneficiaries of the Trust. The first scenario occurs when each of the children receive an equal percentage in the real property from the parent's Trust. In that scenario, Proposition 58 keeps the property taxes from being reassessed in the same manner as it does when there is only one child.

What happens when there are multiple children and one child wants to receive the parcel of real estate and the other child does not want to receive title? There are two additional scenarios where the property taxes can remain the same through Proposition 58. The County Assessor will not reassess the property taxes when one child receives title to the realty and the other child receives an amount of other assets from the Trust equal to the value of the realty if the Trust contains an "in-kind distribution" provision. This provision gives the Trustee flexibility in distributing the Trust assets. In other words, the Trustee can distribute all cash to one beneficiary and other assets to the other beneficiary, so long as the amount distributed to each child is equal in value. Every Trust we create at Preston Estate Planning includes an "in-kind distribution" provision. This scenario works well to keep the property taxes from being reassessed when the Trust holds lots of assets.

What happens when the Trust does not hold sufficient assets to offset the value of the real estate? Suppose the parent's Trust owns a residence worth $500,000, cash accounts in the sum of $50,000, and investments of $50,000. There are two children who are equal beneficiaries and one child wants to receive the residence. In this example, each child needs to receive $300,000 worth of assets. You can still keep the property taxes from being reassessed but it is tricky. A child cannot buy out the interest of the other child. If that happened in our example, the Assessor would reassess 50% of the property as the buyout is considered a sibling to sibling transfer and not a parent to child transfer. The solution? The Trust can borrow enough money against the residence to ensure that each child receives an equal amount. In our example, if the Trustee borrows the sum of $200,000 from a lender which is secured against the residence, that additional $200,000 added to the Trust will now allow the Trustee to distribute $300,000 in cash and investments to the one child and distribute to the other child the residence, which now only has $300,000 in equity due to the secured loan. Of course, the child receiving the property will be responsible for the mortgage payments. However, the property taxes will not be reassessed.

At Preston Estate Planning, we work with you and your family to find the best solution, and that makes clauses like our "in-kind distribution" provision so valuable.

In future editions of this newsletter, we will explore what happens to the property taxes if a grandchild happens to be a Trust beneficiary.

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transfer to your loved ones with ease when you pass away. This process may be foreign to many of you who have had experiences with other law firms, because no one checked to see if everything was registered correctly. It is another example of the extra service we provide to our clients to make sure everything works properly.

I enjoy my work here at Preston Estate Planning. John and all the staff are like family, and we are all dedicated to creating, updating, and "funding" Trusts that will protect our clients while they are alive and provide peace of mind to their surviving families when they are gone. We do all in our power to help carry out our clients' estate planning desires.

So, if you need help "funding" your Trust or designating the correct beneficiary, don't hesitate to contact me. I promise to be patient and precise in completing this task.

–Lisa Miller

Leftover Candy Snack Mix

Inspired by Food & Wine Magazine

This recipe from Momofuku Milk Bar chef and "Master Chef" judge Christina Tosi makes great use of those extra Halloween goodies. It's a quick and easy way to both elevate and get rid of unwanted leftovers.

Ingredients

- 2 cups mini pretzels, coarsely broken
- 1/4 cup light brown sugar
- 2 tbsp granulated sugar
- 1/3 cup dry milk powder
- 6 tbsp unsalted butter, melted
- 12 oz mini candy bars, such as Snickers, chopped into 1/2-inch pieces

Directions

1. Heat oven to 275 F.
2. In a large mixing bowl, fold together pretzels, sugars, milk powder, and butter.
3. Spread mixture on a baking sheet lined with parchment paper and bake for 20 minutes.
4. Let cool for at least 30 minutes and mix in candy bar pieces before serving.