The Best Laid Plans Sometimes Go Alright.

You have put significant time, effort and thought into the client's estate plan. A key component will be a family limited partnership, which will generate discounted asset values that lower the estate tax. You have almost completed all of the work, but the client dies before everything is finalized.

Does that mean the family limited partnership plan goes out the window? Maybe not. In *Keller v. United States*, 2012 U.S. App. LEXIS 20119 (5th Cir. Sept. 25, 2012), the Fifth Circuit held that enough of the formalities had been accomplished to bring the family limited partnership into being.

Maude Williams was a wealthy widow; her advisors had concluded that a family limited partnership would be useful given her circumstances. While in the hospital with cancer, she executed all of the documents necessary to create the entities associated with the family limited partnership. Maude had been over proposals to capitalize the partnership and had endorsed them. The schedule of initial capital was not completed, however, and Maude died. *Id.* at *4-*5. Her advisors assumed that the family limited partnership was a nullity because the initial capitalization of the family limited partnership was not formalized before Maude's death, leaving the estate with a $147 million estate tax. *Id.* at *6. After a CLE seminar, however, one of Maude's advisors concluded that the limited partnership could be operative. This led to a refund claim, which was premised primarily upon the amount by which the estate's holdings would be discounted due to the creation of the family limited partnership.

The Fifth Circuit heard the case on appeal from a favorable ruling on the refund claim in district court. The central question was whether (under Texas law) the intent of the owner of property to make it partnership property is sufficient to convert the property into partnership property. The Court concluded that this was the correct result under Texas law. *Id.*at *10-*13. The Court also rebuffed a number of counter-arguments by the government that were based on the language of the Texas Revised Limited Partnership Act. *Id.* at *13-*20. In doing so, the Fifth Circuit relied upon a prior case that upheld a family limited partnership even though certain formalities, such as forming the corporate general partner and filing the certificate of limited partnership, had not been completed before the decedent's death. *Id.* at *16-*17 (citing *Church v. United States,* 2000 U.S. Dist. LEXIS 714 (W.D. Tex. 2000), *aff'd,* 268 F.3d 1063 (5th Cir. 2001).

Obviously, this is not a planning technique. The right way to wrap up an estate plan is to complete all of the necessary documents before the death of the decedent. Moreover, the law in other states might dictate a different result. Nonetheless, it is worth keeping the *Keller* case in mind when death appears to have thrown a monkey-wrench into a planned family limited partnership.

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