



Case by Case

A PERIODIC NEWSLETTER

Summer 2007

CIVIL UNIONS: A NEW FRONTIER IN FAMILY LAW

by Keenan McMahon

The practice of family law in Connecticut has been greatly impacted by legislation allowing same sex couples to enter into civil unions in our state. Effective October 1, 2005, a person who is at least eighteen years of age, or who has been emancipated by court decree, may enter into a civil union with an unrelated person of the same sex so long as neither person is currently a party to another civil union or a marriage. A person who meets the eligibility requirements set forth in the legislation, but is under the supervision of a conservator, may also enter into a civil union with written consent from the conservator. The legislation further sets forth the requirements for obtaining a civil union license and entering into a valid civil union. The creation and dissolution of civil unions is a new and burgeoning area of law.

The legislation states, in part, that "Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage." *2005 Conn. Pub. Act 05-10, §14*. However, there are significant differences in the tax treatment of couples who are parties to a civil union and couples who are married. The full impact and implications of those issues remain to be seen.

The federal Defense of Marriage Act and Connecticut's civil union legislation are inconsistent in their treatment of parties to a civil union, creating several income tax issues. One of the most significant issues is that parties to a civil union are faced with the unique dilemma of being eligible for treatment as married persons for Connecticut state tax purposes, but being denied similar treatment for federal tax purposes.

Although Connecticut affords parties to a civil union the benefit of being treated as married for tax purposes, that is not without a hitch. The Connecticut General Assembly set an effective date of January 1, 2006 to afford parties to a civil union this beneficial treatment, even though parties could enter into civil unions as of October 1, 2005. The practical impact is that those parties who entered into a civil union in 2005 were treated as unmarried for both federal and state tax purposes, for that tax year only. Some of the other issues created by the inconsistency in treatment between the federal and state laws are: discrepancies in the classification of a party's income transfers in the form of support of the other party; differences in the treat-

ment of alimony as deductible by the payor and includible as income by the payee upon the dissolution of a civil union; and the handling of property transfers incident to a dissolution of a civil union and whether they will be considered tax-free transfers. These issues will most likely be the subject of IRS rulings and case law in the very near future.

The income tax issues facing parties to a civil union are just the tip of the iceberg. Parties to a civil union who wish to

have children must consider alternatives such as co-parent adoption, artificial insemination and/or surrogacy and must be aware of statutory requirements that apply to them. Whether a child is considered to be an issue of the civil union will depend on when the child is conceived. There are also estate planning issues to consider (i.e., parties to a civil union are not treated as married for purposes of Medicaid planning under the federal Medicaid law). The one definite in this new frontier of civil unions is that, at this point in time, there are more questions than answers. Only over time will these novel issues be resolved. &



CONNECTICUT REVAMPED ESTATE AND GIFT TAXES

WILL THE FEDERAL ESTATE AND GIFT TAX LAW ALSO BE CHANGED?

By Linda S. Brown

May an individual make as many gifts as he or she wants during life? What happens to an individual's money and assets after death? Both the Connecticut legislature and Congress have wrestled with these questions. In June 2005, Governor Rell signed into law the repeal of the Connecticut succession tax and the imposition of a unified gift and estate tax, effective January 1, 2005.

Succession Tax Repealed

The succession tax was a system of taxing assets held by a deceased resident of Connecticut and a non-resident owning real or tangible personal property in Connecticut. Beneficiaries were divided into different classifications and the tax rates varied according to the classifications. The new law repealed the succession tax for estates of all individuals dying on or after January 1, 2005.

New Unified Gift And Estate Tax

The gift tax is a tax on the individual's lifetime transfers of property and the estate tax is a tax on the transfer of assets after death. Previously, Connecticut had separate systems for the taxation of gifts and for the taxation of estates. The new law created a unified lifetime gift and estate tax system, effective for gifts made or individuals dying on or after January 1, 2005. The taxpayer may transfer up to an aggregate amount of \$2 million with no gift and estate tax consequences.

If the taxpayer does substantial gifting during lifetime and uses some of the exemption amount, the balance of the unused exemption amount will be available upon death. The \$2 million exemption amount is above and beyond the gifts of the federal annual exclusion amount to each recipient in a given calendar year (\$12,000 for 2007) and the excluded gifts for education and medical purposes. The new unified gift and estate tax is based on the decedent's gross estate for federal estate tax purposes, less allowable deductions, plus the aggregate amount of Connecticut taxable gifts made by the decedent on or after January 1, 2005.

Tax Rates

The taxing threshold has been raised substantially and many taxpayers may initially be pleased with the new legislation but not when they figure the tax. The tax consequences for exceeding the exemption amount are serious and unfavorable. For example, if the combined amount of gifts made on or after January 1, 2005 and estate assets exceeds the \$2 million exemption level by just \$1, the combined

Connecticut gift and estate tax will be \$101,700.05. The tax rates range from 5.085% to over 16% for taxable estates of \$10.1 million and more.

Resident/Non-Resident

For Connecticut residents, Connecticut taxable gifts exclude real and tangible personal property located outside Connecticut. However, the Connecticut taxable estate includes all assets that would be included in the gross estate for federal estate tax purposes, including out-of-state real and tangible personal property. A credit may be allowed for the amount of estate tax, if any, paid to the other state that is attributed to the real and tangible personal property that is located in that state.

For non-residents owning real and tangible personal property in Connecticut, the Connecticut Gift and Estate Tax Return must be filed. A tax will be owed if the total estate assets are greater than \$2 million. However, Connecticut will calculate the percentage of the value of the Connecticut property to the whole estate and will use this to pro-rate the tax owed to Connecticut.

Federal Gift and Estate Taxes: Will They Change?

The taxpayer must also be aware of the federal gift and estate tax laws. Today, there is a lifetime gift tax exclusion amount of \$1 million. This is above and beyond the gifts of the federal annual exclusion amount to each recipient in a given calendar year (\$12,000 for 2007) and the gifts for education and medical purposes, which are not included in the \$1 million cumulative figure.

For individuals dying in 2007-2008, the estate tax exemption amount is \$2 million; for 2009, \$3.5 million, with a tax rate of 45%. For individuals dying in 2010, the estate tax is repealed. In 2011, the estate tax exemption amount returns to the 2001 level of \$1 million.

Both houses of Congress have debated the issue of the repeal of the federal estate tax but with no resulting change to the existing law. We anticipate that legislative changes will occur between now and 2009, and that the amount that will be exempt from federal estate tax will be raised from the current \$2 million level, perhaps to the range of \$3 million to \$5 million per individual taxpayer. Until new legislation is passed, however, the federal gift and estate tax laws in place since 2001 will remain in effect. ☺

THE CONNECTICUT ESTATE AND GIFT TAX LAW: WHAT DOES IT MEAN FOR YOU?

By Alice Ann Fitzpatrick

The Connecticut estate and gift tax law provides both new opportunities and new pitfalls. Taxpayers can take advantage of the unified gift and estate tax system in many ways. Here are a few:

- Make annual exclusion gifts (\$12,000 in 2007) to reduce the taxable estate. This is helpful for those individuals with estates of \$2 million or more;
- Make direct payments of educational expenses for grandchildren. Such payments are exempt from both state and federal gift tax;
- Increase the size of gifts to family members, making gifts of more than \$12,000. These gifts reduce the taxable estate initially, and reduce it further because the income from, or increased value of, the gifted assets will not be part of the estate at death. Gifting more than \$12,000 does, however, reduce the exemption amount available at death;
- Increase the size of gifts to charities. Gifts of more than \$12,000 provide estate reduction benefits, but also provide an income tax deduction to the donor;
- Create a Family Limited Partnership to hold the family business. Such gifts are subject to discounts reducing the value of the gifts. Under the new Connecticut law, gifts made in conjunction with that transfer are no longer subject to an immediate state gift tax;

In addition to these planning opportunities, Connecticut law now presents certain challenges. Most important among these is the need to determine whether or not an individual's current estate plan is still what he wants and needs. Many older Wills, for example, contain mandatory credit shelter trusts. When the estate tax exclusion amount was lower, it made estate planning sense for that amount to be placed in trust. Now that the state and federal exclusion amounts are \$2 million, a mandatory trust may result in the entire estate being placed in trust. Many surviving spouses will not be pleased with this result.

Every new tax law requires re-thinking on the part of clients and their attorneys. We at Cacace, Tusch & Santagata look forward to working with our clients to ensure that they maximize their estate planning opportunities.

Personal Notes

Michael Cacace recently lectured at a seminar, sponsored by Lorman Educational Services, on "Zoning and Land Use in Connecticut," authored an article entitled "Lawyer's Role Reflects Best and Worst of Society" in the May, 2007, issue of Connecticut Lawyer magazine, and will be listed in the June 25 issue of New York Magazine as one of the best Real Estate lawyers in the region.

Paul Tusch, Michael Cacace and Richard Fisher were each named as "Super Lawyers" in the February 2007 issue of Connecticut Magazine, Paul for Family Law, Michael for Land Use and Richard for Estate Law. Only 5% of Connecticut attorneys were selected by their peers for this honor.

Mark Santagata has been appointed to serve as Counsel to the Board of Directors of Kids in Crisis.

Alice Ann Fitzpatrick and Ronald E. Kowalski, II have been awarded the "AV

Peer Review Rating" by LexisNexis Martindale-Hubbell. AV is the highest possible rating, signifying very high to preeminent legal ability and integrity, and is awarded based on confidential survey responses from other practicing attorneys.

Richard Fisher is serving as co-chair of the committee of the CBA Estates & Probate Section that drafted changes in Connecticut's living will/advance directive laws and is presently working on changes to the conservatorship laws.

Judith Ellenthal spoke on 1031 tax free property exchanges in a seminar entitled "Real Estate for Profit" co-sponsored by Coldwell Banker, Greenwich Bank & Trust and Showcase Your Space, and is now a co-chair of the Real Estate Committee of the Fairfield County Bar Association, Inc.

Keenan McMahon was quoted in "Solving Problems is the Crux of Family Law," by Rhea Hirshman, featured in the Winter 2006 edition of Quinipiac Law Magazine.

Meredith Denecke volunteered as a Judge for the 16th Annual Mock Trial Program held at the Stamford Superior Court and participated in Stamford Education Association's "Teacher for a Day" program. She has also joined the Board of Directors of the Stamford Museum and Nature Center.

Jane Freeman lectured at a Lorman Education Services seminar entitled "Plat and Subdivision Law in Connecticut" in Hartford on the topic of "Public Improvements in Subdivisions."

Ronald E. Kowalski, II is now a Volunteer Presenter for The Climate Project, speaking on the topic of global climate change, after participating in a training program led by former Vice-President Al Gore and a team of scientists in Nashville, Tennessee. Ron recently appeared on The Exchange with David Smith on WICC AM 600 to discuss global warming.

Linda S. Brown spoke on some of the operational and legal issues facing the elderly in a workshop entitled "Caring for the Aging" at Temple Israel in Westport.

OUR MAILING ADDRESS HAS CHANGED!

Please note that in connection with Post Office restructuring, our mailing address and zip code have been changed. Our offices remain at 777 Summer Street in Stamford, but we are no longer receiving mail at our post office box. To avoid delays in delivery of mail, please address all correspondence to: Cacace, Tusch & Santagata, 777 Summer Street, Stamford, CT 06901-1022. Thank you!

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The attorneys of Cacace, Tusch & Santagata. Seated (L to R): Partners Ron Kowalski, Paul Tusch, Michael Cacace, Mark Santagata and Richard Fisher; Standing (L to R): Meredith Denecke, Keenan McMahon, Mark Koczarski, Judith Ellenthal, Katherine Blakeslee, Jane Freeman, Michael Thomas, Linda Brown and Alice Ann Fitzpatrick.

CACACE, TUSCH & SANTAGATA is a full-service general practice law firm dedicated to providing its clients with quality legal work. The firm occupies the second and third floors of the office building located at 777 Summer Street, Stamford, Connecticut, and has an office at 124 West Putnam Avenue, Greenwich, Connecticut. Our attorneys' areas of practice include:

ZONING AND LAND USE PLANNING ❖ REAL ESTATE TRANSACTIONS ❖ CIVIL LITIGATION
ADMINISTRATIVE HEARINGS AND APPEALS ❖ VALUATION OF PROPERTY ❖ FAMILY LAW
BANKRUPTCY ❖ LANDLORD/TENANT LAW ❖ ESTATE PLANNING AND PROBATE ❖ ELDER LAW
EMPLOYMENT LAW ❖ BUSINESS AND CORPORATE LAW ❖ CRIMINAL LAW

Case by Case is intended to provide a periodic discussion of developments and issues of interest to our clients and friends. If readers have questions concerning the matters discussed herein, they should direct them to Ronald E. Kowalski II, the attorney responsible for the newsletter's content, at **CACACE, TUSCH & SANTAGATA** by telephone at (203) 327-2000 or by e-mail at rkowalski@lawets.com.

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