Proskauer

Wealth Management Update

December 2024

December 2024 Interest Rates for GRATs, Sales to Defective Grantor Trusts, Intra-Family Loans and Split-Interest Charitable Trusts

The December Section 7520 rate for use in estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 5.00%, an increase from the November rate of 4.40%. The December applicable federal rate ("AFR") for use with a sale to a defective grantor trust or infra-family loan with a note having a duration of:

- 3 years of less (the short-term rate, compounded annually) is 4.30%, up from 4.00% in November.
- 3 years to 9 years (the mid-term rate, compounded annually) is 4.18%, up from 3.70% in November.
- 9 years or more (the long-term rate, compounded annually) is 4.53%, up from 4.15% in November.

Estate of Becker v. Commissioner of Internal Revenue, T.C. Memo 2024-89 (September 24, 2024)

Dr. Larry Becker ("Dr. Becker"), a resident of Maryland, created an irrevocable life insurance trust on July 21, 2014, for the benefit of his wife and descendants (the "Trust"). The Trust was funded with two life insurance policies (the "Policies") on Dr. Becker's life. The Trust was named the owner and beneficiary of each of the Policies.

The Trust funded the initial premiums for the Policies by borrowing funds from Dr. Becker, who in turn borrowed the same amounts from Barry Steinfelder ("Mr. Steinfelder"). Mr. Steinfelder was the insurance broker who helped Dr. Becker apply and secure the life insurance policies on his life.

Mr. Steinfelder borrowed the funds (which he then loaned to Dr. Becker) from an acquaintance, Dr. Julia Wen ("Dr. Wen") and executed two promissory notes (the "Notes") memorializing the loans to Dr. Wen. One of the promissory notes listed Mr. Steinfelder as the borrower and was signed by Mr. Steinfelder, while the other promissory note listed JJM, LLC as the borrower and was signed by Mr. Steinfelder. JJM, LLC, is a single-member limited liability company organized by Mr. Steinfelder.

Mr. Steinfelder transferred the funds borrowed from Dr. Wen to Dr. Becker and thereafter, Dr. Becker subsequently deposited the funds into the Trust account. The Trust then used the funds to pay the initial 30 months of premiums on each of the Policies. There were no promissory notes documenting the loans to the Trust from Dr. Becker for the initial 30 months of paid-up premiums for the Policies.

Two months later, Mr. Steinfelder then directed ALD, LLC (a limited liability company that Mr. Steinfelder controlled) ("ALD") to repay the loan to Dr. Wen. Thereafter, the right to receive repayment from the Trust of loans that funded the initial premiums on the Policies were assigned and transferred to ALD (the "ALD Notes"). Under the ALD Notes, the Trust was to repay the funds that it borrowed to fund the initial premiums on the Policies to ALD. Dr. Becker had no right to receive any funds from the Trust as a result of the ALD Notes. The ALD Notes granted ALD first priority security interests in each of the Policies. Subsequently, ALD transferred the Trust's obligations to JTR, LLC ("JTR") (the "JTR Assignment").

In late 2014, the Trust entered into a Loan and Security Agreement (the "LTF Agreement") with LT Funding, LLC ("LT Funding") and executed two promissory notes pursuant to the LTF Agreement. The LTF Agreement and associated promissory notes were secured with a security interest in the Policies. The LTF Agreement provided that LT Funding was obligated to pay the future premiums on each of the Policies and in exchange the Trust would pay LT Funding (i) seventy-five percent (75%) of the total death benefits from the Policies, (ii) all premiums advanced by LT Funding, and (iii) interest on all premiums advanced by LT Funding at a rate of six percent (6%). The LTF Agreement had a senior right of payment over the Trust's obligation to pay JTR.

Dr. Becker died unexpectedly in a car accident on January 8, 2016. On March 14, 2016, the Policies paid out the death benefits ($11,489,797.22 on one policy and $8,013,808 on the other policy) to the Trust. A dispute then arose between the Trust and various third parties, including Mr. Steinfelder, JTR, LT Funding and ALD as to who was actually entitled to the proceeds from the Policies.

Pursuant to the LTF Agreement, LT Funding claimed it was entitled to receive from the Trust $14,797,000 of the death benefits paid to the Trust from the Policies pursuant to the LTF Agreement, while JTR claimed that, pursuant to the JTR Assignment, it was entitled to receive from the Trust $1,820,428 paid to the Trust from the Policies. Ultimately, an agreement was reached in October 2017, whereby the Trust paid $9 million to LT Funding in exchange for a release of the claims.

On April 14, 2017, Gary Becker (“Mr. Becker”), Dr. Becker’s son, as Executor of Dr. Becker’s Estate filed the estate tax return on behalf of the estate, reporting the interests in each of the Policies and including a Form 712 for each as exhibits. However, the death benefits payable on the Policies were not included in the value of the gross estate on the estate tax return.

A Notice of Deficiency was issued for the estate tax return on February 25, 2020, which determined a deficiency in estate tax liability of $4,191,094, based on various adjustments made to the estate tax return, including an increase to the values of the property listed on Schedule F (Other Miscellaneous Property) by $19,470,000 based on the death benefit proceeds received from the Policies.

The Internal Revenue Service (the “IRS”) asserted that the proceeds of Policies were includable in the gross estate of Dr. Becker under Section 2031, and, in the alternative, Section 2042(2) of the Internal Revenue Code of 1986, as amended (the “Code”).

The Court looked to state law to determine the decedent's interest in the property. Since Dr. Becker was at all times a Maryland resident, the Court applied Maryland law. Under Maryland statute Section 12-201(a), although an individual may obtain an insurance contract on the individual's own life for the benefit or any person, an individual may not obtain an insurance contact on the life of another individual unless the benefits under the insurance contact are payable to: (a) the individual insured; (b) the individual insured's personal representative; or (c) a person with an "insurable interest" in the insured at the time the insurance contact was made. Further, if an insurance contract on the life of another was impermissibly procured, then the estate would hold a cause of action to recover proceeds from such policy. Further, Maryland law provides, in pertinent part, that individuals related closely by blood or law, a substantial interest engendered by love and affection is considered an "insurable interest". Finally, Maryland law clarifies that a trustee of a trust has an "insurable interest" in the life of an individual insured under a life insurance policy owned by the trust or the trustee of a trust if, on the date the policy was issued, the insured is the grantor of the trust and the life insurance proceeds are primarily for the benefit of trust beneficiaries having an "insurable interest" in the life of the insured.

The Estate argued that the Trust obtained the Policies on the life of Dr. Becker, in which such Policies were owned and payable to the Trust. Dr. Becker was the grantor of the trust and on the date the Policies were issued, the proceeds were payable to the Trust's beneficiaries – Dr. Becker's wife and descendants – each of whom had an "insurable interest" in
Dr. Becker's life. Therefore, the policies were valid at inception and freely assignable, including to third parties who would otherwise be lacking an "insurable interest".

The Court noted that it is well settled law that if a policy of insurance was a valid at inception, then any further assignment of the policy to a third party would be legal, even if the third party does not have an "insurable interest" in the life of the insured.

The IRS argued that the application of the step transaction doctrine applies. Thus, the various transactions involving the Policies should be collapsed, and therefore the proceeds were not primarily for the benefit of the Trust beneficiaries, but rather for LT Funding and therefore, the Trust lacked an “insurable interest” in the Policies on the dates of issuance. Further, the IRS asserts that the Policies violated Maryland’s insurable interest statute which would allow a cause of action, which in turn triggers federal estate tax liability under Section 2031 and/or 2042(2) of the Code.

In considering the step transaction doctrine, the Court considered the three various tests for determining if it was appropriate to apply the step transaction doctrine to the transaction: the “binding commitment” test, the “end result” test and the “interdependence” test. The Court determined that the “binding commitment” test was inappropriate given the set of facts and therefore analyzed the transactions under the latter two tests.

Under the “end result” test, transactions are collapsed if it appears that a series of formally separate steps are really prearranged parts of a single transaction intended from the outset to reach the ultimate result. The “end result” test is subjective, focusing on the parties’ actual intent at the time of the transaction.

The IRS argued that it was the intent of the Trustees and Dr. Becker to transfer the Policies to LT Funding the entire time and that the Policies do not appear to have fulfilled any major need or insured against any imminent risk such as the loss of support or payment of estate taxes. The IRS also noted that the LTF Agreement, which provided that the Trust would have only been entitled to 25% of the proceeds from the Policies. Finally, the IRS asserted that the Trust and Dr. Becker’s lack of sufficient assets from the onset to pay the initial premiums (i.e., the various loans) presents further evidence of the parties’ intent to transfer the benefits to LT Funding the entire time.

The Court ultimately rejected the IRS’s arguments under the “end result” test and found that the facts as presented do not show that the subjective intent of the parties at the outset of the transaction was to transfer the death benefits to LT Funding, a wholly unidentified party at the time the Policies were issued.

The “interdependence” test, on the other hand, focuses on whether the steps are so interdependent that the legal relations created by one transaction would have been useless without a completion of the series. This test specifically concentrates on the relationship between the steps, rather than the end result.

The IRS asserted that several events within the transaction were interdependent on the later steps, specifically the flow of money used to fund the initial premiums. The IRS pointed to the loan from Dr. Wen to Mr. Steinfelder, then to Dr. Becker, who later transferred the funds to the Trust to pay the initial premiums. The IRS additionally argued that without the LTF Agreement, ALD (wholly owned by Mr. Steinfelder) lacked any opportunity for repayment – even though the ALD Notes granted ALD first priority security interests in the Policies to repay the initial premiums.

The Court found that even if the Trust would need additional funding, upon the issuance of the Policies the Trust was entitled to almost $20 million in death benefit proceeds (less repayment of the ALD Notes). Dr. Becker also had significant assets at the time of the issuance (as he indicated on each of the life insurance applications) of the Policies, and therefore, payment of the initial and subsequent premiums did not appear contingent upon the entry into the LTF Agreement, especially given that the Policies were fully funded for 30 months from the payment of the initial premiums on each of the Policies. The Court therefore found that each step had its own independent significance without regard to later transactions.

Turning to the determination on whether the proceeds are includable in the gross estate, the Court determined that because there was no violation of Maryland insurable interest statute, there was no cause of action under Maryland law, and therefore it didn’t matter whether a potential claim should be treated as an “incident of ownership” under Section 2042(2) or as “property” under Section 2033 of the Code.

Haan v. Haan, No. 364875 (Mich. Ct. App. Oct. 7, 2024)

Anne and Gerald Haan were married in May 2008 and Ms. Haan filed for divorce in August 2021. The parties had a prenuptial agreement (the “Prenup”) which provided for the parties’ respective assets to remain separate and that, if a divorce occurred after five years of marriage, Ms. Haan would receive a total of $180,000 in spousal support ($45,000/year for 4 years). At the time of the marriage, Mr. Haan had a net worth of $3.6 million and at the time of divorce his net worth had increased to $10 million. Ms. Haan, on the other hand, had a net worth at the time of marriage of $220,000 and at the time of divorce, her net worth had increased to $537,000.

Prior to the marriage, the parties also entered into a joint operating agreement with regard to the ownership of what would become their marital home (the “Agreement”). The Agreement provided that in the event of death, or the sale of the home prior to death of either of the parties, each would get back what he/she contributed to the home and the remaining equity would be split 50/50. The Agreement lacked any provision on what would happen in the event of a divorce. The marital home was titled in joint names as tenants in common.

During their nearly 13-year marriage, Ms. Haan helped raise Mr. Haan’s children from a prior marriage, her children from her prior marriage and helped maintain the marital home. She helped Mr. Haan start Haan Development, but Mr. Haan and Ms. Haan ultimately decided that she would stay at home instead of continue working at the company. Ms. Haan also cared deeply for Mr. Haan’s ailing mother. She saw Mr. Haan’s mother several times a week, took her to various Doctor’s appointments and took her shopping. Mr. Haan continued to work at Haan Development, where he often worked long hours (between 65-70 hours a week) and traveled frequently. In exchange for his work at Haan Development, he received compensation of close to $1 million a year. As a result of Mr. Haan’s hard work at the company, Haan Development, at the time of the divorce, was worth nearly $7.6 million. Mr. Haan also received some inheritances from family during the marriage which helped increase his net worth.

The trial court awarded each of the parties one-half of the marital home, without consideration or return of the separate property contributions that Mr. Haan had made in its acquisition, since the Agreement did not specifically address what would happen upon a divorce of the parties. Further trial court awarded Ms. Haan $1.5 million (significantly more than the $180,000 that was agreed to in the Prenup) because the parties, under Michigan law, cannot waive or otherwise abrogate the Court's authority to equitably divide the assets.

Mr. Haan appealed the court's ruling and the trial court awarded Ms. Haan an additional $25,000 pursuant to Michigan law for her to defend herself in the appeal, which permits a court to award attorney fees in a divorce proceeding if a party is able to show he/she is unable to bear the expense of the action and the other party is able to pay.

In the appeal, Mr. Haan argued that Ms. Haan did not contribute to the acquisition or improvement of his separate property to merit the invasion of his separate property. The court disagreed and concluded that a spouse's contributions to the administration and maintenance of a household and caring for children in which permits the other spouse to devote him or herself to grow a business may be a sufficient contribution to justify the invasion of separate property when the marriage operated as a partnership (which is the case here). The court further found that Ms. Haan's contributions were sufficient to exercise its equitable powers under Michigan law and award Ms. Haan significantly more than what was agreed to in the Prenup and that the existence of a Prenup did not deprive the court of those equitable powers. Finally, the court found that because the Agreement regarding the parties' marital home wasn't ambiguous it was to be interpretated based upon the terms within its four corners and parole evidence as to the parties' intentions was not permissible.

IRS Postpones Deadline for States Impacted by Hurricanes

On October 1, 2024, the IRS announced disaster tax relief for taxpayers affected by Hurricane Helene. This relief covers the entire states of Alabama, Georgia, North Carolina, and South Carolina, Florida and parts of Tennessee and Virginia. Affected taxpayers now have until May 1, 2025, to file various federal tax returns and make tax payments.

The May 1, 2025, deadline applies to:

- Any affected taxpayer that has a 2024 return normally due during March or April 2025;
- Any affected taxpayer, including tax-exempt organizations, that has a valid extension of time to file their 2023 federal return (this relief applies to filing only, as payments were due last spring before the hurricane occurred);
- 2024 quarterly estimated tax returns normally due on January 1, 2025;
- 2025 quarterly estimated tax returns normally due on April 15, 2025; and
- Quarterly payroll and excise tax returns normally dur on October 31, 2024, January 31, 2025 and April 30, 2025.

The relief applies for filing and payment deadlines occurring:

- On or after September 22, 2024, for Alabama;
- On or after September 23, 2024, for Florida;
- On or after September 24, 2024, for Georgia;
- On or after September 25, 2024, for North Carolina, South Carolina and Virginia; and
- On or after September 26, 2024, for Tennessee.

Florida Amendment 5 – Annual Inflation Adjustment for Homestead Exemption

Florida's Amendment 5 ballot proposal passed with 66% of the vote (Florida requires at least 60% for an amendment to pass) during the recent election.

Current Law: Florida currently provides that Florida homeowners that live in their primary residence receive a $50,000 homestead exemption, resulting in a lower taxable value which directly correlates to the amount of property taxes a homeowner pays. The total exemption of $50,000 is broken up into two parts – the first $25,000 of value is exempted from all taxes currently, and the second $25,000 is not exempted from school taxes.

New Law: Now, the first half of the exemption will upwardly adjust for inflation with the passing of Amendment 5. Beginning in 2025, Florida homeowners who qualify for homestead exemption will see anywhere from a 1-3% increase on the first half of the exemption, though the exact percentage will match the inflation rate.

Effective Date: January 1, 2025

Final Regulations on Consistent-Basis and Basis Reporting Issued

On September 17, 2024, the IRS issued the final regulations dealing with the requirement under Section 6035 that the basis of property acquired from a decedent must be consistent with the basis reported on the decedent's estate tax return.

Generally, under Section 1041(f), a recipient's basis in certain property acquired from a decedent must be consistent with the value of the property as finally determined for federal estate tax purposes. In addition, under Section 6035, executors must provide basis information to the IRS and the property recipients.

According to the IRS, changes were made to the final regulations from the proposed regulations issued more than 8 years ago. These changes are intended to "reduce the burden on both the IRS and taxpayers and increase administrability of the proposes rules."

Significant changes in the final regulations from the 2016 proposed regulations include the following:

- **Removal of the Zero-Basis Rule** – the proposed regulations provided that, for property discovered after the filing of, or otherwise mitted from, an estate tax return, where that property is not reported before the expiration of the statute of limitations period for assessing estate tax, the final value of the property would be zero. The final regulations completely remove this rule, specifically noting in the preamble of the final regulations that the IRS recognized that this rule would primarily affect recipients of unreported property, who may not know of or be involved in the failure to report the property for estate tax purposes.
- **Statement Deadline** – the proposed regulations required a statement of the basis of the assets to be furnished to the beneficiaries of the estate 30 days after the filing of the estate tax return. However, since many estates have not made final distributions to the beneficiaries 30 days after the filing of the estate tax return, the estate would have been required to provide the beneficiaries with a statement indicating the basis of all assets that could be potentially distribution to a beneficiary. The commentary indicates that this could result in confusion on the beneficiaries' part because they might think that the assets listed as potentially being distributed to them would actually be distributed to them. The final

regulations provide that asset distributed to a beneficiary prior to the filing of an estate tax return must be reported to the beneficiary 30 days after the filing of the return. For assets distributed after the filing of the return, a statement to the beneficiary is due January 31 of the calendar year following the year of acquisition by the beneficiary. This change will allow Executors/Personal Representatives to provide basis information after they know which beneficiary has received what property.

- **Subsequent Transfers** – the proposed regulations provided that for inherited property acquired by a beneficiary, a subsequent gift or transfer would require a report by the beneficiary making the gift. This provision now only applies to trustees when they distribute inherited property from a trust. Thus, until the property vests in an individual or individuals it is still being transferred, in effect, from the decedent's estate via the trustee.
- **Exception of Certain Types of Property** - the proposed regulations provide as exceptions to consistent basis requirement only property that qualified for the marital or charitable deduction and tangible personal property for which an appraisal is not required. The proposed regulations provided for four exceptions of types of property that do not have to be reported under Section 6035: (i) cash (other than a coin collection or other coins or bills with numismatic value); (ii) income in respect of a decedent; (iii) tangible personal property for which an appraisal is not required and (iv) property sold or disposed of in a transaction in which capital gain or loss is recognized. The final regulations add clarity and other exceptions:
    - **Property Wholly Deductible Under Marital or Charitable Deductions.** Property qualifying for the estate tax marital or charitable deductions not subject to consistent basis provisions of Section 1041(f), but generally are subject to the reporting requirements under Section 6035. The final regulations clarify that property qualifying for only a partial martial or charitable deduction is not excepted from the consistent basis requirement.
    - **Taxable Termination Property Subject to GST Tax and Surviving Spouse's One-Half Community Property Interest.** The consistent basis and reporting requirements apply only to property included in the decedent's gross estate. The proposed regulations provided a long list of items not included in the gross estate and are therefore not subject to the requirements. The final regulations add several additional exceptions:
        - **Taxable termination property** – property subject to a taxable termination for GST tax purposes is not in the gross estate and therefore not subject to the consistent basis requirement.

    - **Spouse's One-Half Interest Community Property Interest.** – the surviving spouse's one-half of community property is not in the decedent's gross estate for estate tax purposes and therefore is not subject to consistent basis and reporting requirements.

- **Cash** – the proposed regulations did not include cash as property not subject to the consistent basis and only described cash generically. The final regulations add more guidance for cash-type assets that are not subject to the consistent basis requirement or reporting requirements: (i) US dollars (physical bills and coins with values equal to their face values); (ii) US dollar-denominated demand deposits, (iii) certificates of deposit denominated in US dollars, (iv) cash collateral denominated in US dollars held by a third party to secure a liability; (v) money market funds; (vi) life insurance proceeds payable in a lump sum in US dollars and (vii) tax refunds (federal, state and local) payable in US dollars.
- **Household and Personal Effects** – the final regulations changes "tangible personal property" to "household and personal effects" to refer to household and personal effects that do not have a marked artistic or intrinsic value over $3,000.
- **Notes Forgiven by Decedent** – the final regulations add as an exception to the consistent basis and reporting requirements notes that are forgiven in full by the decedent, whether or not denominated in US dollars.
- **Property Whose Basis is Unrelated to the Federal Estate Tax Value of the Property** – The proposed regulations excepted income in respect of decedent property from the consistent basis and reporting requirements. The final regulations add to the consistent basis and reporting exceptions other types of assets whose basis is unrelated to the estate tax value of the property:
    - Annuity contracts and amounts received as an annuity;
    - Income in respect of a decedent;
    - Amounts received under installment obligations;
    - Stock of a passive foreign investment company
    - Retirement plans, deferred compensation plans and IRAs
    - Bonds to the extent redeemed by the issuer for US dollars prior to being distributed to a beneficiary;

- Property included in the gross estate of a beneficiary who died before the due date of the information report; and
- Any other property that may subsequently be identified by the IRS as excepted property.

- **Property Sold or Disposed of in Recognition Events.** Assets sold or disposed of in recognition events (whether or not resulting in gain or loss and whether gain is capital or ordinary) are not subject to the reporting requirements under Section 6035.

Lull v. Clark (In re Philpot Est.), No. 365107 (Mich. Ct. App. October 11, 2024)

William G. Philpot ("William") died on March 28, 2007, survived by his wife, Michaelene Philpot ("Michaelene"). William had three children from a prior marriage, Jennifer Clark ("Jennifer"), Donald Philpot ("Donald") and Robert Philpot ("Robert").

A few months before his death, William conveyed parcels of real property that he owned to himself and Michaelene as tenants by the entireties, except for the property owned on Lake Street (the "Lake Street Property"). Michaelene executed an agreement in consideration of the conveyance providing that she would pay Jennifer, Donald and Robert $200,000 in equal amounts, within three years after William's death.

Five days after the execution of the agreement, William executed his Will. In it, he devised all of his real property to Michaelene, including the Lake Street Property where he and Michaelene resided. William's Will stated that most of the real property was owned as tenants by the entireties and he further provided in his Will that the reasoning behind this tenancy was to "facilitate the liquidation of my estate upon my demise with the explicitly agreement and understanding on the part of my wife, Michaelene, that she shall distribute the sum of Two Hundred Thousand ($200,000.00) dollars of the value of said real property to my three children, equally, within three years of the date of my demise."

After William death, Michaelene continued to reside at the Lake Street Property for many years and her son, Lull, moved in with her as her health began to decline. Michaelene died on August 5, 2020. Lull was appointed as the Personal Representative of her estate.

Lull filed a petition with the Michigan probate court to open William's Estate to that the Lake Street Property could be transferred from William's Estate to Michaelene's Estate. Jennifer opposed the transfer asserting that Michaelene had only paid each of her, Donald and Robert $10,000 each and still owed her, Donald and Robert the full $170,000, pursuant to the provisions in William's Will and under the agreement executed prior to William's death.

Lull argued that the enforcement of the agreement to pay William's children $200,000 was barred by the statute of limitations and that the bequest to his mother of all of the real estate wasn't conditioned on the payment to William's children. Further, Lull argued that the failure of William's children to probate his Will, or otherwise pursue payment in the years after William's death, should be barred under the doctrine of laches.

The probate court disagreed with Lull and appointed Jennifer and Lull, as co-Personal Representatives of William's Estate. Further, the probate court concluded that William made it clear in his Will that he wanted his children to be compensated out of his Estate of the real property that Michaelene received or would otherwise receive as a result of his death. Thus, if Michaelene failed to pay them it was contemplated by the provisions in William's Will that the property(ies) would be sold in order to do so. The probate court ordered the Lake Street Property to be listed for sale and $170,000 of the sale proceeds be paid to Jennifer, Donald and Robert's descendants (Robert passed away after William's death but prior to the conclusion of these proceedings). Lull appealed the ruling.

Absent a patent or latent ambiguity, the appellate court maintained that it is to interpret a will to give effect to the testator's intent and that intent is to be determined from the plain language of the Will. The appellate court further stressed that it is not permitted to interpret a clear and unambiguous will in such a manner as to rewrite it. Here, Lull argued that the probate court violated this notion because the Will didn't contain any language that specifically conditioned the bequest of the Lake Street Property to Michaelene on the payment of $200,000 to William's children, nor did it specify the property to be liquidated. The appellate court found that the probate court's interpretation of William's intent was correct in which the probate court determined that there was a promise to pay that was protected by the fact that the most valuable property was titled in William's name alone and that William made it clear that his children would be compensated out of his estate and that probate of the Lake Street Property would inevitable if Michaelene failed to pay the $200,000.

Lull then argued that the probate court was erroneous by declining to apply the statute of limitations to Jennifer's claim because the probate court enforced Michaelene's agreement with William 14 years after William's death and 11 years after the supposed breach of the agreement. The appellate court ruled that the probate court did not enforce the agreement between Michaelene and William, but rather the probate court interpreted William's will and then ruled accordingly based on the arguments. In any event, the appellate court stated that the agreement only pertained to the properties that William and Michaelene held as tenants by the entirety and did not pertain to the Lake Street Property that is at issue.

With respect to the doctrine of laches, Lull claims that the probate court erred in its application of the doctrine of laches. Lull argues that Michaelene was prejudiced by the delay because she paid taxes and made repairs and improvements to the property over time and would not have done so if she was required to sell the property and pay William's children at an earlier date. Here, the appellate court ruled that the passage of time does not alone trigger the doctrine of laches, but rather the doctrine of laches requires the passage of time combined with a change in condition that would make it inequitable to enforce a claim. The appellate court upheld the probate's court ruling that laches does not apply because Lull failed to establish that the delay by William's children prejudiced himself or Michaelene and that Lull's argument that Michaelene would not have had to pay the taxes and repair the property faults William's children for her own failure to pay them within the allotted time as stated in the Will.

Lull further argues that the value of the Lake Street Property has decreased over the years and that the property was damaged by a fire in 2015. However, the appellate court notes that is Michaelene had sold the property and paid William's children within the three years as specific in his Will, the property would have sold for a higher price and would not have been destroyed by a fire.

Lull's final argument provides that if William's children acted sooner and pursued the $200,000, Michaelene could have elected against the Will and taken her statutory spousal share of William's property under Michigan law. Lull calculated that had Michaelene elected against William's Will she would have ended up with $50,000 plus one-fourth of the remainder of William's estate. The appellate court did not find this persuasive and ruled that regardless, Michaelene had the opportunity the entire time to elect against William's will but failed to do so.

Related Professionals

- **Albert W. Gortz**
- **Nathaniel W. Birdsall**
  Partner
- **Stephanie E. Heilborn**
  Partner

- **Henry J. Leibowitz**
  Partner
- **Jay D. Waxenberg**
  Partner
- **Dara B. Howard**
  Associate