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LEGISLATION UPDATE
TAX SECTION 11-10-15

The following are proposals for 2016 or later legislation.

1. Friends as Fiduciaries This has a long history, so will do that orally. The latest is that the Idaho Bankers Association may carry a bill to partially solve the problem by adding a new paragraph 14 to §26-3205, Activities Not Requiring a Charter, reading: "Acting as a trustee, but only if such person is an individual and does not engage in the trust business as defined in sections 26-3203(30). This leaves "fiduciaries" who are not trustees in limbo, especially as to powers of attorney, since the 3203 in general talks about fiduciaries, not just trustees. The only exemption relevant other than the possible new one is for "relatives", which is not defined. Therefore, naming a friend or entity as POA is in violation of the statutes. The Dept may not be enforcing this provision, but it is not good to have practice and the law in conflict.

2. Digital Assets Currently providers are a pain to work with if the holder of the account needs to act through a power of attorney, conservator, trustee, or personal representative. There was a bill from the Uniform Laws Commission that had been theoretically agreed to two sessions ago, which I introduced, but then several of the providers pulled back. There is a new bill and everyone seems to have signed off, so will introduce this year. Long and fairly complicated so will not go into any detail.

3. Tax law There will be a bill that will greatly simplify the capital gain status on breeding stock. In the area of pass through entities, which we have been working on for a number of years. Was getting far too complicated. There will not be, at least this session, a bill on innocent spouse status where no federal liability so no issuance of that status at federal level - STC will continue to treat on a case by case basis for now.

4. Simplified Death Certificate for Recording We are working on a simplified death certificate that could be used for recording for things like CPWROS deeds at death of first spouse. Would not contain all the sensitive information of current death certificate. Technically more difficult than it sounds.

5. Affidavit in Lieu of Probate We are still examining this and waiting for feed back from ILTA and counties. Probably nothing this session, but major questions.

6. Effect of Divorce We are looking at extending provisions on effect of divorce to areas such as beneficiary designations on life insurance, POD/TOD, etc. There is some language in UPC 2-802 and 804, and some South Dakota language.

7. Deposit of CP into Account Possible updated 15-6-216, that CP status is not altered, and rights

of survivorship cannot be altered by Will.

8. Notice for Foreclosure, Decedent's Estate, Medicaid May be some additional language to address some current problems.

Other items will probably arise. But this session will be fairly tight and possibly short, and much of our work is more long term.

C&G - CLARITY OR CONFUSION

The following notes are quite brief because most of the proposals I discuss are in preliminary format and are not authorized for release. Therefore, I will discuss concepts, but probably not exact language. "[oral history]" means discussion that is not detailed in the notes below, either because it would be too time consuming or confusing to write out or because I want plausible deniability.

1. Uniform Laws Commission

History first. Chapter 5 of the UPC, dealing with C&G, was last amended in 1996, and promulgated in 1997. That act, the Uniform Guardianship and Protective Proceedings Act, was only adopted by a handful of States/Territories. Now, the ULC has started a substantial review and revision of that Act, producing a first draft and continuing meetings until a final draft is finished and adopted, with Comments, perhaps in the July 2017 meeting unless things move very quickly and July 2016 works. I am an official Observer to the Committee, so I get to look and comment, but not vote. There is a lot of discussion on what to include in the revision, among which is whether to cover Minor C&G - probably, since most states have both adult and minor and integrate them in some way. There is also an attempt to re-order the Act to make it more user friendly, including combining some sections, placing things in one area only instead of repeating them, etc. This makes it hard, though, to directly compare our law with the revisions.

Because these are preliminary drafts, I will comment on how this Act is heading in terms of other topics below. The preliminary drafts are pretty brief compared to existing Idaho law - see below.

2. TEPI

TEPI has made continual changes in the C&G area, tweaking the Code, and occasionally providing some major additions, but based on the Code as it existed prior to the UGPPA. However, there are major changes still needed, especially in the temporary appointment area and there even more especially in the minor guardianship area. Again, I will defer discussion of specifics until the end.

Additionally, TEPI is preparing an update of the C&G Forms Book. A ton of work and don't know when it will be finished.

3. Idaho Supreme Court Committees

The Idaho Supreme Court has been working on various aspects of C&G for a number of years. [Oral history]. So currently, there are a number of areas in which there will be major changes, when combined with the above two entities.

4. Issues

a. Nomenclature

The *Rogers* case [oral history] created some consternation. Additionally, there were emotional and dignity aspects to be considered. Part of the changes that all 3 of the above entities are doing is to remove what is deemed archaic or misleading nomenclature for persons involved in a C&G. Therefore, the terms “Incapacitated Person” and “ward”, will be replaced by something in the nature of “Person in Need of Protection” and “Protected Person” or “Person Under Protection” and “Protected Minor”. Expect future legislation and Rules to use such terms. The new Forms Book is also following that terminology.

b. Fees and Costs, Compliance

There are horror stories [oral history]. Therefore, some changes that are taking place include having Court Visitors become employees of the Court system. This has been going on already as a pilot project in Third and Fifth Districts and will be expanding, probably next to Ada County. This includes creation of a Court form for Court Visitor reports that will force the CV to provide the correct information, but also not to try to expand their role inappropriately. There will also be examinations of how to control fees and costs. Eventually, Guardians ad Litem may also be Court employees, and may be more limited in their scope and involvement in the case. There will need to be legislative funding at some point for a number of programs to protect those needing protection.

c. Alternatives to C&G

The statutory language is mostly already there, just not being followed. Should always look to trust and powers and other means first. Then, if those not work, least restrictive method. [oral history]. The UGPPA will emphasize this again. The court system here is also going to make an increasing emphasis on all this. Additionally, a concept that both the UGPPA and Supreme Court is examining is “Supported Decision Making”. This has numerous variations in application and is often a complete alternative to any formal proceedings or court involvement. [oral history]. There are also major issues on how to determine capacity/competency/disability and how all of that bears on C&G. [oral history] We are currently looking at forms and approaches in other states, including Texas, where Tarrant County has a long history of innovation in C&G.

The whole nation wide emphasis is “Person Centered Planning”. This encourages:

- (1) evaluations to focus on abilities and limitations, not just limitations
- (2) give increased role in decision making to person interests and values
- (3) consider Minor’s preferences in determining best interests
- (4) add to priority list for appointments “an adult who has exhibited special care and concern for the person’s interests and values” - different than our de facto custodian
- (5) make person’s preference a factor in selection of appointee

Some of this is in the existing Idaho Code to some extent.

d. Attendance at hearings Currently, many C&G persons do not attend the hearing. [oral history] However, the UGPPA may require presence at the hearing with very few and limited exceptions.

e. Temporary Appointments

This is a real problem currently. The minor and adult provisions vary dramatically. [oral history]. Also, no existing requirements on accountings, inventory for temporary appointments. [oral history]

e. Nomination of Guardian/Conservator Other Than By Will

TEPI is looking at legislation. Current statute covers nomination of Guardian by parent. Probably will add ability to nominate in POA. This whole concept, Will and POA, has been in and out of UGPPA revision, but currently looking at creating a spot on the priority list, but not automatic appointment. UGPPA goes into delegation of powers of Guardian/Conservator of Minor by a sort of POA. We have a form of that, originally passed in 1991 as part of Desert Storm, but now considerably modified and used often by grandparents and other family members, or in moving between school districts.

f. Developmental Disability

This Code will/may be moved into the Probate Code, for a number of reasons. [oral history]. Difficult to complete until the UGPPA is completed and Idaho determines whether to adopt some, all, or none of it, which is probably not until 2018 legislature at earliest.

g. Electronic Filing

The court system in Idaho is moving from the existing ISTAR program to Odyssey, based on a Minnesota system already in place there. This has been a test pilot in several districts and is supposed to move to Ada County, probably about next January. Full implementation however will take some additional time, so will be phase in. This gets into a mix of what are Court forms and what are pleading forms that presumably will mostly come from the TEPI forms book, how filings work, access through attorney portals, public access (this will replace the existing Repository), when original documents may need to be filed, how *pro se* filings will be handled, and a hundred other issues. [oral history] But will happen and sooner than you think.