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on the Subject

April 2018

Summary of Estate Planning Provisions of the Tax Cuts and Jobs Act of 2017

Andrew T. Peebles

As you likely know, Congress recently passed, and the President signed, the Tax Cuts and Jobs Act at the end of last year. This Act constitutes the most extensive change to the tax code in over thirty years, and significantly alters how individuals and businesses will be taxed. Several important revisions to the tax code have been made that may affect your estate plan. A summary of these key provisions is set out below.

1. Estate, Gift, and Generation-Skipping Transfer Tax Amendments

The Act temporarily doubles the basic exclusion amount for estate and gift taxes, as well as the exclusion amount for the generation-skipping transfer tax (imposed on amounts transferred to grandchildren and others more than 37.5 years younger than you). Under the old law, the first $5.6 million ($11.2 million for married couples electing portability) was exempt from federal estate and gift taxes. Under the new law, for gifts made and/or decedent's dying between January 1, 2018 and December 31, 2025, an individual is allowed to exempt the first $11.18 million ($22.36 million for married couples electing portability) from federal estate and gift taxes, subject to inflation adjustments. Prior to this change, only .004% of estates in the country were subject to estate taxes. That number will most certainly decrease even further in light of these changes, leaving estate tax a non-issue for most taxpayers.

However, this does not mean that estate planning itself is no longer important. While it is true that, for most Americans, recent changes in federal tax law has removed the emphasis on estate tax and gift tax planning, the real reasons we need to do estate planning continue to remain at the forefront. These include providing for the management of your assets in the event of incapacity; ensuring your assets are managed and distributed pursuant to your specific instructions at your death; protecting your estate from a spendthrift child, a child's creditors, and from being part of a child's divorce proceedings; providing for children or grandchildren with disabilities or special needs; charitable gift planning; business succession planning; and asset protection planning. In short, Revocable Trusts, Wills, Durable Powers of Attorney, and Health Care Directives will still be important tools, even for individuals not subject to the estate tax.

For those individuals whose estates may still be subject to the reach of the federal estate tax (and its 40% tax bracket), the changes to the law offer some important opportunities to take advantage of the increased exclusion amounts before they expire or before a new Congress and President change the law. The current increased amounts provide the opportunity to leverage gifts for the benefit of future generations.

2. Stepped-Up Basis for Inherited Assets

Heirs will continue to receive a "step-up" in basis for property they receive as of the date of death of the decedent. This allows a taxpayer to readjust the value of an appreciated asset upon inheritance, fixing the basis as the higher market value of the asset at the time of inheritance rather than its cost basis (i.e. what the original purchaser paid for it). Therefore, once the new owner decides to sell the asset, capital gains tax will be minimized. Proper planning to ensure that appreciated assets receive a basis adjustment is now more important than ever.

3. Income Tax Rates for Estates and Trusts Updated

The previous income tax brackets and rates applicable to estates and trusts (originally 15%, 25%, 28%, 33%, and 39.6%) have been updated and simplified (10%, 24%, 35%, and 37%). It is important to note that estates and trusts will still reach the highest income tax bracket at only $12,500 of income.

4. Gift Tax Annual Exclusion

The gift tax annual exclusion amount remains unchanged by the Act. However, the rate of inflation has increased the amount an individual may gift to $15,000 per donee, per year.

5. Charitable Deduction Increased

Under the new law regarding charitable contributions made by taxpayers, the original 50% limitation on deductions for cash contributions to public charities and certain private foundations has now been increased to 60% of the taxpayer's adjusted gross income. Contributions exceeding this 60% limitation are generally allowed to be carried forward and deducted for up to 5 years.

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in this issue

What is the Best Way to Remove Non-Paying Tenants? A Recent Decision of the Missouri Supreme Court May Change the Answer

Jay Preston

Far too often, especially in the context of residential rentals, tenants fail to pay rent and/or move out. When this happens every landlord is faced with the question of what to do. In addressing this question, it is essential to know your options as a landlord, and, maybe more importantly, the consequences of each potential option.

One of the standard options is to have an attorney file a lawsuit, but even that choice has options within it; file an action for unlawful detainer or an action for rent and possession. The basic features of an unlawful detainer action are: (1) the action only applies if the lease has been terminated; (2) the tenant may request a jury trial; (3) no counterclaims are permitted; and (4) the landlord is entitled to double damages for the period of unlawful detainer. The basic features of a rent and possession action are: (1) the action only applies if the tenant fails to pay rent; (2) the tenant may request a jury trial; (3) the tenant is entitled to file a counterclaim; and (4) the tenant can stay the proceedings by paying all rent then due, plus court costs, to the landlord.

Reviewing these basic features, you may ask: why do landlords typically file rent and possession actions when an unlawful detainer action appears more attractive? One of the answers is that prior to December 5, 2017, a tenant was not entitled to request a jury trial in a rent and possession action. Rent and possession actions are filed in the associate division of the circuit court, and prior to 2014 if the tenant or landlord did not agree with the decision of the Judge they could appeal to the circuit court. Once before the circuit court either party could request a trial by jury. Missouri's Constitution grants citizens the right to a trial by jury, and past decisions of the Missouri Supreme Court held that in rent and possession actions, since a jury trial was available at some point in the process (the appeal to the circuit court) the constitutional right to a jury trial was satisfied.

This conclusion recently changed as a result of a revision to a Missouri Statute. In 2014, §535.110, RSMo. was amended and the provision allowing an appeal to the circuit court in rent and possession actions was removed. In the case of *Brainchild Holdings, LLC v. Cameron*, 534 S.W.3d 243 (Mo. banc 2017), the Missouri Supreme Court addressed the impact of this statutory revision. The Court found that due to the elimination of the right to appeal to the circuit court, and the resulting elimination of the right to request a jury trial at the circuit court level, that tenants and/or landlords are now permitted to request a jury trial in a rent and possession action in the associate division of the circuit court.

The reason this change is so important to landlords is that a request by a tenant for a jury trial will drag out the legal process, and allow the tenant to remain on the property, presumably without paying rent. Courts are required to give rent and possession trials priority in scheduling, and in the past judges would often schedule the trial within a few weeks of the initial hearing, but jury trials are a different story. This change is new and the courts are still adapting, but if a tenant requests a jury the trial may not be scheduled for 30 to 60 days, or potentially longer.

To avoid such an unwanted scenario, landlords need to ensure that their lease agreements contain language that effectively waves a tenant's right to a jury trial, and they may wish to revisit their procedure with respect to tenants that are past due on rent so as to know the answer to the following questions. Is it better to terminate the lease and file an unlawful detainer action or file a rent and possession action? Does my lease allow for immediate termination if rent is past due? What is the process for terminating a lease? How quickly can and/or should I act if a tenant is past due on rent?

Unfortunately, every landlord, big or small, will likely be faced with a nonpaying tenant. When this occurs you want to be sure that you know the most effective, fastest, and cheapest means to remove the non-paying tenant, and that your lease agreement provides you with the best tools for ridding yourself of a nonpaying tenant. Often, an upfront investment of time and effort on your lease and eviction procedures will result in significant savings when you are faced with the inevitable, a nonpaying tenant.

Summary of Estate Planning Provisions of the Tax Cuts and Jobs Act of 2017 *Continued from Page 1*

6. Section 529 College Savings Plans Expanded

Section 529 Plans are state-sponsored, tax-advantaged savings plans designed to encourage saving for the future educational expenses of the plan beneficiary. Under prior law, these plans only applied to college expenses. Therefore, tuition for elementary or secondary schools was not a "qualified expense" under the plan. New law provides that up to $10,000 in distributions per year, per child, can be taken tax-free out of 529 Plans to pay for private elementary and secondary educational expenses.

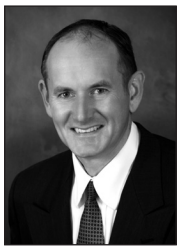
7. ABLE Account Contributions Expanded

ABLE Accounts are savings plans established to meet the qualified disability expenses of the account beneficiary. These accounts are very similar to Section 529 Plans, ensuring that all funds within the account grow tax free as long as the funds are used for qualifying disability expenses, and that such funds will not affect the disabled person's qualification for Medicaid, SSI, and other government benefits. Previously, total contributions to an ABLE account in a single year from all contributors could not exceed the annual exclusion amount ($15,000 in 2018). New law allows an ABLE account's designated beneficiary to contribute an additional amount up to the lesser of (1) the federal poverty line for a one-person household, or (2) the individual's total compensation for the year.

If you have been sitting on the sidelines, waiting to see what Congress would do, the wait is over; the time to review your old documents is now. If you would like to discuss these issues in more detail, please contact a member of our Estate Planning Practice Group to schedule an appointment.

If you would like to review a more extensive summary of the most important provisions of the Tax Cuts and Jobs Act which, in addition to estate planning provisions, also focuses on new laws affecting individual taxpayers and businesses, please email us at cecb@cecb.com to request a copy, or visit our company page on Facebook (www.facebook.com/CECBLAW/) to review the summary there.

Mechanic's Liens Against Homeowners—Simplified



Christiaan D. Horton

Ask any homeowner renovating or constructing a home and you will get unanimous agreement. Nobody wants to pay for labor or materials twice. However, with frequency, this happens in Missouri. Homeowners must beware when signing proposals and/or contracts with anyone providing labor or materials for their home. Consider these guidelines and suggestions in this important area of the law.

General Contractors and Subcontractors—What is the Difference?

A general contractor is one who has a direct contractual relationship with the owner(s) of the property. Typically, a general contractor will hire subcontractors more proficient in their respective trades to complete various portions of the work. This is true for most builders of residential homes. They hire a framing crew, an electrician, a plumber, a cabinet and trim carpenter and others who perform labor and supply materials for the project while they serve to coordinate the work and communications with the owners. What happens if the general contractor fails to pay the subcontractors for work that is done after the owner has paid for such work? The homeowner becomes exposed to a subcontractor mechanic's lien and most likely, very costly litigation. Let's explore some prerequisites for mechanic's liens.

Contractors must supply statutory notices before they have a right to assert a mechanic's lien.

A general contractor is required by Missouri law to provide a special notice to owners before filing a mechanic's lien. The Notice must be conspicuous and must be provided at the front end of the project. Specifically, the Notice, to be compliant with § 429.012, RSMo., must state in at least 10 point type:

NOTICE TO OWNER

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMo. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

Special rules apply for subcontractors who seek mechanic's lien protection on residential construction. They are required to obtain a consent form signed and dated by the Owner(s) as follows:

CONSENT OF OWNER

CONSENT IS HEREBY GIVEN FOR FILING OF MECHANIC'S LIENS BY ANY PERSON WHO SUPPLIES MATERIALS OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT ON THE PROPERTY ON WHICH IT IS LOCATED IF THEY ARE NOT PAID.

This executed consent form, also made in ten point bold type, is a prerequisite for the filing of a mechanic's lien by a subcontractor, supplier, architect or engineer in a building contract for the repair or remodeling of an owner-occupied residential property of four units or less. § 429.013, RSMo. However, this consent does not apply to a newly constructed residence. Further, this consent form only applies to subcontractors, suppliers, architects and engineers--the original contractor's lien rights are predicated on the owner receiving the notice provided in § 429.012, RSMo. Why? Because the owner and general contractor are deemed to be in communication on project issues and have better knowledge of what each is doing in the performance of their agreement.

The 10 Day Notice Rule Applicable to Subcontractors

Every person except the original contractor, who may wish to avail himself of the benefit of the provisions of Missouri's mechanic's lien law, shall give ten days' notice before the filing of the lien, as herein required, to the owner, owners or agent, or either of them, that he holds a claim against such building or improvement, setting forth the amount and from whom the same is due. Such notice may be served by any officer authorized by law to serve process in civil actions, or by any person who would be a competent witness to prove service of the Notice. § 429.100, RSMo.

The 6 Month Rule on Mechanic's Lien Filing

Both general contractors and subcontractors have six (6) months to file their mechanic's lien from the date their last labor or materials were supplied to the property and incorporated into the construction which is essentially "when the indebtedness" for such items becomes due. § 429.080, RSMo. Subcontractors must watch their deadlines very carefully because their Notice must be delivered to owners before the 6-month period expires. Timelines are critical with mechanic's lien filings and perfection.

Homeowner Protection with Lien Waivers

Lien waivers signed by the general contractor and also subcontractors performing labor and/or supplying materials to the project can be a very important protection for homeowners. A lien waiver operates as a bar against double payment for the items set forth in the wavier. Lien waivers should always be obtained prior to payment by the owners for work performed. They should be carefully and clearly drafted so they will hold up in a court of law.

The Role of Legal Counsel

Many people will agree to sign contractor proposals for significant sums of money for home construction and improvements, but fail to seek attorney guidance and recommendations in advance. Homeowners should consult with an attorney at the beginning of the project and along the way to make sure they will not pay for materials or labor twice and to best protect their rights under contract documents so project expectations are met. Special contractual provisions should be inserted in contracts to provide homeowners with protections on payment, workmanship, warranties, insurance, and mechanic's lien avoidance, just to name a few. Moreover, homeowners should also know exactly who is performing work or supplying materials on their property. ***Requesting a contractor to provide a certified list of laborers and suppliers is highly recommended.***

Advice in this area of the law is key to avoid costly litigation when the general contractor fails to perform his side of the bargain. The construction season is upon us and the litigation group at Carnahan, Evans, Cantwell & Brown, P.C. is ready to consult with owners in this specialized area of the law as new projects are planned for residential or commercial construction.

Four CECB Attorneys Selected for Inclusion on the 2017 Missouri-Kansas *Super Lawyers* List; One Included on the *Rising Stars* List

Each year, *Law & Politics Magazine* invites lawyers in each state to nominate top Missouri and Kansas lawyers, they've personally observed in action. Research is then conducted on each candidate dividing them into practice areas. A panel of preeminent peers in each practice area then evaluates each candidate. From the original pool of candidates, only 5 percent of Missouri and Kansas attorneys are selected for inclusion in *Super Lawyers*.

Meet the four CECB Attorneys that were included on the list.

John M. Carnahan III in the Transactional and Estate Planning Practice Groups of Carnahan, Evans, Cantwell & Brown, P.C. He concentrates his practice in the areas of tax planning, corporate transactions, estate planning, and business succession planning for family-owned businesses. Mr. Carnahan has been awarded an AV Rating by Martindale-Hubbell.

Mr. Carnahan has served as author and editor for the Missouri Law Review, the Current Case Development ABA Section of S Corporations, and The Tax Lawyer.

Mr. Carnahan is a member of the American College of Tax Counsel (ACTC) and servers as Regent for the 8th Circuit. The College is composed of Fellows (approximately 700 current members) chosen by their peers in recognition of their outstanding reputations and contributions in the field of tax law and is governed by a Board of Regents consisting of one Regent from each federal judicial circuit and two Regents at large.

In 2005, the Missouri Senate confirmed Mr. Carnahan's appointment by Governor Matt Blunt to serve on the University of Missouri Board of Curators, representing the Seventh Congressional District.

Mr. Carnahan is also a member of the Springfield Metropolitan and American (Member, Sections on: Taxation, Business Law, and Real Property, Probate and Trust Law) Bar Associations, as well as The Missouri Bar (Chairman, Taxation Committee, 1984-1985). He is a Fellow of the American College of Tax Counsel, the American Bar Foundation, the Missouri Bar Foundation, and has been active in Bar Association activities involving continuing legal education. Mr. Carnahan has been included on the *Missouri Kansas Super Lawyers*® list published by *Law and Politics Magazine* since 2006.

Joseph D. "Chip" Sheppard, III is a shareholder in the Litigation/Dispute Resolution and Transactional Practice Groups of Carnahan, Evans, Cantwell & Brown, P.C. He concentrates his practice in the areas of real estate, business, employment, banking, securities and intellectual property litigation, dispute resolution and transactions. Mr. Sheppard has tried more than 50 security and other arbitrations, state and federal trials, both jury and non-jury, in his areas of concentration.

Mr. Sheppard is past President of the Springfield Metropolitan Bar Association and past Chair of the OTC Board of Trustees. In 2005 he was elected as a Fellow of the American Bar Association, an honor bestowed upon less than .5 percent of the. In 2008, he Co-Chaired the Greene Countians for Fair and Impartial Judges Committee which was responsible for bringing the Missouri Court Plan to Greene County, was a finalist for Missouri Lawyer of the Year and received the Missouri Bar Association and Springfield Metropolitan Bar Association President's Awards in recognition of extraordinary service to those Associations and the legal profession. Finally, he has been named to the "Best Lawyers in America" list by the publication of the same name.

Mr. Sheppard's community involvement also includes serving as a director of Hickory Hills Country Club (2003-2011), as well as serving as a member of the Chamber of Commerce Governmental Relations Committee (1995-present). He also serves as an Elder at First and Calvary Presbyterian Church and on various committees. Mr. Sheppard has also served on the Board of Directors for Leadership Springfield and the Housing Authority of Springfield.

Chip was selected to the *Missouri Kansas Super Lawyers*® list in 2005 and 2006 and again for 2010-2017.

Thomas D. Peebles, Jr is a shareholder and member of the Estate Planning Practice Group of Carnahan, Evans, Cantwell & Brown, P.C. Mr. Peebles has concentrated his practice in estate planning and estate and trust administration matterssince 1980.

Mr. Peebles has significant experience in the preparation of basic and sophisticated estate planning documents, and in wealth transfer planning for high net worth clients, closely held business owners and their families. He has been awarded an AV Rating from Martindale-Hubbell in recognition of his preeminent work in assisting his clients in achieving their estate planning goals and objectives. In 2004, Mr. Peebles was elected a Fellow of The American College of Trust and Estate Counsel in recognition of distinguished service in the practice of estate planning, probate and trust law.

Mr. Peebles has been honored since 2010 by being named to the "Best Lawyers in America" list. In 2007, Mr. Peebles was elected by his peers as a Fellow in the American Bar Foundation. Membership as a Fellow in the American Bar Foundation is limited to one-third of one percent of the lawyers in America and is in recognition of a lawyer whose professional, public and private career has demonstrated outstanding dedication to the welfare of the community and to the traditions of the profession.

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Missouri-Kansas Super Lawyers - *Continued from Page 4*

In addition to his membership in the American College of Trust and Estate Counsel, Mr. Peebles is a member of the Springfield Metropolitan Bar Association (Chair, Probate and Trust Committee, 1991 to 1992), the Missouri Bar (Member, Probate and Trust Committee), the Greene County Estate Planning Council (President, 1990-1991), and the American Bar Association (Member, Real Property, Probate and Trust Law Section). Mr. Peebles was selected to the *Missouri Kansas Super Lawyers*® list in 2005 and 2006 and again for 2010-2017.

John E. Price is a shareholder in the Litigation/Dispute Resolution Practice Group of Carnahan, Evans, Cantwell & Brown, P.C. He concentrates his practice in the areas of civil and business litigation, environmental law, corporate and real estate law and appellate practice.

Mr. Price has significant experience in environmental law over the last 20 years. He has handled litigation with government agencies and private parties under the Clean Air Act, Clean Water Act, Superfund and toxic torts. He regularly advises business clients on environmental regulation, permitting issues and real estate transactions.

Mr. Price also has many years experience with large and complex real estate and business transactions, and with commercial litigation involving leases, contracts and insurance disputes. He has argued over 75 appeals in federal and state appellate courts.

Mr. Price has served on the Boards of the Wilson's Creek National Battlefield Foundation, the Visiting Nurse Association, and Project Parkway in Springfield. Additionally, Mr. Price is currently serving a two-year term as President of the Springfield Sister Cities Association Board of Directors.

Mr. Price received his bachelor's degree from the University of Northern Iowa, with honors, in 1975 and his law degree, cum laude, in 1979 from the University of Missouri at Columbia (Member of Order of the Coif, and Note and Comment Editor of the Missouri Law Review).

Mr. Price is a member of the Springfield Metropolitan and American Bar Associations (Natural Resources Law Section), as well as the Missouri Bar (District 16 Representative, Young Lawyers Section Counsel, 1983-1988; Young Lawyer representative to the American Bar Association House of Delegates, 1984-1986; Energy and Environmental Law Committee). He has been awarded an AV Rating by Martindale-Hubbell.

Mr. Price was selected to the *Missouri Kansas Super Lawyers*® list in 2007-2013 and again for 2016-2017.

Those named to the *Rising Stars* list go through the same selection process as those named to the *Super Lawyers* list with the exception that the *Rising Star* candidate must have been in practice less than 10 years or be under the age of 40. No more than 2.5 percent are named to the *Rising Stars* list.

Megan E. McCullough is an associate in the Litigation/Dispute Resolution Practice Group of Carnahan Evans Cantwell & Brown, PC. She concentrates her practice in the areas of federal criminal defense, construction and real estate litigation, and other general civil litigation matters. She also represents select clients facing criminal charges at the state level. She is a member of the Criminal Justice Act Panel of the United States District Court for the Western District of Missouri through which she accepts court appointments on federal criminal cases.

Megan has been published twice in the Annual Meeting Notebook of the West Virginia Trial Advocacy Counsel and also served as a chapter editor on Lindemann & Kadue, Age Discrimination in Employment Law (2d Ed. 2015).

While in law school, Megan served as an Executive Editor for the Duquesne Law Review. She was a member of the trial team that won the regional ABA Labor and Employment Trial Competition in Chicago, Illinois and went on to place third in the national competition. She was awarded the Shalom Moot Court Award for outstanding trial advocacy and was awarded membership to the Louis L. Manderino Honor Society for her meritorious service to the trial advocacy program at Duquesne Law.

Megan is a member of the Missouri Bar, the Springfield Metropolitan Bar Association, the Southern Missouri Women Lawyers organization, and the Christian County Bar Association. She is admitted to practice before the United States District Courts for the Western District of Missouri, the Northern and Southern Districts of West Virginia and the Western District of Pennsylvania, as well as the United States Court of Appeals for the Fourth Circuit.

In 2015 and 2016, she was recognized by Super Lawyers magazine as a top-rated lawyer and "Rising Star" attorney in West Virginia and recognized in 2017 in Missouri.

Celebrity Estate Planning Bloopers

Andrew T. Peebles

We all have a tendency to elevate celebrities to a position far above the "common man" to a point where it seems they can do no wrong. But as the supermarket tabloids, late night talk shows, and other media outlets frequently tend to show, celebrities make mistakes just as we do (but on a far bigger stage). These mistakes don't end at messy domestic disputes, late night altercations, or substance abuse issues. Celebrities have also been known to make costly errors when it comes to planning for the transfer of their massive wealth to the next generation. As the following celebrity estate planning blunders show, no one is immune from the consequences of inadequate planning.

Prince: No Estate Plan

Prince Rogers Nelson, the singer-songwriter who brought us "Purple Rain", passed away in April 2016. His death was not only shocking due to his young age (57), but also due to the fact that he had failed to set up any semblance of an estate plan prior to his death (i.e. he died "intestate"). As a result, Prince left no documented evidence of how he desired his multi-million dollar estate to be distributed among family members and friends. Instead, a Minnesota judge is in the process of deciding how to distribute Prince's estimated $300 million estate among six siblings, according to Minnesota state law. This process, known as probate, will take years to go through due to the size and complexity of Prince's estate, and the fact that other potential heirs have surfaced, including a federal inmate claiming to be Prince's son. Throughout this time-consuming process, the estate will pay thousands of dollars in court costs and attorney's fees. Furthermore, due to Prince's lack of tax planning, his entire estate will be subject to the 40% estate tax rate, nearly cutting in half the amount of money his heirs will receive once the estate is finally distributed.

Lesson: Not preparing at least a basic estate plan is a serious mistake. Failing to leave any evidence of your wishes regarding how you want your property distributed following death leaves your family members in a difficult position, and allows a court to determine who receives your property according to state law. Additionally, court battles over who should manage your estate, and who should care for minor or disabled children will frequently ensue, needlessly tearing apart families. Unfortunately, it's estimated that 60-70% of adults in the U.S. don't have any estate planning documents in place. Don't leave your family in this difficult position. Creating a basic estate plan is an easy solution, and makes life easier for those you leave behind during an already difficult time.

James Gandolfini: Poor Planning for Estate Taxes

Sopranos actor James Gandolfini, best known for his alter ego Tony Soprano, was reportedly worth $70 million when he died in June 2013 of a heart attack in Rome. He had the foresight to at least execute a Last Will and Testament which sufficiently provided for his wife, daughter and two sisters. However, Gandolfini failed to implement proper tax planning in his estate plan. As a result, his entire estate was subject to the 40% estate tax rate, in addition to the 15% estate tax rate imposed by the State of New York. Therefore, the majority of Gandolfini's estate will be consumed by taxes, a result that is undoubtedly contrary from his (or his family's) wishes.

Lesson: For many people, a simple Will isn't enough, and this is especially the case for those (like celebrities) with significant wealth. Currently, an individual can pass away with approximately $11.2 million in assets ($22.4 million for married couples) and not have to worry about federal estate taxes. However, anything above this amount will be subject to the 40% federal estate tax rate. If you are near or above this threshold, there are several options you need to consider to avoid a large chunk of your estate being consumed by taxes, including, among other strategies, irrevocable life insurance trusts, charitable remainder trusts, and lifetime gifting strategies.

Michael Jackson: Trust Unfunded

Michael Jackson's death in June 2009 touched off a string of ongoing court battles over his $600 million estate. One of the biggest estate planning missteps committed by the King of Pop was creating a Trust — and then failing to fund it. In other words, Jackson neglected to re-title his property in the Trust's name, instead leaving such property in his individual name, and forcing application of the probate process. As a result, Jackson's estate remains open, the named beneficiaries of Jackson's Trust have found themselves numerous times in probate court attempting to determine how to distribute his erroneously titled property, and every action taken with regard to the estate is subject to costly and burdensome court approval.

Lesson: It is vital to understand that creating a Trust Agreement is not the end of the process. Unless you re-title your property in the Trust's name (i.e. fund the trust), the Trust is merely an empty shell with no impact on how your estate should be managed and ultimately distributed. Only property owned by the Trust itself will pass subject to its terms. This trust funding step may include deeding real property from individuals to the Trustee of your Trust, updating beneficiary designations on life insurance or retirement accounts to name the Trust, and ensuring that transfer-on-death or payable-on-death designations reflect the Trust as well. If this important step is ignored, all of the time and money spent in setting up a carefully crafted estate plan will have been for naught.

Heath Ledger: Inadvertent Omission of a Child

After actor Heath Ledger died in January 2008, it was discovered that he had failed to update a Will created prior to the birth of his daughter, Matilda, who remained unnamed as a beneficiary in the document. As a result, Ledger's entire $20 million estate was distributed to his parents and three sisters, completely disinheriting his daughter, a result that Ledger could hardly have desired. Ledger's parents quickly pledged to donate their inheritance to Matilda anyway, but had they not been such understanding people, Matilda would have been out of luck.

Lesson: As easy as it may be to forget about your newly created estate plan and move on with your life, there are times that you need to reevaluate it in order to accurately reflect the changes of life. This is especially true after marriage or divorce, and after the birth of a child. If you allow your estate plan to remain unchanged for many years, your estate may be distributed in ways that you neither desired nor expected.

Florence Griffith Joyner: Keeping Will Location Secret

Olympian sprinter Florence (Flo Jo) Griffith Joyner was considered to be the fastest woman of all time, having broken

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Reviving Judgments in Missouri - Judgment Creditors Need to Pay Close Attention to the 10-year Statute

Megan E. McCullough

Under Missouri law, a judgment is considered "active" (collectible) for ten years. This includes a monetary judgment as well as any real property liens resulting from that judgment. Whether the judgment can impose a lien depends upon where it was entered:

- A judgment from a Circuit Court in Missouri automatically imposes a lien upon the judgment debtor's real property located within the county in which the judgment was entered. § 517.151, RSMo.
- A judgment from an Associate Circuit Court in Missouri imposes a lien upon real property within the county in which the judgment was entered if transcribed to the Circuit Court in that county. § 517.141, RSMo.
- A judgment from a federal court or other state court may become a lien on real property if transcribed in the Circuit Court where the real property is located. § 511.440, RSMo.
- A judgment obtained in a small claims court may not become a lien on real property. § 517.151, RSMo.

Section 516.350.1, RSMo, provides that a judgment is conclusively presumed paid after ten years from the original date the judgment was entered or from the last payment made on the judgment. This presumption applies to all judgments entered in any court within the United States except for judgments awarding maintenance, child support, or property division in connection with a dissolution proceeding if distribution is mandated by the making of payments over time in the future. The presumption also applies such that it extinguishes any real property liens created as a result of the judgment.

It is essential for a judgment creditor to be aware of this statutory presumption and the 10-year timeline because once the ten years has expired, there is no relief for the creditor. The statute and the related caselaw in Missouri is clear that "[o]nce the conclusive presumption arises, the judgment cannot be revived and no suit can be maintained upon it." *Pirtle v. Cook*, 956 S.W.2d 235, 238 (Mo. en banc 1997). In other words, a judgment creditor has no right to bring an action against the judgment debtor or engage in any other efforts to collect on the judgment after the ten years has expired. Indeed, at that time, the judgment creditor is considered to have been paid in full.

There is a procedure under Missouri law, however, whereby a judgment creditor can seek an extension of the ten years during which a judgment is active. To do so, the judgment creditor must file a motion to revive the judgment in the court which entered it. Importantly, the motion must be filed before the ten years expires. Upon the filing of a motion to revive judgment, the court must issue an order to the judgment debtor directing the debtor to show cause why the judgment should not be revived. If the judgment debtor fails to appear and show cause why the judgment should not be revived, the court must enter an order reviving the judgment.

If the court enters an order reviving the judgment, the judgment will be continued for another period of time, during which the judgment creditor can file subsequent, additional motions to revive as needed. See § 511.430, RSMo. Because Section 511.430 still refers to the three-year period for which real property liens were considered active under the old rule, it seems the legislature still needs to amend this provision so as to be consistent with the ten-year rule now in place.

Navigating this area of the law requires careful attention to statutory mandates in order to maintain collectability of your judgment and active status of your lien upon a judgment debtor's real property. We here at CECB can assist you with this process so you arrive at your ultimate destination – collection of your judgment.

Celebrity Estate Planning Bloopers *Continued from Page 6*

several records in the 1988 Olympics. Sadly, she died ten years later from an epileptic seizure at 38 years old. Although she had created a Last Will and Testament, the document could never be located. As a result, Joyner was considered to have died intestate (without a Will). Therefore, it took a probate court four years to complete the administration of her estate, and her property was distributed according to state law, rather than as outlined in her missing Will. In the end, this process resulted in years of litigation and difficulty for her family.

Lesson: Without a Will to instruct a probate court as to your final intentions, there is no way to adequately provide for and protect your loved ones. Unfortunately, a missing Will is the same as having no Will whatsoever. It is therefore vitally important that you advise the trusted individuals who you have appointed as Executor, Personal Representative, or Trustee of your estate as to the location of your final estate planning documents, or at the very least, maintain copies. A safety deposit box, safe, or the office of your drafting attorney are all safe locations to keep your estate planning documents.

Don't Repeat These Mistakes!

As these celebrity case studies show, there are a multitude of mistakes that can be made when it comes to one's estate plan, all of which can result in your wealth being transferred in ways you neither imagined nor desired. The bright side? All of these mistakes can be easily avoided through the implementation of careful and capable planning. Don't make the error of thinking that, because your estate may not be as large and complex as these superstars, you can skate by without a properly prepared, and regularly updated, estate plan. Everyone needs to have an estate plan in place, and the size of your wealth only matters in the type of documents required. Make an effort to sit down with a trusted estate planning attorney and check this necessity off your list. You're sure to achieve celebrity status in the eyes of your loved ones if you do.

CECB Carnahan, Evans, Cantwell & Brown, P.C.

2805 S. Ingram Mill Road
P.O. Box 10009
Springfield, Missouri 65808-0009
PH: (417) 447-4400 • FAX: (417) 447-4401
www.cecb.com • cecb@cecb.com

ADDRESS SERVICE REQUESTED

Founded in 1979, Carnahan, Evans, Cantwell & Brown, P.C. is a locally owned and operated law firm noted for its commitment to providing superior client service to a diverse client base, including national and regional businesses, financial institutions, not for profit organizations and individual clients. The Firm currently has 16 attorneys, including six who have their Master of Laws in Taxation. An "A-V rated" preeminent law firm by Martindale-Hubbell, our attorneys are engaged in the general business practice of law with an emphasis in the following areas:

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Carnahan, Evans, Cantwell & Brown, P.C. **Attorneys at Law**

John M. Carnahan III
William E. Evans
C. Bradford Cantwell
Frank C. Carnahan
Joseph Dow "Chip" Sheppard III
Julie T. Brown
Thomas D. Peebles, Jr.
John E. Price
Jennifer K. Huckfeldt
Douglas D. Lee
Andrew K. Bennett
Christiaan D. Horton
Courtney L. Fletcher
A. Jay Preston
Andrew T. Peebles
Megan E. McCullough