

PACIFIC BUSINESS NEWS

THE BUSINESS OF LAW

EXPERT LEGAL ADVICE FOR HAWAII'S SMALL BUSINESS

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TOPIC

Managing an Inheritance

An inheritance is a bittersweet thing – brought about by the death of a loved one who thought enough about you to try to make your life better.

Think carefully before you spend it. Don't squander it on meaningless things, but rather things that make a lasting impact on your life - to honor your loved one and their memory.

Do:

- Pay off your debts
- Make it your emergency fund
- Invest in your career
- Save for a secure retirement
- Put it in your child's college fund

Don't:

- Brag about your wealth and risk being preyed upon
- Squander it on things you don't need
- Make hasty decisions
- Invest in "get rich quick" schemes

If the inheritance is an IRA, you must take the "required minimum distributions", but the rest can continue to grow tax-deferred. Complete a new beneficiary designation form so that it goes to your preferred beneficiaries on your death.

Visit with your estate planning attorney to consider whether the inheritance affects your own estate plan. Do you still want the same disposition? For example, if you were leaving \$10,000 to each nephew before the inheritance, perhaps it should now be \$15,000. If you were giving a percentage of your estate to each person, do you want them to get the same percentage of your now larger estate?

TOPIC

May an employer cover domestic partners even though the Domestic Partner Bill has been vetoed?

Yes. Who is eligible to benefit under an employer's benefit plan is largely up to the employer, particularly in the case of welfare plans. Thus, even though the Domestic Partner Bill was vetoed, an employer could still elect to provide benefit coverage to domestic partners.

An employer who wanted to do that—for example, to provide health insurance coverage to domestic partners—would first need to define "domestic partner". Does the definition cover any two people in a committed relationship, or just same sex couples? Will children of an employee's partner also be covered, or just the partner? What will the employer require, if anything, as evidence of a "committed" relationship?

Whatever the answers on those questions of eligibility, the employer will need to confirm that insurance carriers will go along. The employer will also need to communicate its decisions as clearly as possible to employees.

In that regard, an employer should insure that employees know covering domestic partners and covering spouses have different tax implications. For example, the cost of health insurance provided by an employer for an employee's spouse is excluded from employee income under federal tax law. But whether health insurance provided to a domestic partner is similarly excluded (or, instead, is taxable) depends upon whether the domestic partner is also the employee's tax dependent—namely, a member of the employee's household, more than half of whose support for the year is provided by the employee. While there are now bills in Congress to address the difference in the taxation of benefits provided by employers to spouses and domestic partners, it is probably a safe bet that such differences will remain part of the mix for now.

TOPIC

Choosing Your Business Entity

Selecting the entity determines ownership, control and management of a business, and how the owners are treated for tax and liability purposes. Before deciding, you should consult your attorney and tax advisor; however, here are some choices to consider:

• **Sole Proprietorship.** This is the simplest form of doing business. There is no legal entity to be taxed apart from the owner. Owners have unlimited liability for company debts, making this unattractive to most.

• **Corporation.** A regular ("C") corporation provides for limited liability protection for shareholders, but is subject to double taxation (at the corporate and shareholder levels). Shareholders elect the board of directors who set policy and elect officers to handle day-to-day operations. Certain corporations may elect to be taxed as an "S" corporation, which eliminates the double taxation and allows it to be taxed as a pass through entity like a partnership.

• **General Partnership.** This occurs when two or more partners operate a business as co-owners. Because of the unlimited liability of each partner, few people use general partnerships. A limited partnership, however, limits the liability of limited partners and is managed by a general partner. The partnership is not subject to taxation on its net income; however, the partners are.

• **Limited Liability Partnership.** A limited liability partnership operates like a general partnership, except that each partner has limited liability (unless that partner was responsible for the liability). A limited liability limited partnership operates like a limited partnership, except that the general partner has limited liability in many instances.

• **Limited Liability Company.** LLC's are popular because owners (members) have limited liability, there is no double taxation, and there is flexibility in structuring it to meet the owners' needs. In a "member-managed" LLC, all members participate in management. In a "manager-managed" LLC, the members select a manager.

TOPIC

The New Consumer Financial Protection Agency

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act"). Among other things, the Act creates a Bureau of Consumer Financial Protection (the "BCFP") and vests the BCFP with extensive rule-making authority regarding federal consumer financial laws, supervisory authority over financial service providers and strong examination and enforcement powers. Depository institutions and mortgage lenders that were regulated by federal banks and state regulators in the past now will be regulated by the BCFP. The Act also significantly expands federal authority over numerous financial products and services that nonbank providers have traditionally provided without federal oversight. In the near future, it is likely that these businesses will need to implement new disclosure requirements and will experience greater limitations on their prior business practices.

The Act applies to each "covered person" which includes "any person that engages in offering or providing consumer financial products or services" and any affiliate that "acts as a service provider to such person". A "consumer financial product or service" is defined broadly to include the following:

- Extending credit and servicing loans.
- Providing real estate settlement services, or performing appraisals.
- Selling, providing, or issuing stored value or payment instruments.
- Providing check cashing or check guaranty services.
- Providing payments or processing services to a consumer.
- Collecting debt related to any consumer financial product or service.

The BCFP is also authorized to (i) extend the definition to other financial products or services that meet certain requirements, (ii) require additional disclosures concerning consumer financial products or services, and (iii) prevent unfair, deceptive, or abusive acts. The BCFP has examination and enforcement authority over certain depository institutions and other companies who do not accept deposits. The Act also provides for civil and criminal penalties for violations and for IRS referrals for tax law violations by a covered person.

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