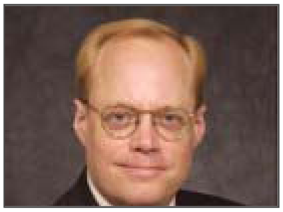
Wood LLP Tax Alert



Robert W. Wood
THE TAX LAWYER

TAXES | 7/20/2013

6 Estate Planning Lessons From James Gandolfini's Will

James Gandolfini (Photo credit: Wikipedia)

James Gandolfini's untimely death at 51 brought many discussions, none more strange than the fixation on his will. A few estate planning stories are salacious, such as the tale of Anna Nicole Smith. A few are amusing, such as Leona Helmsley's $12M trust for her dog Trouble.

But most estate planning stories are dull, and even the gaffes are not very interesting. Yet the will of Tony Soprano's alter ego has sparked national commentary and debate over taxes, how to provide for family, and the efficacy of estate planning. Rich or poor, none of us want to be remembered for paying too much in taxes or giving our money away foolishly.

In Mr. Gandolfini's case, the most common tag-line is that his will is a tax disaster. Here is [Gandolfini's will](). Many say it dispenses his $70M estate in a clumsy and ill-advised way that lops off $30M first for the IRS. The stories should make any tax man go to the mattresses.

The New York Daily News said James Gandolfini will is a tax 'disaster.' Lawyer William Zabel said Mr. Gandolfini's gaffe was leaving 80% of his estate to his sisters and his 9-month-old daughter, making 80% of the estate subject to "death taxes" of about 55%. The New York Times staged a public debate over the wisdom of Gandolfini's will.

Despite the hype, we probably do not know the whole picture. Still, here are six lessons for everyone:

1. Keep It Private. This is the most important of all. Mr. Gandolfini's will was admitted to probate, so all these stories are possible. Most people regardless of their financial wherewithal should not need to admit a will to probate. It is public. The simple way to keep it private?

2. Use a Revocable Trust. For very little money (or do it yourself) you create a revocable trust that calls for the disposition of your assets. Yes, you still write a will—also cheap or do it yourself—but the will just says that everything you own goes via the revocable trust. It's called a pour-over-will, since it pours all assets into the trust. The trust is private.

3. Think Taxes, But Not First. No one wants to pay taxes unnecessarily, but you first want your assets to go how you want them to go. That can change frequently during life. Another advantage of a revocable trust is that you can change it easily at any time. Mr. Gandolfini is being roundly criticized for paying tax. Even if that turns out to be true, if he ***wanted*** his sister to receive a large share, taxes may be inevitable. Taxes aren't everything.

4. Consider Tax Efficient Gifts and Transfers. We don't know how many tax-efficient steps Mr, Gandolfini took, but surely he took some. For example, his teenage son, mentioned in the will, receives $7M in life insurance proceeds via a separate life insurance trust. Irrevocable life insurance trusts are highly tax efficient ways to transfer wealth. No estate tax there.

5. Consider Children's Ages Carefully. Many who have young children think they will be ready to receive and manage assets at age 21. Or 25. Or 30. Often, we revise our expectations over time as they mature (or don't). Be careful with this one. Mr. Gandolfini's will calls for his baby daughter to receive significant assets at 21.

6. Foreign Property is Different. Many of us dream about having a getaway overseas. But get some local legal advice. Mr. Gandolfini's will says his Italian property goes to his son and daughter when she turns 25. But inheritance laws in Italy may override this, injecting a share for his spouse. And upkeep can be brutal, so getting the overseas property with no cash can doom the goal of keeping it in the family.

You can reach me at Wood@WoodLLP.com. *This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*

Originally published by Forbes.com.