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TRUST ADMINISTRATION • NON-PROFIT AND CHARITABLE LAW

REAL ESTATE • GUARDIANSHIPS

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

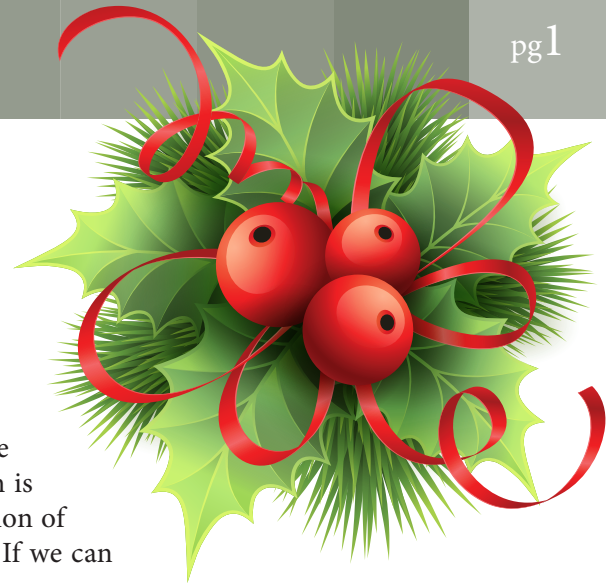
PROVERBS 15:22

Over 35 Years of Providing
Counsel & Guidance
to Businesses and Individuals

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Merry Christmas, 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. An issue we see almost daily is people who have developed an incapacity and they have no planning in place for someone to take care of their health and financial affairs. Death is inevitable. Planning should be done to plan for an orderly disposition of your assets, but planning for lifetime incapacity is also important. If we can help you with any of these issues, please contact us.



Our website contains an overview of our practice areas, background information on each of our attorneys and topical articles. www.mcalisterlaw.com Our practice focuses on estate planning and estate administration for our many clients but we also provide litigation expertise for dispute resolution and expertise in the business area for our many clients who are business owners or entrepreneurs. We added two new attorneys this year, Greg Mulkey and Mariana Pitts. You will read more about their backgrounds in the newsletter.

Lloyd McAlister and Cara Nicklas were once again chosen as Super Lawyers in Oklahoma. Lloyd in the Estate Planning and Probate practice area and Cara in the Business Litigation practice area. Cody Jones and Ashley Ray were both selected as top attorneys in Wills and Trusts, and Cara was chosen as a top attorney in Employment Law by 405 Magazine. Our firm has once again been chosen as a top tier Trust and Estate Planning law firm in the Oklahoma City metropolitan area by the U.S. News and World Report. We are the only Edmond firm recognized for this honor. It is our privilege to provide big firm quality and small firm customer service to our clients. This is our 38th year of serving clients across Oklahoma and beyond from our office in Edmond.

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 & 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*

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Power of Attorney: On-Board Training

by Mariana Pitts

If you have ever flown in an airplane, you must have heard the pre-flight announcement, “put on your own oxygen mask before helping others in the event of an emergency.” The idea behind this warning is that you cannot help others if you cannot help yourself. Similarly, the same principle applies to agents acting under the Power of Attorney documents. If you are currently serving as someone’s agent, considering accepting the appointment, or if you are merely curious about what the agent’s role entails, this article is for you.

A power of attorney (POA) creates a legal relationship between a principal (the person signing the document) and an agent (the person nominated to act for the principal). There are two types of POA under Oklahoma law. The first type is called the Durable Power of Attorney (DPOA), and it authorizes the agent to make decisions regarding the principal’s property. The second type is called the Health Care Power of Attorney (HCPOA), and it authorizes the agent to make decisions regarding the principal’s health care.

Serving as someone’s agent under the DPOA is a great privilege. Indeed, if you were named as an agent, the principal must have had great confidence in your integrity and ability to give you the power to step into the principal’s shoes. In the immortal words of Uncle Ben, with great power comes great responsibility. Finding a way to balance your own ability to handle multiple aspects of someone else’s life all while keeping up with living your own life is vital. To aid you in putting on your own oxygen mask first, here are a few steps designed to help you help your principal both responsibly and effectively:

1. **Guidance.** Prior to taking any major steps as someone’s agent, consult with an attorney about your duties, responsibilities, and liabilities under the DPOA and state law. Knowing what you can and cannot do as an agent is important to maintaining your duty to the principal. While all you initially need is integrity and willingness to act on the principal’s behalf, you may be required to make decisions about the principal’s investments, taxes, or assets that may necessitate the expertise of non-legal professionals. To do so, do not hesitate to reach out to the principal’s existing advisors (if known) or someone you trust with financial matters. Either way, it is okay to ask for help in the event you do not feel equipped to address the situation on your own.

2. **Organization.** Staying organized benefits you by giving you peace of mind that necessary things are not being missed and by protecting you in case your decisions are ever called into question. Staying organized involves:

- Identifying the principal’s assets and keeping them up-to-date
- Designing a to-do list and a plan to execute it
- Keeping track of due dates
- Keeping records of any expenditures made on the principal’s behalf
- Keeping your personal finances separate from the principal’s.

3. **Communication.** You should always communicate with the principal about your actions as their agent as much as possible. Additionally, as you step into the principal’s shoes when contacting any third-party entities, make sure that these third parties are aware of your role as an agent. Providing documentation of the DPOA to third parties should give you the recognition and authority to act on the principal’s behalf and address any pressing matters as soon as they arise.

4. **Loyalty.** The duty of loyalty requires that you step into the principal’s shoes when you make decisions as their agent. In other words, before making a decision you should ask yourself “What would the principal do under the circumstances?” If it is difficult to decide what the principal would do, exercise your own judgment with the principal’s best interest in mind.

Being someone’s agent can be both demanding and rewarding. Take care of yourself and remember to ask yourself periodically, “Do I have my oxygen mask on?”

Our Practice

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

Estate Planning

Business Law

Litigation And Dispute Resolution

Estate & Trust Litigation

Probate

Employment Law

Trust Administration

Non-Profit And Charitable Law

Real Estate

Guardianships

Planning for Rightsizing

By Cody Jones



Are you looking around at all the space in your home thinking this is too much for me to handle? Do you see stairs in your home that you cannot easily climb? Are you walking into a room struggling to remember why you walked into the room? Are you missing community because you are outliving your friends and loved ones? You are not alone.

From a different perspective, are you part of the sandwich generation – taking care of your kids while also spending more time addressing the needs of your parents? Do you worry about your parent's forgetfulness or tendency to trust the unknown caller on the other end of the line? Do you worry about their ability to navigate their own home? You are not alone.

Sometimes we humans are like the frog in the pot of boiling water. We do not notice, or more likely, we choose to ignore the signs and fail to make changes until it is too late. We delay the changes because we love our home. We love the memories we have in our home. We do not want to bear the cost of a long-term living facility. We are still able to do most things, so it seems too early to make any changes. And maybe we are just a little too stubborn.

As estate planners, we often hear the phrase "if this happens to me" when we should be considering the phrase "when this happens me." As we age, we become more like a child, needing assistance and guidance. Rarely does this happen suddenly, but also rarely does it happen without warning. We have counseled many children who see their parents aging, but their parents refuse help. For all of our friends reading this, please know an honest, transparent approach by both the children and the aging parents can make this transition so much better for everyone involved. Have the conversation early, explore nearby options for senior living, process the information while you are healthy and mobile, and develop a "what if" plan together.

Most people have heard the phrase downsizing. To some, this sounds overwhelming and restricting. It sounds like a loss. A local realtor I know refers to downsizing as rightsizing instead. Doesn't that sound so much more ... right? Rightsizing is finding a home or living community or tweaking your existing home early so that you can transition through the end of life gracefully. Rightsizing is finding the right location, with the right items, near the right people, with the right accessibility,

at the right time. One of the biggest mistakes is waiting until the crisis happens to make these changes. Rightsizing frees you from the worries before the crisis occurs and gives a gift to your loved ones to make it more convenient for them to help as your abilities decrease.

The good news is an entire industry exists to help people through this process. Retirement communities and independent living communities are happy to discuss their facilities with you in advance. You can contact a trusted realtor, preferably a certified senior housing professional, to consider an age-restricted neighborhood or patio home community with less maintenance. Consider neighborhoods near senior wellness centers or church facilities that offer senior programs. You can reach out to a professional personal organizer or estate liquidator to help you decide what personal belongings to keep – oftentimes a third-party perspective can save frustration. And as always, you should review your estate planning documents to make sure your incapacity-planning documents are in order and your assets will be managed according to your wishes during your lifetime and upon your death.

If you are looking for a place to start, may we suggest you consider attending the Crossings Care Series: Moving Mom & Dad offered at Crossings Community Church in the Spring. More information can be found at <https://lifecare.crossings.church/careseries>.

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.

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. 

Welcome to Greg and Mariana!



Big welcome to Greg Mulkey. Greg primarily practices in the areas of estate planning, probate, trust administration, real estate, and business issues. Greg is licensed to practice in Oklahoma and the United States District Court for the Western District of Oklahoma.

Greg was born in Dallas, Texas and raised in Duncan, Oklahoma. He graduated from the University of Oklahoma with a bachelor's degree in accounting in 2006 and a law degree with honors in 2010. During his time in law school, Greg was a member of the American Indian Law Review and had an article published in the 2008-2009 American Indian Law Review. He was also a member of the Phi Delta Phi International Legal Fraternity.

Prior to joining the firm, Greg served for over thirteen years in various roles at one of the largest privately owned banks in the United States. He managed commercial loan workouts, bankruptcies, collections, and a variety of litigation, including insurance-related matters, foreclosures, retail banking disputes, and employment actions.

Greg and his wife, Jennifer have two sons. They attend Faith Bible Church in Edmond and serve in various children's ministries. Greg enjoys spending time at Lake Eufaula with his family and playing sports, especially basketball with his sons.



Mariana was born and raised in western Ukraine. She obtained a Bachelor's in International Relations in Warsaw, Poland, and a Bachelor's in International and Area Studies (summa cum laude) from the University of Oklahoma. She then earned a Juris Doctor from the University of Oklahoma College of Law while working as a legal assistant. She believes that hard work is fundamental to success in both life and law and, as such, she is dedicated to giving her all for her clients.

Prior to joining McAlister, McAlister, and Nicklas, Mariana worked in immigration law and focused on business immigration. She worked with professionals and institutions in a variety of fields, including education, medicine, and energy. She enjoys engaging with and serving clients from all places, all backgrounds, and all walks of life.

Mariana serves on the Oklahoma Free Speech Committee as a Chair of the Training Task Force focusing on free speech matters at public institutions of higher education in the State of Oklahoma. She is also a board member of the Young Lawyers Division of the Oklahoma Bar Association. Mariana speaks four languages: English, Ukrainian, Polish, and Russian. She enjoys spending her free time with her family and friends, reading, traveling, and playing the piano.

Americans Are Putting Off Estate Planning

2 out of 3 Americans still do not have a will despite the Covid-19 pandemic.
56% of Americans said that having a will or living trust is very or somewhat important.
40% of Americans cite procrastination as the main reason they do not have a will.

Source: 2022 Wills and Estate Planning Study, Caring.com

FDIC Coverage Limits for Trusts

by Greg Mulkey

The failures of Silicon Valley Bank and Signature Bank in March of 2023 garnered national attention. An issue highlighted with Silicon Valley Bank was the large number of uninsured deposits held by the bank. In light of these failures, many people considered the possibility of their bank failing and whether their money would be insured or at risk of being lost.

The Federal Deposit Insurance Corporation (FDIC) insures deposits at FDIC-insured banks to help protect depositors in the event a bank fails. The common account types covered by FDIC insurance include checking accounts, savings accounts, money market deposit accounts and certificates of deposit. Investments, such as stocks, mutual funds, and annuities are not FDIC insured. Most people are aware of the general premise that deposits at an FDIC-insured bank are insured up to \$250,000.00. Does this mean that deposits can only be insured up to \$250,000.00? Not exactly. FDIC deposit insurance covers \$250,000.00 per depositor, per FDIC-insured bank, for each account ownership category. It is possible for a depositor to qualify for more than \$250,000.00 in FDIC insurance coverage. Accounts owned by a trust are one situation in which a depositor could be insured for more than \$250,000.00.

The rules for determining the amount of FDIC insurance coverage for accounts owned by a trust currently differ between revocable and irrevocable trusts. However, effective April 1, 2024, the rules will be the same for both trust types. As of April 1, 2024, trust deposits will be insured up to \$250,000.00 per owner (each trust settlor), per each unique beneficiary, up to five beneficiaries, which means a trust's deposits at an FDIC-insured financial institution could be insured up to \$1,250,000.00 per owner. The following are examples of how the rule applies to joint revocable trusts and single settlor revocable trusts in different scenarios.

Example 1 – Husband and Wife are the settlors of a joint revocable trust. The couple's three living children are equal trust beneficiaries upon the death of both settlors. The revocable trust owns a \$2,000,000.00 certificate of deposit (CD) at Insured Bank. For purposes of determining the amount of FDIC insurance coverage, each trust settlor is an owner of the account.

Owner & Beneficiaries	Balance	Insured	Uninsured
Husband Daughter, Son 1 & Son 2	\$1,000,000.00	\$750,000.00	\$250,000.00
Wife Daughter, Son 1 & Son 2	\$1,000,000.00	\$750,000.00	\$250,000.00
Total	\$2,000,000.00	\$1,000,000.00	\$500,000.00

Example 2 – Husband and Wife are the settlors of a joint revocable trust. The couple's three living children and two living grandchildren are equal trust beneficiaries upon the death of both settlors. The revocable trust owns a \$2,000,000.00 CD and a checking account with \$750,000.00 at Insured Bank.

Owner & Beneficiaries	Balance	Insured	Uninsured
Husband Daughter, Son 1 & Son 2 Grandchild 1 & 2	\$1,375,000.00	\$1,250,000.00	\$125,000.00
Wife Daughter, Son 1 & Son 2	\$1,375,000.00	\$1,250,000.00	\$125,000.00
Total	\$2,750,000.00	\$2,500,000.00	\$250,000.00

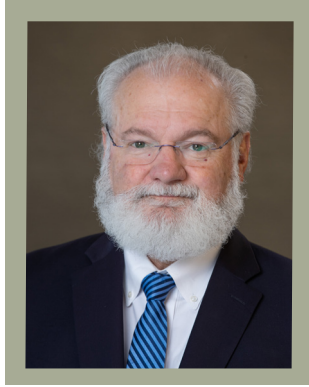
Example 3 – Husband is the settlor of a revocable trust. Upon the death of Husband, the trust assets remain in the trust for Wife's lifetime benefit. Upon the death of Wife, the trust assets will be distributed to Husband and Wife's three living children in equal shares. The revocable trust owns a \$1,000,000.00 CD at Insured Bank.

Owner & Beneficiaries	Balance	Insured	Uninsured
Husband Wife (life estate) Daughter, Son 1 & Son 2 (contingent beneficiaries)	\$1,000,000.00	\$1,000,000.00	\$0.00

The examples are provided to illustrate the applicability of the FDIC insurance rules for trusts as of April 1, 2024, based on the facts in each example. You can visit the FDIC's Electronic Deposit Insurance Estimator (EDIE) at <https://edie.fdic.gov/calculator.html> to see how the FDIC insurance rules and limits apply to your covered accounts.

Estate and Gift Tax Law Update

by Lloyd McAlister



In early 2017, the provisions of the Tax Cuts and Jobs Act went into effect. The act contained a variety of provisions that are set to sunset at the end of 2025. One of the sunset provisions is tied to the estate and gift tax exemption. As real estate values have increased and wealth has accumulated for many property owners these past few years,

estate tax planning will become a concern for many families in the years ahead of the sunset.

The Tax Cuts and Jobs Act doubled the estate tax exemption up to roughly \$11 million per person. With that exemption level indexed annually to inflation, the current exemption threshold is \$12.92 million per person, increasing to a projected \$13.61 million for persons dying on or after January 1, 2024. This means the first \$12.92 million (\$13.61 million in 2024) in a person's estate at the time of death is exempt from estate taxes to the extent the exemption has not previously been used to offset gift tax for lifetime transfers.

Fast-forward to 2026 and the estate and gift tax exemption amounts will sunset unless otherwise extended by Congress and the President. Projections for the post-sunset exemption level place the new amount about \$7 million per person. Keep in mind, every dollar over the exemption level is subject to a 40% tax. And keep in mind the estate tax applies to life insurance and retirement benefits owned by the deceased person.

Families should be proactive when planning in anticipation of this sunset event.

With the November 2024 general election scheduled before the sunset date, it is impossible to predict whether the sunset will occur or if the higher exemption levels will be extended. Regardless, taking proactive steps today can save a lot of time and money if urgent changes to your succession plan are required.

If your family could be in estate tax territory after the sunset, the best strategy is beginning proactive estate planning efforts now. Waiting to engage a succession planning team and develop a strategy for managing potential estate taxes could be costly.

As of January 1, 2024:

Estate and gift tax exemption - \$13,610,000

Gift tax annual exclusion \$18,000

Gift Tax Facts

Individuals can make use of the \$17,000 annual exclusion from the federal gift tax in 2023. This increases to \$18,000 in 2024. You can give the exclusion amount to as many individuals as you'd like without gift tax consequences and without filing a gift tax return. A husband and wife can each make cash gifts. So, for example, a couple could make \$17,000 gifts to each of their four grandchildren, for a total of \$136,000 this year. Gifts in excess of the annual exclusion amount count towards the lifetime estate/gift tax exemption. Gifts in payment of qualified medical expenses and education expenses are not subject to the annual per year exclusion. These are general statements concerning the federal gift tax laws. Contact our office if you wish to have assistance in planning gifts which comply with all the details of the federal transfer tax laws (gift tax, estate tax and generation skipping tax).

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Our Mission

McAlister, McAlister & 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.