

## Trusts and Estates

Reinhart's Trusts and Estates Practice navigates the intersection between business and family to help our high-net-worth clients build and preserve wealth. We maintain a unique perspective advising high-net-worth clients whose wealth has been built from a successful business. Leveraging this understanding, we counsel individuals and corporations on matters across the continuum of trust law – from succession, estate and tax planning, to estate and trust administration. Throughout the process, we work with our clients to build wealth and preserve the legacy of the family and business.

Our attorneys are adept at working collaboratively with all parties involved in the planning and succession process, particularly multi-generational families. We understand and appreciate the human element involved in business decisions, whether the business maintains a successive family lineage or takes a different path.

Reinhart attorneys seamlessly partner with our clients' other financial advisers – including accountants, financial advisers and insurance professionals – to develop a coordinated plan best suited for each individual client. We are able to assist our clients with the objective selection of investment providers – or, if our clients prefer, work seamlessly with the financial adviser they designate.

Our attorneys are accomplished at guiding our clients through the intricate stages of a business transition. We illustrate a clear path of succession or transition, distilling the complexity of the process for each client without losing sight of important considerations. We take the time to listen to and account for all the clients' goals, and then execute the appropriate transactions and techniques for each individual circumstance.

Along the way, Reinhart's trusts and estates attorneys leverage substantial experience and an approach grounded in active listening and flexible solutions to satisfy the needs of all individual stakeholders. We understand the sensitive nature of situations where business and family intersect, and we are skilled at navigating complex relationships.

Our attorneys frequently counsel on a broad range of trusts and estates law, and we have deep experience in the following matters:

- Counseling owners of closely held businesses on succession planning and related matters
- Drafting trust agreements, marital property agreements and other estate planning documents
- Advising individuals and trustees on estate, gift and tax planning and asset protection planning
- Forming and advising charities, both public and private
- Representing trustees on matters of routine trust administration, as well as contested matters



## **Charitable Contributions and Planning**

Charitable giving can be a very important component in our clients' personal planning. Reinhart trusts and estates attorneys understand how important charitable planning is for many of our clients. We guide our clients through a sea of various options to ensure the plan best fits our client both from a philanthropic and tax-efficient point of view. We will listen to our clients to get a true understanding of their goals and desires, and then work with them to accomplish just that.

In establishing a charitable giving plan, we will discuss the particular interests of the client and their family, whether they actively want to be involved with the gifting on an ongoing basis and the timeframe they have in mind.

We also ensure that our clients will receive the most favorable tax treatment possible. Tax benefits can include acceleration of the income tax deduction, avoidance of the percentage deduction limitations, and leveraging of the existing gift, estate and generation-skipping transfer tax exemptions.

Our attorneys are experienced in utilizing a wide variety of charitable vehicles and options, such as charitable remainder trusts, charitable lead trusts, IRA charitable rollovers, private foundations and outright charitable bequests.

## **Estate Planning**

Reinhart's Trusts and Estates Practice helps individuals achieve their short- and long-term planning objectives while minimizing estate and gift taxes. Our attorneys create flexible estate plans to allow clients to respond to future family changes, economic conditions and changes in tax laws. We regularly provide counsel on the following types of estate planning documents:

### **Revocable Living Trust**

The revocable living trust acts as the centerpiece of a client's estate plan, as it either holds the client's assets during life or receives them after death. The trust allows the client to direct how his or her property should be managed and distributed. A revocable living trust can be changed or revoked at any time during the client's life. A revocable living trust is an important tool, since it may provide for property management during a disability or illness. It also avoids the costly and time-consuming process of a legal guardianship proceeding in case the client becomes incompetent. If a trust is fully funded during life, or beneficiary designations are properly coordinated to fund the trust immediately upon death, probate may be avoided.

### **Will**

A will decides who receives the client's estate upon death. It can work as the main dispositive document or as a "pour-over" to a revocable living trust. In the will, the client appoints a personal representative, who will have control over the assets and the responsibility to pay the client's bills and distribute the client's remaining estate. A

will is also the only estate planning document in which a guardian for minor children may be appointed.

### **Power of Attorney for Property**

A power of attorney is a written contract between the client and his or her agent, authorizing the agent to act on behalf of the client. There are two general kinds of powers of attorney for property: a "Durable Power of Attorney," which gives the agent immediate power to act, and a "Springing Power of Attorney," which allows the agent to act when the client is no longer capable of handling his or her own affairs. The agent's powers may be as broad or as narrow as the client desires.

### **Health Care Power of Attorney**

A Health Care Power of Attorney is a document that authorizes a person the client names as his or her "health care agent" to make health care decisions on behalf of the client if he or she is unable to make decisions himself or herself. A "Living Will Declaration" is typically included in the document, which will inform the clients physicians of the clients wishes as to life-sustaining procedures.

### **HIPAA Authorization**

A HIPAA authorization permits custodians of health care records to disclose those records under specified circumstances to the client's family members, attorney, etc.

## **Business Succession Planning**

Reinhart's trusts and estates attorneys assist clients in developing a long-term ownership succession plan when they are considering transferring closely held businesses to later family generations. We counsel clients on the many possible structures such a transfer can take and then develop a plan based on that structure to reduce gift and estate taxes. In addition to transferring the economic value of a business, we also help guide the transition of control of that business within the family and/or outside management.

## **Retirement Planning/IRA Planning**

Planning for your retirement begins long before most people think about it. For many of our clients, their retirement planning is also more multi-faceted than they initially expect. Our clients who are business owners and managers consider their businesses are their primary source of retirement income, both because the businesses sponsor retirement plans or deferred compensation plans, or because they plan to sell the business to finance their retirement income needs. Drawing upon the business experience across the firm, the attorneys in our Corporate Law, Tax, and trusts and estates practices regularly counsel our business owners and managers on planning for their retirement.

Retirement planning involves more than preparing just for the one-time event when our clients stop working full-



time at their job or in their business. We view retirement planning as an ongoing process of building a source of income to be drawn upon in retirement. Business owners also must consider planning for the succession of their businesses whether to the next generation, or next owner. Regardless of the exit strategy, we help our clients with maximizing the net, after-tax values of their businesses, retirement benefits (both their qualified retirement plans and non-qualified deferred compensation plans), and IRAs.

Roth IRAs and Roth 401(k) plans have become a very popular tax-efficient vehicle to save for retirement. Although the contributions to Roth IRAs and Roth 401(k) plans are not income tax-deductible, all the amounts contributed together with their earnings, are tax-free when withdrawn. Roth IRAs are often created when a client "converts" amounts in a taxable IRA to the Roth IRA, and our tax and trusts and estates attorneys help clients calculate the tax and estate planning benefits of making these conversions. Read more about [Roth IRAs](#).

Much of this financial and tax planning for retirement involves structuring withdrawals from the benefits and IRAs to ensure income during retirement. The planning also includes coordinating beneficiary designations for the retirement benefits and IRAs with the clients overall estate planning so that the benefits and IRAs flow to the intended beneficiaries with the least income taxation after the client's death.

Many of our clients use "stretch IRA" distributions for their benefits and IRAs after their deaths, and we help the beneficiaries create "inherited IRAs" for themselves to accomplish this result. Other clients use their retirement benefits and IRAs for charitable giving, either during their lives with "Charitable IRA Rollovers," or after their deaths by leaving part or all of their benefits and IRAs to charities. In addition, clients who plan to marry and have substantial balances in their qualified retirement benefit plans often need assistance with obtaining waivers under the Retirement Equity Act (REA) from the new spouse to assure the client's control of the benefits after death. Finally, for clients with employer securities in their qualified retirement plans, we assist with taking those employer securities out of the plan and use the "Net Unrealized Appreciation" (NUA) rules to dramatically reduce the tax burden on the distribution.

## **Trust and Estate Administration**

When an individual passes away, the trustee or personal representative (or both) named in the decedent's estate plan has a number of important duties to carry out. He or she must inventory, collect and manage the decedent's assets, resolve and pay any outstanding debts, file applicable tax returns (and pay any required taxes), and distribute the assets according to the decedent's estate plan. While creating an effective estate plan during lifetime may greatly simplify this process, it cannot eliminate it.

Trustees and personal representatives are known as "fiduciaries," which means that they are subject to strict fiduciary duties. For example, a trustee has a duty of impartiality and loyalty to the trust's beneficiaries, must manage the trust property in a responsible and productive manner, and is required to provide detailed and specific information to the trust beneficiaries. As fiduciary laws continue to evolve and become increasingly



complex, it is imperative that the trustee or personal representative consult with legal counsel regarding his or her role prior to beginning the administration.

Reinhart's Trusts and Estates Practice provides a comprehensive approach to trust and estate administration. We counsel trustees, personal representatives and other fiduciaries in the administration process, focusing on the duties and responsibilities mentioned above. If a probate is required, our attorneys handle all required court filings and hearings. We are experienced in handling difficult to value assets, such as closely held business interests and real property, and are often involved in the administration of high-net-worth estates, which present a multitude of complex legal and tax issues.

Our attorneys and other professionals also assist with trust and estate accounting and preparation of federal estate tax returns and federal and state fiduciary income tax returns. We work closely with our clients accountants, financial advisers and asset managers to implement post-mortem tax planning techniques designed to minimize and defer income and estate tax liabilities. We focus on maximizing the value of the assets passing to the beneficiaries and minimizing the tax burden on the estate.

In light of the increasingly complex role of the trustee or personal representative, post-death administrations are rife with the potential for error. By engaging our Trusts and Estates Practice to assist with the administration, a trustee or personal representative can avoid disgruntled beneficiaries and other contentions matters throughout the administration process. If necessary, we rely on our experienced attorneys in our [Trust, Estate and Fiduciary Litigation](#) Practice to settle disputes arising out of an administration.

## Services

- Estate Planning
- Estate, Gift and Generation-Skipping Transfer Tax Planning
- Succession Planning
- Trust and Estate Administration
- Trust Services
- Family Office Services
- Prenuptial Agreements/Marital Agreements
- Trust, Estate and Fiduciary Litigation
- Gift and Estate Tax Audits
- Retirement Planning/IRA Planning
- International Estate Planning
- Charitable Contributions and Planning
- Arizona/California/Florida/Illinois/South Dakota Law Consultations

## Matters

### **Advanced Business Succession Planning**

Develop and implement a gifting program to transfer nonvoting S corporation stock via grantor retained annuity trusts and installment sales to intentionally "defective" trusts in order to minimize estate tax exposure upon the death of the senior generation and retain ownership of the business in the family.

### **Trustee Defense**

Represent Trustees in many actions including: against a beneficiary who alleged breach of fiduciary duty; petitioning the Court to interpret the terms of a trust agreement and the administration of the same; termination of trusts and approval of accounts.

### **Individual Charitable Planning**

Create charitable trusts and private foundation to assist client in maximizing the value of assets transferred to charities and the tax deductions available for the same.

### **Representing Charitable Entities**

Work with public and private charities to help them best fulfill their charitable objectives, including preparation of fiduciary accountings and tax returns and assistance with other gift administration services.

## Resources

- A Gift to Your Family: Planning Ahead for Future Health Needs

<https://www.reinhartlaw.com/uploads/documents/A-Gift-to-Your-Family-Planning-Ahead-for-Future-Health-Needs.pdf>

## Chair





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