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James Gandolfini's Estate Plan: It's Nobody's Business

Some topics are meant to be private. This list should include “what happens with my money and property when I pass away.” People are generally unaware that a Last Will and Testament is a public record. After you die, if a Last Will and Testament is the means by which your estate is administered, your affairs are anything but private. There are alternate means of disposing of one's assets, such as a revocable trust, which would not become part of the public record.

Following the recent and untimely death of James Gandolfini, known to many for his role as Tony Soprano, major media outlets have been covering what is seemingly the celebrity's poorly structured estate plan that will lead to an estimated 30 million dollars in estate taxes. Every major newspaper, television station, radio show and internet blog has quoted estate attorneys and financial planners who have dissected Mr. Gandolfini's intentions in designing the plan, its beneficiaries, and whether he was aware of its tax consequences. Perhaps the biggest mistake made by Mr. Gandolfini and his estate planning advisors was not the failure to incorporate effective tax planning strategies but the failure to protect it from public scrutiny. Mr. Gandolfini's estate plan could have remained a private matter for his family.

For many, taxes are only a secondary concern

People fail to realize that, although tax planning is critical, it is only one factor in an overall estate plan. For most people, the question of “who” comes before the question of “how much,” even if certain tax advantages will be lost by giving to person “X” instead of to person “Y.” It is possible that, even to Mr. Gandolfini, providing for a particular beneficiary was more important than avoiding taxes.

The benefit of estate planning: privacy is not just for celebrities

It is not only the super wealthy who want their estate plan to remain private. Death records, including a Last Will and Testament, are public records. They are easily accessible in the Surrogate's Court in the county where the decedent resided. There are many reasons why one might desire for his or her Will to remain private, for example, if a person wants to leave unequal amounts of money to different children, or wants to provide for children from a prior marriage, or does not want certain family members to know that they were not chosen as an executor or trustee or guardian.

Keeping it private — the revocable trust

A simple means of avoiding the notoriety received by Mr. Gandolfini's estate plan, or failure to plan, would have been to use a revocable trust instead of, or in addition to, a Will. A revocable trust is known as a "testamentary substitute" because it can be used as a vehicle to distribute assets upon death, similar to a Will. However, unlike a Will, a revocable trust is not a public record. No one has the right to know who was chosen to serve in a trusted position, or which family members received which assets, or who was disinherited. Berwitz & DiTata LLP can assist you in devising an estate plan using techniques to help keep your plan private.