

PROBATE & ESTATE PLANNING

By Marguerite Munson Lentz

“But in this world nothing can be said to be certain, except death and taxes.”

—Benjamin Franklin, in a letter to Jean Baptiste Le Roy,
November 13, 1789¹

Death taxes may no longer be a certainty for most people after the 2017 Tax Cuts and Jobs Act, which increased the federal estate, gift, and generation-skipping transfer tax exemption to \$11.18 million (indexed for inflation) for each U.S. citizen or resident—at least until that provision sunsets at the end of 2025. Death, however, remains a certainty for everyone, and that means probate and estate planning lawyers still have much to do for our clients.

The SBM Probate and Estate Planning Section is pleased to sponsor this issue of the *Michigan Bar Journal*. The articles demonstrate the breadth of estate planning practice, from techniques for the wealthiest clients to drafting the most basic documents all clients should have.

In his article, James Spica explains a proposal to permit a settlor to manage the fiduciary functions as the settlor chooses. A portion of this proposal is similar to “directed trustee” statutes enacted in Delaware and elsewhere, while another portion presents a unique way of dividing the fiduciary functions. Spica’s article focuses on the directed-trustee portion of the proposal.

Michigan has joined the growing number of states that permit the creation of asset protection trusts. Robert Tiplady’s article explains the drafting and uses of a Michigan domestic asset protection trust.

Spica’s and Tiplady’s articles will help attorneys draft trusts that meet their clients’ objectives. However, not all estate plans reflect the clients’ desires. Some estate plans have been affected by undue influence, which can be difficult to prove.

David Skidmore’s article explains the fiduciary presumption of undue influence and how it operates in trust-related litigation.

Some clients aren’t worried about the drafting and administration of their trusts. They’re more concerned with maintaining government benefits for a disabled child and how an unintended distribution—such as an award of an exempt property allowance to a minor disabled child—can undo the careful planning to obtain and maintain government benefits. Nathan Piwowarski explains the policy, drafting, and litigation considerations concerning the *Jajuga* case and the exempt property allowance remedial statute.

Finally, who doesn’t need a durable power of attorney? If our clients become incapacitated, who will manage their affairs or even have the power to collect the mail? Nancy Little and Molly Petitjean explore what should be included in a well-drafted power of attorney.

The articles in this issue also show the scope of involvement of the section’s council. Spica and Tiplady each chaired a section committee that drafted the legislation in question. Piwowarski chaired a committee that responded to a proposed legislative response to *Jajuga* with substitute legislation that was eventually enacted.

The Probate and Estate Planning Section thanks the contributing authors for their articles, the members of the section’s council and committees for their work, and the readers of this issue for your interest in the section. Section members are warmly invited to attend monthly meetings or join a committee. Visit <http://www.michbar.org/probate> for more information. ■



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ENDNOTE

1. *The Oxford Dictionary of Quotations—Third Edition* (Oxford University Press, 1980), p 218.

