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Estate Planning Pitfalls: A Case Study

As you might be aware, famed actor and Sopranos star James Gandolfini passed away on June 19th of this year at the age of 51, and we extend our sincerest condolences to his family. With his family in mind, we questioned the wisdom demonstrated through his estate planning process, and we'd like to address some of those points here for your benefit in this brief summary. It should be noted, that in offering these comments our intent is not to disparage either the late Mr. Gandolfini or his legal team, as we of course are not privy to all of the factors that led to the ultimate estate that we are examining. Our hope is that we can learn from the decisions that were made without presuming intimate detail that contributed to those decisions.

First, it is estimated Mr. Gandolfini left an estate valued at roughly $70 million, and his death is of interest from an estate planning standpoint because the majority of it is governed by a Last Will and Testament updated in December of 2012. If you are unaware, this becomes a public document that allows curious bystanders to learn the details of his estate, and the specific disposition of his assets. The very fact that one can conduct a case study on Mr. Gandolfini's affairs is in itself an oddity, as many high net worth individuals elect to pass assets via a trust document, if for no other reason than a desire for privacy. Nevertheless, the public nature of Mr. Gandolfini's estate has offered us a glimpse into his thinking, and ultimately provides a case study in the common pitfalls and errors of the estate planning process. We believe these lessons to be of value regardless of your net worth, and are beneficial for all of us to consider.

The issue of privacy is front and center in the Gandolfini estate. It is quite odd to see an estate of such size, regardless of the directives or beneficiaries, pass in such a way that allows public knowledge and scrutiny. To be clear, Trust documents are not a silver bullet in the estate planning process and for many are unnecessary, as they should only be used as a tool in response to a specific need and not as a cure-all. That being said, for many individuals the desire for a private settlement of their affairs is sufficient reason to justify the use of such a document, and we ponder over why it wasn't utilized in this instance.

Second, death and taxes are indeed two certainties in life, with the latter likely to take a hefty toll on Mr. Gandolfini's estate. Mr. Gandolfini left a full 80% of a $70 million estate to his sisters and nine month old daughter, making it subject to federal death taxes as high as 55%, as well as New York State estate taxes of perhaps another 16%. The way the math works, this may mean as much as $46 million of the estate coud be owed to the federal government and New York state within nine months of his passing. This constitutes a near 65% reduction in the value of his assets from taxes alone. If Mr. Gandolfini had allowed the assets to pass primarily to his wife as opposed to other relatives, the tax bill could be far less severe. As it stands, regardless as to why this path was chosen, it represents a significant tax liability to the estate.

Third, the issue of feasiblity also comes into play. It is likely that in order to satisfy the tax collectors, illiquid assets such as real property may have to be sold in a hurry. Also, real property that remains in the estate and is passed to his extended family, doesn't appear to have sufficient liquid assets available to cover basic expenses such as property taxes and maintenance. Again, there may be other plannng at work unbeknownst to us, but the practice of passing on a valuable but illiquid asset without the means to maintain that asset is all too common and may be the case here.

It is, therefore, crucial to not only consider the value of an asset, but likewsie its nature and characteristics. Cash is very different from property, which is very different from a business. Suitable planning must be accomplished in order to ensure not only the desired quantities of inheritence or philanthropic giving, but also the proper disposition of those assets to the right beneficiaries. The issue of a lack of liquid assets for the heirs to maintain what's been given to them can represent another possible failure of this estate plan.

So, what lessons do we learn here?

The first and primary lesson is that money doesn't necessarily buy good estate planning. It may be true in some instances that in order to execute a more complex plan additional legal dollars will have to be spent, however, as with any good or service more money being spent does not necessarily equal a better product. Likewise, when appropriate and skilled legal counsel is secured it is important to actually follow their advice. There is therefore the need to not only assess and secure appropriate legal assistance but to follow and execute the advice that such competant counsel is providing.

Second, it is important to undertand that just because you desire a specific disposition of your estate doesn't mean it's necessarily a good idea. In this case Mr. Gandolifini may have had very good reasons for wanting a particular relative to have a piece of real property, but unless he provides the means to maintain that property he may be passing on a headache and financial burden regardless of its intrinsic value.

Finally, estate planning can be difficult regardless of your net worth, and in all likelihood you too need some help. The ultimate quality of any estate plan is based in large measure on the effort and oversight of those who own the assets. While good legal counsel is essential, no amount of documentation can fix familial discord or decisions driven solely by fear and greed. An estate plan is not a product, it is a process which must be fully engaged by participants if it is to stand a chance of successfully carrying out the wishes of its creator.

In closing, please know that we at Capstone Investment Group take the estate planning conversation with our clients very seriously. Estate planning is something that we all must address regardless of net worth. Any plan crafted today will likely continue to evolve and can require adjustments in the future. We are not attorneys or CPAs, but we are experienced in providing feedback on what constitutes good estate planning. We stand ready to help you prepare your plan prior to the employment of appropriate legal professionals. In our view, good estate planning is done not just for the benefit of the owner but also out of care and loving concern for those who will be left behind and must live with the ramifications of our decisions. It is therefore in the spirit of stewardship and selflessness that we encourage you to examine your own plan, or lack thereof, in light of this case study and please undertake the necessary steps to set your affairs in order. To the extent you need help with that or have no idea where to begin, please know we are a phone call or email away and would love to be of assistance in any way we can.

Yours very sincerely,

CAPSTONE Investment Group, LLC