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2016 Guides

Estate Planning Guide 2016

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I. INTRODUCTION

A. What is "Estate Planning"?

The primary focus of traditional estate planning is the orderly and systematic transfer of one's wealth to heirs and beneficiaries. Modern estate planning, however, has had to expand that focus to cover the varied and complex issues that one faces in our current society.

The more you understand about the estate planning process, the better your chances will be to effectively plan for retirement; provide for your family; minimize the risks associated with aging; reduce costs and taxes; and dispose of your assets in the manner you see fit. This guide is intended to introduce you to the estate planning process, and to serve as a reference to you as you advance through that process. At McDermott, Pierro, Mandery & Mandery, LLP we take great pride in our ability to serve you on an individual basis and to satisfy your estate planning needs.

The role of intestate succession is an important estate planning concept which will begin the discussion in this guide. As will be more fully explained below, the laws of intestacy become the default "estate plan" for persons who have not made an effort to put together their own estate plan.

Wills and the probate process will also be explained, as every Will must be offered for probate to determine its validity. In New York State, the local Surrogate's Court will have jurisdiction over your Will. This court will determine if the Will is valid, supervise the actions of the executor named in your Will and settle any disputes arising out of the settlement of your probate or intestate estate. A good estate plan can go a long way toward reducing or even eliminating the time, cost and unwanted publicity often associated with the probate process, and our guide will explain the use of Trusts and other vehicles available to facilitate these goals.

B. Goals of Estate Planning

A good estate plan has several fundamental goals:

1. To ensure you maintain your standard of living and that you will be properly provided for throughout your lifetime;

2. To make sure your wealth reaches the individuals or organizations you select, in the manner in which you choose, with minimum shrinkage from federal and state transfer taxes and administration expenses;

3. To protect assets from internal claims, disputes and external creditors;

4. To allow you to select who will handle various administrative and management functions on your behalf, both during life and after your death; and

5. To control your family's future, allowing for the orderly and systematic transfer of one's wealth to heirs and beneficiaries.

C. Basic Strategies of Estate Planning

By following a number of strategic planning steps, you may be able to minimize or even eliminate estate taxes and settlement costs and ensure your assets are distributed according to your wishes. Those steps are as follows:

1. **Goal Evaluation**
   Determine who you want to inherit your assets and how you want your property distributed Once your objectives are clear, you can incorporate strategies designed to help meet your individual goals.

2. **Estate Inventory**
   List all of your holdings and place a fair market value on the assets. Subtract the sum of your debts from the value of your assets to determine your net estate. This is the maximum amount you can leave to your heirs, before taxes.

3. **Will and Trust Preparation**
   Your Will or a Revocable Trust is the cornerstone of your estate plan; it will determine who will receive your assets and how those assets will be distributed.

4. **Family Gifts**
   Lifetime gifts to your family can reduce your taxable estate and provide personal satisfaction. An individual can transfer up to $14,000.00 per person each year, indexed to inflation, without paying taxes, as will be discussed later.

5. **Charitable Giving**
   Contributions to a qualified charity may result in a current income tax deduction, can be made gift tax free and may reduce estate taxes.

D. Implementing an Estate Plan

Estate planning strategies involve more than just executing a Will. You can make arrangements for the accumulation and handling of assets while you are alive and upon your death; draft living "inter vivos" trusts to manage your assets during and after your lifetime to support your children until they are of age, and to shelter your estate from taxes; utilize gifts to people or charities to reduce taxes; protect your heirs from creditors and divorce; incorporate life and disability insurance into your plan to provide liquidity; and more.

As stated above, the first step in your estate plan is to determine what your goals are with respect to your estate. For example, do you want any of your assets to go to charity or for your children's education? Who would be a good candidate to serve as your personal representative and as the Guardian of your children? If something were to happen to your entire immediate family, what should happen to your property?

The second step in estate planning is to take an inventory of your assets, including your home, jewelry, stocks and bonds, bank accounts, insurance, retirement plans, and real property, and to note how they are owned. Then take a similar inventory of your debts and liabilities. This can be done by using our comprehensive ***Estate Planning Questionnaire.***

At this stage, you also need to consider the tax ramifications of your plan, and how to minimize estate shrinkage. Then you must determine the best vehicles to carry out your plan, including Wills, Trusts and other estate planning tools.

To help manage all of this, McDermott, Pierro, Mandery & Mandery has developed a **Professional Advocates Lifetime Maintenance System** ("PALMS"). By using the PALMS system, you will have 24-7 secure access to your personal data, financial information, and copies of your legal documents. The PALMS program gives you and your team of professional advisors an invaluable tool during the development, lifetime management, and after-death administration of your financial, tax and estate plan.

Estate Planning is not simply a one-time occurrence. We recommend that you review your estate plans periodically to make sure that they still meet your goals whenever a significant life event occurs (e.g., birth of a child, death of a spouse, purchase of new home, etc.).

II. PLANNING FOR INCAPACITY

An essential part of current estate planning is appointing individuals, known as "fiduciaries," to act on your behalf in the event you become incapacitated. In this section we will discuss three documents appointing fiduciaries: the **Power of Attorney**, the **Health Care Proxy** and the **Disposition of Remains Appointment.**

A. Power of Attorney

Through a "Power of Attorney" (POA), you can appoint another individual to transact business in your name. A General Power of Attorney gives an agent, known as your "Attorney-in-Fact," the authority to make banking, real estate, and all other transactions in your name. You may also elect to have a separate Business Power of Attorney to manage business affairs. With a "***Durable***" Power of Attorney, the authority you grant lasts beyond any disability or incompetence you may suffer. Thus, if those events do occur, you have an individual able to manage your affairs. All Powers of Attorney terminate with the death of the Principal.

A Durable Power of Attorney may allow you to avoid the costly and complicated Guardianship procedure which is required under Article 81 of the Mental Hygiene Law, when an individual becomes incapacitated for any number of reasons including an accident, disease, or merely the natural process of aging. It can also prevent any difficulties involved with management of your affairs while a Guardianship is pending and before a Guardian is appointed by the court. However, a word of caution is advised because a Durable Power of Attorney grants enormous rights and powers to your Attorney-in-Fact. Because of this, this document could potentially be abused by the person you select as your

agent. Thus, the decision of whether to create a Durable Power of Attorney and the decision of whom to appoint is extremely important and can have dire consequences.

If you do not wish to grant immediate authority, you can make use of an instrument known as a ***Springing Power of Attorney***, which grants the same authority as the Durable Power of Attorney but delays the effective date of the appointment until the happening of some event or contingency which you, yourself, designate in the document. In this way, you can designate an Attorney-in-Fact, but delay the effective date of the appointment until such time as you become disabled or incompetent. A combination of the use of a Durable Power of Attorney, appointing one individual as your immediate Attorney-in-Fact, with a Springing Power of Attorney appointing another individual as your Attorney-in-Fact, when and if the need arises, is an effective way to ensure that your personal and financial needs will be taken care of in the future, even in the event of the unavailability of your first agent for any reason.

New York passed legislation that became effective September 1, 2009 substantially revising the Power of Attorney statute. New York made further revisions to the statute and issued a new form on September 12, 2010. Powers of Attorney that were previously signed using prior versions of the form will remain in effect and will not have to be changed to comply with the new law. However, any Powers of Attorney signed after September 2010 will have to comply with the new law, using the new form. The new Power of Attorney form, while more complicated, contains many provisions to safeguard the Principal from abuse of authority by their Agent. Perhaps the most significant change is the addition of a "Statutory Gifts Rider" that allows your agent to make gifts on your behalf, and which must be used if you want to allow your agents to make gifts in excess of $500. The rider can be customized to direct the manner of making gifts and to designate the beneficiaries of the gifts. Other changes include the ability to appoint a Monitor, whose job is to oversee your agent's actions and a place for you to affirmatively indicate if and how your agent is to be compensated for his or her duties. The new form also requires the agent to sign a notarized acceptance of their appointment which contains an explanation of their role, their fiduciary duty and the limits on their authority.

B. Health Care Proxy

One duty which cannot be performed by an Attorney-in-Fact through the Power of Attorney is the performance of health care decision-making. If you wish to have someone available to make health care decisions in the event that you are unable to do so yourself, you should also consider executing a Health Care Proxy or Living Will.

New York passed legislation authorizing the designation of an agent to make health care decisions on a person's behalf. In the event that you become incapacitated or incompetent, as determined by your physician, your health care agent would be authorized to make any decisions regarding treatment which you, yourself, could have made if competent. For example, if you wish to have artificial life support terminated in the event that you are unconscious and there is no reasonable hope of your recovery, you may authorize your agent to direct medical personnel to discontinue any treatments which would unnecessarily prolong your life. There are a number of procedural safeguards built into New York State's law, which protect you from having unwanted, or unauthorized, decisions made. New York does not have any statute recognizing a Living Will, although the courts have stated that if you leave "clear and convincing evidence" of your intention to have artificial life support

terminated, then the court may direct a physician or hospital to discontinue such treatments. At McDermott, Pierro, Mandery & Mandery we typically execute a tailored Health Care proxy that contains Living Will provisions to ensure your wishes are carried out.

C. Appointment of Agent to Control Disposition of Remains (DORA)

On August 2, 2006, the right to designate a person to handle one's remains became law. Public Health Law § 4201(2) now provides that one can designate, in writing, a person who shall have the right to control the disposition of one's remains. The law provides a guideline to follow for such a document, which must be signed and dated by the decedent and his signature must be witnessed by two independent persons. In addition, the agent should sign the document accepting the responsibility of handling the remains.

Such a document may seem unnecessary to many individuals, but it does provide a means of conveying burial instructions to the named agent, other than in a Will that usually is not read until a probate proceeding has begun and the burial has already occurred. Pre-planned funeral arrangements can be used in conjunction with the Disposition of Remains legal document. Most importantly, litigation over one's remains can be avoided with this document.

III. INTESTACY - WHAT HAPPENS IF YOU DIE WITHOUT PLANNING

Whether you plan or not, everyone has an estate plan. With no written estate planning documents in place, ***Intestate Law*** (dictated by State Government) will govern the distribution of your estate. New York has perhaps the most complicated law of descent of distribution.

A. What Happens if You Die Without a Will?

If you die without a Will or "intestate", the courts will take control of your estate and distribute your assets according to the intestacy laws of the state in which you reside at the time of your death. In other words, the government becomes your estate planner when you die intestate, through a series of statutes which provide for the administration and distribution of your estate. The statutes are designed to accomplish what the government thinks your estate plan should be and rarely matches your own. For example, in New York, if you do not have a Will and you are married with children, your spouse will receive $50,000.00 and one-half of the remainder of your estate and your children will receive the other half of the remainder outright, even if they are minors, have a disability, and/or the inability to properly manage money. This becomes even more important when one or both spouses have children from prior marriages.

Another disadvantage, and particularly so where your spouse has predeceased you, is that the court will appoint a Guardian for your minor children with respect to their share of your estate. The court may not name an individual or individuals that you would want to take responsibility for your children or feel would make decisions in the best interest of your children. Having a court appointed Guardian can also provide complications in estate management. For example, any money used to pay for your children's education, clothing and living costs would require prior approval of the court, **even if your spouse is appointed Guardian**. Furthermore, law requires annual accountings of income and

expenses to the court, and investment of the funds by the Guardian will be limited to choices approved by the court. If the Guardianship lasts for any significant length of time, the investment limitations imposed by the court may not allow the children's funds to grow at an acceptable rate.

Without a Will, the court will appoint a "personal representative" or "administrator" of your estate. This may be a relative if one is willing or able to serve; or the court will appoint an administrator of its choice. Since the personal representative is entitled to a fee, most people find comfort in selecting someone they know and trust to oversee the administration of their estate.

Finally, if you die intestate your estate will not have the benefit of any tax planning to minimize the often confiscatory effects of federal and state death and income taxes.

IV. PLANNING WITH A WILL

One of the most common forms of Estate Planning tools is a Will. Simply, a Will is a legal declaration by which you can name one or more persons to manage your estate and provide for the transfer of your property at death. There are many benefits to a having a properly drafted will.

A. Why You Need a Will

One of the most effective ways to direct the distribution of your property according to your own wishes is to make a Will. Many people assume that if they die, everything will simply go to their spouse and/or children. Unfortunately, **three out of four Americans die without a Will**. If you worked hard throughout your life to build a solid financial foundation and to provide for the security of your family, shouldn't you be the one to decide how and by whom your assets will be distributed after your death? The simple fact is that everyone should have a Will. Some Wills can be rather straight forward and others can be very intricate depending on your Estate Planning needs and goals.

The primary reason for making a Will is to provide written instructions on how your assets are to be distributed among your beneficiaries. A properly drafted Will accomplishes the following:

- Outlines how you wish to distribute your assets including specific gifts of your tangible personal property;
- Designates an Executor, or personal representative who is responsible for taking inventory of your property, preserving your estate, paying creditors, administrative expenses and death taxes, and disposing of the remainder of your property among your beneficiaries;
- Appoints Guardians for minor children in the event of the death of both parents; and
- Establishes trusts to protect assets.

B. What are Probate & Non-Probate Assets?

Even if you have a Will, the will only controls the disposition of probate assets. Non-probate assets (also referred to as "**Will Substitutes**") pass outside of the will, and you should be aware of the impact of both.

Probate assets are those owned in your own name that do not have a named beneficiary.
Example: Bank account or real estate titled in your name alone.
Non-probate assets are those which transfer automatically to another person or designated beneficiary upon your death. Examples of non-probate assets include:

- Assets held in a revocable living trust;
- Assets held jointly with your surviving spouse, or with another as joint tenants with right of survivorship;
- Proceeds of an insurance policy where beneficiaries are named other than your estate; and
- Balances of retirement plans, Individual Retirement Accounts, or Keogh accounts and tax deferred annuities, which may be payable to designated persons rather than your estate.

When planning with a Will, it is important to keep in mind your non-probate assets and to check your beneficiary designations on life insurance and retirement plans to make sure your assets pass to your intended beneficiaries. It is not uncommon to update a Will but forget to update beneficiaries and inadvertently leave assets to former spouses, predeceased or other family members. It is also not advisable to list minors as beneficiaries as these assets will pass directly to them.

C. What is Estate Administration or the Probate Process?

Estate Administration or Probate is the legal process of administering the estate of a deceased person by resolving all claims and distributing the deceased person's property under the will or estate plan. The process involves two procedures:

First, the Surrogate's Court in the county where you reside determines if you have a Will and whether it will be held to be valid to transfer your assets. If you die intestate, the court determines your legal heirs by reference to the applicable state law on intestate succession.

Second, the court oversees the process of settling your estate, including:

- Supervision of the actions of your Executor or Administrator;
- Ruling on the legitimacy of any creditors' claims against your estate;
- Supervision of the transfer of your remaining property to the beneficiaries named in your Will, or to your heirs if you die without a Will; and
- Overseeing a Guardian's use of any property which is left to minor children (under age 18).

Court supervision of the probate process helps ensure that the directions left in your Will are carried out properly. The probate process can take as little as seven months or as long as several years. Things that can significantly delay the process include if your Will is contested, if you own additional property in other states, or using a "**do-it-yourself**" Will. Any assets tied up in the probate process will not be available for use until the estate is settled. This can be particularly important if a significant portion of the estate is in bank accounts and property with few non-probate liquid assets available. The Probate process can be equally as devastating for small business owners where business assets get held up.

A properly drafted estate plan, which is kept up to date, will minimize probate delays and

expenses. It can provide for the prompt appointment of Executors, Guardians and Trustees, payment of expenses and taxes, settlement of claims, continuation of business interests and the avoidance of Will contests and unsubstantiated claims.

D. Estate Settlement Costs & Transfer Taxes

Estate Administration or the Probate process have many associated fees before your assets can be fully distributed to your heirs. Administrative costs vary widely from state to state, but usually are estimated at 3-8% of an estate's gross value. Fees can include executor's fees, legal fees, filing fees, appraisal fees, publication fees, bond fees and unexpected legal costs for services such as Will contests/disputes and real estate transactions. In addition, if the size of the estate warrants, there will be an excise or Estate tax on the transfer of property from a decedent. Estate Taxes are applied at the Federal and State levels. Proper Estate Planning can help mitigate Estate Taxes and Estate Settlement Costs. Federal and New York transfer taxes are due nine months after death except for certain special situations.

V. PLANNING WITH A TRUST

In the world of estate planning, trusts are the most powerful weapon in the arsenal, providing asset protection, tax reduction, probate avoidance and many other uses. While Trusts can sometimes have more up front costs over a traditional Will, there are many benefits and cost savings to consider.

A. What is a Trust?

A Trust is a "fictional" legal entity which is created by an agreement, under which three roles are created. First, you, as ***Grantor***, ***Settlor*** or ***Creator*** of the Trust, dictate the terms of the Trust and decide what to put in it. Second, an individual you select, known as the ***Trustee***, holds and manages property under the terms of the agreement. Third, you name the beneficiaries of the trust, which could include yourself, family members, charities or anyone else you want to benefit.

Thus, a Trust is a legal arrangement through which you give property to your Trustee to manage and use for the benefit of whomever you name. There are two main types of trusts:

- **Testamentary Trusts**, which are inside your will and go into effect when you die; and
- **Living ("inter vivos") Trusts**, which take effect during your lifetime.

Trusts may also be "revocable" or "irrevocable", depending upon its purpose. If the Trust is revocable, you retain complete control of the assets and can change the terms of the Trust at any time. If it is irrevocable, you give up certain rights to the property and have limited ability to change the Trust terms. Knowing the difference between revocable and irrevocable trusts is very important, as the distinction can have significant consequences. A Trust can be used in conjunction with a Will or on its own.

B. Testamentary Trusts

You can use your Will to establish a Testamentary Trust that will ensure that your assets are held, managed and distributed in the manner which you specify. You can direct that the Trustee of this Trust manage certain assets for the benefit of your family and/or other beneficiaries, and distribute Trust money at specific times and in the manner you have set forth in your Will. For example, some people are concerned with what will happen to their assets if their spouse remarries after their death. You can create a Trust that provides income and principal for your spouse during his or her life, but preserves the remaining principal for your children (or other chosen beneficiaries) upon his or her death, rather than transferring all assets to the new spouse or the new spouse's children. Likewise, if you are leaving assets to children or other minors (such as nephews, nieces or grandchildren), you will want to use a Trust to ensure that they do not receive the funds until they reach a certain age or level of maturity, or dictate that funds are for certain purposes such as support, maintenance, health and education.

C. Revocable Living Trusts (RLTs)

A Revocable Living Trust is a complete Will substitute. It can provide for the management of your assets both during your lifetime and for the proper disposition to your beneficiaries upon your death. You may change or revoke the terms of the trust at any time and may designate anyone you like - a professional manager, your spouse, an adult child, an attorney, or even yourself - as Trustee. This type of trust is also useful if you become incapacitated and/or incompetent, because the Trustee or successor Trustee will be able to manage your assets and provide for your needs without court intervention.

A Revocable Trust arrangement generally offers several advantages over a Will. It can help:

- Manage and protect assets during your lifetime, including upon a disability;
- Provide continuity in the management of your affairs after your death;
- Control how and when assets are to be distributed;
- Avoid the costs and delays of probate;
- Ensure privacy in the handling of your affairs; and
- Reduce taxes and/or expenses when properly designed.

Revocable Living Trusts can also be prepared in conjunction with a "pour-over" Will to ensure that upon your death any remaining assets in your name and inadvertently left outside the Trust, will be transferred into the Trust for distribution to your designated beneficiaries in accordance with your wishes as expressed in the Trust instrument.

D. How a Revocable Living Trust Works

When you set up your Revocable Trust, you transfer the title of all your assets (stocks, bonds, real estate, etc.) from your name to the name of the trust. You then name yourself as the trustee and beneficiary. This gives you, and you alone, total and complete control of all your assets. You can buy, sell, trade, and do whatever you want - just like you do now.

Here's the difference, and the real benefit to you. When you die, there will be no assets left in your name, and therefore, no probate for your family to endure. Whomever you name as your successor trustee will immediately gain control of your assets to distribute them according to your exact

instructions. With a Revocable Trust your assets will go directly to your beneficiaries after your death. There will be no probate or court costs, and greatly reduced attorney's fees. There will also be no delay in distributing your assets, and all your estate planning wishes will be completely private. Furthermore, the trustee will be able to ensure continuity of asset management during your lifetime for any period in which you are unable to manage your trust due to incapacity.

Having your assets owned by a revocable living trust can substantially reduce the risk that a guardianship proceeding will become necessary if you become disabled. You can establish detailed instructions for how your successor trustee is to handle and manage your assets upon your disability. By avoiding guardianship, you will save on the associated fees and preserve continuity of the management of your assets that would be lost with a guardianship proceeding.

Revocable Trusts can protect children from earlier marriages. Both your current spouse and the children from a previous marriage can receive fair treatment and creditor protection under the terms of your living trust. However, to accomplish this you should leave the property in further trust for their benefit. Depending on your desires, this trust can be so flexible that from your children's perspective, it is as if they owned the property outright but without the risks associated with outright ownership like creditors or divorce.

Revocable Trusts can insure that your wishes are carried out and are not easily subject to attack. Because Revocable Trusts are difficult to challenge, disgruntled heirs will have a much harder time contesting your estate plan.

E. Avoiding Probate

Trusts cost less to administer and have substantial benefits that can never be achieved by a Will. There are certain reasons why you may wish to avoid probate:

- If you desire privacy, trust documents are generally not filed with the court (but be aware of exceptions, such as when a "Pour Over" Will is used);
- If you own property in more than one state which will require an expensive "ancillary" administration in the other jurisdiction;
- To provide for uninterrupted management of your assets;
- To avoid certain probate expenses and undue administrative delays; and
- To provide a certain sense of relief, knowing that everything has been taken care of prior to your death.

VI. ESTATE & GIFT TAX SYSTEM

The federal estate tax is a tax levied on all property each individual owns or has rights to at death. The tax is based upon the fair market value of the property at the date of death. Contrary to popular belief, property includes not only property passing under your Will (or by state laws of intestate succession without a will), but also property which passes by operation of law (known as Will substitutes), such as real property held in joint names, joint bank accounts, retirement plans, and

insurance policies. In particular, proceeds from a life insurance policy owned by the decedent on his or her life, or policies in which the decedent had certain "incidents of ownership," are also included in the gross estate.

Regardless of whether your estate goes through probate, it will be taxed depending upon the size of the estate. It is a common misconception that assets which avoid probate, such as life insurance, pension benefits and jointly-owned property with right of survivorship, are not taxed in your estate. In summary, your estate for federal and New York estate tax purposes includes:

- Property held in your own name;
- Half of the value of property you hold jointly with your spouse;
- The full value of property you hold jointly with someone other than with your spouse, except to the extent that you can demonstrate that the joint owner paid for the acquisition of their interest in the property;
- The face value of life insurance you own on your life or over which you hold "incidents of ownership" (regardless of the beneficiaries);
- Property over which you have a general power of appointment;
- Pensions, IRAs, annuities and other retirement plans owned by you with a death benefit payable to others;
- Other property which you have given away but have retained an interest in such as a life estate or a reversion; and
- In New York, certain gifts made within three years of death.

These items together comprise your "***Gross Estate,***" which equals the value of all property subject to estate taxation. Many people assume that Estate Planning is only for high net worth families who want to set up trusts and save estate taxes. However, many families can accumulate an estate in excess of $3,125,000, especially when assets have appreciated significantly in value, and proceeds of life insurance are included.

Almost every state has its own death or estate tax in one form or another. New York currently imposes an estate tax on estates greater than $3,125,000 for decedents dying between April 1, 2015 and March 31, 2016, increasing to $4,187,500 on April 1, 2016. This figure known as the **Basic Exclusion Amount** will be gradually increased over the next few years until it matches the Federal Applicable Exclusion Amount as of January 1, 2019. See ***Appendix D*** for the NY phase in schedule.

Each individual should be aware of the state death taxes applicable to them. See ***Appendix A*** for a schedule showing current combined federal and New York Estate Tax Rates for different sized estates.

Even if you do not have a taxable estate, there are many other reasons to do Estate Planning. In addition, with escalating health care costs, "**Long-Term Care Planning**" should be an important consideration for all families, seniors and those approaching retirement age. For more information on Long-Term Care Planning, please see our "***2016 Long-Term Care Planning Guide***".

A. Deductions

Your personal representative may deduct from your Gross Estate the administrative costs of the estate, funeral expenses, the value of debts you owe at the time of death, and charitable bequests (the charitable deduction is unlimited). In addition, the marital deduction (discussed later) allows you to leave an unlimited amount of property to your spouse tax free; but, as we will see, it then becomes important to plan for payment of taxes at your spouse's death. Simply trying to avoid or delay planning may cause the property to be taxed at even higher rates when it passes to your children or other heirs.

B. Lifetime Gifts

The federal estate and gift transfer tax system taxes each item of property you transfer to someone else, either while you are alive or upon your death. However, for lifetime gifts, there is an annual gift tax exclusion which facilitates lifetime transfers of property.

Each individual has the ability to annually gift up to $14,000.00, indexed to inflation, to any donee free of gift taxes. A married individual can make a $28,000.00 gift, indexed to inflation, by "splitting" the gift with a consenting spouse. The number of donees permitted is unlimited, but if the gift is other than outright, certain conditions must be met to qualify for the annual exclusion. The gift must also be a gift of a ***present interest***. A present interest gift is one in which the donee has all immediate rights to the use, possession, and enjoyment of the property and income from the property. The annual exclusion does not apply to a ***future interest*** gift where the donee's right or full possession does not begin until some future date. Most gifts to trusts are gifts of a future interest.

Payment of educational bills, nursing home bills and medical bills can be considered additional gifts (over and above the $14,000.00 per donee annual exclusion), if you pay such bills directly to the university, nursing home or physicians on behalf of the donee.

Example 1- Annual Gift Tax Exclusion

Ted and Joan Smith wish to help their son Bill and his wife with the down payment on their new home. Almost all of the Smith's liquid assets are in Ted's name. The down payment needed is $56,000.00.

In December 2015, Ted gives $28,000.00 to Bill. When the Smiths file their income tax return for the year, they will also file gift tax returns on which Joan Smith will consent to "splitting" the gift with Ted. In next calendar year, starting January 2016, Ted can give Bill a check for the remaining $28,000.00. Thus there will be ***no gift taxes due*** because of the annual exclusion and gift splitting techniques utilized.

C. American Taxpayer Relief Act of 2012

In order to avoid the "fiscal cliff " Congress enacted the American Taxpayer Relief Act of 2012, which was signed into law by President Obama on January 2, 2013. This act made significant changes to the estate, gift and Generation Skipping Transfer Tax law. The following are some of the key provisions of the act:

- The federal gift, estate and generation-skipping transfer tax provisions were made permanent as of December 31, 2012. This is beneficial as it allows for certainty in estate planning, as the last 10 years have seen numerous changes in the estate tax laws, and various expiration dates for certain provisions. ***Appendix B*** at the back of this guide provides the historical exemption amounts for the past 10 years.

- The federal gift, estate and generation-skipping transfer tax exemptions are set at $5,000,000, indexed for inflation. For 2016 the inflation adjusted exemption amount is $5,430,000 per individual. This means that a couple can pass wealth of $10,900,000 over their lifetime to their heirs free of federal gift and estate tax.

- The tax rate on estates larger than $5,450,000 is now fixed at 40%. This is an increase from the prior maximum estate tax rate of 35%.

- The new law makes permanent the provisions for "portability" of the estate tax exemption. This allows the unused exemption amount of the first spouse to die to be preserved for use by the surviving spouse, if an election is made on the first spouse's estate tax return. If the rules regarding portability are strictly adhered to, a couple should be able to utilize two full exemptions even if the first spouse to die fails to do so.

- The annual gift tax exclusion amount, which is indexed for inflation, remains at $14,000 for gifts made in 2016.

D. New York State Estate, Gift & Generation Skipping Tranfer Taxes

When planning to minimize taxes, one must also consider the impact of New York State taxes. With the passage of the New York State Budget for 2014-2015 substantive changes were made to the New York State Transfer Tax System (Estate, Gift & Generation-Skipping Transfer Taxes). Under prior law, $1,000,000 was excluded from tax under the New York Exemption. Effective April 1, 2014, the new legislation imposes a tax on a decedent's entire taxable estate, but allows a credit, known as the "Applicable Credit Amount", against the tax imposed. For decedents dying between April 1, 2015 and March 31, 2016, the New York exemption is $3,125,000, and on April 1, 2016 the New York exemption increases to $4,187,500.

The New York exemption is phased in over the next few years and will ultimately, as of January 1, 2019, approximate the Federal exemption. As noted above, the new legislation features a generous credit which essentially eliminates the New York Estate Tax for estates which do not exceed the State Basic Exclusion Amount. However, the Applicable Credit Amount is rapidly phased out for decedents with taxable estates in excess of the new State Basic Exclusion Amount.

Once an estate exceeds $3,281,250, the Applicable Credit against the New York Estate Tax is phased out to $0. This phasing out of the Applicable Credit at 105%, of the New York exemption is known as the "cliff," and can have dramatic tax consequences. The phase in of the new Basic Exclusion Amount and Applicable Credit Limit is illustrated in ***Appendix D*** at the back of this guide. The effects of

the cliff are illustrated by the three examples below.

Example A. Taxpayer has a taxable estate valued under the current state Basic Exclusion Amount, $3,125,000. At his or her death in 2015, the credit will cover the entire tax and no estate tax will be due.

Example B. Taxpayer has a taxable estate valued at $3,150,000. The credit begins to phase out when the value is between 100-105% of the state Basic Exclusion Amount. Here, a New York estate tax of $46,600 is due if the taxpayer dies in 2015.

Note that the increase in the value of the estate is only $25,000, but the estate tax is now $46,600. The cliff caused the estate taxes due to outweigh the increased value of the estate. If the $25,000 overage was instead transferred out of the estate, the estate tax may be avoided.

Example C. Taxpayer has a taxable estate valued at $3,285,000, which only slightly exceeds the 2015 Applicable Credit Limit. Here, the taxpayer goes over the 105% cliff and Applicable Credit is entirely phased out, causing New York estate tax of $208,560.

Note that the value of the estate only exceeds the Basic Exclusion Amount by $160,000. The increase in taxes due, however, is $208,560, which is $48,560 more than the added value. The increase in value of the estate from the $3,150,000 value in Example B is $135,000, but the increase in tax is $113,400. Notice that all but $21,600 of the increase in value of $135,000 goes to paying the estate tax. The consequences of this cliff effect only increase as the Basic Exclusion Amount increases each year. Proper estate and tax planning can help minimize or eliminate the adverse consequences of the cliff.

As under prior law , the 2015-2016 Executive Budget made permanent the 16% top New York maximum marginal estate tax rate

In order to discourage a rash display of generosity by taxpayers who would prefer to make gifts to their heirs than pay any New York Estate Tax, the legislation provides for the inclusion, in the gross estate of a decedent, of New York gifts made within three years of death, but only if the gifts are made during the phase in period for the new State Basic Exclusion Amount running from April 1, 2014 through December 31, 2018. No New York Estate Tax Return needs to be filed unless the taxable estate exceeds the Basic Exclusion Amount.

In addition, in an apparent effort to simplify the NY Tax Code and its enforcement, the NY Generation-Skipping Transfer Tax has been repealed as of April 1, 2014. Unfortunately, this will not result in any savings for NY residents subject to the federal Generation-Skipping Transfer tax as the tax previously imposed by NY was covered by a federal credit against state Generation-Skipping Transfer Tax which will no longer apply thereby increasing the federal tax by the amount of the foregone credit.

E. The Unlimited Marital Deduction

A married couple can defer any or all federal and New York estate taxes on the death of the first spouse by passing an unlimited amount of property to the survivor, provided the recipient spouse is a United States citizen. At the death of the surviving spouse, taxes will become due and payable on the

full value of his or her estate, less the applicable exclusion amount. If the first spouse leaves everything to the surviving spouse, then the first spouse has failed to utilize his or her exemption amount. However the first spouse can utilize a "Bypass", or ***Credit Shelter Trust***, to take full advantage of the exemption amount, as will be explained in more detail later.

If one spouse does not fully utilize his/her entire $5,450,000 applicable exclusion amount, the unused portion is "portable" to the surviving spouse. This law, called "portability" was first introduced under the 2010 Tax Act and was made permanent by the 2012 Tax Act. There are special rules regarding the portability of the estate tax exemption for decedents with multiple predeceased spouses or if the surviving spouse remarries. There is <u>no portability</u> of the unused portion of the NY exclusion amount.

F. The Generation-Skipping Transfer Tax

The Generation-Skipping Transfer Tax (GSTT) is an additional transfer tax imposed on transfers to grandchildren or great-grandchildren. It is a flat tax pegged at the top bracket for the federal estate tax - 40% in 2016. Since the tax is <u>in addition</u> to the applicable gift or estate taxes, it is possible for the combined taxes to consume the vast majority of the transferred property (up to 80%).

There are some escape hatches to avoid the GSTT. Many gifts that qualify for the annual exclusion will also be exempt from the GSTT. There is also a cumulative lifetime and testamentary GSTT exemption for decedents. The amount for 2016 is $5,450,000. See ***Appendix B***. This exemption may be used on behalf of one grandchild, or spread among several grandchildren. It should be noted that New York State has repealed its Generation-Skipping Transfer Tax for decedents dying after March 31, 2014.

VII. BYPASS TRUST TO REDUCE ESTATE TAXES

A. Bypass or Credit Shelter Trust Planning

For estate tax purposes, if you are married, then you can adopt what is often referred to as an "A-B" Trust Plan, Credit Shelter Trust Plan or Bypass Trust Plan. The purpose of this plan is to utilize both you and your spouse's Applicable Exclusion Amount at the time of your deaths. If the estate of the first spouse is left to the surviving spouse using the unlimited marital deduction, then the first spouse has failed to utilize his or her exemption, and on the death of the second spouse only one exemption amount will be available if the portability election was not made or not available. Whereas, if proper planning is employed and both spouses are able to utilize their respective exemptions from Estate Tax, your tax savings will double.

A Bypass Trust is a trust that is funded at the death of the first spouse, and is held for the benefit of the surviving spouse. Since the surviving spouse does not receive the property directly, there is no marital deduction for the property passing to the Bypass Trust. The applicable exclusion amount is used to shelter the assets passing to the Bypass Trust. The trust can permit the surviving spouse to manage the investment of trust assets and receive income and principal from the trust, if desired. On the death of the surviving spouse, the assets in the trust will pass to your beneficiaries free of estate tax. The surviving spouse will then be able to use the applicable exclusion amount to shelter assets in his or her

estate passing to his or her beneficiaries. If structured properly, each spouse is able to fully utilize the credit shelter amount, providing for maximum estate tax savings.

Despite the apparent simplicity of leaving everything to the surviving spouse and relying on the portability to fully use both spouses' applicable exclusion amount, there are still strong reasons to continue to use credit shelter trust planning. One reason is that with a credit shelter trust the first spouse can be assured that the assets will go to the beneficiaries named in the trust, rather than leaving the assets outright to the surviving spouse who can then dispose of them as he or she sees fit. This is especially important for blended families or potential remarriage. Another compelling reason is that there is **no portability for New York State** purposes.

Example 2 – Estate Tax Savings with a Bypass Trust

Ted and Joan Smith are in their early 70's and have a net worth of $10,000,000. Ted has a $9,000,000 investment account in his name, while their $1,000,000 house is in Joan's name. They do not own any life insurance. They live comfortably on the income from their assets and would like to leave as much of their estate as possible to their son, Bill.

Without Planning - Ted & Joan's Wills leave everything to each other and then to their son Bill. Assume both spouses die in 2015 and portability of the estate tax exemption is preserved for the second death.

Without Planning		
	First Death (Ted)	Second Death (Joan)
Gross Estate	$9,000,000	$10,000,000
Marital Deduction	$9,000,000	$0
Taxable Estate	$0	$10,000,000
Federal Estate Tax	$0	$0
NY Estate Tax	$0	$1,067,600

With Planning Utilizing a Bypass Trust - Ted leaves $2,000,000 to a Bypass Trust for Joan in his Will or Revocable Living Trust. Ted's New York taxable estate is then $8,000,000.

With Bypass Trust Planning		
	First Death (Ted)	Second Death (Joan)
Gross Estate	$9,000,000	$8,000,000
Marital Deduction	$7,000,000	$0
Taxable Estate	$2,000,000	$8,000,000
Federal Estate Tax	$0	$8,000,000
NY Estate Tax	$0	$773,200

Compare Chart 1 without planning to Chart 2 utilizing a Bypass Trust. The ultimate tax savings when utilizing a Bypass Trust is $294,400 of New York estate taxes in 2016.

B. Family Trust Planning

Despite the 2012 Tax Act permanently setting the federal exemptions for the estate, gift and GST taxes and making portability permanent, there are numerous ongoing benefits of the Family Trust when crafting a well rounded estate plan.

1. **The Federal Estate Tax:** The burden of the federal estate tax has been lessened and even eliminated for most, but for others it is still a serious concern which can be mitigated with good use of trust planning.

2. **The New York State Estate Tax:** This tax is applicable to all decedents of NY with estates in excess of the State Basic Exclusion Amount. Family Trust planning coupled with a well thought out lifetime gift plan is still a critical consideration when exploring ways to reduce the cost of this tax, which currently has a top marginal rate of 16%.

3. **Second Marriages:** The Family Trust is an important tool to ensure that the surviving spouse is taken care of without jeopardizing the eventual inheritance of children from a prior marriage.

4. **Re-Marriage:** The same concept comes into play when re-marriage by the surviving spouse is a concern. Outright bequests to a spouse always create a risk that the inheritance of the deceased spouse's children will be diverted to a future spouse and/or the children of that spouse.

5. **Divorce:** If a beneficiary gets divorced there is a risk that an outright bequest will be lost at least in part as part of the divorce settlement. A well designed trust can eliminate that risk.

6. **Minor Children:** Outright bequests to minors will typically require the appointment of a guardian and court supervision over expenditures for the benefit of the minors. Establishing a Minor's Trust is a far superior method of providing for young children *(Read more about Minor's Trusts on page 21).*

7. **Spendthrift Protection:** Young adults and even some fully matured adults sometimes have difficulty in managing their financial affairs. The Family Trust can be designed to include spendthrift provisions and other limitations on distributions to ensure that the beneficiaries are well taken care of without the risk that a new found inheritance will be quickly squandered on impulse purchases.

8. **Beneficiaries with Disabilities or Special Needs:** Beneficiaries with special needs are often the recipients of public benefits. Outright bequests can interfere with the flow of those benefits and place the beneficiary's inheritance at risk. A properly drafted Supplemental Needs Trust (SNT) is the preferred planning technique in these cases. *(Read more about SNTs on page 22)*

9. **Creditor Protection:** An outright bequest will be available to the creditors of the beneficiary. A well drafted trust can include provisions to make trust assets available for the benefit of the beneficiary without exposing them to creditor's claims. The death of the last income recipient. The value of the property given to the trust is often replaced for the heirs with a life insurance policy in an irrevocable life insurance trust. A charitable lead trust provides a charity with the income from your principal, paid over a certain amount of time, after which the remainder passes to your heirs at greatly reduced transfer tax costs.

10. Multi-Generation Trusts and other Temporal Interests: In some cases there is a desire to provide for a child during the child's lifetime, but an equally strong desire to keep the money working for the family after the child's death. In these cases a multi-generation trust sometimes referred to as a **Dynasty Trust** may be appropriate *(Read more about Dynasty Trusts on page 20)*.

There are many reasons for these trusts and estate tax planning is just one of them. In other cases there may be a desire to provide a trust for a beneficiary during the beneficiary's lifetime and then have the balance paid out to a charity upon the beneficiary's death. Such trusts known as **Charitable Remainder Trusts** can be designed in many different ways and can be drafted to offer significant tax savings *(Read more about Charitable Trusts on page 21)*.

VIII. ADVANCED PLANNING OPTIONS

A. Irrevocable Living (Bypass) Trust - Estate Tax Planning

This is a method to gift ownership of an asset without giving the recipient unbridled access to the money or property. If you relinquish all rights to income and principal from the Trust, as well as the power to change the Trust agreement in any manner, the asset will not be part of your taxable estate. You name the recipient of the assets, including income and principal beneficiaries, such as children, spouses or charities. Because the transfer is considered a gift to the Trust, a gift tax may be imposed unless the transfer qualifies for the gift tax annual exclusion (currently $14,000 per person per year), or you use some or all of your lifetime Exemption Equivalent Amount (currently $5,450,000). Both can be made part of the planning.

B. Irrevocable Life Insurance Trust (ILIT)

Life insurance has been called the estate planner's "fuel" because it provides the power to do so many things, such as provide capital to support a surviving spouse and children, buy out a business interest, help keep a business running, equalize an estate, and pay estate taxes. A more advanced use of an Irrevocable Trust is to have the Trust own life insurance policies on your life, thereby removing the proceeds of such policies from your taxable estate. Otherwise for policies you own or have rights over, the full death benefit is taxable. Trust-owned insurance will not be included in your taxable estate, and it will be available to provide liquidity to accomplish estate objectives. The cash may be used to buy non- liquid assets from the estate or loan money to the estate, thereby eliminating any need for distress sales of estate property or excessive borrowing which might be needed to pay estate taxes.

An irrevocable life insurance trust should be used when it is desirable to remove life insurance proceeds from the taxable estate and effect the management of the death benefit proceeds. If your estate is over $3,000,000, or in the case of a married couple over $6,000,000, you should begin to think about using such trusts. Those with larger estates and those with closely held businesses, real estate or other illiquid assets should seriously consider using them in ***almost all cases***.

If transfers of existing employer sponsored and personal policies are made to an irrevocable trust, the

insured must survive the transfer by three years for the policy proceeds to avoid estate taxation. Gift taxes on payments of premiums may also have to be paid if the trust is not properly drafted. A frequent objective of such trusts is to minimize any gift tax consequences on payment of premiums and on the transfer of life insurance policies to trust. Two techniques that will accomplish this are using annual exclusion gifts with "***Crummey***" withdrawal powers and/or using portions of your Lifetime Applicable Exclusion from Gift Tax (***Appendix B***). Simple assignment and change of beneficiary forms are all that is required to effect the transfers. For new policies, the Trustee should be the applicant, owner and beneficiary of the new policy. In either situation, cash gifts are generally made to the trust by the policy donor. The Trustee then pays the insurance premiums due.

If it is an estate planning objective to transfer existing policies out of the taxable estate of the insured, the insured must give up all "incidents of ownership" in the policies. This means that the person who gives up the policy must not retain control over the use of the policy in any way (for example, the right to name a beneficiary or to borrow against the policy).

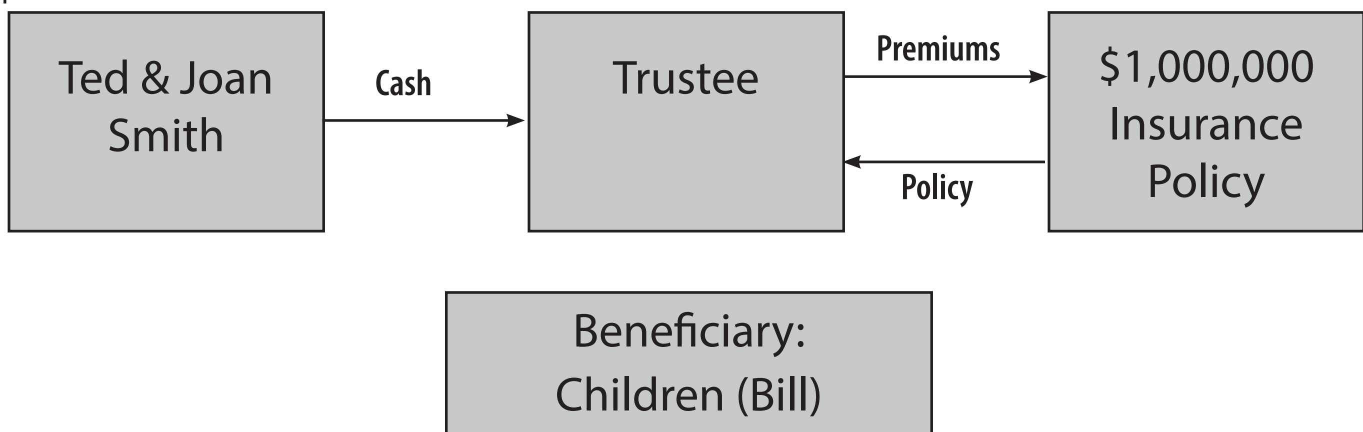
Transferring the insurance to your spouse will not accomplish transfer tax savings because the death benefit would become part of your spouse's estate. You must transfer such policies to your children or other beneficiaries or to irrevocable trusts for their benefit and/or the benefit of your spouse.

In conclusion, the irrevocable life insurance trust can provide income for your heirs, avoid probate, reduce estate settlement expenses, prevent life insurance proceeds from being included in your estate and provide funds to pay estate taxes and other estate settlement costs at deeply discounted rates.

Example 3 - Annual Exclusion Gifts with an Irrevocable Life Insurance Trust

Ted and Joan Smith established an Irrevocable Life Insurance Trust to benefit their son, Bill. The Trust is the applicant and owner of a survivorship whole life policy. The $1,000,000 policy is illustrated to require premium payments of $30,000 each year for 10 years. After year 2, the death benefit is illustrated to increase each year.

Ted and Joan will transfer $30,000 per year to the Trust for 10 years. After a short period of time (for example, 30 days) the Trustee of the Trust will pay the insurance premium with the $30,000. Because the Trust was drafted with Crummey powers, the first $28,000 transferred each year will qualify for the gift tax annual exclusion. The remaining $2,000 per year will utilize $1,000 of each of Ted's and Joan's Lifetime Applicable Exclusion from Gift Tax amounts.



Observations:

- Gift tax returns must be filed each year.
- Use of the Irrevocable Trust allows Ted and Joan greater control over disposition of policy proceeds than if their son, Bill, had owned the policy outright.

C. Qualified Personal Residence Trust (QPRT)

This trust allows you to transfer your residence or a vacation property to a Trustee on a highly leveraged transfer tax basis, while continuing to use the property for the term of the trust. This type of trust is often used to "freeze" the value of estate assets for estate tax purposes.

D. Grantor Retained Annuity Trust (GRAT)

A Grantor Retained Annuity Trust ("GRAT") is an estate freeze technique. The Grantor creates an irrevocable trust and transfers assets to the trust in exchange for an annuity payable over a term of years. To the extent the trust assets grow at a rate greater than the IRS Section 7520 rate, the excess is transferred to the beneficiaries free of estate and gift tax at the end of the trust term.

E. Installment Sale to an Intentionally Defective Grantor Trust (IDGT)

An Intentionally Defective Grantor Trust ("IDGT") is a trust where all income is taxed to the grantor because the trust is defective for income tax purposes. This allows a grantor to sell assets to an IDGT without having to recognize gain on the sale. Typically a grantor will sell interests in a Limited Liability Company ("LLC") to the trust in exchange for a promissory note which requires interest only payments for a term of years, with a balloon payment at the end of the term. Assuming the LLC assets grow at a rate of return greater than the interest rate on the promissory note, then at the end of the note term the excess appreciation passes to the trust beneficiaries free of estate and gift tax.

F. Asset Protection Trust

An Asset Protection Trust allows you to protect your assets from the claims of future creditors. Asset Protection is important to individuals with businesses and especially important to those that have high risk professions, such as doctors, where there is a threat of medical malpractice lawsuits. Traditionally if you place assets into a trust that you create, and you may receive some benefits from the trust, then the assets in the trust are not protected from the claims of creditors. However certain states, such as Delaware, have laws that allow self-settled trusts to be protected from creditors in certain cases. Certain foreign trusts can also be utilized to protect assets, however are typically more expensive to set up, maintain and administer.

G. Dynasty Trust

A Dynasty Trust can be established to pass your assets to your children, grandchildren and great-grandchildren, while protecting the money from creditors. It also allows the funds in the trust to avoid

estate taxes at the death of your child, and again at the death of your grandchildren, allowing the funds to grow tax free, thereby aiding the transfer of wealth from one generation to the next. A Dynasty Trust must be established in a state that allows such trusts to exist, such as Delaware, Nevada, South Dakota and Alaska. We can help you establish a trust in these states with the use of a corporate trustee, even if you reside in New York.

H. Minor's Trust

If you or your spouse die, a minor's trust can hold your assets for your children until they reach a certain age, provide management of the assets and pay income and principal as you direct for such purposes as their support, maintenance, health and education.

I. Beneficiary Controlled Trust

A Beneficiary Controlled Trust allows you to protect assets going to your adult children (or other beneficiaries), while at the same time giving them a measure of control over the assets. Typically a Beneficiary Controlled Trust will be established by your Will or Revocable Living Trust for assets that you leave to your beneficiaries after your death. Utilizing this type of trust provides protection for your children in the event of divorce, lawsuits, or bankruptcy, and protection from creditors and predators. Your child can be a Co-Trustee of the trust and allowed to make limited distributions to himself or herself, but a Distribution Trustee will also be appointed that can make unlimited distributions. You can have your grandchildren also be beneficiaries of the trust, and give your child power to leave the assets among the grandchildren. Overall, the Beneficiary Controlled Trust combines the best in asset protection while allowing your child to have as much control as possible over the trust assets.

J. Standalone Retirement Trust

Although your own Individual Retirement Account (IRA) is protected from creditors, those assets may lose that protection once you pass and your beneficiaries inherit the IRA. A way to protect your IRA from creditors after your death is to name a Stand Alone Retirement Trust as the beneficiary of your IRA. Your IRA will be divided into shares, one for each beneficiary, and will be required to pay Required Minimum Distributions (RMDs) based on that person's life expectancy (also called the "stretch"). However, your beneficiary will not receive the distribution directly. Instead the distribution will be paid to the Stand Alone Retirement Trust, and the Trustee will decide whether to pay the distribution directly or to accumulate it in trust for future use by the beneficiary. Assets in the trust are protected from creditors, divorce and bankruptcy. So, if you are interested in protecting your children's inheritance, while at the same time obtaining the maximum "stretch" for your IRA, a Stand Alone Retirement Trust will accomplish both of these goals.

K. Charitable Trust

Charitable remainder trusts can help an individual obtain income tax deductions, sell assets and diversify investments without incurring an immediate capital gains tax, increase cash yields generated by assets, and decrease the size of the estate. They work best for older individuals who find themselves holding low yielding, highly appreciated assets and who have charitable giving objectives. Assets are

transferred by an individual to a trust and then sold to be reinvested in higher yielding assets. Generally, an individual and perhaps a spouse receives income for life, with the remainder going to a charity after the death of the last income recipient. The value of the property given to the trust is often replaced for the heirs with a life insurance policy in an irrevocable life insurance trust. A charitable lead trust provides a charity with the income from your principal, paid over a certain amount of time, after which the remainder passes to your heirs at greatly reduced transfer tax costs.

L. Special Needs Trust (SNT)

Special Needs Trusts (SNTs) provide a source of funds for people with disabilities. Because of self-imposed limitations on these trusts, individuals can remain eligible for government benefits such as Supplemental Security Income (SSI) and Medicaid. SNTs enhance the quality of life of the person with the disability by purchasing additional support services, therapy and care that are not covered, or are not covered adequately, by the Medicaid program, but which are vital to his or her well-being. In addition, the SNT can provide funds for housing, food, travel, recreational items or special medical equipment. The SNT can be made part of a "Future Care Plan" which includes management of property and arrangements of personal care, vocational services, housing and case management for a loved one with a disability. Although SNTs are commonly used to provide for a child with a disability, it can also be used for a spouse who suffers a disability or even an aging parent who needs care.

M. Business Succession Planning

If you own your own business, we can work with you to develop a plan to ensure a smooth transition and continuation of your company upon your death, disability, or retirement. With a focus on asset protection and business preservation, we can advise you on the selection and formation of a business structure for your company, drafting of an Operating Agreement or Shareholder's Agreement, and the design and drafting of a Buy-Sell Agreement. For more information of any of these business services, please contact our office for a consultation.

N. Family Limited Partnerships & Limited Liability Companies

The family limited partnership ("FLP") or Limited Liability Company ("LLC") enables the donor to preserve significant management control over property transferred to family members as gifts without adverse transfer and income tax consequences, facilitates the making of annual exclusion gifts and, can generate substantial valuation discounts with respect to gifts of non-managing interests in the partnership. The FLP/LLC also avoids the confiscatory compressed income tax rates applicable to trusts and the double tier tax applicable to corporations. Finally, the FLP/LLC also provides investment flexibility. The ability for you to preserve control of the income and principal of the assets placed in the FLP/LLC while making discounted gifts of non-managing interests makes this a most attractive planning option in large estates. Due to the complexity of this type of structure, careful attention must be given to the detail of formation and maintenance of the entity.

O. Planning for Same Gender and Unmarried Couples

According to the 2000 Census Results, there are over 5.5 million unmarried couples in the United

States. This includes a growing trend of younger couples choosing not to marry, widows/widowers choosing not to remarry, and same gender LGBT couples who choose not to marry or may not have a legally recognized marriage. State laws differ greatly in recognizing same gender marriages, "common law" marriages, and other types of arrangements such as Domestic Partnerships, Civil Unions, and Second Parent Adoptions. New York does not recognize "common law" marriages. Same gender marriages are now legal in New York (and 16 other states) and New York will also recognize marriages of same sex couples performed in other states.

Federal law regarding same sex marriages was drastically changed with the Supreme Court ruling in *United States vs. Windsor* in June 2013. This ruling struck down part of the Defense of Marriage Act (DOMA) and now recognized same sex marriages as legal under federal law. In 2015, The Supreme Court decided Obergefell v. Hodges, which requires all states to issue marriage licenses to same-sex couples and to recognize all same-sex marriages lawfully performed out of state.

Unmarried couples face many of the same planning challenges that married couples do, yet it is even more important that you put your wishes in writing and have a solid plan in place. In some circumstances, unmarried couples do not enjoy the same privileges that married couples do when it comes to estate planning. We can tailor an estate plan to ensure your wishes are carried out. Spouses retain certain rights and priorities when it comes to making health care decisions, being a guardian for minor children, inheriting assets, and being a beneficiary of retirement benefits. By carefully tailoring your estate plan to include your partner as your named fiduciary and beneficiary, you can provide the same benefits to your partner.

P. Post-Mortem Tools

While pre-planning is recommended, there are also several post-mortem (after death) tools that an estate may be eligible to use to reduce estate taxes.

Please contact McDermott, Pierro, Mandery & Mandery for more information and to set up a consultation on any of these sophisticated techniques as cases and circumstances vary greatly.

IX. OTHER CONSIDERATIONS IN ESTATE PLANNING

It would be impossible for this guide to do more than introduce you to estate planning. Many legal and tax requirements apply to the general principles discussed, and legal guidance should always be sought before taking any action. With that in mind, below are several important points to consider in planning your estate:

- If you leave assets directly to minor children, the Guardian (including the child's surviving parent) must keep records of even routine use of the inheritances and petition the court for any unusual expenditures on the children's behalf. Instead, you may be wise to bequeath your property to a Trust established in the children's names, and in most cases, name their designated Guardian as Trustee.

- If you give your personal representative broad powers to settle disputes or sell property as he or she sees fit, the personal representative will not have to seek permission from the court for each activity.

- If you plan to be married, you may wish to consider a prenuptial agreement to control the disposition of your assets in the event of divorce or death. This may be particularly important in certain circumstances, such as if you own a closely held business or wish to bequeath all or a portion of your estate to children from a previous marriage. For larger estates, this is a particularly good time to plan for your estate.

- It is wise to avoid provisions likely to be ruled invalid or to cause a challenge from neglected heirs. Under New York Law, you may not totally disinherit a spouse, but if you seek to totally disinherit a child, we recommend that it be unequivocally indicated in your documents that this is your intent. Also, bequests that appear as favoritism or slights may cause challenges to the Will or Revocable Trust or, just as damaging, lasting ill feelings in your family.

- There is little that can be done after death to relieve your estate from taxes if you have not properly planned the disposition of your estate.

X. REVIEWING YOUR ESTATE PLAN

Anytime your life or circumstances change dramatically, your estate plan should be reviewed and, if necessary, updated. Changes in the following areas may alter your desires significantly:

- Marital Status
- Ownership or Value of Property
- Birth of a Child
- Tax Law Changes
- Income or Employment Status
- Business Ownership
- Relocation

At a minimum you should have your estate plan reviewed every three years. In doing so, you should:

- Keep your affairs in order and maintain an inventory of all of your property. Take some time to educate your personal representative about the property and where you keep your inventory, or leave a copy on file in our office. As a member of McDermott, Pierro, Mandery & Mandery PALMS (Professional Advocates Lifetime Maintenance System), your personal data, financial information, and legal documents will be reviewed and updated on an annual basis. The **PALMS** program helps ensure that your estate planning stays in order. In case of emergency, it also gives you 24-7 access to your legal documents.

- Your Will or Revocable Living Trust (RLT) is effective until you change or revoke it. You may alter your Will or RLT by executing a new one or by adding a “codicil,” or “amendment” which is

executed with the same formalities as a Will or Trust. If you make changes to your Will or Trust by writing on the document itself, you may invalidate the entire document.

- Designating a beneficiary of your life insurance policy does not take the place of a Will or Trust. Life insurance is but one asset which needs to be considered in your overall estate plan. Under certain circumstances, it is advisable to transfer ownership of your life insurance either to a trust or to the beneficiary. If you create a trust for your children during life or in your Will or Trust, be sure to designate the minor's trust as your beneficiary.

- If you own your house and checking account jointly with your spouse, those items will not be probated, and the survivor will have immediate access to the account. This is not necessarily true for all assets, however, as those assets held individually will be subject to probate.

- Married couples should work closely together in estate planning so family objectives can be met regardless of who dies first.

- Do not have a beneficiary serve as a witness to your Will. If the beneficiary is needed as a witness in order to validate your Will, he or she may not be able to collect an inheritance.

- If you think your estate might shrink or grow, use percentages instead of dollars to divide your assets.

- You generally may not exclude your spouse completely from your Will without your spouse's consent. In New York, in such case a surviving spouse is entitled to an "elective share" of the estate, which is equal to 1/3 of the net estate, including testamentary substitutes, like a Revocable or Irrevocable Trust.

- The best assets to give as gifts are those which are gaining in value because future appreciation will be excluded from your estate for estate tax purposes.

XI. CONCLUSION

Estate planning encompasses a number of different subject areas, and it is not without complexity. Add to that the volatility of the markets and uncertainty of current tax laws, and it is easy to put off planning to another day. Procrastination, however, can lead to disastrous consequences for your family. The most effective way to begin the preparation of an effective estate plan is to meet with a qualified planner, and to begin assembling the information necessary to formulate the plan. This is a time that demands a new approach to your planning, with new thinking and added flexibility to ensure that your wishes are fulfilled no matter what Congress throws at us, this year or next. We will craft a solution that will meet your planning objectives, with the least amount of tax.

At McDermott, Pierro, Mandery & Mandery, LLP our attorneys and staff are seasoned professionals dedicated to serving you in the areas of estate planning and estate and trust administration, and we would be happy to meet with you in order to discuss your needs and goals. In order to begin the process, you should complete an ***Estate Planning Questionnaire***, which we will

make available to you upon request. Everyone's situation is unique and it is impossible to discuss all of the planning opportunities in this resource guide. Please call us at **631-414-0094** for a consultation, or visit us on the web at **www.mpmmlaw.com.**

GLOSSARY OF ESTATE PLANNING TERMS

Administrator - A person appointed by the Surrogate's Court to manage the estate of a person who dies intestate.

Beneficiary - A person designated to receive the income or principal of a trust or estate.

Bequest - Personal property given to another by Will. Compare with "Devise."

Codicil - A document which adds to or changes a Will. Its execution must comply with the formalities required for the execution of a Will.

Decedent - A deceased person.

Devise - Real property given to another by Will. Compare with "Bequest."

Estate - An interest in assets and personal property; also the legal entity which manages and distributes a decedent's property.

Estate Tax - The transfer tax paid to the IRS and New York State by the Executor or Administrator of a decedent's estate out of the assets of the estate itself.

Executor - A person appointed by a Testator in a Will to carry out the provisions of the Will. A woman acting in such a capacity is an "Executrix." A "Co-Executor" acts as Executor together with another or others. See "Personal Representative."

Fiduciary - A person in a position of trust or confidence. The fiduciary is bound by a duty to act in good faith. Examples of fiduciaries are trustees, executors and administrators.

General Power of Appointment - The power to decide who should receive assets and when. A power will be limited, instead of general, if the holder of the power does not have the power to appoint the assets subject to the power to himself, his creditors, his estate or the creditors of his estate.

Grantor - A person who makes a transfer of property. The term is commonly used to describe a person who establishes and transfers property to a trust. See "Settlor" and "Trustor."

Guardian and/or **Property of a Child** - A person legally appointed by the court to manage the rights and/or property of a minor. A "Guardian ad litem" is appointed by the court to prosecute or defend an action for a minor.

Heir - A person entitled to inherit a portion of the estate of a person who has died without a Will. In New York, this person may be known as a distributee.

Intestate - Dying without a Will.

Legacy - A transfer of personal property by a Will.

Living ("Inter Vivos") Trust - A Trust which goes into effect while the settlor is alive.

Personal Representative - An Executor or Administrator charged with marshaling assets, paying bills and taxes, and ultimately distributing an estate.

Pour Over Will - A Will used to transfer assets to a trust which already is in existence. Very often it is used in conjunction with a Revocable Living Trust to dispose of those assets not previously placed in the trust.

Power of Attorney - A document in which you authorize a person to act as your agent. A "Durable" Power of Attorney continues after you become incompetent, and a "Springing" Power of Attorney comes into existence only upon the happening of an event or contingency which you define.

Probate - The proving of the validity of a Will.

Settlor - The creator of a trust.

Testament - A Will.

Testamentary Trust - A trust established by a Will which begins after the Testator's death.

Testator - A man who makes or has made a Will. A "Testatrix" is a woman who makes or has made a Will.

Trust - A legal relationship where property is transferred to and managed by a person or institution for the benefit of another.

Trustee - The person or institution entrusted with the duty of managing property placed in Trust. A "Co-Trustee" serves as Trustee with another. A "Successor Trustee" becomes Trustee upon the happening of a named future event.

Trustor - One who creates a Trust. Also called a "Grantor" or "Settlor."

Will - A legally executed document which explains how and to whom a person would like his or her property distributed after death, and appoints personal representatives to carry out the management and distribution of assets.

CIRCULAR 230 DISCLOSURE: To comply with the U.S. Treasury regulations, we must inform you that (i) any U.S. federal tax advice contained in this resource guide was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax advisor based on the taxpayer's particular circumstances. If you would like an opinion on the one or more Federal tax issues addressed in this guide, please contact the McDermott, Pierro, Mandery & Mandery, LLP.

The information in this guide is provided for informational purposes only. While every effort has been made to ensure accuracy, it cannot be relied upon as legal advice. Applicability of the legal principles discussed may differ substantially in individual situations, and you should always consult with your legal advisor.

Appendix A: Federal & NYS Estate Taxes as of 2015

Taxable Estate	Federal Tax (After Applicable Exclusions but before Deductions)	NY State Estate Tax*	Total Federal & NY Estate Taxes	Applicable Federal Estate Tax Rate
$1,000,000	$0	$0	$0	0%
$1,250,000	$0	$0	$0	$0
$1,500,000	$0	$0	$0	$0
$1,750,000	$0	$0	$0	$0
$2,000,000	$0	$0	$0	$0
$2,500,000	$0	$0	$0	$0
$3,000,000	$0	$0	$0	$0
$3,500,000	$0	$229,200	$229,200	0%
$4,000,000	$0	$280,400	$280,400	0%
$4,500,000	$0	$335,600	$335,600	0%
$5,450,000	$0	$444,800	$444,800	0%
$10,000,00	$1,392,960	$1,067,600	$2,460,560	40%
$15,000,000	$3,073,280	$1,866,800	$4,940,080	40%

*NY Estate State Taxes from April 1, 2015 to March 31, 2016

Appendix B: Applicable Exclusion Amounts

Year of Death and Gifts Made	Applicable Exclusion Estate Tax Amount	Gift Tax Exclusion Amount	Generation Skipping Transfer Tax Exclusion Amount
2002	$1,000,000	$1,000,000	$1,100,000
2003	$1,000,000	$1,000,000	$1,120,000
2004	$1,500,000	$1,000,000	$1,500,000
2005	$1,500,000	$1,000,000	$1,500,000
2006	$2,000,000	$1,000,000	$2,000,000
2007	$2,000,000	$1,000,000	$2,000,000
2008	$2,000,000	$1,000,000	$2,000,000
2009	$3,500,000	$1,000,000	$3,500,000
2010	REPEALED / $5,000,000	$1,000,000	REPEALED/ $5,000,000
2011	$5,000,000	$5,000,000	$5,000,000
2012	$5,120,000	$5,120,000	$5,120,000
2013	$5,250,000	$5,250,000	$5,250,000
2014	$5,340,000	$5,340,000	$5,340,000
2015	$5,430,000	$5,430,000	$5,430,000
2016	$5,450,000	$5,450,000	$5,450,000

Appendix C: Gift, Estate & GTS Exemption & Rates

	2012		2013		2014		2015		2016	
Tax	Exemption	Rate	Exemption	Rate	Exemption	Rate	Exemption	Rate	Exemption	Rate
Gift	$5.12M	35%	$5.25M	40%	$5.34M	40%	$5.43M	40%	$5.45M	40%
Estate	$5.12M	35%	$5.25M	40%	$5.34M	40%	$5.43M	40%	$5.45M	40%
GST	$5.12M	35%	$5.25M	40%	$5.34M	40%	$5.43M	40%	$5.45M	40%

*Executors of 2010 decedents had the option to elect into the "no estate tax/ modified carryover basis" regime or the $5M Estate Tax exclusion under the 2010 Tax Act.

Appendix D: Applicable Exclusion Amounts

Date of Death	State Basic Exclusion amount	Applicable Credit Limit
April 1, 2014 to March 31, 2015	$2,062,500	$2,165,625
April 1, 2015 to March 31, 2016	$3,125,000	$3,281,250
April 1, 2016 to March 31, 2017	$4,187,500	$4,3966,875
April 1, 2017 to December 31, 2018	$5,250,000	$5,512,500
January 1, 2019 or Later	Appoximately equal to the Federal Applicable Exclusion Amount*	State Basic Exclusion Amount, plus 5%

*Because the Basic State Exclusion Amount is indexed using a different base year than the Federal Applicable Exclusion Amount, it is possible that the State Basic Exclusion Amount and the Federal Applicable Exclusion Amount may not be equal beginning in 2020.