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RECENT STATUTORY CHANGES MAY AFFECT YOUR ESTATE PLANS

Ohio Estate Planning Changes

Ohio Transfers to Minors Act

Anyone currently serving as a Custodian under the Ohio Transfers to Minors Act should consider designating a successor Custodian. The law makes clear that such a designation will override any previous designations. The Custodian may make the designation in a Last Will, in the ownership registration or in an affidavit recorded at the County Recorder's office (for real estate interests).

In addition, you may now establish a Custodianship to be held for the benefit of the beneficiary until the beneficiary attains age 25, up from age 21. You may want to update provisions in your Will or trust, if you want the higher age to apply. If it is a lifetime gift, the beneficiary may have a right to withdraw the asset at age 21 unless you specifically eliminate that right. However, if you have a large estate, eliminating the right could cause tax consequences now or in the future.

Vehicle Transfer to Spouse at Death

Ohio has had a helpful probate avoidance provision that allowed up to two automobiles to pass to a surviving spouse outside of probate if the total value of the vehicles did not exceed \$40,000. Ohio just made the statute even more helpful by allowing an unlimited number of automobiles to pass to a surviving spouse outside of probate if the total value does not exceed \$65,000. If you do not want all of the vehicles to pass to a spouse or if you have motor homes or semis, you may want to consider adding a Transfer on Death (TOD) beneficiary to your title.

Digital Assets

Digital assets include such items as your online accounts, passwords, emails, blogs, bank account access, and cloud storage services. Many people are now making money from online activity. Many online providers have tried to restrict successor's access to these items. In fact, it may have been a criminal act for successors to attempt to access the information. Ohio has now created a law that allows you to authorize your successors to access your digital assets. You can grant access to just the catalog of content or to all of the content itself. Consider updating your Will, trust and or financial power of attorney to grant this access.

Many providers are starting to provide "online tools" for designation of successors. If you make use of these online tools, the online tools will override anything that you may specify in your estate planning documents. Accordingly, you will need to remember to update these online tools as you make changes over your lifetime as to who you want to be the successor, much the way you need to update life insurance and retirement account beneficiary designations. If you fail to make any designations, the terms of the service agreement will prevail and may prevent any access at all.

Assisted Reproductive Technology

In our new digital and high tech society, you or your descendants can have posthumously conceived children. You can decide whether you want these children to inherit under your Will or trust. The standard definition of child or other descendant includes a person born within 300 days of the death of the parent. You can now specify in a Will that the beneficiary will be included if they are born within one year and 300 days. You can extend that time period to up to 5 years in a trust. If you want to extend this period of time, you may need to specify how the estate will be administered during this period of waiting to see whether additional beneficiaries are born. You also may need to address in your estate planning documents or through agreements with storage facilities how you wish to dispose or transfer genetic material at the time of your death.

Federal Change

Basis step-up for assets in trust

A recent ruling by the IRS provides smaller estates with trusts the opportunity to seek a basis step-up for assets subject to the trust at the death of the first spouse to die and then again at the death of the surviving spouse if the trust is only for the benefit of the surviving spouse during the surviving spouse's lifetime and the trust qualifies for the marital deduction. Trusts that allow distributions to the surviving spouse and to children or other lineal descendants will not qualify for this election. An election by the surviving spouse to opt for this basis step up causes the trust to be included in the surviving spouse's estate for estate tax purposes, so the election is not as beneficial to larger estates.

RUSSELL CUNNINGHAM SCHEDULED TO SPEAK AT FARMLAND SUCCESSION WORKSHOPS

Partner **Russell Cunningham**, OSBA certified specialist in estate planning, trust and probate law, is speaking at two upcoming OSU Extension seminars entitled "Farmland Succession Workshop." Other guest speakers will be Chris Bruynis, the OSU Extension Educator in Ross County, and Richard K. Shirer, CLU, LUTFC, CLTC, of Shirer Benefit Services.

THE SEMINAR WILL BE PRESENTED ON TWO OCCASIONS:

- July 27, 1 to 4 p.m. at the Mohawk Community Library, 200 S. Sycamore Ave., Sycamore, Ohio. Hosts are Jason Hartschuh, OSU Extension Educator in Crawford County; Rick Leitzzy, Ag Credit in Wyandot County; and Darrell Swinehart, Ag Credit in Crawford County. Pre-register by Tuesday, July 25, by calling 614-932-0854 or emailing richard_shirer@glic.com. There is no charge for this meeting.
- August 30, 6 to 9 p.m. at the Andersons Marathon Ethanol Conference Room, 5728 Sebring Warner Road, Greenville, Ohio. Registration and light refreshments at 5 to 6 p.m. Hosted by Sam Custer, OSU Extension Educator in Darke County.

Pre-register and prepay \$10 per person (covers snacks and materials) by August 28. Mail name(s), address, phone, email address, and payment to OSU Extension, Darke County, 603 Wagner Ave., Greenville, OH 45331. Make checks payable to Ohio State University Extension.

TOPICS INCLUDE:

- How to start the transition process
- How to expand the farm estate for heirs without estate tax inclusion
- How to use limited liability companies to minimize risks
- How to establish a family farm operating agreement with your children
- How to create money outside your estate to pay estate settlement expenses
- How to design options for farm heirs to purchase farm assets from non-farm heirs



BECE WELCOMES IP ATTORNEY YIMEI HAMMOND

BECE LLP is pleased to welcome attorney **Yimei Hammond** in an "of counsel" capacity. She has been practicing law for more than 10 years, advising clients about patents, trademarks, service marks, copyrights, and other IP matters, and preparing and prosecuting U.S. and foreign patent applications.

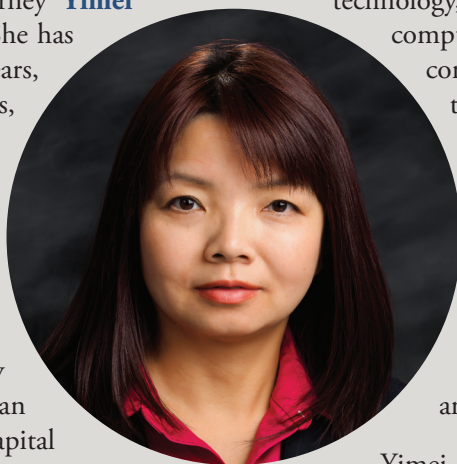
Yimei (pronounced ee-may) majored in biological sciences at Kenyon College, received a master of sciences in pharmaceutical sciences at the University of the Sciences in Philadelphia, obtained an MBA degree with highest honors from Capital University, and earned a law degree magna cum laude from Capital University Law School. Yimei has been registered to practice before the United States Patent and Trademark Office since 2004.

As a patent attorney, Yimei Hammond is experienced working in many technologies, including food safety, semiconductor

technology, polymer technology, nanotechnology, computer software, anti-virus methods, internal combustion engine, nanofiltration water technology, electrochemical technology, corrosion resistant coatings, pharmaceutical compositions, mechanical devices, peptide technology, and consumer products.

Before becoming a lawyer, Yimei worked as a scientist for more than seven years, including as a chemist, a quality control specialist, a product development scientist, and a formulation scientist/process engineer.

Yimei grew up in China and has maintained and built upon her Chinese connections. She currently is a chair for the SIPO/U.S. Bar Liaison Council (State Intellectual Property Office for the Peoples Republic of China), and she is a member of the Asian Pacific American Bar Association of Central Ohio. Yimei is a past president for Columbus Intellectual Property Law Association.



BIG DATA RIGHTS IN SMARTER AGRICULTURE

With wireless sensors mounted on modern farm equipment, data associated with every farming decision can go directly to manufacturing companies and suppliers. These wireless data collection procedures are in part legally regulated via contracts, for example by Climate Corporation's "End User License Agreement," which a farmer must sign.

What can or should a farmer do with this kind of "End User License Agreement"?

According to the privacy and Security Principles of Farm Data of April 1, 2016 (Principles), **farmers are recognized as the owners of the information generated on their farming operations.** They also have the rights to be notified about how their data will be disclosed and used. Nevertheless, it is the responsibility of the farmers to agree upon data use and sharing with other stakeholders. It is also the responsibility of the farmers to ensure that only the data they own or have permission to use is included in the agreement with the Agriculture Technology Provider (ATP).

This set of Principles was agreed to by a group of companies and organizations: AGCO, Ag Connections, Inc. Agrible, Inc. AgSense, AgWorks, Ag Leader Technology, American Farm Bureau Federation, American Soybean Association, Beck's Hybrids, Dow AgroSciences LLC, DuPont Pioneer, John Deere, National Association of Wheat Growers, National Corn Growers Association, National Farmers Union, Raven Industries, the Climate Corporation – a Division of Monsanto, USA Rice Federation.

In this set of Principles, farmers are recognized as the owners of the information generated on their farming operations (also called raw data). However, **farmers are urged to affirmatively negotiate their rights to the use of the data and sharing of the derivative data with other stakeholders.** "Derivative Data" refers to the data and information generated based on the raw data produced by the farmers (can also be referred to as "Generated Data"). Therefore, if farmers sign the "End User License Agreement" without questioning or negotiating the content of the Agreement, farmers are likely waive their rights to Derivative Data and other legal protections, such as trade secrets.

Farmers not only need to understand the rights stated in the Agreement, but they also need to actively negotiate the

uses and rights of the Derivative Data (or Generated Data) with the manufacturing companies and other suppliers and stakeholders. During negotiations, **farmers must take care to ensure the contract clearly defines who has access to the data and what uses may be made of it.**

For example, in response to this set of Principles, Climate Corporation's "End User License Agreement" affirms: "We presume you own the information and data that you provide to us..., for example, the data generated from the farming equipment you own or lease ... we do not claim any ownership interest in Your Information [and it] remains yours even after you provide it to us." The Agreement also says: "[W]e are the sole owner of the Climate Products and Generated Data and all associated technology and intellectual property rights, and we reserve the rights in and to the Climate Products and Generated Data." While Climate Corporation recognizes farmers' ownership of the raw data, it also declares that farmers do not have rights to Derivative Data that Climate Corporation analytics generate, even when these data rely on farmers' raw data. **Think about and raise these issues when reviewing an ATP agreement:** Who are the owners of the Climate Products and Generated Data? Who are the owners of the associated technology and intellectual property rights? What rights that the farmers have in these Generated Data and associated technology and intellectual property?

In addition, when purchasing equipment, a farmer should talk to the manufacturing company about how fast the company's representative or technician should respond when faced with an equipment issue. Consider asking the company to provide quick temporary mechanical solutions that farmers can perform themselves when faced with equipment breakdown or issues. All of these can be negotiated and put in the contracts.

Other areas to consider: the right to be notified about how data will be disclosed and used, the rights to security necessary to keep the data safe, and whether the program(s) are compatible with other data analytics farmers may already be using.

Questions? Yimei Hammond can be reached at 614-210-1849 or yhammond@ohiocounsel.com.



KAITLYN KACHMARIK LICENSED TO PRACTICE LAW IN INDIANA

Associate **Kaitlyn Kachmarik** is now licensed to practice in Indiana, as well as in Ohio. We appreciate the considerable effort she spent to prepare for two bar exams in one year.



The passing rate for the Indiana exam was only 52%, all the more reason to congratulate Kaitlyn!



B E C E

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