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TWO THINGS YOU CAN ALWAYS COUNT ON IN NEW JERSEY: DEATH AND TAXES

By Valerie L. Howe, Esq.

Everyone has heard of the Federal estate tax, colloquially referred to as the "death tax." Did you know that New Jersey also has an estate tax? And, did you know that the New Jersey estate tax has been changed to prevent a reduction in that tax that would otherwise have occurred as a result of the changes made to the Federal estate tax?

The Background: The Federal estate tax is a tax imposed on the value of your estate at the time of your death. Federal tax law changes initiated in 2001 call for a gradual increase in the amount of the "exemption" from this tax. The "exemption" is the amount which each individual can pass to his/her heirs without incurring a Federal estate tax. In 2001, the Federal exemption was $675,000. Today, the exemption is $2 million, increasing to $3.5 million on January1, 2009. The Federal estate tax is eliminated in 2010, but then returns on January 1, 2011 with an exemption of $1 million.

The New Jersey estate tax, just like the Federal estate tax, is a "death tax" based upon the value of your estate at the time of your

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Timely News and Information from Mason, Griffin & Pierson, P.C.

NEW JERSEY AND AFFORDABLE HOUSING: NOT PERFECT TOGETHER

by Edwin W. Schmierer, Esq.

For New Jersey homeowners, housing is anything but affordable. The cost of utilities, heating fuel, electric, gasoline and food are at record high levels. Despite talk of tax reform in Trenton, the school, county, and municipal real property taxes continue to increase annually.

An attempt to provide affordable housing for low and moderate income households during the current economic situation has proved to be a formidable challenge. The Council on Affordable Housing ("COAH") is the agency responsible for overseeing affordable housing opportunities in the state. According to the New Jersey Fair Housing Act of 1985, in the central New Jersey region, a low-income, one person household is defined as a household earning not more than $29,598 annually. In the same region, a moderate one person household is defined as a household earning not more than $47,357 annually. The COAH guidelines further indicate that persons in the low or moderate-income range should not be required to expend more than 30% of their income on housing shelter costs. This means that when the housing expenses of the low or moderate-income household are totaled (including monthly mortgage payments, real estate taxes, utility charges, monthly condominium dues where applicable), the housing units have to be priced so that all the housing shelter expenses do not exceed one-third of the household's disposable income.

To qualify for low and moderate-income housing, an individual can go to either the municipal housing liaison in the community where they would like to live, or they can go through the New Jersey Housing and Mortgage Finance Agency Bureau of Housing Affordability Services (http://www.state.nj.us/dca/hmfa/biz/gov/). Those wishing to qualify to either purchase a home or rent a unit must submit detailed financial information at either the local or state level in order to be certified as eligible for affordable housing. Subsequently, as housing becomes available in the various communities throughout the state, those interested will be placed on a waiting list to purchase or rent.

Qualified applicants will be able to purchase or rent a one, two, or three bedroom dwelling depending upon the size of their family.

Providing affordable housing for those in the low or moderate-income range is a laudable objective, and COAH has recently issued new rules that must be followed by all municipalities participating in the COAH affordable housing process. The purpose of the new rules is

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to attempt to guarantee that COAH will achieve its goal of providing more than 115,000 new affordable units, state-wide, by the year 2018. This is a significant burden and tremendous obligation for all municipalities in New Jersey. As a result, local elected officials are in the process of digesting the new COAH regulations (adopted on May 6, 2008) and analyzing the impact these regulations will have on their communities.
Unfortunately, the forces normally at work in the marketplace that drive the construction of new homes and non-residential buildings will most likely not be able to achieve such an aggressive affordable housing objective within the next decade. Due to the current economic downturn, few new homes are being built, and thus it will be extremely difficult within the foreseeable future to achieve construction of one new affordable housing unit each time four market-rate houses are built.

It would be prudent to monitor your community's response to the current affordable housing challenge. Years ago, the courts in New Jersey stated that municipalities were not required to appropriate funds to construct affordable units. The municipalities were required to zone within their communities for a realistic opportunity for the affordable housing to be built. However, with less than ten years remaining to achieve the goal of 115,000 new affordable housing units, communities might be forced to expend residents' tax dollars on affordable housing. Consequently, to guard against this, individuals are urged to actively participate (by contacting their elected local officials) in how their community intends to respond to the COAH challenge so that existing homes do not continue to become less and less affordable in the future.

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death. It should not be confused with the New Jersey inheritance tax (another "death tax") which is based upon the family relationship between the deceased individual and the beneficiary.

Prior to the 2001 Federal estate tax law changes, if there was no Federal estate tax due, then there was also no New Jersey estate tax due. However, if an estate owed a Federal estate tax, then a portion of the Federal estate tax liability would be paid to New Jersey in the form of the New Jersey estate tax and the balance would be paid to the Federal government.

The Change: As a result of the gradually increasing Federal estate tax exemption, New Jersey was facing potential losses in revenue, since there would be no New Jersey estate tax until estates exceeded the now much higher Federal exemption. To prevent this loss of revenue, New Jersey amended its estate tax law to provide that the New Jersey estate tax will be calculated based upon the Federal estate tax as it existed in 2001, when the Federal exemption was just $675,000.

The Impact (a fact of life for New Jersey residents): Because of high real estate values, simply owning a home in New Jersey is sufficient to cause many individuals to be subject to this tax. The change in the New Jersey estate tax particularly impacts married couples whose estate tax planning includes Wills or Trusts incorporating so-called "credit shelter trusts" also referred to as "by-pass trusts." These are trusts designed to be funded with the full amount of the Federal exemption available to the first spouse to die. If such a trust is funded with an amount greater than $675,000, there will now be an immediate New Jersey estate tax, whereas, prior to the change, no New Jersey estate tax was due. In short, where previously taking full advantage of the Federal exemption upon the death of the first spouse resulted in no Federal or State estate tax liability, now doing so results in an immediate New Jersey estate tax to the surviving spouse. For example, if the credit shelter trust is funded with the full current Federal exemption of $2 million, the surviving spouse will owe $99,600 in New Jersey estate taxes.

In light of the changes in both the Federal and New Jersey estate tax laws, it is important to revisit existing estate plans and re-examine existing Wills and Trusts. Failing to do so could result in an unplanned and unexpected tax bite.

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