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Please visit our website at [www.WBBLawFirm.com](http://www.WBBLawFirm.com)

for more information about estate planning strategies as well as additional information about other services provided by our firm.

## WILL YOUR ESTATE PLAN WORK AFTER YOU DIE?

WISEMAN BRAY PLLC provides an array of estate planning strategies for our clients. However, an estate plan that does not work as intended after your death is largely worthless. There are several things that you can do to ensure that your estate plan is executed as you intended after your death.

You should take great care in protecting your estate planning documents. The original, executed documents should be kept in a safe place, preferably in a fireproof and waterproof lockbox or safe. Also, if you have executed a living will, durable health care power of attorney, or other health care directive, then you should provide your doctors with a copy, and the original should be kept in a safe place along with any other important documents.

When you consider your estate plan, open and frank discussion with your heirs is crucial to avoiding any misunderstanding of your true intentions after your death. For instance, many heirs falsely equate the degree of

inheritance with the degree of love. If you plan to make unequal distributions to your heirs, discussion with your heirs about the reasoning for such unequal distributions should alleviate any potential tension. Another good idea is to write a letter to your heirs and your Executor or Trustee that remains separate from your legal documents. Sharing your desires in this type of letter could lessen potential conflict and also inform your Trustee how to act on your wishes.

It should go without saying, but choosing the Executor or Trustee of your estate is also very important. Oftentimes, a client will choose an Executor who is not the most fit for that responsibility. Always remember, the Executor of your estate should be the person you trust most to carry out your wishes after you die. Again, open and frank discussion with your heirs about your reasoning for your selection can avoid most conflicts.

Another strategy is to have your estate plan reviewed and updated regularly. This is for

many reasons, not the least of which is that your wishes will change over time. Also, if your plan is not updated frequently enough, then it simply may not apply any longer, due to significant changes in your or your beneficiaries' lives such as adoption, marriage, divorce or death. Moreover, estate planning law is almost constantly changing, and the ability to take advantage of new laws requires an update of your estate plan.

Probably the most important part of fortifying your estate plan is making sure that all of your trusts are properly funded. The method by which a trust works depends on the fact that your assets are owned by the trust and not by you personally. Not funding your trust completely could land your heirs in Probate Court and could require the payment of hefty inheritance taxes.

If you are interested in learning more about assuring that your estate plan will accurately reflect your wishes after you die, please contact our office.

## COURT RULES FOR IRS IN FLP CASE

On December 8, 2006, the Eighth Circuit Court of Appeals upheld the Tax Court's ruling in Korby that the assets owned by a Family Limited Partnership (FLP) were included in the taxable estate of the husband and wife that established the FLP. In this case, husband and wife funded an FLP with marketable securities in return for a 98% limited partnership interest, which they gave equally to irrevocable trusts for their children. The assets in the FLP represented almost all of their assets. Soon afterward, the FLP purchased an annuity, showing the FLP as the owner, but

entitling the husband to receive the annuity payments. The FLP also made substantial distributions to the husband and wife which were used to pay many of their household expenses. The Tax Court held that an implied agreement existed that the FLP income would be available to husband and wife for their personal expenses; therefore, the assets of the FLP were included in their taxable estates even though they no longer owned the limited partnership interests. This ruling stresses the importance of adhering to the business formalities of a FLP or Limited

Liability Company (LLC) when the strategy is used in an estate plan. For example, you should keep assets outside of the FLP/LLC that are sufficient to pay for your personal living expenses so that distributions are not made from the FLP/LLC. In addition, only pro rata distributions should be made from the FLP/LLC to the partners/members of the FLP/LLC. Please contact our office if you are interested in discussing the administration of your FLP/LLC or if you would like to discuss the use of these strategies in your estate plan.



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## FIRM NEWS

We are pleased to announce that our new firm name will be WISEMAN BRAY PLLC. Our former member, Lodie V. Biggs, has decided to continue his professional career with another law firm.

In the last issue, we announced that Lindsay A. Jones had joined our firm and would support the firm's estate planning practice. Lindsay recently attended an estate planning conference in Atlanta sponsored

by WealthCounsel. Her participation in the conference afforded her the opportunity to increase her estate planning knowledge and remain current in the ever-changing field of estate planning.

Lindsay has also recently given estate planning seminars to the Junior League and at Millington Naval Air Station. We are constantly making efforts to educate our clients and professional advisors about



estate planning strategies we use in our practice. If you have a group that would benefit from this type of seminar, please call our office.

**Disclaimer** We are obligated by ethical rules to state that this Newsletter is an advertisement. Certifications of Specialization are available to Tennessee lawyers in many areas of practice, including the areas of Civil Trial, Criminal Trial, Business Bankruptcy, Consumer Bankruptcy, Creditor's Rights, Medical Malpractice, Legal Malpractice, Accounting Malpractice, Elder Law, Estate Planning and Family Law. Listing of related or included practice areas in this Newsletter does not constitute or imply a representation of certification of specialization.

Pursuant to recently-enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

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