REMBOLT LUDTKE & BERGER LLP
Attorneys at Law

The Compass

Volume 4, Issue 3 December 2002

SERVING ALL POINTS OF NEBRASKA AND THE MIDWEST

JIM REMBOLT BECOMES STATE BAR PRESIDENT

James E. Rembolt, senior partner of Rembolt Ludtke & Berger LLP, became president of the Nebraska State Bar Association at the close of the bar's annual meeting on October 18, 2002.

His main agenda item for 2003 is lawyer professionalism. As president-elect, he proposed the creation of a standing committee which will focus on the development of programs and activities to enhance professionalism. His second goal is to coordinate the activities of other segments of the NSBA that regularly address these issues, such as continuing legal education.

"It is becoming increasingly evident that we must revisit and renew our commitment to these core values," Mr. Rembolt stated. "Many bar associations and bar related organizations have begun formal efforts to emphasize professionalism among lawyers."

Mr. Rembolt has practiced law in Lincoln since he graduated with distinction from the University of Nebraska College of Law in 1972. Elected to the NSBA House of Delegates in 1999, he also was president of Nebraska Continuing Legal Education Inc. from 1996 to 1998. He is past president or chairman of the Lincoln Senior Centers Foundation, Madonna Foundation, Lincoln YWCA Board of Trustees and University of Nebraska College of Business Alumni Board.

Please be assured that Jim's term as President of the Bar has not removed him from our firm practice. While he may be out of the office more frequently over the next few months, he remains available for any new or continuing legal matter with which you need assistance.

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Ten Reasons You Need an Estate Plan

1. *You want to decide who inherits your property (not let state statutes decide).*
2. *You have children under age 19.*
3. *You have children under age 25.*
4. *You have loved ones with special physical or financial needs.*
5. *You want to reduce or avoid estate and inheritance taxes.*
6. *You want to remember a charity or charities upon your death.*
7. *You want to decide who administers your estate.*
8. *You own a business.*
9. *You own property in different states.*
10. *You want a Living Trust to avoid probate.*

Death and Taxes

An effective estate plan must take into account the taxes that will apply upon death. Here's a quick summary of the two primary death taxes applicable in Nebraska:

1. **Federal Estate Tax:** Tax applies to the fair market value of all property owned by the decedent as of the date of death (net of debts and final expenses). The proceeds of life insurance policies owned by the decedent are generally taxable. Transfers to your spouse and to charity are generally tax-free. Under current law, the tax applies to each dollar of value in excess of the available exemption and is adjusted based on the decedent's year of death as follows:

Year	Exemption	Tax Rates
2002	$1,000,000	41-50%
2003	$1,000,000	41-49%
2004	$1,500,000	45-48%
2005	$1,500,000	45-47%
2006	$2,000,000	46%
2007	$2,000,000	45%
2008	$2,000,000	45%
2009	$3,500,000	45%
2010	Estate Tax Repealed	0%
2011 and forward	$1,000,000	41-55%

2. **Nebraska Inheritance Tax:** Tax applies to the fair market value of all property owned by the decedent as of the date of death (net of debts and final expenses). Life insurance is generally excluded. The applicable rates and exemptions apply based on who receives the property as follows:

Recipient	Per Person Exemption	Tax Rates
Spouse	Unlimited	0%
Parents/Grandparents	$10,000	1%
Children (and spouses)	$10,000	1%
Grandchildren (and spouses)	$10,000	1%
Siblings (and spouses)	$10,000	1%
Uncles/Aunts	$2,000	6-9%
Nieces/Nephews/Cousins	$2,000	6-9%
Charity	Unlimited	0%
All Others	$500	6-18%

INTRODUCING THE CUSTOM ESTATE PLANNING PROGRAM

In an effort to make estate planning a more convenient and efficient process, Rembolt Ludtke & Berger LLP recently introduced the Custom Estate Planning Program or "CEPP." CEPP is an intensive estate and financial planning program specifically targeted to meet the needs of successful professionals, executives, and business owners. These individuals generally share the following characteristics: (a) They have accumulated significant assets and have significant earning capacity; (b) They require a fairly sophisticated estate plan for tax planning and to meet their financial, personal and family goals; and (c) Because they are successful, they have a limited amount of time to commit to the estate planning process. CEPP is designed to accomplish the required tasks quickly with a minimum of disruption for the client. The various tasks are scheduled in stages to make the process more manageable. In addition, the program offers fixed fee billing to eliminate surprises.

If you see yourself described above, here is how CEPP could work for you.

Part I: The Basic Program:

The Basic Program consists of four meetings which result in the execution of estate planning documents and (if appropriate) re-titling of assets.

(A) The *Initial Conference* is designed to acquire information about you, your family, and your business. In addition to discussing financial and professional matters, the Initial Conference focuses on your personal and family goals and objectives such as how children and/or grandchildren should be treated in the estate plan, special needs or situations in the family, and your charitable inclinations or objectives.

(B) At the *Planning Conference*, we will assimilate the information obtained in the Initial Conference and propose basic estate planning strategies which provide estate tax savings and meet personal objectives. At this point, you will identify the parties who will serve as personal representative, trustee, guardian, etc.

(C) At the *Document Conference*, we will review the estate plan documents with you, make any final changes and execute the documents.

(D) The *Final Meeting* involves implementing the estate plan by executing all documents required to change (if necessary) ownership of assets and beneficiaries of accounts and insurance policies to conform with your estate plan. A sophisticated estate plan can fail if these details are not correctly implemented. We undertake these tasks to insure that they are accomplished correctly and with a minimum of time commitment by you.

Part II: Special Products:

In working through the Basic Program, you may discover that some additional planning is necessary. For example, you may wish to use a family partnership or an irrevocable life insurance trust in order to implement a gifting program or to minimize estate taxes. The special products which may be used vary according to your needs and objectives. These products may enhance the accomplishments of the Basic Program, but are dealt with after the Basic Program so that implementation of these sophisticated tools does not delay preparation and execution of the basic documents discussed above. These special products are highly customized and are priced separately either by the hour or at a fixed cost depending on the complexity and time required.

Part III: The Maintenance Program:

The final aspect of CEPP is the Maintenance Program. Estate and financial planning is an on-going process. Facts change. People change. The law changes. As part of CEPP, we offer a fixed fee annual maintenance program following a three-year cycle. The first year we conduct a review of all assets, ownership, and beneficiary designations. Have there been changes and did the client miss anything? The second year we do a people review. Are there more children or grandchildren? Has the marital status of any of the children changed? Have any additional special needs of heirs been identified? Do you still want the same trustee, guardian, etc.? The third year is a comprehensive review including an in-depth personal conference. In addition, we will advise you of changes in the law which may affect your estate plan.

If you have questions or would like to start the CEPP now, call any one of our estate planning attorneys.

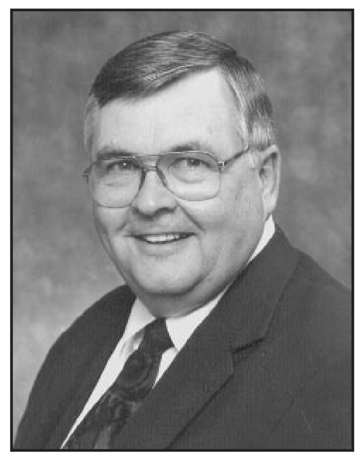
– James E. Rembolt, Esq.
and
David A. Ludtke, Esq.

Estate Planning and Probate Practice Group of Rembolt Ludtke & Berger LLP

James E. Rembolt

Jim is a recognized authority in estate planning and probate administration, and has taken a very active role in helping to provide opportunities for continuing education in these areas. He graduated with distinction for the University of Nebraska College of Law, and has spent his professional life with our firm. Jim has held leadership roles with many community organizations, and is currently the president of the Nebraska State Bar Association.

David A. Ludtke



David's accomplishments during his career have established him as an authority in estate planning and probate. He earned his B.A. from Harvard, and his J.D. magna cum laude from the University of Michigan. David taught at the University of Nebraska College of Law, has published numerous articles and books, and is a frequent seminar speaker. He has been with the firm since 1973.

Timothy F. Clare

Tim is a frequent speaker in the Lincoln area on estate planning issues. He clerked for Rembolt Ludtke & Berger LLP during law school, and after graduating from the University of Nebraska College of Law in 1993, he joined the firm. Tim also holds an M.B.A. from Creighton University, and his education and experience assists him in helping business owners plan for orderly transitions. Tim has also taught business courses as an adjunct professor at the University of Nebraska.

Timothy L. Moll

Tim received his B.A. from Concordia College and his J.D., with highest distinction, from the University of Nebraska College of Law. He was the Managing Editor of the Nebraska Law Review and, after graduation, served as Chambers Attorney for The Honorable C. Arlen Beam of the Eighth Circuit Court of Appeals. Tim joined Rembolt Ludtke & Berger LLP in 1995, having clerked with the firm during law school. He has co-authored several published articles, and been an adjunct professor at the University of Nebraska College of Law.

Jan Wigodsky
Paralegal

Jan has been with Rembolt Ludtke & Berger LLP since 1981, when she was hired as a legal secretary. After additional training, she became the firm's first paralegal, working in a variety of practice areas before focusing on estate and probate work.

Deb Reichert
Paralegal

Deb has worked with estate planning and probate matters for most of her career. She joined Rembolt Ludtke & Berger LLP in 1997. Along with estate and probate matters, Deb also works in the real estate and entities practice areas.

ESTATE PLANNING FOR RETIREMENT PLANS

The primary purpose of your IRAs, 401(k)s and similar retirement accounts is to provide income in your retirement. To encourage retirement savings, the Internal Revenue Code allows you to contribute funds to these accounts and (up to certain annual limits) defer income tax on the contribution and on the growth of the funds. Income tax is payable only when you withdraw the funds in retirement.

What about funds left in your retirement plan upon your death? Unfortunately, the tax consequences are not always so pleasant. Upon death, when these accounts pass to your heirs, the balance in the accounts is subject to federal estate tax in your estate and is still taxable income when the funds are distributed to your heirs. Dealing with these two levels of tax makes estate planning for retirement plans a complex task. Here are a few do's and don't's to consider:

1. *Do Name a Beneficiary (and a contingent beneficiary):* Who receives the balance left in a retirement plan is determined by the beneficiary designation on the account, not your Will. It is a good idea to name a beneficiary and a contingent beneficiary. Relying on the default beneficiary which may (or may not) be named in the plan is not a good idea.

2. *Do Consider Naming Your Spouse as Beneficiary:* Your spouse has special rights when he or she inherits a retirement account. Most individual beneficiaries of a retirement plan must start taking distributions soon after the death of the plan participant. The amounts must be withdrawn at least quickly enough to withdraw the balance over the remaining life expectancy of the beneficiary. A spouse, however, has the right to "rollover" the plan balance and treat it as his or her own account. This means he or she can defer taking distributions until age 70$^{1}/_{2}$. If the spouse has other income, there are significant tax benefits to letting the plan assets continue to grow income tax free.

3. *Don't Name Your Estate as the Beneficiary:* It is generally not a good idea to name your estate as the beneficiary of your retirement plan. Though it might be convenient to have your retirement funds pass as directed by your Will, the adverse income tax consequences will often outweigh any convenience factor. In many cases, if your retirement funds pass to your estate, income tax will be immediately due and payable on the entire amount in the plans. Naming individual beneficiaries, by contrast, will generally allow the beneficiaries to withdraw the funds and pay the income tax gradually.

4. *Do Be Careful Naming a Trust as Beneficiary*: For any number of reasons, you may wish to have assets held in trust for one or more beneficiaries after your death rather than paid outright to the beneficiary. It is permissible and often appropriate to name a trust as the beneficiary of a retirement plan. In order to avoid unexpected and unwanted income tax results, however, the trust must contain certain provisions and be drafted to comply with the minimum distribution rules applicable to retirement plans. If you intend to name a trust as beneficiary, proceed with caution and make sure you get sound legal advice in advance.

5. *Don't Forget to Review (and update) Your Beneficiary Designations Often*. It is critical to review and update the beneficiary designations on your retirement plan accounts on a regular basis. Too often, we see beneficiary designations which are out of date and inconsistent with the current estate plan. An old outdated designation which names your parents (not your current spouse) or names your ex-spouse (not your children) will cause nothing but trouble upon your death.

6. *Don't Forget Charitable Options.* If you are charitably inclined, your retirement plan accounts are a great option for charitable gifts. If you name a charity as the beneficiary of all or a portion of a retirement account, the charity will receive the funds tax-free. Though retirement account distributions are subject to income tax, qualified charitable organizations are exempt from income tax.

7. *Do get expert help*. The rules applicable to lifetime and post-death distributions from retirement plans are too complex to sort through without help. A little extra effort now to involve your attorney, accountant, and plan administrator will result in a coordinated and tax-efficient estate plan.

How long has it been since you reviewed the beneficiary designations on your retirement plans? If it has been a while, give us a call. We can help you review them and make sure the designations are tax-efficient and consistent with your overall estate plan.

–Timothy L. Moll, Esq.

DON'T FORGET TO PLAN FOR YOUR BUSINESS

For the business owner, no estate plan is complete until plans have been made for the future of the business. How will you leave gracefully when you no longer wish to or are able to work full time? What will happen to the business upon your disability or death? If you fail to plan in this area, it is all too easy for the value of the business to slip away.

There are a wide variety of ways to plan for a business transition, but almost all of them require advance planning. When is it time to begin this planning? NOW! It is never too soon to start thinking about what will happen to you and the business when you and the business part ways. Consider these (mostly) universal truths:

* All business owners leave the business (it's not a matter of if, it's a matter of when).
* All successful business owners are busy (and most are too busy).
* All business owners believe their business cannot survive without them.

What do these truths tell us? First, business transition is unavoidable, so advance planning is a necessity. Second, there will never be a "good" time or a "slow" time to do this type of planning. You have to make room for it. Finally, if your business really cannot survive without you, you owe it to your family, your employees, and your customers to do some planning.

Ready to plan? Let us help you work through the following steps:

1. Review Your Personal & Business Goals

A. *How is your business owned and operated now?* A quick review of your current ownership structure and management structure is always a good starting point.

B. *What are the mostly likely events that would cause you to leave the business?* Consider what events might cause you to leave the business in the short term and what events may cause your departure in the long term.

C. *Will or should the business continue if you are gone?* Do not assume that your business will continue or should continue if you are no longer involved.

D. *Who could/should take over the business and when?* Consider who you would like to take over the business and who would be able to take over the business.

E. *How involved will you be in the transition and how long will it take?* Consider how much of your expertise you will have to "transfer" in order to make the business work after you are gone. How long will it take to complete the transfer?

F. *What do you need from the business to allow you to leave?* Consider your need and your family's need for continued income from the business. If you leave, how will you and your family support your current standard of living?

2. Consider Key Issues

A. *Management and Control of the Business*. A sound transition plan must address issues of management and control. Who will make key decisions for the business? If you are leaving right away, who will take over? If you are staying on for a while during the transition, what power will you retain?

B. *Ownership of the Business/Asset Value*. Management and control of the business does not always coincide with ownership of the business assets. For a number of reasons, you may be willing to give up some control over the business, but retain ownership of the underlying assets or value of the business.

C. *Income/Cash Flow*. Unless you have adequate cash flow from other sources, it is important for the plan to provide for your financial needs. After you leave the business, you can receive ongoing income by investing the sales proceeds or by retaining an ownership interest in the business and receiving a share of the profits.

D. *Tax Consequences*. Finally, a transition plan must take into account the potential tax consequences. On the income tax side, care should be taken to minimize the tax consequences of any sale of assets or sale of stock (there are many tax surprises for the unwary). With regard to federal estate tax, the exit strategy must take into account your estate and gift tax situation.

3. Decide What You Will Need to Implement Your Plan

A. *Team of Advisors*. The first step to implementation is assembling a sound team of advisors who can help you formulate and implement a plan. The best plans include input from your attorney, accountant, and financial and insurance advisers.

B. *Buy-Sell Agreements.* Business transition plans are often implemented with a written agreement executed by all the business owners. Often referred to as buy-sell agreements, these documents are the legal road map for business transition. It will normally address the following critical transition issues: (1) What are the triggering events for transition (e.g. death, disability, retirement)? (2) Who will have the right to buy or sell business interests? (3) Will sale or purchase be mandatory or optional? (4) Will the purchase be funded with life insurance, business assets, or other financing? and (5) How will the business be valued?

C. *Estate Plans/Trust Planning*. The business transition plan must be consistent with your estate plan. Often trust planning is an appropriate means to give benefi-

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DON'T FORGET TO PLAN YOUR ESTATE

ciaries the benefit of the business income, but reserve management and control to others.

D. *Life Insurance/Disability Insurance*. Life insurance is often a key component in funding business transition upon death. It can provide cash to keep the business going during a difficult time of transition as well as cash to buy out deceased owners. Disability insurance is also a key component in planning for the cash needs of business owners who can no longer work.

E. *Deferred Compensation Arrangements/Qualified Retirement Plans*. Retirement planning and retirement accounts must also be considered. How much additional income will you need to supplement available retirement funds? Is it possible for the business to support significant deferred compensation?

Our estate and business planning attorneys deal with these issues on a daily basis. Please contact us for help with a transition plan. You will be surprised at how much better you feel once a plan is in place and how much you learned about your business just by going through the process.

–Timothy F. Clare, Esq.

BULLETIN

Changes in Workers' Compensation Coverage for Executive Officers

During the most recent legislative session, changes were made to the Nebraska Workers' Compensation Act. Effective January 1, 2003, executive officers of a corporation who own 25% or more of the corporation's common stock will no longer automatically be considered employees of the corporation. Since the officer will not automatically be covered under the corporation's workers' compensation insurance policy, no Corporate Executive Officer Waiver of Rights will be required if the officer chooses not to be covered. To the contrary, effective January 1, 2003, if such an executive officer ***wants*** to be covered as an employee of the corporation, a written election of such coverage must be filed with the workers' compensation insurer as well as with the corporation secretary. The election is effective upon receipt by the insurance company and remains in effect as long as continuous coverage is provided by that insurer or until the officer provides written notice of termination to the insurer and the corporation secretary. No notice of election or termination is to be filed with the court. Likewise, no Corporate Executive Officer Waiver of Rights or Termination of Waiver forms are to be filed with the court after January 1, 2003.

In addition to corporate owners and officers, the following individuals are also ***not*** automatically covered: sole proprietors, LLC members (any ownership%), partners (any ownernship%) and officers of not-for-profit corporations who earn less than $1,000 per year.

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ESTABLISHING A NEBRASKA DYNASTY

If you ask Nebraskans for their definition of a "dynasty," some may mention Husker football or other successful sports teams. Others will hark back to their vague recollections of dynasties in world history. Still others will think of the Dodge Dynasty they used to drive.

Now, thanks to the Nebraska Legislature, Nebraskans can set up their own dynasty through a so-called Dynasty Trust. A trust is a written instrument in which the person creating the trust (known as the "Grantor" or "Settlor") directs a second party (the "Trustee") to hold and manage certain assets for a third person or persons (the "Beneficiaries"). Traditionally, there has been a limit on how long a trust can continue before it must terminate. The so-called "rule against perpetuities" generally provides that a trust must terminate no later than 21 years after the death of a trust beneficiary alive at the time the trust was created. In the last legislative session, the Legislature changed the law so that if a trust includes some specific provisions, the rule against perpetuities will not apply. This means that there need not always be a limit on how long the trust will continue. A trust without these time limits is often referred to as a "dynasty trust" and has been available in other states for a number of years.

What does this mean for you? The bottom line is you have more flexibility in planning for future generations. For instance, trusts can be established for the benefit of unborn grandchildren. In addition, the dynasty trust can create some options for estate tax savings in future generations. Special care must be taken, however, in establishing such a trust. The applicable tax rules are complex as are the general issues in drafting such a trust. The last thing you want is a poorly drafted trust that haunts (rather than supports) future generations. Expert advice is a must. If you have questions or think a dynasty trust might fit into your estate plan, please contact any of our estate planning attorneys.

–Timothy L. Moll, Esq.