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REAL ESTATE • ESTATE PLANNING • NON-PROFIT LAW

BUSINESS & CORPORATE LAW • PROBATE • TRUST ADMINISTRATION

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PLANS FAIL FOR LACK
OF COUNSEL, BUT WITH MANY
ADVISERS THEY SUCCEED.

PROVERBS 15:22

Over *30* Years of Providing
Counsel & Guidance
to Businesses and Individuals

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Merry Christmas to all our friends,

We are continually thankful for your friendship and the opportunity to serve you with legal advice on matters of personal importance to your families and businesses. This newsletter contains articles on a variety of topics which may be pertinent to your present situation. If we can help you with any of these issues, please contact us. We are pleased to inform you we have added an extra layer of protection for our client's information in the form of encrypted email. We have the ability to send and receive sensitive information in an encrypted format which is recommended by cyber security professionals. If you wish to send us sensitive information, first send us an email message telling us you wish to do so; we will respond with our encrypted email, then you can more safely reply with the sensitive information. Likewise, you may receive encrypted email from us if we wish to send you sensitive information in a message or an attached file.

We have been blessed with three new babies recently. Nanci Tipton, one of our legal assistants, and her husband Ray recently welcomed grand-daughter number one, Bailey. Ryan Jones, our newest associate, and his wife, Amber welcomed Thatcher, baby boy number two for them. And Karla and Lloyd welcomed grandson number two, Grayson. We are grateful for the safe deliveries of these new little ones. Exciting news is that next year we will have another addition when Haleigh Collins, associate, and her husband, Chip, welcome baby boy number one in February. We also have added a new receptionist, Alison Lemay, and are thankful for her cheerful and helpful servant's heart for us and to our clients.

We pray our past service to you has met your expectations, just as we are committed to serving your best interest going forward. We wish you a joyful holiday season filled with the love of family and friends.

Your friends at McAlister, McAlister, Baker & Nicklas

The Lord bless you and keep you: the Lord make His face shine upon you and be gracious to you;
the Lord turn His face toward you and give you peace. Numbers 6:24-26



Ryan Jones, Brandon Baker, Cody Jones, Cara Nicklas, Karla McAlister, Haleigh Collins, Lloyd McAlister



Welcome to Ryan Jones

It is our great honor to introduce Ryan Jones, our new associate. Ryan was born and raised in Edmond, Oklahoma. He received his bachelor's degree in Business Administration from the University of Central Oklahoma. Ryan attended law school at the Denver Sturm College of Law, where he graduated with distinction in 2016.

While in Colorado, Ryan met his wife, Amber, and they now have a two sweet boys, Winston and Thatcher. He enjoys spending time with his family, running, reading,

and serving in a local church community. Ryan is inspired by his faith and his family to serve clients with excellence, honesty, and efficiency.

During law school, Ryan focused his legal studies in the area of tax law, and he aspires to practice in the areas of real estate, business, and taxation. He graduated from college as the top-ranking business student in his class, and he maintained a full-tuition academic scholarship while attending law school.

Congratulations Brandon Baker, Lloyd McAlister and Cara Nicklas

Congratulations to Brandon Baker on being recognized as one of the Top 20 under 40 by the Edmond Business Times. Brandon has been with the firm since he began clerking during law school in 2005. Brandon and his wife, Liza, are the parents to three boys, Graham, Clark and Matthew. Brandon leads our business and real estate practice area and we are proud of this recognition as a leader in our community. He is committed to excellence in all he does.

Congratulations additionally to Lloyd McAlister and Cara Nicklas for being chosen as SuperLawyers in Oklahoma. Lloyd in the Estate Planning and Probate practice area and Cara in Business Litigation practice area. This selection is based on nomination by peers, third party research and review by a panel of highly credentialed attorneys. Only five percent of attorneys are selected for this honor. Their experience, skill and professionalism are huge assets for our clients.

Don't forget year-end gifting as an estate planning tool. You may gift \$14,000 per person per year in 2017 (\$15,000 per person in 2018), without using any of your lifetime applicable exclusion amount. So, a couple can gift a combined \$28,000 per year in 2017 (\$30,000 in 2018) without wealth transfer tax consequences.

The applicable exclusion amount increases from \$5,490,000 in 2017 to \$5,600,000 in 2018.

2018 is subject to change by pending tax legislation!

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Inheritance of Digital Assets

By Karla McAlister



We live in a changing world, a seminar I attended this summer alerted me to an area I had not really encountered in estate planning because it is such a new issue. It was a wakeup call for me personally and I believe our clients will also benefit from considering these issues regarding the management and disposition of digital assets. A practical example is when I was contacted by the children of a client because they were unable

to access bank accounts for their parent. The parent is now incapacitated and only used online banking, but she could not remember her password and the children could not locate a written list of passwords. They wanted to know if I had a list. Unfortunately, I did not have that information in my file.

Although there is no official definition of “digital asset” yet, you can think of it as any information stored electronically, either online or on an electronic device. This includes text, images, multimedia, travel rewards and points, domain names, games, music, digital books, home security, online storage accounts, personal property stored in digital format and words, passwords, characters, codes or contractual rights to access that digital content which is stored online or offline. There are online corporations such as Google, Apple, Microsoft and Facebook and blogs, personal websites, online banking and other online accounts. With the average person having twenty-five online accounts, digital inheritance has become a complex issue. They may be confidential, such as banking and medical information or shared such as social media or contacts in forums.

Two thirds of all digital content is created by individuals, not businesses or organizations. Your “digital assets” increase each time you open a new account, send an email, snap a picture, book a flight, make a purchase or post a comment. Fifty one percent of adults use their bank’s website for banking transactions and seventy-six percent of adults in the United States have a social network site. It has become normal to store data electronically in smartphones, computers and the “cloud” and to conduct transactions electronically. These assets may have monetary value and sentimental value to you and your family.

There are several ways to plan for management of digital assets upon incapacity or death. First, keep a complete list of passwords, online user

accounts and other digital assets and update the list often. You should include security questions and answers to ensure fiduciary access as well. A printed copy should be kept in a safe location. You should consider including specific instructions in your estate planning documents regarding management of the digital assets at your death or incapacity. The third-party providers will want explicit provisions to allow your fiduciary to have access to your digital account.

There is a push for a Revised Uniform Fiduciary Access to Digital Assets Act (RUFADA) which has been adopted in thirty-five states, but it has not been adopted in Oklahoma. The goal of RUFADA is to respect a user’s intent reflected in online account options and dispositive documents. One of the biggest hurdles for fiduciaries is that most digital accounts are bound by terms-of-service agreements and these terms of agreement (which most people do not read) determine what happens to an account upon the death of its owner. Some terms of agreement prohibit a user from allowing anyone else to access his or her account. Facebook’s terms-of-service agreement prohibits sharing passwords with anyone. Yahoo! terms-of-service provide that accounts are non-transferable, and the account terminates upon the user’s death and the receipt of a copy of the death certificate then the content is permanently deleted, which may not be what the family or owner intends. RUFADA states that users may consent to the disclosure of their digital assets and it will override any terms-of-agreement.

However, there may be electronically stored information a client does not want to share with family members or beneficiaries, and those wishes should likewise be included and addressed in your planning. Specific directions may be made to delete private data.

With new technologies and innovation comes new complexities and considerations in your estate planning. Hopefully, this article will help jump start your effort to help your loved ones by addressing these issues in your planning.

Please visit our website at
www.mcalisterlaw.com.

It is mobile friendly and has many features we
hope you will enjoy and share with your friends.

Also look for us on Facebook. 

New Tax Rules: Are you Liable For Your Business Partner's Taxes?

By Ryan Jones

If your business entity is taxed as a partnership (including many multi-member LLCs), the IRS can now collect a business partner's tax deficiency from the entire business. In other words, your company could be liable for your business partner's tax deficiency. This article briefly compares the old rules with the new rules and provides 5 critical action steps in response to the new rules.



WHAT ARE THE NEW RULES?

The old rules. Historically, the IRS calculated taxes at the partnership level (i.e. the whole business), but collected taxes at the individual partner level. If the IRS discovered a tax deficiency for the entire business, the IRS could only collect from the individual partner who caused the deficiency.

The new rules. The new partnership tax audit rules are a part of the Bipartisan Budget Act of 2015 (the BBA), effective January 1, 2018. Beginning with the tax year 2018, the IRS can collect a tax deficiency from the business itself. This means that the entire business could suffer due to a tax deficiency caused by one of the owners.

5 ACTION STEPS IN RESPONSE TO THE NEW RULES

1. Determine whether the new rules apply to you. If your business is taxed as a partnership, the new rules apply to you. Keep in mind that your business may be taxed as a partnership under federal law even if it is not considered a partnership under state law (many multi-member LLCs are taxed as partnerships).

2. Determine whether you qualify to opt out of the new rules. If your business satisfies certain criteria, you may qualify to opt out of the new rules. To opt out, your business must have less than 100 owners and must have a simple ownership structure. We are happy to help you determine whether you satisfy the opt-out criteria.

3. Elect out of the new rules each year with your annual tax return. Even if you qualify to opt out, the election is not automatic. You must actively make the election each year with your annual tax return. Presumably, the IRS will issue additional guidance on exactly how to make the election. The new rules do not take effect until January 1, 2018, so you do not need to make an election until you file your taxes for the tax year of 2018.

4. Modify your partnership agreement or operating agreement. In addition to electing out of the new rules (if you qualify), you should also add certain provisions to your partnership agreement or operating agreement. Specifically, your agreement should contain a provision that makes each owner ultimately liable for any tax deficiency caused by him or her. This way, even if the IRS collects a deficiency from the entire business, the business owners can then collect the deficiency from the owner who caused it. For full compliance with the new rules, your agreement should also contain a new provision that names a "partnership representative."

5. Contact us for assistance. If you have questions about the new rules, or if you would like assistance in updating your operating agreement to account for these tax law changes, please contact us. We are available to assist you in complying with the new rules and taking steps to protect against tax liabilities caused by your business partners.

(For a full-length version of this article, visit our webpage at www.mcalisterlaw.com/articles/)

²The historical "tax matters matter" has been replaced by the new rules with a "partnership representative."

Our Practice

The attorneys and staff at McAlister, McAlister, Baker & Nicklas provide a broad range of professional services to individual and business clients in the following areas:

- Estate Planning
- Probate
- Business & Corporate Law
- Taxation
- Real Estate
- Elder Law
- Business Planning
- Litigation
- Guardianships
- Nonprofit Law
- Estate & Trust Administration
- Employment Law
- Oil & Gas

10 Loose Ends To Tie Up Before You Die

By Cody Jones



Creating an estate plan can provide peace of mind for our clients because if all goes according to plan, their beneficiaries will be equipped and prepared to settle their estate according to their written wishes. However, when our clients walk out the door of our office armed with their detailed plan, change doesn't come overnight. It takes some effort from our clients to make sure the plan is fully implemented and properly maintained. These are a few of the unresolved or incomplete matters we often see, which can cause the plan to go awry.

1. Safe Deposit Boxes. Your safe deposit box is subject to a box rental agreement and access to the box is limited upon your incapacity or death. Review the box rental agreement. If you have a revocable trust, make your trust a party to the box rental agreement. Otherwise, you should coordinate with your financial institution to make sure someone you trust has authorization to access your safe deposit box upon your death or incapacity, which may require adding them as a joint or successor owner on the account.

2. That "Small" Bank Account. Many of our clients dismiss their assets of limited value, assuming they will not cause their survivors or caretakers any trouble, but many times it's these small assets that require the most work after an owner's death. If you have a revocable trust, transfer the account ownership to your trust, ensuring the successor trustees will have easy access to these funds. If you do not have a trust, consider adding a payable-on-death designation to the account to ensure the funds in the account are accessible by your survivors. Otherwise, your survivors may need to pay an attorney to gain access to the account. Such expense often exceeds the value of the account. This issue is easily avoidable if you take the small step during your lifetime instead of leaving unfinished business which requires big steps after your death.

3. Those Minimal Minerals. Even if your mineral interests are not worth much now, they may be worth much more after your death. One of the most common triggers for probates and estate administrations are mineral interests that clients failed to either transfer to their revocable trust or otherwise provide for succession of ownership by deed during their lifetimes. A simple quitclaim deed during your lifetime can avoid significant cost after your death, a cost most of our clients intend to avoid with their estate plans.

4. Boats, Trailers, Motorcycles, and Other Motorized Objects. They have titles too. If your name is the only name on

the title at your death, the ownership is trapped in your name. Barring a few exceptions, no one will have authority to sell this asset without being appointed by the court. Once again, if you have a revocable trust, take the easy step to transfer the title to your trust now. Otherwise, you might consider adding a co-owner to the asset to make sure the person you wish to receive each asset can easily assume ownership upon your death.

5. Bonds, Paper Bonds. United States Savings Bonds are no longer issued as paper bonds, but many of our clients have old Series E Bonds or something similar. More likely than not, these bonds do not have a beneficiary. If you have bonds in your name upon your death, these bonds will undoubtedly trigger an estate administration. Please contact us so we can advise you on how to convert your paper bonds and update ownership during your lifetime.

6. The Future of Your Pets. If you have pets, do you know what will happen to them upon your incapacity or death? Have a conversation with your loved ones to make sure they know your wishes. Make sure they have the knowledge and ability to assume caretaking responsibilities for your pets as you desire, and if not, direct them as needed. The more they know, the more likely your wishes are fulfilled.

7. Old Beneficiary Designations. If your spouse or child predeceased you, please review your beneficiary designations on your retirement accounts and life insurance policies. Oftentimes, the surviving spouse forgets to update these designations. If your named beneficiary is not living upon your death, the proceeds of these assets will likely be payable to your estate, triggering a costly estate administration or probate. Updating your beneficiary designations is an easy loose end to address.

8. Pesky Passwords, Codes and Keys. Make sure your loved ones have access to your passwords, keys and access codes for your cell phone, email, social media, online billing, financial institutions, security systems, internet streaming services, and other similar accounts. If you have a code for your safe, ensure someone other than yourself has access. If you have multiple keys, make sure they are labeled as necessary. If you do not want to give individuals access to this information during your lifetime, we will gladly keep this information in your client file for your heirs and successors, as needed.

9. Trusted Advisors. You know yourself and your assets better than anyone, and you know who you trust for advice for various purposes. Consider making a list of these trusted advisors for your survivors so they do not need to reinvent the wheel. Let them know who your CPA, financial advisors, attorneys, doctors, realtors, and other professional advisors are. This information can be extremely helpful and cost-effective, particularly when your survivors live out of state.

10. Blended Families. Blended families often have different desires than what is provided for under state law. Please call us to make sure your estate plan fits your family situation.

Preparing for Incapacity

By *Haleigh Collins*



Imagine driving home from a holiday party this season and the unexpected occurs – Santa’s sleigh crashes into your vehicle! Leftover pumpkin pie and dressing splatter all over the reindeer. Jingle bells, toys, and cookies are strewn across the street in a 30-yard radius. Santa and his crew speed away without a scratch to finish deliveries to all the good boys and girls across the world. You, however, are incapacitated and require an emergency trip to the hospital, where you experience loss of consciousness (with visions of sugar plums) until Valentine’s Day.

Even without reckless reindeer on the road, about 750 car wreck-related injuries occur over the holiday season in Oklahoma, according to the most recent Fact Sheet published by the Highway Safety Office of the Oklahoma Department of Public Safety. Because car accidents occur so commonly, they provide a perfect illustration for imagining how easily any of us could become incapacitated. Any one of us could experience an accident or an illness and become unable to manage our day-to-day affairs, like paying our bills or driving to our doctor’s appointments.

What can we do to prepare for a season of life where we simply cannot take care of ourselves? Such a season could affect our physical abilities, mental abilities, or both. It could involve temporary impairment or permanent incapacity for the rest of life. Incapacity could occur slowly and across a long period of time, or it could occur suddenly and unexpectedly. The legal definition of “incapacity” incorporates a broad spectrum of circumstances, including the following:

- impairment due to mental illness or disability;
- impairment due to physical illness or disability;
- impairment due to drug or alcohol dependency;
- the inability to meet essential requirements for health and safety; and/or
- the inability to manage financial resources

Preparing for a season of your own incapacity could provide a huge blessing to your family and others who depend on you.

Here are some ways you can prepare for the possibility of incapacity:

1. Appoint a person who can act for you in legal and financial matters. This person, your “agent,” is appointed in your Durable Power of Attorney. In case you ever need a court-appointed guardian, you can utilize your Durable Power of Attorney to nominate the person you would want to serve as your guardian.
2. Appoint a person who can act for you in making health care

decisions. This person, your “Health Care Agent,” is appointed in your Health Care Power of Attorney. He or she can be authorized to communicate with your doctors and medical caregivers about your care and make decisions on your behalf if you are unable to do so. In case you ever need a court-appointed guardian, you can utilize your Health Care Power of Attorney to nominate the person you would want to serve as your guardian.

3. Appoint a person who can make decisions about end-of-life matters. You should have an Advance Directive in place to document your decisions about the type of care you would want to receive if you become incapacitated and experience an end-of-life condition, such as becoming persistently unconscious or terminally ill. An Advance Directive also allows you to appoint a person, your “Health Care Proxy” to make sure your wishes, as expressed in your Advance Directive, are carried out by your health care providers.

4. If you already have these important documents in place, make sure your family members know where these documents are located and how to use them. Make sure these documents are accessible to those who might need them. Also, if you have appointed one of your children before another to serve an important role in your care, please consider explaining your decision to your children while you have the capacity to do so in order to avoid potential family strife after you are no longer able to communicate your wishes.

5. Talk to your family members and/or close friends about what information they will need to know if you become unable to take care of yourself and/or unable to continue taking care of them. This information includes the name and contact information for advisors you trust to assist you and your family during a period of incapacity.

CONFIDENTIALITY

If you choose to communicate with members of our firm by email, please use an e-mail account which you alone are authorized to access. If you utilize a public or work-related computer, even with a private e-mail account, you may not have a reasonable expectation of privacy. Please note, if you forward e-mail communication with your attorney to third parties, you may inadvertently waive your attorney client privilege.



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McALISTER, McALISTER, BAKER & NICKLAS

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ATTORNEYS AND COUNSELORS AT LAW

Our Mission

McAlister, McAlister, Baker & Nicklas is here to serve God by serving our fellow man. Each person in our office believes God created them uniquely as an individual with a purpose and plan for their life. This is not a condition of employment but rather, as it turns out, a common perspective on life and work.

Specifically, we have the privilege of helping people deal with the details of life, as well as the details of death. It is our desire to provide wise and godly counsel to our clients. We always wish to serve our clients well, both as they want to be served and as we ourselves would want to be served. We know that we cannot and do not please all people at all times, but that is a goal we constantly work toward. We don't impose our beliefs on those we serve. Yet, we pray our work will be performed in such a manner as to be pleasing both to the clients we serve and to the Savior we serve.

Although our vocation is focused on knowing and applying rules of law, we cannot ignore the human factor in our work. As we believe and can attest from personal experience, no human life is without its defects and no human relationships are without their unreconciled differences. It is our desire to see all people reconciled to their maker and to their fellow man. We sincerely desire all our clients' relationships be whole and healthy ones. We desire our relationships be the same.

We hope you enjoy reading this issue of our firm newsletter. Of course, if you have any questions about these matters, please feel free to contact us. With hundreds of clients, it is impossible for us to consider all changes in the law with each client's particular circumstances in mind. However, if you would like for us to do that, simply let us know and we will be very happy to review your file and, if necessary, arrange to discuss these matters with you further by conference. The purpose of this newsletter is to discuss matters of current interest. All information should be verified and supplemented by professional advice on your individual circumstances before any action is taken.