AN INTRODUCTION TO ESTATE PLANNING

For more than a century our firm has helped clients write their wills and arrange their family financial affairs—the process now called estate planning. This brochure will introduce you to the process and tell you how we go about it.

Estate planning assures that your property passes to others precisely as you direct, and as efficiently as possible. A common goal is reducing taxes, particularly estate or gift taxes. But we find that other considerations are often even more important—such as assuring the financial security of family members during their youth or old age.

Despite its name, estate planning also can involve arranging your financial affairs during your lifetime. For instance, you may wish to plan for management of your assets should you become unable to manage them or desire to be relieved of some of the detail or responsibility.

Whatever your particular goals, your estate plan should be practical, flexible, consistent with the degree of your wealth, and compatible with the maturity and needs of your family members.

GETTING STARTED

Estate planning involves these steps:

- *Collecting* information about your assets and liabilities.
- *Thinking* about where and how you want to direct your assets.
- *Conferring* with us about how to achieve your goals as precisely and efficiently as possible.
- *Authorizing* us to prepare the documents to carry out your estate plan.
- *Reviewing*, revising, and signing the documents.

We are providing you a checksheet to use in gathering your financial information. Some of this information may be included in a recent financial statement. We do not need exact figures-value estimates will suffice or we will ask for more precise information when required.

Once you have accumulated your financial information, we will meet with you to discuss your estate plan.

At our initial meeting, we will want to learn about your family and your goals. We may raise questions that may not have crossed your mind. After we are both satisfied that you have considered all of the necessary issues, we will present suggestions for achieving your goals. Once you have made your choices, we will prepare the necessary documents. During this process we will be pleased to work with other advisors you may have engaged, such as your accountant, insurance or investment advisor, or trust officer.

Our Fees

At the end of our initial conference, we will give you an estimate of how much our work will cost. Because the cost depends on the professional time we will devote to your estate plan, it will vary with the plan's complexity.

ELEMENTS OF YOUR ESTATE PLAN

Your Will

Your will is a written declaration of how certain of your assets are to pass when you die. And it selects someone to carry out your wishes-called your "executor" or "personal representative." It may also recommend someone to care for your minor children if they are orphaned.

Your will does not control the disposition of many of your assets. For example, a will usually does not govern the disposition of life insurance benefits, pension benefits, or assets you own jointly with your spouse or others. Because wealth in these forms may comprise much of what you own, it is important to coordinate your will with your plans to dispose of these other assets.

About Trusts

A trust is a practical and flexible legal device by which one or more people you select (called your "trustees") manage assets for the benefit of others you designate (called your "beneficiaries"). We may recommend that you consider trusts for one or more purposes:

Tax minimization or avoidance;

Spreading or sharing of assets among beneficiaries (for example, spouse as beneficiary for his or her life, then your children as beneficiaries, or spouse and children as co-beneficiaries according to their relative needs over time); or

Management of assets for the convenience of beneficiaries or to protect beneficiaries from their immaturity, inexperience, or the frailties of advancing age or impaired health.

A trust can last for the lifetime of a beneficiary or can be designed to end when a beneficiary reaches a specified age.

Contrary to popular belief, trusts can enhance rather than unduly restrict your family's enjoyment of wealth. For instance, trusts do not necessarily remove management responsibilities from family members. Family members often serve as trustees, either alone or with professional independent co-trustees. For example, your spouse can be the sole trustee of a trust for his or her benefit designed to minimize transfer taxes. You could also provide for additional trustees to serve from the beginning or from the occurrence of a specified event.

You can establish a trust either during your lifetime (called a "living trust") or upon your death.

A living trust is often established but not funded. This is a "standby" arrangement, to be activated only if you later decide to transfer assets to it, or if you become incapacitated or die. You can usually change or revoke trusts of this type.

You can add assets to a living trust at your death by a direction in your will or by designating the trust as an insurance beneficiary. You can also add pension or other employee benefit rights to a trust by beneficiary designation. This technique (called "pourover") has the advantage of privacy, because the trust agreement (unlike a will) never becomes a public document.

We sometimes propose the creation of "irrevocable" living trusts as a means of making gifts of property to family members or charities. While these trusts normally cannot be changed or revoked, they often reduce

taxes. It is common to put life insurance policies (and ultimately, their proceeds) in irrevocable living trusts.

Powers of Attorney

A power of attorney is a revocable written declaration by which you authorize someone else (called your "attorney-in-fact") to act for you in financial matters. A broad or "general" power of attorney lists things that your attorney-in-fact can do for you, such as paying your bills or managing your money. Powers of attorney often allow your attorney-in-fact to add assets to a living trust you have already created or make gifts to members of your family.

Many people prepare powers of attorney in case they become disabled. Powers of attorney eliminate the expense and inconvenience of a "guardianship," in which a guardian is appointed to manage your financial matters under court supervision. Spouses often give powers of attorney to each other, while providing a "standby" power of attorney to one or more of their adult children. A power of attorney terminates when you die.

Selecting Your Executor and Trustee

An *executor* is an individual or bank or trust company you designate to carry out the directions in your will. Often more than one executor is named (for example, a spouse and bank or a spouse and a child or children). In selecting your executor, you should consider such factors as integrity, judgment, knowledge and skill, experience, and time available to devote to the job.

The executor takes control of your assets at your death, pays your debts, and files required tax returns. The executor must settle all tax matters with the tax authorities and then distribute your assets as your will directs.

An executor often faces difficult decisions about what assets to retain or sell. If assets must be sold, the executor must determine how to sell them. An executor also must make critical tax strategy decisions that can affect the amount and timing of transfer tax and income tax payments.

A *trustee* is an individual or bank or trust company (or a combination) named in a will or trust agreement to manage trust assets on terms you specify. The trustee must manage the assets prudently (deciding when and what assets to buy, hold, or sell), account for the assets to your beneficiaries, file income tax returns and develop income tax strategies, and distribute income and principal as you direct. Your trustee's conduct is governed by a well-developed and logical body of law based on a duty of undivided loyalty to your beneficiaries. Because no one can foresee what the future may bring to his family, trustees are often given discretion in using or distributing money to benefit family members. For example, you may grant your trustee discretion to make trust distributions for the education, support, and health needs of beneficiaries, just as you would make the decisions if you were there to make them. Family members often make suitable trustees, either alone or jointly with professional trustees. The nature of your assets, the relationships among members of your family, and the degrees of mutual confidence among your beneficiaries all have to be considered in selecting your trustees.

ESTATE AND GIFT TAXES

The federal government imposes taxes on gratuitous transfers of property that exceed certain limits. Gift taxes are imposed on transfers during life; estate taxes, on transfers at death. The generation-skipping transfer tax restricts the use of transfers to grandchildren or more remote descendants designed to avoid transfer taxes by "skipping" a generation. This tax is levied in addition to gift or estate taxes and not as a substitute for them.

State gift and estate tax laws vary considerably. The most common estate tax is based on a specified percentage of the federal estate tax. Some states impose additional transfer taxes. Your estate plan will be designed to avoid, minimize, or delay these taxes, depending on your overall goals.

FEDERAL ESTATE TAX

Estate Tax Structure

The federal estate tax is a tax on the transfer of property at death. It is a graduated rate tax, based on the size of the "taxable estate". The taxable estate is the value of your assets, plus all taxable gifts made after 1976, less available deductions. For 2009, no estate tax is assessed on estates up to $3,500,000 (assuming no lifetime gifts were made that exceed the annual exclusion).

The 2001 Tax Act made significant changes to the estate tax laws as well as the gift and generation-skipping tax laws. Although the Act purports to abolish the federal estate tax, true repeal (or permanency of increased exclusion amounts and reduced rates) will only happen if Congress acts to override the "sunset" provision that in 2011 automatically reinstates the law as it was before the Act. Such Congressional action is expected during 2009.

The key change was an increase in the estate tax unified credit applicable exclusion amount from the $675,000 limit for 2001 to $1,000,000 as of January 1, 2002, and then in stages to $3,500,000 in 2009, as shown below.

The Federal Estate Tax Under The 2001 Act

Year of Death	Exclusion Amount	Beginning Rate	Top Rate
2002	$1,000,000	41%	50%
2003	$1,000,000	41%	49%
2004	$1,500,000	45%	48%
2005	$1,500,000	45%	47%
2006	$2,000,000	46%	
2007	$2,000,000	45%	
2008	$2,000,000	45%	
2009	$3,500,000	45%	
2010	—	0	
2011	$1,000,000	41%	55%

The Marital Deduction

The federal estate tax law provides an unlimited "marital deduction." Either during your life or at your death, you can transfer any amount to your spouse without incurring any estate or gift tax.

While outright transfers are common, there are also advantages to establishing a trust for your spouse's benefit.

A trust can give your spouse the lifetime benefit of property (both income and principal if needed) free of any estate tax burden at your death. Such a trust can permit you to control how the remaining property will ultimately pass at your spouse's death. You may also permit your spouse to participate in this decision. For example, you can allow your spouse an unlimited power to decide who will ultimately receive the assets, or you can limit the power to choosing among persons you specify.

FEDERAL GIFT TAX

Gift Tax Structure

Under the 2001 Tax Act, the tax-free gift amount also increased to $1,000,000 on January 1, 2002 but remains frozen at that level, making careful planning of lifetime transfers very important. Those who completely used their unified credit amounts when it was at the $675,000 level are able to make additional tax-free gifts in the range of $250,000 to $325,000.

The Annual Exclusion

The first $13,000 given to any individual during 2009 is excluded from taxable gifts. Gifts of future interests, such as most gifts in trust, do not qualify for this exclusion.

Married individuals may treat gifts by either spouse as having been made equally by them. This is known as the "split-gift" election. With it a married couple may annually transfer $26,000 per beneficiary to any number of beneficiaries without making taxable gifts. These gifts do not count against the $1,000,000 gift tax exclusion amount and therefore completely escape transfer tax.

Accordingly, such gifts are a very important planning tool for persons who can afford to make them.

FEDERAL GENERATION-SKIPPING TRANSFER TAX

If you transfer assets to your grandchildren or more remote descendants, those assets will not be taxed in your children's estates. The generation-skipping transfer ("GST") tax, however, discourages these transfers by taxing them at the highest estate and gift tax rate. (Such transfers are also subject to estate or gift tax.) Transfers to persons outside your family who are more than 37½ years younger than you are also subject to the GST tax. Under the 2001 Tax Act, the same repeal and sunset provisions that apply to estate taxes also apply to the GST tax.

Transfers that qualify for the gift tax annual exclusion are generally exempt from the GST tax, but certain transfers to trusts are not. Apart from the GST annual exclusion, each individual can make a total of $3,500,000 of generation-skipping transfers free of GST tax during 2009.

BASIC ESTATE TAX STRATEGY FOR MARRIED COUPLES WITH CHILDREN

We find that the basic goal of most married clients is to provide maximum security for one another, and to ultimately pass whatever may remain of their wealth to their children. A basic strategy can achieve this goal while eliminating or minimizing estate taxes.

The key to this strategy is each individual's right to pass the exclusion amount (which is $3,500,000 in 2009) without paying any estate tax.

Consider the example of a husband dying before his wife in 2009. Because transfers of wealth between spouses are completely free of transfer tax, the husband might simply leave everything to his surviving wife.

This transfer would avoid estate taxes upon the husband's death. But what would happen when his wife dies in 2012 (assuming the exclusion amount remains at $3,500,000)? If the couple's combined wealth is under the $3,500,000 exclusion amount, the wife could pass all of the couple's assets to their children without any transfer tax. But if the couple's combined wealth is more than $3,500,000, there could be significant tax consequences.

By leaving all of his assets to his wife, the husband forfeited the use of his $3,500,000 exclusion amount. And because the wife can only use her exclusion amount, there will be estate tax on any amount over $3,500,000 that the wife leaves to the couple's children when she dies.

The husband in this example could have met the same family goals but reduced the tax burden by splitting his estate into two parts.

The first part (which we will call the "Bypass Trust") consists of the first $3,500,000 of the husband's wealth. His $3,500,000 exclusion amount will shelter these assets from estate tax. By placing this amount in a carefully designed trust, it will not be taxed at his wife's death. His surviving wife (or their children, if he wishes) can receive the full benefits of both the income and the principal of this Bypass Trust. The trust assets would pass to the children when the wife dies.

The second part of the husband's estate would consist of the remainder of his assets. This amount could be given outright to the surviving wife or placed in another trust (called a "Marital Trust") for the wife's benefit during her life, ultimately passing to the couple's children when she dies. Whether the assets are passed outright or through the Marital Trust, they are not taxed when the husband dies (because of the marital deduction). They may be taxed when his wife dies because they will have become her property for tax purposes.

The following example illustrates the federal tax savings of such an estate-splitting plan—compared to an "all to my spouse plan"—for a married couple with assets of $8 million.

All To My Spouse Plan

Husband	Wife
$4,000,000	$4,000,000

First spouse dies in 2009 and leaves everything outright to surviving spouse. No taxes on first spouse's death due to unlimited marital deduction.

Surviving Spouse
$8,000,000

Death of Surviving Spouse in 2012: $4,500,000 Taxable. Taxes are $2,025,000.

Balance to children
$5,975,000

Bypass Trust - Remainder to Spouse

Husband	Wife
$4,000,000	$4,000,000

First spouse leaves $3,500,000 in a bypass trust for surviving spouse's benefit, rest outright to surviving spouse. No taxes on first spouse's death.

Surviving Spouse
$500,000 outright $4,000,000 spouse's $3,500,000 in bypass trust

Death of Surviving Spouse in 2012; $1,000,000 taxable. Taxes are only $450,000.

Balance to children
$7,550,000

As this example demonstrates, a couple with more than the exclusion amount in assets who fails to adequately plan their estate will cost their children significant estate taxes. The estate-splitting plan allows a married couple to pass twice the exclusion amount to their children with no estate tax. For larger estates, tax is often deferred until the surviving spouse's death.

This basic plan can be adapted to meet your particular circumstances and goals.

ASSETS REQUIRING SPECIAL ATTENTION

Employment Benefits

Nearly everyone has been an employee or self-employed and has employment benefits.

Many employment benefits have post-death payment features and must be considered in your estate plan. They suffer greater tax erosion than other assets because they are subject both to estate tax and income tax. The tax impact on these assets can be minimized by careful lifetime planning.

Investments and Insurance

As lawyers, we will not advise you about what assets to buy, hold, or sell from an investment perspective. We can provide a tax or legal analysis of a proposed investment. We can also advise you about your cash needs at particular times (for expenses such as taxes). We can assess the role of life insurance in meeting these cash needs, and analyze life insurance products you may be considering. We believe we can be objective in this role, because we do not sell the products we are reviewing.

Joint Ownership

The maxim "moderation in all things" applies to joint ownership. A reasonable amount of joint ownership between spouses can be perfectly appropriate and practical. For example, many married

persons own their home jointly with survivorship. To place all or even a substantial part of a family's wealth in joint ownership can, however, have disastrous tax consequences. We will review with you the way your assets are titled and advise you on possible modifications. Generally, changes in the way that property is owned by a married couple can be made without any transfer tax cost and with little other expense.

A WORD ABOUT KEEPING YOUR ESTATE PLAN CURRENT

We cannot guarantee to keep your estate plan current. Changes in your assets, your family situation, and the law can all outdate your estate plan. We therefore encourage you to initiate reviews with us every three to five years or whenever there are significant changes in your financial or family situation or in the tax laws. We try to alert clients to major tax law changes, but changes are now so frequent and estate plans so diverse that periodic client initiated reviews are the only practical assurance that your plan will remain efficient.

GLOSSARY OF TERMS

***Descendants* –** A person's children, grandchildren, and more remote persons who are related by blood or because of legal adoption. A person's spouse, parents, grandparents, brothers, or sisters are not included. The terms "descendants" and "issue" have the same meaning.

Guardian – An individual or bank or trust company appointed by a court to act for a minor or incapacitated person (the "ward"). A guardian of the person is empowered to make personal decisions for the ward. A guardian of the property (also called a "committee") manages property of the ward.

***"Per Stirpes"* –** A method of distributing assets which provides that descendants take the share their deceased ancestor would have taken if the ancestor were living.

***Residue* –** The property remaining in a decedent's estate after payment of the estate's debts, taxes, and expenses, and after all specific gifts of property and sums of money have been distributed as directed by the will. Also called the residuary estate.

***Tangible Personal Property* –** Property that is capable of being touched and moved, such as personal effects, furniture, jewelry, and automobiles. Tangible personal property is distinguished from *intangible* personal property, which has no physical substance but represents something of value, such as cash, stock certificates, bonds, and insurance policies. It is also distinguished from *real* property which is land and items permanently affixed to land, such as buildings.

***Uniform Transfers to Minors Act* –** A state law providing a convenient means to transfer property to a minor. An adult person known as a "custodian" is designated by the donor to receive and manage property for the benefit of the minor. Although the legal age of majority in may be 18, the donor may in many states authorize the custodian to hold the property until the beneficiary reaches age 21. (This law replaced a similar previous law called the Uniform Gifts to Minors Act.)

***Principal (or Capital)* –** The property (money, stock, real estate) put into a trust to generate income and to be used for the trust beneficiaries according to the trust's terms.

***Income* –** The earnings from the principal, such as interest, rent, and cash dividends.