Willson & Pechacek, P.L.C. Newsletter

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Iowa Final Disposition Act

by Benjamin J. Wischnowski

Many Iowans would be surprised to learn that Iowa law places strict limitations on a person's ability to direct the final disposition of his or her remains after death. Though enacted in 2008, Iowa's Final Disposition Act did not make its way to the Iowa Supreme Court until early 2013, when the Court analyzed the Act at length in the case of *In the Matter of the Estate of Mary Florence Whalen*, 827 N.W.2d 184 (2013). This case involved a decedent who, in no uncertain terms, had made it clear that she desired to be buried in a pre-paid plot at a cemetery in Billings, Montana. Evidence of these burial wishes appeared not only in correspondence with her family members, but also in her Last Will and Testament. However, following the decedent's death, her surviving husband insisted that she be buried in Iowa, in direct conflict with her well-known and explicit wishes. After a detailed analysis of the facts and law at issue, the Supreme Court ultimately ruled in favor of the surviving husband, basing its opinion on the express requirements of the Final Disposition Act.

The Act, which applies to all deaths occurring on or after July 1, 2008, does not allow a person, while living, to issue binding instructions relating to burial wishes. Rather, the Act permits a person to *designate* someone else to make those decisions following the person's death. Importantly, the designee is not required to follow the decedent's wishes. By providing that an identified family member or other living designee will have the final say on burial decisions, the Act is intended to avoid family disputes about the nature of a decedent's burial wishes.

To name a designee who will be responsible for deciding the final disposition of your remains, the law requires that you execute a written form that complies with various technical requirements outlined in the Iowa Code. For example, the form must be attached to a durable power of attorney for health care, and it must not contain specific burial instructions. If a person dies without executing a valid declaration that complies with the Act, the right to control the final disposition of the decedent's remains first falls upon the surviving spouse, if any. Incidentally, this happened to be the scenario in the *Whalen* case. If no spouse survives the decedent, then the right falls upon a surviving child or, if there are several children, then upon a majority of the surviving children.

If you have any questions about Iowa's Final Disposition Act, it would be worthwhile to discuss your situation with an attorney to determine whether your estate plan should include a Declaration of Designee for Final Disposition.

Beginning Farmer Programs

By Lonny L. Kolln II

With the falling grain prices and current high cash rent amounts how are Iowa's beginning farmers to compete in today's economic environment? One possible solution is to look at programs available through the Iowa Agricultural Development Division (IADD). Programs available range from Loan Programs that offer lower interest rates to tax credits available for Landlords that rent to beginning farmers. The definition of "Beginning Farmer" is not tied to an age but instead to a farmer's maximum net worth. A beginning farmer must be at least 18 years old and have a maximum net worth of $678,731. The following is a brief overview of the programs available.

If you are interested in learning more about these programs please contact our office. We are currently making plans to provide a seminar on the IADD programs that will include speakers from the IADD to take place after this year's harvest.

(continued on page 3)

Social Networking for Seniors

by Jamie L. Cox

Persons over age 65 represent the fastest growing demographic for social networking users in the United States (the 50-64 age group is the second fastest growing group). While most people believe that seniors as a group are technologically challenged, that generalization (which may once have had some truth to it) is rapidly going the way of the dinosaurs. More and more seniors have acknowledged, adopted, and even befriended technology. Now we find seniors regularly using e-mail, text messaging from smartphones and tablets, keeping up with friends and family through social media sites or Skype, exchanging videos and photographs, and streaming media for entertainment.

It is clear that seniors have moved into social networking online. Social media networks can provide many benefits to seniors, but also expose them to significant risks. Issues such as financial scams and identity theft continue to raise their ugly heads. We do not advocate running and hiding from the Internet or social media sites, but we do strongly encourage seniors to exercise caution. By doing so, the benefits should outweigh the risks. Here are 10 precautions that seniors should employ when using the Internet and social networking sites:

1. Recognize that scammers use social networking channels to facilitate their schemes.

2. Do not open e-mails or e-mail attachments from people you do not know and trust; the bad guys continue to use e-mail attachments to deliver computer viruses capable of stealing your identity, capturing data from your computer, sending spam from your e-mail account, spying on you, and doing other bad things.

3. Do not give out personal or financial information such as bank account numbers or Social Security numbers.

4. Be wary when a site redirects you to another login page; check your browser to ensure that it still reflects the website you wanted. If not, leave the site and, as a precaution, shut down the entire program before continuing.

5. Be wary of links in e-mails and on websites. If something does not look right, do not click on it.

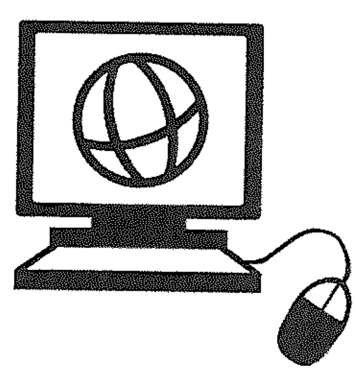
6. Do not give out information about comings and goings on social mediate sites. It may not cause problems, but why let people know when you will not be home, particularly for prolonged periods of time such as vacations. Similarly, think about the wisdom of checking in from various locations on your social media networks. Ask yourself whether that "check-in" will advertise your absence from home.

7. Do not advertise on social media the fact that you are home alone.

8. Responsible social media sites have privacy settings. Learn what they are and use them. You would be wise to set them more tightly when you first join a site than you might otherwise do. If things seem to work out well on the you can always opt to relax the settings if they appear to get in your way.

9. Do not give out credit card information to identify yourself or in order to get a trial version of something. It may be legitimate, but chances are that you will get billed for services that you had no intention of buying.

10. Many browsers will allow you to limit "cookies" or block them entirely. These cookies do not come with chocolate chips or raisins. They are small programs inserted on your computer by websites you visit that provide certain information to the website and its operators. Sometimes the information is harmless and will actually make your life a bit easier. Other times, it provides details you may not want third parties to have about you. If you completely block cookies, you may have problems with some websites. If that limits your access to websites you want to access, you may want to set your browser to reject cookies from sites you do not visit and accept them only from sites to which you navigate.



A Primer on Distributions from Retirement Plans

By Lee Rankin

Using a Qualified Retirement Plan (401(k) or 403(b) for example) or an Individual Retirement Account (IRA) is a great way to grow an investment nest egg because it defers any tax on the investment and its gain until the funds are distributed (except for Roth IRA accounts). Therefore, from a tax planning perspective, it is best to avoid distributions as long as possible to keep that money in the retirement account, but eventually the funds do need to be distributed.

So what are the rules on distributions? There are basically three different stages, all based on age.

The first stage is the time before age 59 ½. With certain exceptions, the withdrawal of retirement funds prior to reaching age 59 ½ will incur a 10% penalty (Iowa does not tack any penalty on but Nebraska does add an additional 3%). One notable exception to this penalty is to withdraw money from the retirement account in a "series of substantially equal periodic payments" for period of at least 5 years or until reaching 59 ½. Using this exception will distribute all the money held in the retirement account and avoid the 10% penalty. Please note to use this exception for a Qualified Retirement Plan (not an IRA), a separation from service from the employer maintaining the plan is required. Also, if a payout of the full balance of the retirement plan is not desired, a separate retirement account can be created and funded with a smaller balance to be paid out.

The second stage for those between ages 59 ½ and 70 ½, a participant can choose to withdraw or not withdraw any money during this time without any penalties. However, if a participant is still working at the employer that maintains their plan, he or she needs to check with the plan administrator to see if an "in-service" distribution is allowed.

The last stage is for those who are 70 ½ and older. These participants must abide by an IRS rule to take a minimum amount out of the retirement each year or be penalized. These payments are called Required Minimum Distributions or RMDs. These amounts are calculated using IRS actuarial tables and the balance of the retirement account. One can always withdraw more than what is required, but not distributing the minimum will incur a 50% penalty on the RMD amount. For the owner of the retirement account, a positive aspect is that the IRS table used to calculate the RMD is designed to make sure money is available in future years.

In my next article, I will go a little more in depth on retirement plan topics. If you would like to discuss any retirement plan questions with me, please do not hesitate to call.

(**Farmer Programs**, cont from page 1)

Beginning Farmer Loan Program

The Iowa Beginning Farmer Loan Program assists new farmers in acquiring agricultural property by offering financing at reduced interest rates. Beginning Farmer Loans are financed by participating lenders or contract sellers with the issuance of federal tax-exempt bonds by the Iowa Finance Authority. The tax-exempt interest income earned by lenders and contract sellers enables them to charge borrowers a lower interest rate, which will typically result in about a 25% rate reduction using the program. IADD's Beginning Farmer loan is often used with the FSA Direct Farm Ownership Down payment Loan Program (5/45/50).

Beginning Farmer Tax Credit Programs

IADD has two tax credit programs to assist beginning farmers. These tax credits are an incentive to lease to, or custom hire, a beginning farmer. The Agricultural Assets Transfer Tax Credit, commonly referred to as the Beginning Farmer Tax Credit program, allows agricultural asset owners to earn tax credits for leasing their land, equipment and/or breeding livestock to beginning farmers. The new Beginning Farmer Custom Farming Tax Credit program offers a credit to anyone hiring a beginning farmer to do agricultural contract work for the production of crops or livestock.

Loan Participation Program

The Loan Participation Program assists low-income farmers to secure loans and make down payments. IADD's participation can be used to supplement the borrower's down payment, helping a farmer secure a loan more readily. The lender's risk is also reduced since the IADD provides a "last-in/last-out" loan participation for the financial institution.

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		Beginning Farmer Loan Program (BFLP)	Loan Participation Program (LPP)	Beginning Farmer Tax Credit (BFTC)	Beginning Farmer Custom Farming Tax Credit (BFCF)
Beginning Farmer Qualifications	Maximum Net Worth	$678,731			
	Age	Must be at least 18 years old; No upper age limit			
	Residence	The applicant must be a resident of Iowa			
	Management	Must be owner/operator			
	Training and Experience	Must have sufficient education, training and experience for the anticipated farm operations			
	Access to Capital	Must have access to the following as needed: Adequate working capital, farm machinery, livestock, agricultural land			
	Land Ownership	Must be below 30% of the county median	No Restrictions		
	Off-Farm Income	No Restrictions	May not exceed 50% of total income	No Restrictions	
Fees	Application Fee	$50	$100	Cash Rent - $200 +$50/yr of lease Crop Share - $200 + $100/ yr of lease	$200
	Closing Fee	1.50% of bond up to $250,000 0.75% over $250,000 $300 minimum	1.25% of IADD participation loan $300 minimum	None	None
Terms	Eligible Projects	Land, machinery, equipment, breeding livestock or farm improvements	Land, machinery, equipment, breeding livestock or farm improvements	Leasing of land, equipment and/ or breeding livestock to beginning farmers	Anyone contracting a beginning farmer to do agricultural custom labor
	Program Maximums	$509,600 - Federal Bond	30% of the project cost up to $150,000	$50,000 Maximum Credit	$50,000 Maximum Credit
	Terms	• Loan terms are set by the Lender or Contract Seller	• 1.00% over the FSA Direct Farm Ownership Down Payment Loan Program fixed for the first five years, then readjusted to the same index for the final five years • 10-year balloon with 20-year amortization	• 7% tax credit for cash rent leases • 17% tax credit for crop share leases • Lease terms and duration are set by the Asset Owner • Must be a 2 - 5 year lease term • Additional credit if beginning farmer is a veteran	• 7% tax credit on amount actually paid • Contract terms are set by those contracting the custom labor • Payment for custom labor must be verified • Additional credit if beginning farmer is a veteran