ESTATE PLANNING GUIDE 2009

20 Corporate Woods Blvd., 3rd Floor
Albany, New York 12211
Telephone: (518) 459-2100
Facsimile: (518) 459-2200

100 Park Avenue, 20th Floor
New York, New York 10017
Telephone: (212) 661-2480
Facsimile: (212) 682-6999

Toll Free: (866) 951-PLAN
Web Address: www.pierrolaw.com

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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 Pierro Law Group, LLC, 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.

Tax planning has been an integral part of the estate planning process in the United States as far back as the Civil War. Notwithstanding the political frenzy and media attention which accompanied the so called "repeal" of the estate tax through the Economic Growth and Tax Reconciliation Act of 2001, the tax planning needs for most people have not been significantly diminished. The estate tax has actually been repealed and reinstated several times in the past, and the sunset provisions of the recent tax act make it likely that history is about to repeat itself. Some of the key provisions of the recent tax act include the graduated increase in the amount of an estate which is exempt from estate taxation; the gradual decrease of the maximum estate and gift tax rates; and the one year repeal of the estate tax, which will be explained later in this guide.

B. GOALS OF ESTATE PLANNING

A good estate plan has four basic 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 that 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 allow you to select who will handle various administrative and management functions on your behalf, both during life and after your death; and

4. To control your family's future.

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 $13,000.00 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.

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 "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, which we will be happy to supply to you without cost.

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.

II. POWERS OF ATTORNEY AND HEALTH CARE PROXIES

An essential part of current estate planning is appointing individuals, known as "fiduciaries," to act on your behalf. In a Will, a fiduciary is called an "Executor," and in a Trust, the fiduciary is called a "Trustee." In addition, there are other methods to appoint individuals to act on your behalf during your lifetime, as the need arises.

Through a "Power of Attorney," 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. 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.

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, where 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 who 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.

One duty which cannot be performed by an Attorney-in-Fact 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. A Living Will should constitute “clear and convincing evidence,” but because there is no agent appointed in the Living Will, we recommend that you execute a Health Care Proxy.

III. DISPOSITION OF REMAINS

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. In addition, litigation over one’s remains can be avoided with this document.

IV. EVERYONE HAS AN ESTATE PLAN - VOLUNTARY OR INVOLUNTARY

The basic transfer vehicles from which you can choose when planning your estate are as follows: **no** estate plan which means that intestate law will govern the distribution of your estate (discussed in more detail below); execute a Will; or create a living trust. Some people

might add the use of "Will substitutes" as an additional transfer technique. Will substitutes include such assets as life insurance, qualified retirement plans and jointly held property, all of which pass to designated beneficiaries by operation of law and outside of your Will or intestate succession. These will be discussed in more detail later.

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 or unable to manage their wealth.

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, and having a court appointed Guardian can 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 the 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.

Also, 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 your 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.

B. PROBATE AND NON-PROBATE ASSETS

Most estates include probate assets and non-probate assets (previously referred to as "Will substitutes"), and you should be aware of the impact of both. Probate assets are those owned in your own name which require a determination by the court as to where the assets should go (i.e., a bank account or residence 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.

For those assets which go through probate (or administration), probate involves two procedures:

First, the Surrogate's Court in the county where you reside, determines whether a particular instrument is your 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 (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 (for example, if your Will is contested, if you own additional property in other states or if it is a "do it yourself" Will). 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.

A recent law impacted whether or not a security account was a probate or non-probate asset. As of January 1, 2006, New York State allows an individual to pass his or her securities to a beneficiary upon death without the need for probate. This new way to transfer securities at death became known as Transfer on Death (TOD). An individual can check with his or her brokerage firm, bank or other financial institution for forms and procedures on how to accomplish this Transfer on Death.

V. WHAT ARE THE ALTERNATIVES?

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 Wills are only for wealthy people, or are only for people who want to set up trusts or save estate taxes BUT the fact is that everyone should have a Will. Many of us can readily accumulate an estate in excess of $1,000,000.00. For example, a typical middle class family might have assets as follows: life insurance - $500,000.00, equity in home - $200,000.00, savings and investments - $175,000.00, and retirement plan assets - $300,000.00, and tangible personal property such as jewelry and household furnishings of $50,000.00 for a total estate value of $1,225,000.00.

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 primary reason for making a Will is to provide instructions on how your assets are to be distributed among your beneficiaries. A Will is a written document which:

< 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.

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, if you are concerned that your spouse may remarry after your 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 upon his or her death. Likewise, if you are leaving assets to children, 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 only for certain purposes such as support, maintenance, and education.

B. AVOIDING PROBATE

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.

An effective way to avoid probate is by employing either a “revocable living trust,” which can provide for the management of your assets 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, a child, or your attorney, 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. If you desire more detailed information on revocable trusts, please call us and we will be happy to arrange a consultation for you.

VI. ESTATE SETTLEMENT COSTS AND TRANSFER TAXES

There are two obligations which must be paid from your estate before your assets can be fully distributed to your heirs - administrative costs and estate taxes.

A. ADMINISTRATIVE COSTS

Administrative costs vary widely from state to state, but usually are estimated at 3-8% of an estate’s gross value. The biggest administrative costs are Executor’s fees and legal fees, but there are also filing fees, appraisal fees, publication fees, bond fees and legal costs for unexpected legal services such as Will contests and real estate transactions. It is important to introduce the basics of federal and New York State transfer tax systems in general, and in particular, two key tax provisions - the applicable exclusion amount and the unlimited marital deduction - to see how you can save with proper planning estate taxes and administrative fees.

VII. TRANSFER TAXES - THE ESTATE AND GIFT TAX SYSTEM

A. Basics

The estate tax is an *excise* tax on the transfer of property from a decedent. Under current federal law, a transfer tax is applied cumulatively to all gifts that are made during an individual's lifetime and then to all assets that are owned at death. Currently, the federal estate tax rate is 45% for the year 2009. However, as described below, significant changes to the estate and gift tax rates and applicable exclusion amounts are being phased in.

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, but also property (known as Will substitutes) which passes by operation of law (i.e. 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.

Whether or not 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 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; and

< Other property which you have given away but have retained an interest in such as a life estate or a reversion.

These items together comprise your "Gross Estate," which equals the value of all property subject to estate taxation.

Almost every state has its own death tax in one form or another. While planning strategies to minimize these state death taxes are beyond the scope of this guide, 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.

1. 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 donations (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, because when your spouse dies and the property passes to your children or other heirs, it may be taxed at even higher rates.

2. 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 $13,000.00, indexed to inflation, to any donee free of gift taxes. A married individual can make a $26,000.00 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 be a gift of a *present interest*, and most gifts to trusts are gifts of a future interest. You can also consider educational bills, nursing home bills and medical bills as additional gifts over and above the $13,000.00 per donee, 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 Ted, Jr. 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 $52,000.00.

In December, Ted gives $26,000.00 to Ted, Jr. 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 January of the following year, Ted will give Ted, Jr., a check for the remaining $26,000.00. Thus there will be no gift taxes due because of the annual exclusion and gift splitting.

B. ESTATE TAX FILING REQUIREMENTS

1. Which Estates must File - the Federal Filing Threshold:

The Federal Estate Tax is imposed on the estate of every decedent who is a U.S. Citizen, or resident alien, as of the decedent's date of death. A Federal Estate Tax Return will be required if the decedent's gross estate, when combined with his or her lifetime adjusted taxable gifts, is in excess of the applicable exclusion amount. The applicable exclusion amount is the amount which can be transferred free of estate tax. This credit has an exemption equivalent which is called the Exemption Equivalent Amount.

2. The Applicable Exclusion Amount:

The Applicable Equivalent Amount will vary depending on the year of death and is illustrated in Appendix B. As of January 1, 2011, the estate tax will be reinstated and the Exemption Equivalent Amount will be $1,000,000.00.

3. Federal Estate Tax Rates:

As a result of the 2001 Tax Act, a gradual reduction of the maximum estate tax rate is phased in as follows: 2002 - 50%; 2003 - 49%; 2004 - 48%; 2005 - 47%; 2006 - 46%; 2007, 2008 and 2009 - 45%; 2010 - tax repealed; in 2011 the estate tax will be reinstated and the maximum estate tax rate will be 55%.

4. New York State Estate Tax Filing Threshold:

When New York State switched to a SOP tax (a state estate tax system which relies on the federal state death tax credit for its revenues) in the year 2000, it did not adopt a pure SOP tax due to constitutional limitations. Consequently, as the Federal Credit for State Death Taxes has been phased out over the last few years (in 2002 the credit was 75% of the full 2001 pre-estate tax repeal credit; 50% of the 2001 credit in 2003; 25% of the 2001 credit in 2004; and as of 2005 the credit has been phased out completely and converted to a deduction), New York's estate tax will continue to be calculated based on the Federal State Death Tax Credit in place in 1998, notwithstanding the phaseout of the state death tax credit allowed on the Federal Estate Tax Return.

However, New York estates of $1 million or less for decedents dying from January 1, 2002 forward will not incur any state estate taxes and no New York Estate Tax Return will be required to be filed, because the New York State estate tax filing threshold will be linked to the federal Applicable Exclusion Amount allowed under the Internal Revenue Code, provided that the exclusion does not exceed the amount due on a federal taxable estate of $1 million. As noted above, the federal Applicable Exclusion Amount was $1 million in 2002. On the other hand, when the federal Applicable Exclusion Amount increased to $1.5 million in 2004, New York decedents with taxable estates in excess of $1 million continued to incur a New York

State Estate Tax, even though no federal estate tax was due on any taxable estates under $1.5 million. The Federal Applicable Exclusion increased to $2 million in 2006 but the New York State filing threshold remains at $1 million. Furthermore, beginning in 2004, the top New York State estate tax rate increased to 16%. See Appendix C for the maximum New York State marginal estate tax rates under the current law.

5. New Federal Filing Requirement For Large Estates:

There will be a new Federal filing requirement for decedent's dying in 2010 with large estates. Pursuant to the 2001 Tax Act, a return relating to "Large Transfers" must be filed on behalf of decedents with estates in excess of $1,300,000.00. This new return is designed to assist the government in enforcing the modified step up in basis rules applicable to property received from decedents dying in 2010.

The information which must be reported on the new returns pertaining to "Large Transfers" will include the following:

< The name and taxpayer identification number of each person receiving property from such a decedent;

< An accurate description of the property transferred;

< The adjusted basis of such property in the hands of the decedent and its fair market value at the time of death;

< The decedent's holding period for such property;

< Sufficient information to determine whether any gain on the sale of the property would be treated as ordinary income;

< The amount of basis increase allocated to the property under subsection (b) or (c) of IRC Section 1022; and

< Such other information as the IRS may require.

6. Who is Responsible?

The executor or administrator of the decedent's estate must file the return and pay the estate tax, or if no executor or administrator is appointed, then any person in actual or constructive possession of any property of the decedent is required to pay the entire tax to the extent of the value of the property in his or her possession.

C. 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. Since the surviving spouse is only entitled to one Applicable Exclusion Amount, the estate will receive only a single federal exemption on property valued up to $3,500,000.00 for decedents dying in 2009, not a double exemption on assets worth $7,000,000.00. Thus, use of the unlimited marital deduction to defer federal and New York estate taxes at the death of the first spouse may result in additional estate taxes due nine months after the death of the surviving spouse. However, there are planning opportunities which we will describe later to minimize these estate taxes and to provide liquidity to pay them.

D. THE GENERATION-SKIPPING TRANSFER TAX

The generation-skipping transfer tax (GSTT) is an additional transfer tax designed to take away the tax benefit of using a trust, or similar device, to pass property through successive generations within a family without paying an estate tax at each generation. It is a flat tax pegged at the top bracket for the federal estate tax - now 45% in 2009. Since the tax is *in addition* to the applicable gift or estate taxes, it is possible for the combined taxes to consume the entire value of the transferred property.

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 dying in 2009 of $3,500,000.00. See Appendix B. This exemption may be used on behalf of one grandchild, or spread among several grandchildren.

VIII. THE USE OF TRUSTS IN TRANSFER TAX PLANNING

A. WHAT IS A TRUST?

A Trust is a fictional legal entity which is created by an agreement, under which arrangement, an individual you select, known as the *Trustee*, holds and manages property for your *beneficiaries*. You, as *Grantor*, *Settlor* or *Creator* of the Trust, dictate the terms of the Trust, and the Trustee is responsible for carrying out your written instructions as set forth in the agreement.

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:

- *Testamentar trusts*, which go into effect when you die; and
- *Living* (“*inter vivos”) trusts*, which take effect during your lifetime. Living trusts may also be *revocable* or *irrevocable*.

Trusts are vehicles which provide for certain actions to take place with the best possible consequences - both tax and non-tax. Trusts are generally 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.

The living Trust is funded by transferring the title to all or a portion of your assets into the Trust name. 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 rights to the property and cannot amend the Trust terms.

B. ADVANTAGES AND DISADVANTAGES OF LIVING TRUSTS

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

< 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.

While there are many benefits to trusts, there are also some disadvantages. Irrevocable trusts involve some degree of loss of flexibility or control over your assets, and trusts are initially more expensive to prepare and implement than Wills. However, trusts cost less to administer and have substantial benefits that can never be achieved by a Will.

C. TYPES OF TRUSTS

The following are more detailed descriptions of some of the more common types of trusts:

1. Revocable Living Trust

A Revocable Living Trust is a complete Will substitute. It can control all of your assets both during your life and after your death. Here's how it 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 attorneys' fees or court costs.

There will be no court 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 a period of 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 the surviving 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 more difficult to contest than Wills, it prevents disgruntled heirs from successfully attacking your estate plan.

Revocable Trusts allow you to restrict how your estate is managed and spent even after your death. It can provide for the care, support and education of your children or grandchildren by turning over assets to them at an age chosen by you or can be protected from creditors or divorce forever by keeping it in trust. Even insurance proceeds can be paid to the trust so your successor trustee can manage them for the benefit of your family.

2. Irrevocable Living Trust

This is a method to transfer *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 <u>not</u> be part of your taxable estate. You name the recipient of the assets, including income and principal beneficiaries. Because the transfer is considered a gift to the Trust, a gift tax may be imposed unless the transfer qualifies for the previously discussed gift tax annual exclusion, or you use some or all of your "Exemption Equivalent Amount."

3. Irrevocable Life Insurance Trust

One popular use of an irrevocable living Trust is to have the Trust own life insurance policies on your life, thereby removing the proceeds of such policies from your taxable estate. If the death benefit proceeds will not be included in your taxable estate, they 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 $1,000,000.00, or in the case of a married couple, over $2,000,000.00, 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 of related premiums, the transfer of life insurance policies to trust and/or the payment. Two techniques that will accomplish this are using annual exclusion gifts with "Crummey" withdrawal powers and/or using portions of your $1,000,000.00 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. If you would like more information about the parties involved in a life insurance trust, please ask for our "Who's Who and What's What In a Life Insurance Trust" folio. If you prefer an overview of how the trust works, please ask for our "Irrevocable Insurance Trusts - An Overview" folio.

Example 2. - Using Annual Exclusions and Exemption Equivalents with an Irrevocable Life Insurance Trust

Ted and Joan Smith established an irrevocable life insurance Trust to benefit their son, Ted, Jr. The Trust is the applicant and owner of a survivorship whole life policy. The $1,000,000.00 policy is illustrated to require premium payments of $30,000.00 each year for 10 years and then vanish. After year 2, the death benefit is illustrated to increase each year.

Ted and Joan will transfer $30,000.00 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 $30,000.00. Because the Trust was drafted with "Crummey" powers, the first $26,000.00 transferred each year will qualify for the gift tax annual exclusion. The remaining $4,000.00 per year will utilize $2,000.00 of each of Ted's and Joan's Lifetime Applicable Exclusion from Gift Tax amounts.

Beneficiary

Ted, Jr.

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 Ted, Jr., had owned the policy outright.

4. Bypass (Family) or Credit Shelter Trust

If you are married and have a net worth of over $3,500,000.00, 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 your and your spouse's Applicable Exclusion Amount at the time of your deaths. As we have previously stated, as of 2009, you and your spouse each have an estate tax of Applicable Exclusion of $3,500,000.00 which you may pass free of federal estate taxes. If the estate of the first spouse is left to the surviving spouse using the unlimited marital deduction, then only $3,500,000.00 can be transferred to your beneficiaries free of federal estate taxes. Whereas, if proper planning is employed and both spouses are able to utilize their respective exemptions from Estate Tax, you will be able to pass up to $7,000,000.00 to your heirs free of federal estate tax.

By designing an estate plan that divides the estate upon the death of the first spouse, both Exemption Equivalent Amounts will be used. As previously noted, you also have a $1,000,000.00 Applicable Exemption from gift tax regarding lifetime transfers. However, when planning for transfer taxes, it is important to keep in mind that the maximum amount which you can pass on through lifetime gifts and through your estate upon death, transfer tax free is currently $3,500,000.00 each. The opportunity to benefit from the applicable Exemption from Estate Tax is on a "use it (during life or upon death) or lose it" basis. If, for example, all property in an estate passes to a surviving spouse, the ability to pass the $3,500,000.00 of property to the heirs free of transfer taxes is lost. This $3,500,000.00 will be taxed at the top marginal tax bracket in the estate of the second spouse to die. The Bypass Trust can produce

federal and New York estate tax savings of up to $1,883,000.00 for a married couple, and allow for the transfer of up to $7,000,000.00 to your children or other heirs without any federal estate tax. This type of trust arrangement, which is funded at the death of the first spouse, can permit the surviving spouse to manage the investment of trust assets and receive income and principal from the trust, if desired. It will provide for the trust property to be transferred to your designated beneficiaries at the death of your surviving spouse, eliminate estate tax liability on the future appreciation of trust assets after your death, avoid probate of such assets in the estate of your surviving spouse and reduce estate settlement expenses.

Example 3. - The $3,500,000.00 Applicable Exclusion and Tax Savings with a Bypass Trust.

Ted and Joan Smith are in their early 70's and have a net worth of $5,000,000.00. Ted has a $4,000,000.00 investment account in his name, while their $1,000,000.00 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 Ted, Jr.

Chart 1 - *Without Planning - Their Wills leave everything to each other and then to their son Ted, Jr. Assume Mr. Smith dies first.*

	FIRST DEATH* Mr. Smith	SECOND DEATH* Mrs. Smith
Gross Estate	**$4,000,000.00**	**$5,000,000.00**
Marital Deduction	$4,000.000.00	$ 0
NYS Estate Tax Deduction	$ 0	$ 391,600.00
Federal Taxable Estate	$ 0	$4,609,400.00
Tentative Federal Estate Tax	$ 0	$1,954,580.00
Exemption Equivalent Amount	N/A	$ (1,455,800.00)
NYS Estate Tax	$ 0	$ 391,600.00
Total Federal & NYS Estate Taxes	$ 0	$ 890,380.00
Net Estate to Spouse	$2,500,000.00	$ 0
Net to Children	$ 0	$4,109,620.00

*Assumes both death occur in 2009

Compare this chart with Chart #2 below that involves an estate plan utilizing a Bypass Trust.

<u>Chart 2</u> – *With Planning – Mr. Smith leaves $3,500,000.00 to a Bypass Trust for Joan in his Will or Revocable Trust and everything else to her directly. This leaves $500,000.00 to Joan via the unlimited marital deduction. Ted's New York taxable estate is then $3,500,000.00.*

	FIRST DEATH* Mr. Smith	SECOND DEATH* Mrs. Smith
Gross Estate	**$4,000,000.00**	**$1,500,000.00**
Marital Deduction	$ 500.000.00	$ 0
NYS Estate Tax Deduction	$ 229,200.00	$ 64,400.00
Taxable Estate	$3,270,800.00	$1,435,600.00
Tentative Federal Estate Tax	$1,352,660.00	$ 528,108.00
Exemption Equivalent Amount	$(1,455,800.00)	$(1,455,800.00)
Net Federal Estate Tax	$ 0	$ 0
NYS Estate Tax	$ 229,200.00	$ 64,400.00
Total Federal & NYS Estate Taxes	$ 229,200.00	$ 64,400.00
Net Estate to Spouse	$ 500,000.00	$ 0
Net to Children	$3,270,800.00	$1,435,600.00
Inheritance to Children Under Chart #1		***$4,109,620.00***
Inheritance to Children Under Chart #2		***$4,706,400.00***
Difference in Net to Children with utilizing a Bypast Trust		***$ 596,780.00***

5. Marital Trust

You can provide for your spouse without leaving your property directly to him or her through this vehicle. You may appoint another individual to act as Trustee for your spouse, with your spouse as the beneficiary, and, if certain technical requirements are met, the trust assets will qualify for the marital deduction.

Other trusts which may be useful under certain circumstances include:

6. QTIP (Qualified Terminable Interest Property) Trust

With this form of trust, you dictate how your property will be distributed upon the death of your surviving spouse. This trust is generally used in second marriages, where the Decedent

wishes to provide for the surviving spouse for life and remainder to the children of the first marriage. Your spouse must receive the income from the trust for life, and may receive some rights to principal, but the trust agreement must be carefully drafted to satisfy a myriad of highly technical legal requirements. However, properly drafted, the property transferred to the trust will be eligible for the unlimited marital deduction.

7. QPRT (Qualified Personal Residence Trust)

This mechanism allows you to transfer your residence or a vacation property to a trust on a highly leveraged transfer tax basis, and still collect income or 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.

8. Minor’s Trust

If you and your spouse both die, a testamentary 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 and education.

9. Charitable Trusts

Charitable remainder trusts can help an individual obtain income tax deductions, increase diversification of an investment portfolio 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. If you would like an overview of Charitable Remainder Trusts, please ask for our “Charitable Remainder Trust” folio.

IX. OTHER ESTATE PLANNING TECHNIQUES

A. PLANNING ISSUES OF CONCERN TO HIGH NET WORTH INDIVIDUALS

Many high net worth individuals face challenging planning issues due to the composition of their estates, tax liabilities and distribution wishes. Illiquidity in an estate can cause major problems because federal and New York transfer taxes are due nine months after death except for certain special situations.

Two common causes of illiquidity in an estate are ownership of real estate and business interests. Real estate may be difficult to sell quickly, may be inadvisable to sell in a depressed market, or difficult to refinance on short notice to obtain money to pay taxes. Also, it may be difficult to realize full value on sale due to the death of the owner.

Poor timing can also be a problem even in relatively liquid estates. Stock and bond portfolios could be depressed just when they need to be liquidated to pay estate taxes. Individuals may also face the prospect of leaving certain assets to certain heirs, which will then cause their overall distribution plan to be inconsistent with their wishes. To achieve their overall goals, they must make adjustments.

The estate shrinkage caused by federal and state estate taxes often leaves a much smaller net estate than many individuals would like to pass to their heirs. With estates that grow, planning becomes even more important. Since this tends to be a very complex area, with numerous innovative structures customized for the client, we will only discuss the commonly used tools. If you would like more information on several commonly used advanced techniques, please ask for our “Advanced Estate Planning Techniques” folio.

B. POST MORTEM TOOLS

There are several post mortem tools that an estate may be eligible to use to reduce death taxes. For example, while estate assets are normally given their date of death value for estate tax purposes, an Executor can elect to use an alternate valuation date (six months after death, or the date of sale or distribution of the asset if sooner) if the estate’s overall value is reduced and if the estate taxes are also reduced. With proper planning and a closely monitored estate, the estate can pick and choose different dates of sale or distribution for different assets. This tool could be valuable if the majority of the assets are stocks and the market declines between the date of death and six months later. Disclaimers may also be used to correct the results of improper planning and/or drafting.

C. LIFE INSURANCE

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 death taxes. It pays off precisely at the time of need and is an asset that can multiply in value at death.

D. FAMILY LIMITED PARTNERSHIPS AND 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 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. If you would like more information on Family Limited Partnerships/Limited Liability Companies, please ask for our "Family Limited Partnerships" folio.

E. PROPRIETY STRUCTURES

Since tax planning is a complex ever-evolving field, we have created several proprietary structures which can reduce your income and estate taxes while allowing effective control over your assets. We will happily discuss these techniques with you on a case by case basis.

X. 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. For more detailed information on Guardianships, ask for our handout entitled "Guardian for Your Children;"

< 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; and

< 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:

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

< Your Will or Revocable 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; and

< 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

Current gift and estate tax laws, while seemingly punitive, are really more liberal than in years past. Congress has created tax problems in this area, but it has also provided tax relief and incentive provisions in the Internal Revenue Code to solve these problems. Individuals can control the amount and method of tax payments if they are willing to plan ahead.

Estate planning encompasses a number of different subject areas, and it is not without complexity. 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.

At **Pierro Law Group, LLC**, our practice is 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. Please call us to arrange an appointment or to discuss your personal situation.

GLOSSARY

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 of the Person 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.

This brochure 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 consult with your legal advisor.

Appendix A: FEDERAL AND NEW YORK ESTATE TAXES AS OF 2009*

TAXABLE ESTATE	US ESTATE TAX AFTER APPLICABLE EXCLUSION BUT BEFORE DEDUCTIONS	NY ESTATE TAX	TOTAL NY & US ESTATE TAX COMBINED	NEXT BRACKET US ESTATE TAX
$1,000,000	$0	$0	$0	0%
$1,250,000	$0	$48,400	$48,400	0%
$1,500,000	$0	$64,400	$64,400	0%
$1,750,000	$0	$81,600	$81,600	0%
$2,000,000	$0	$99,600	$99,600	0%
$2,500,000	$0	$138,800	$138,800	0%
$3,000,000	$0	$182,000	$182,000	0%
$3,500,000	$0	$229,200	$229,200	45%
$4,000,000	$98,820	$280,400	$379,220	45%
$4,500,000	$298,980	$335,600	$634,580	45%
$5,000,000	$498,780	$391,600	$890,380	45%
$10,000,000	$2,444,580	$1,067,600	$3,512,180	45%
$15,000,000	$4,334,940	$1,866,800	$6,201,740	45%

*Note the maximum federal estate tax rate is 45% in 2009, 0% in 2010, and unless Congress takes action in the interim, will return to 55% in 2011.

The applicable exclusion amount for 2009 is $3,500,000. In 2010 the estate tax will be repealed temporarily, but the applicable exclusion amount will revert to $1,000,000 in 2011 unless Congress intervenes.

Appendix B

IN THE CASE OF ESTATES OF DECEDENTS DYING, AND GIFTS MADE DURING:	THE APPLICABLE EXCLUSION FROM ESTATE TAX AMOUNT WILL BE:	THE GIFT TAX EXCLUSION AMOUNT WILL BE:	THE GENERATION SKIPPING TRANSFER TAX EXCLUSION AMOUNT WILL BE:
2002	$1,000,000.00	$1,000,000.00	$1,100,000.00
2003	$1,000,000.00	$1,000,000.00	$1,120,000.00
2004	$1,500,000.00	$1,000,000.00	$1,500,000.00
2005	$1,500,000.00	$1,000,000.00	$1,500,000.00
2006	$2,000,000.00	$1,000,000.00	$2,000,000.00
2007	$2,000,000.00	$1,000,000.00	$2,000,000.00
2008	$2,000,000.00	$1,000,000.00	$2,000,000.00
2009	$3,500,000.00	$1,000,000.00	$3,500,000.00
2010	Repealed	$1,000,000.00	Repealed
2011	$1,000,000.00	$1,000,000.00	Undetermined

Appendix C

	FEDERAL STATE DEATH TAX CREDIT	Additional Tax on Account of NYS Estate Tax Due to Reduction of Credit *
2002	12%	4%
2003	8%	8%
2004	4%	12%
2005	0%	16%
2006	0%	16%
2007	0%	16%
2008	0%	16%
2009	0%	16%
2010	0%	16%
2011	16%	0%

* These figures do not account for the deduction allowed for State estate taxes from January 1, 2005 thru December 31, 2009.

Appendix D

ESTATE PLANNING LIBRARY DIRECTORY

Folio Number One:	Advanced Estate Planning Techniques
Folio Number Two:	Charitable Remainder Trusts
Folio Number Three:	Asset Protection
Folio Number Four:	Family Limited Partnerships
Folio Number Five:	Private Foundations
Folio Number Six:	Opportunity Shifting
Folio Number Seven:	Irrevocable Life Insurance Trusts
Folio Number Eight:	Generation Skipping Transfer Tax Planning
Folio Number Nine:	Making Gifts for Children or Grandchildren
Folio Number Ten:	Using the Beneficiary Controlled Trust
Folio Number Eleven:	Common Pot Trusts
Folio Number Twelve:	Ensuring the Success of Death Bed Gifts
Folio Number Thirteen:	Non Tax Reasons to Estate Plan
Folio Number Fourteen:	Legal Challenges to your Estate Plan
Folio Number Fifteen:	Who’s Who and What’s What in an LLC
Folio Number Sixteen:	Deducting Qualified Family-Owned Business Interests
Folio Number Seventeen:	Gift Tax Planning for the Non-Citizen Spouse
Folio Number Eighteen:	Who’s Who & What’s What in a Life Insurance Trust
Folio Number Nineteen:	Gifting (Crummey) Trusts

This brochure 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 consult with your legal advisor.