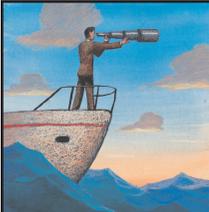




ATTORNEYS SERVING PRIVATELY HELD BUSINESSES AND THEIR OWNERS

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# Legal Advisory

IDEAS AND STRATEGIES FOR YOU AND YOUR BUSINESS / FIRST QUARTER 2018

## SIX ESTATE-PLANNING MOVES IN 2018

It is the dawn of another year, and a good time to review your estate plan. Or, if you do not have a plan in place, you can draft one with assistance from your attorney. Although every situation is different, here are six ways you may update your estate plan in 2018:

**1. Modify your will.** Your will is typically the foundation of the estate plan. Essentially, it determines who gets what, where, when and how; names the guardian of young children; and ties up most of the other loose ends of your estate. But the will you created years ago should be amended or rewritten after any life-changing events.

**2. Create a living trust.** A living trust allows you to pass assets on to your beneficiaries without having to go through the probate process. Probate varies from state to state, but it often costs time and money. Generally, a living trust is viewed as a complement to a will, not a replacement. If you decide to utilize

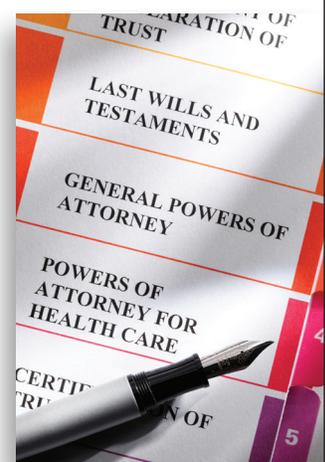
a living trust, you may arrange to have assets that pass under your will “pour over” into the trust.

**3. Consider other trusts.** You may design other trusts to take advantage of the prevailing tax laws. These trusts may have to be modified if the laws change. In addition, trusts can be used for various other purposes, such as shielding assets from creditors or the clutches of an ex-spouse.

**4. Set up a power of attorney.** A power of attorney can be established for someone to act on your behalf regarding your financial affairs. The most popular variation, the “durable” power of attorney, continues in the event you are incapacitated. Coordinate this with a living will and other health care directives.

**5. Plan for health contingencies.** Do not assume that you will stay in the pink of health forever. As with a power of attorney for financial affairs, you can establish a power of attorney or similar directives for

*(see Estate-planning moves on next page)*



*inside*

### SEXUAL CONDUCT

Uncovering the truth is key

### Money in Reverse

### Protection After a Data Breach

### Attorney–Client Privilege

### Legal Briefs

## TWIST IN NEW SEXUAL HARASSMENT CASE

**S**exual harassment continues to be a sensitive workplace issue. What's more, laws on harassment are being applied in some out-of-the-ordinary instances. For example, a new case brought to the Equal Employment Opportunity Commission (EEOC) involved a sexual harassment claim by a male employee about the alleged improper advances of a female supervisor.

For starters, there are generally two types of sexual harassment claims:

1. **Quid pro quo harassment.** This occurs when employment decisions are determined by whether a person submits to sexual advances or demands.
2. **Environmental harassment.** This harassment involves unwelcome sexual conduct that creates an intimidating or offensive work environment.

According to the EEOC, a single incident or isolated incidents of offensive behavior generally do not create a hostile environment unless the conduct is severe. Although both types of harassment have been recognized as being actionable by the courts, environmental harassment is usually more difficult to prove. Conversely, quid pro quo harassment claims are litigated more frequently in the courts.

**Facts of the new case:** A male mechanic for a trucking firm sued his employer for sexual harassment inflicted by his female supervisor, who was also a

company shareholder. The worker alleged that he was fired because he refused to have sexual relations with the supervisor.

When filing the claim with the EEOC, the mechanic was required to complete an intake form. He checked the boxes for "sex" and "retaliation" as the reasons for his claim of the discrimination, in addition to writing out "sexual harassment" on the form. The mechanic also provided evidence of another worker who reportedly received preferential treatment after having sex with that supervisor.

In response to questions seeking more details, the mechanic attached a lengthy statement to the intake form. The statement concluded that he was terminated because he refused to consent to the supervisor's sexual advances and he rejected her efforts to engage in sexual relations.

Because the EEOC didn't receive the separate attachment to the questionnaire, the district court dismissed the claim as being deficient on this technicality. But the mechanic continued to pursue the matter in the Tenth Circuit Court of Appeals. The appellate court was more lenient and remanded the case back to the district court for a determination of whether quid pro quo harassment had occurred.

**Practical advice:** If sexual harassment is alleged, employers should act promptly. Investigate the matter to see if any harassment occurred. 📌

## SIX ESTATE-PLANNING MOVES IN 2018 *(continued from front page)*

health purposes. If you have not done so already, add a living will that addresses any potential end-of-life care issues.

6. **Write yourself a letter.** Although a "letter of instructions" is not a binding legal document, it can provide valuable guidance and insights. For example, the letter may list and describe assets, the location of important documents, miscellaneous instructions (e.g., funeral arrangements) and other information, such as personal preferences and desires. This is mainly for the benefit of your heirs, but make sure your attorney has a copy.

Keep in mind that this is only a basic overview. Consult your attorney for your situation. 📌



### Up to Speed on Reverse Mortgages?

It is hard to miss all the ads for reverse mortgages. As the name implies, the money goes in reverse: Essentially, the lender pays you instead of the other way around.

This is being touted as a way for qualified individuals (i.e., you must be at least 62 years old) to tap into home equity. However, it is also fraught with perils, and you could be hit with unexpected fees. Obtain guidance from your professional advisers before you take any action.



❖ Find out whether your information was exposed. To do this, click on the “Am I Impacted” button and enter your last name and the last six digits of your Social Security number. Because your Social Security number is sensitive, make sure that you are on a secure device and the network connection is encrypted. The site will tell you if you have been victimized by the Equifax breach.

❖ Check your credit reports from the “Big Three” credit reporting agencies. This information is available at [www.annualcreditreport.com](http://www.annualcreditreport.com). If something looks suspicious (e.g., an unauthorized transaction), quickly move to [www.identitytheft.gov](http://www.identitytheft.gov) for the next step.

## SECURITY MEASURES AFTER EQUIFAX BREACH

Some people’s worst fears were realized by revelations about the data breach affecting Equifax, one of the country’s three major credit history bureaus, along with Experian and TransUnion. The personal information of more than 145 million Americans may have been compromised. What’s more, Equifax delayed news of the data breach, so the crooks were able to get a big head start on the police.

According to press releases from Equifax, the data breach occurred in the middle of last year and spanned several months. Hackers were able to gain access to consumers’ personal information, including their names, addresses, birth dates, Social Security numbers and driver’s license numbers. They also stole credit card numbers of more than 200,000 people. The reach of the hackers even extended beyond the United States into the United Kingdom and Canada.

How can you protect yourself in the wake of this massive breach? Among other instructions from authorities, the Federal Trade Commission (FTC) has advised consumers to take several security steps after visiting Equifax’s website, [www.equifaxsecurity2017.com](http://www.equifaxsecurity2017.com). (The FTC states categorically that it has no control over this link.) Some of the FTC’s suggestions include:

❖ Monitor your existing credit cards and bank accounts closely for charges you do not recognize.

❖ It is not for everyone, but you can “freeze” your credit files. With a credit freeze, it is difficult for someone to open a new account in your name, although charges may still be made through existing accounts. On the downside, this may hamper your personal ability to borrow money.

❖ If you decide against a credit freeze, you can still place a “fraud alert” on your files. This alternative warns creditors that you may be an identity theft victim and that they should seek verification from you. For many consumers, this is preferable to the credit freeze.

❖ File your taxes as soon as you have the tax information you need. In this way, you can get a jump on the scammers. Tax identity theft often happens when someone uses your Social Security number to apply for a tax refund. If you receive correspondence from the IRS concerning this matter, respond right away.

Finally, the FTC advises consumers to learn more about protection after a data breach by visiting [www.identitytheft.gov/databreach](http://www.identitytheft.gov/databreach). Rely on your professional advisers for additional support. 📧



## INSIGHTS INTO THE ATTORNEY–CLIENT PRIVILEGE

In a typical refrain from a television show involving law enforcement, a defendant might remark, “I’m relying on attorney–client privilege.” But when does this legal principle actually apply?



Briefly stated, as long as certain requirements are met, an attorney cannot disclose any communication (verbal or written) without the client’s consent. In addition, this privilege may be extended to employees or agents of either party.

### Q. What are the requirements?

A. The following four factors must be present: (1) An attorney–client relationship exists between the parties. (2) The communication is private and confidential. (3) Communications do not concern the future commission of a crime or fraud. (4) The privilege has not been waived.

### Q. How long does the attorney–client privilege last?

A. Forever, unless it is waived by the client.

### Q. What is the reason for the privilege?

A. It is in everyone’s best interests to foster open communication between an attorney and a client. For example, at trial, an attorney might be surprised if a client has suppressed vital information: That could pose irreparable harm to the case. In effect, the attorney–client privilege encourages clients to confide in an attorney.

Of course, the attorney–client privilege is not 100% absolute. In certain situations, it may not be recognized. For example:

- ◆ A client reveals plans to commit a crime or fraud in the future.
- ◆ A client discloses the privileged information to a third party other than an employee of his or her attorney.
- ◆ The communication concerns the will of a deceased client.
- ◆ The executor or administrator of a client’s estate waives the privilege.
- ◆ The relationship between attorney and client is “adversarial.”

**Caveat:** The benefits of the attorney–client privilege are forfeited if the client makes disclosures to other people. Keep information confidential to maintain complete protection. 📝

## BRIEFS

◆ **Quick Click**—An online acknowledgment may be binding, but there are exceptions. **New case:** A co-worker clicked through an agreement on an employee’s online health insurance form to help her with a vacation backlog, agreeing to arbitration for claims. When the employee sued, the employer moved for arbitration. But the court sided with the employee, because the co-worker—not the employee—was the one who agreed to the arbitration clause.

◆ **Donated Leave**—The IRS has established a special program to assist victims of recent hurricanes. Under the program, an employee can choose to forgo compensation for vacation, sick or personal leave that he or she is entitled to receive. In exchange, the employer makes payments to a qualified charitable organization. **Result:** The employee is not taxed on the donated income, and the employer claims a deduction.

◆ **Website Standards**—A blind person sued an arts supply store under the Americans with Disabilities Act (ADA). He said the store’s website failed to meet ADA standards. Because he could not buy supplies online, he had to spend money to get to a store. The district court in New York determined that the ADA requirements extend beyond physical locations. Retailers must also make accommodations online.

◆ **Gift-tax Exclusion**—As expected, the annual gift-tax exclusion is finally going up to \$15,000 in 2018. The annual exclusion, which is only increased in increments of \$1,000, had been set at \$14,000 per recipient for five years. Thus, if you have five grandchildren, you can now give gifts of \$15,000 to each one free of gift tax, for a total of \$75,000. The exclusion is doubled for joint gifts made by a married couple.