

# PLANNING PERSPECTIVE

Summer 2003 • Vol. 1, No. 1

A Publication of Fitzgerald Law Office

## Welcome to “The Planning Perspective”

All of us at Fitzgerald Law Office are excited to share news and information on our company and provide up-to-date legal matters and issues that may affect your planning for the future. We will provide the latest on national and state law changes as well as provide suggestions on what you can do to ensure your legal matters are handled properly. We hope you enjoy “The Planning Perspective!”



*J. Douglas Fitzgerald*  
Fitzgerald Law Office

## Wisconsin’s “New” Estate Tax Presents Challenges

Since 1997, two separate Presidents and Congress have supported reducing federal estate taxes charged against the assets of a deceased person. The good news from Washington D.C. is that this tax reform equals tax savings for Americans who die with over \$675,000 in assets.

The bad news for Wisconsin taxpayers is that these tax cuts from the federal government affect the state budget. Wisconsin receives a smaller share of the federal estate tax. When the federal tax cuts go into effect, Wisconsin loses revenue. In order to protect the state budget, the Wisconsin Legislature separated Wisconsin’s estate tax from the federal tax system and created a “new” Wisconsin estate tax. This tax is designed to give the state the same revenue it would have received had the federal government not cut taxes.

The Wisconsin estate tax applies to any person who dies having over \$675,000 in assets. The tax works just like the federal estate tax, except that the rates are significantly lower. There is no tax on transfers to a surviving spouse or charity. Lifetime gifts can avoid tax, but the \$10,000 per recipient, per year rule still applies (note that Wiscon-

sin will use the “old” \$10,000 gift tax credit rather than the “new” \$11,000 limit in the current federal law).

Any trust or estate plan that is designed to protect assets from federal estate tax will also protect assets from the Wisconsin estate tax to a point. However, there are two important differences. First, if assets are worth more than \$675,000 at death, there needs to be a plan in place even if the estate is below the current \$1 million federal tax exemption. Wisconsin residents in this situation should not believe that they are “tax free” simply because headlines trumpet estate tax reform.

Second, if assets are worth more than \$1.35 million at the death of the first spouse, the new Wisconsin tax might require the surviving spouse to pay some Wisconsin tax. Ordinarily, this would not happen under the federal tax law.

This is a complicated situation and some changes might be necessary to make sure your existing estate planning documents eliminate all estate taxes when the first spouse dies. Contact Doug Fitzgerald at 262-334-8015 to review your current documents to ensure you will not be negatively impacted by these changes.

## Fitzgerald Increases Role in Community Activities

Doug Fitzgerald will serve as the President of the Washington County United Way Board of Directors through March, 2004. Doug is also President of the Washington County 4-H Scholarship Trust Advisory Board and Secretary of the West Bend Sunrise Rotary Foundation.

In 2002, Doug began volunteering on the regional Dispute Settlement Board for Ford Motor Company. The Board is the

state-recognized arbitration process to review and resolve customer warranty concerns regarding Ford Motor Company products without litigation. Doug also volunteers his time for the City of West Bend by sitting on the Zoning Board of Appeals and the Police and Fire Commission. In addition, he has been instrumental in the planning and growth of the annual Ziegler Kettle Moraine Jazz Festival through his membership in the West Bend Sunrise Rotary Club.

## Carol Mog Joins Team

Those of you who have done business with Fitzgerald Law Office know the vital role Suzanne Wendt plays as a legal assistant with the firm. We are pleased to announce the office has yet another experienced resource.

Carol Mog recently joined the firm after 17 years of service with the Washington County Family Court Commissioner’s office. Carol’s

career includes 28 years of service in the family law area and 12 years as legal assistant for West Bend Attorney Henry Renard.

Carol will often be the first voice you hear when you phone the office and, like Suzanne, she will schedule appointments and ensure that client concerns are addressed when Doug is in conference or otherwise unavailable when you call.

## New Rule For Financial Powers of Attorney

A comprehensive Financial Power of Attorney is an important part of everyone's planning. Most Financial Powers of Attorney give the agent the right to make gifts. The gift power can be very important for tax planning and qualifying for Title 19 benefits to cover nursing home bills. Attorneys have debated whether special language is needed in this gift power in order to make it work in all situations. The courts recently answered this question.

If your Financial Power of Attorney included a gift power, the agent will not be permitted to give himself or herself a gift unless specific words in the document authorize the gift. This ruling does not make any Power of Attorney invalid and existing documents are still good. The agent can still make gifts to others (for example, to their siblings), but they could not write themselves a check.

The new ruling and the requirement for special language in the

document would present a problem in certain situations, including:

- If a client has only one child.
- If any of the client's children are not totally reliable with money or may not work well with the other family members.
- If some other part of the client's plan for the future made it very important that the person named in the Power of Attorney controls any money transferred by gift.

If any of these situations seem to describe you or your family, review the terms of your Financial Power of Attorney and consider up-dating the gift power to comply with the new law and specifically authorize your agent to make gifts to himself. Contact Doug Fitzgerald at 262-334-8015 to discuss this matter in more detail.

## Office Programs and Events

Doug Fitzgerald appears regularly on West Bend Community Cable discussing estate planning and other legal matters. Recent shows covered topics such as Wisconsin's Estate Tax, the importance of beneficiary designations in your estate plan, and maintaining an up-to-date statement of assets. Check the local television listings at the West Bend City Web site and in the West Bend Daily News for Doug's show on Channel 3.

Last September, Doug attended the 2002 Notre Dame Tax and Estate Planning Institute in South Bend, Indiana for two days of instruction by the nation's leading tax and elder law specialists. In January, Doug also attended the Wisconsin State Bar's 5<sup>th</sup> Annual Elder Law Workshop for a comprehensive overview of the changing laws regarding Title 19, Guardianships, Powers of Attorney, and other planning issues particularly affecting elderly individuals.

### Fitzgerald Law Office

120 N. Main Street, Suite 260  
West Bend, WI 53095  
262-334-8015 • 262-334-1593 fax  
e-mail: fitzgeraldlaw@hnet.net

FIRST CLASS  
U.S. POSTAGE  
PAID  
Milwaukee, WI  
Permit No. 1382