A Guide to Estate Planning

THE IMPORTANCE OF ESTATE PLANNING

The goal of estate planning is to direct the transfer and management of your property in a way that makes the most sense for you and your family. While this may sound simple enough, it is only through careful planning that you can achieve this result. Without careful planning, your property may pass on your death to unintended beneficiaries or may be reduced unnecessarily by transfer taxes.

While planning for your death is a significant part of the planning process, estate planning addresses more than just the transfer of your assets upon your death. Your estate plan may also provide for the transfer of assets during your lifetime through gifts. In addition, prudent planning may involve planning for the current management of your assets in the event you become incapacitated or desire independent management of your assets as a matter of convenience.

There are a number of considerations that drive the estate planning process. Family considerations are important. For example, you must consider not only whom you want to receive your assets but when and how. Should your children receive their inheritance outright, or should it be managed for their benefit in trust? When should the trust terminate? Should your spouse be a beneficiary? Who should serve as trustee? Does a program of lifetime gifts make sense?

Perhaps just as important as the family considerations are the tax considerations. There are federal and state transfer taxes that apply to lifetime gifts and transfers at death. It is very important to understand the important tools available to minimize total transfer taxes.

The following is a summary of the basics of estate planning to introduce you to the techniques of estate and tax planning and help guide you through the planning process.

THE NEED FOR A WILL

Property that you own in your name alone and for which there is no beneficiary designation will pass at your death under the supervision of the Probate Court. Such property is often referred to as "probate" property. If you have a valid will, the terms of the will will control how your probate property is distributed at your death. If you do not have a valid will at the time of your death, however, your probate property will pass as provided by state law (generally, to your spouse and your closest living relatives), which may not be what you want. Having a will, therefore, is the only way to ensure that your probate property will pass to the persons you choose. A will also ensures that you can choose the guardian for your minor children and the executor who will administer your estate.

Typically, your assets will not be limited to probate property. Assets such as life insurance and retirement benefits are controlled, not by your will, but by beneficiary designation. Similarly, property you hold as joint tenants with right of survivorship passes on your death to the surviving joint tenant without Probate Court involvement. In addition, assets held in trust will pass according to the trust's terms. It is very important, therefore, that you also carefully review how title to your so-called "non-probate" assets will pass in order to avoid having such property distributed to unintended beneficiaries at your death.

SUMMARY OF ESTATE AND GIFT TAXES

The federal government imposes a tax on the transfer of property by lifetime gift or at death. What follows is a summary of the transfer tax structure and current estate planning techniques that are appropriate based on current tax laws.

***Estate and Gift Tax Exemption*.** The estate and gift tax exemption can be used to offset either lifetime gifts that exceed the $18,000 per person "annual exclusion" limit discussed below or transfers at death. Under current law, the total amount of lifetime and testamentary transfers (i.e., transfers at death) that may be excluded from tax is $13,610,000 for gifts made or death occurring in 2024. This amount is indexed for inflation annually. Under current law, the then-applicable exemption will be cut in half in 2026 (although it is possible that Congress will act to reduce these exemptions sooner than 2026). The maximum estate and gift tax rate is 40 percent.

It is important to remember that the proceeds of life insurance policies and employee benefit plans owned by you at your death, along with the family home, vacation home, investments and the like, are counted in determining the size of your taxable estate.

Marital Deduction. The estate tax laws also provide an unlimited marital deduction for transfers between spouses who are U.S. citizens, either by lifetime gift or at death. Thus, because of this unlimited deduction, all property can pass between spouses without estate or gift tax at the time of transfer, and estate tax becomes payable only when the surviving spouse dies. The marital deduction is available for outright gifts or bequests to the spouse and may also be available for transfers in trust for the benefit of the spouse, provided that the trust complies with certain requirements and that the spouse is the sole income beneficiary for life. The trust can provide for principal to be available as well. Transfers to spouses who are not U.S. citizens are subject to certain limitations. For example, outright gifts to non-U.S. citizen spouses are capped at $185,000 in 2024 and indexed for inflation in future years. Transfers to a surviving spouse who is not a U.S. citizen require compliance with certain tax rules in order to qualify for the marital deduction.

Gift Tax Exclusions. You may give up to $18,000 each year (indexed for inflation) to as many individuals as you wish without any gift tax liability and without using any of your gift tax exemption. If your spouse joins in making the gift, the gift can be increased to $36,000. For the gift tax annual exclusion to apply, the recipient of the gift must have the ability to enjoy the gift presently, as in a direct gift of money. However, gifts in trust containing special language can also qualify. In addition to the $18,000 annual exclusion, payment of certain educational or medical expenses on behalf of someone else, when made directly to the institution providing the educational or medical services, is eligible for an unlimited exclusion from gift tax. Gifts that exceed the annual exclusion and otherwise do not qualify for the educational or medical exclusions are taxable gifts that will count against your $13,610,000 exemption.

TAX PLANNING FOR THE MARRIED COUPLE

Because of the unlimited marital deduction, you can leave all of your property to your spouse (or in a qualifying trust for your spouse) and postpone all federal estate tax until your spouse's death. At your spouse's death, however, all of the spouse's property in excess of his or her estate tax exemption amount will be subject to tax, meaning that the marital deduction does not eliminate, but only defers, the tax. Therefore, if the combined estates of you and your spouse exceed the estate tax exemption amount, leaving all of your property to your spouse may result in unnecessary taxes that will reduce your beneficiaries' ultimate inheritance. (As discussed below, any unused federal exemption from the estate of the first of a married couple to die can be used at the time of the survivor's death in many cases. For a variety of reasons, however, this "portability" is not as effective as ensuring that the first spouse to die makes full use of the available exemption.)

Example. Assume that each of you and your spouse has $13,610,000 in assets. Let's further assume that both you and your spouse die in 2024 (when the exemption amount is $13,610,000 per person). If you predecease your spouse and your will leaves your entire estate to your spouse, the marital deduction will shelter the distribution to your spouse from federal estate tax at your death. However, at your spouse's death, your spouse will have $27,220,000 (ignoring appreciation in the assets) and will only be able to shelter $13,610,000 from tax, leaving an estate of $13,610,000 subject to tax. The tax on that $13,610,000 will be $5,444,000, and $21,776,000 will ultimately be available for your beneficiaries. (This example ignores the effect of state estate taxes and so-called "portability," both of which are discussed below.)

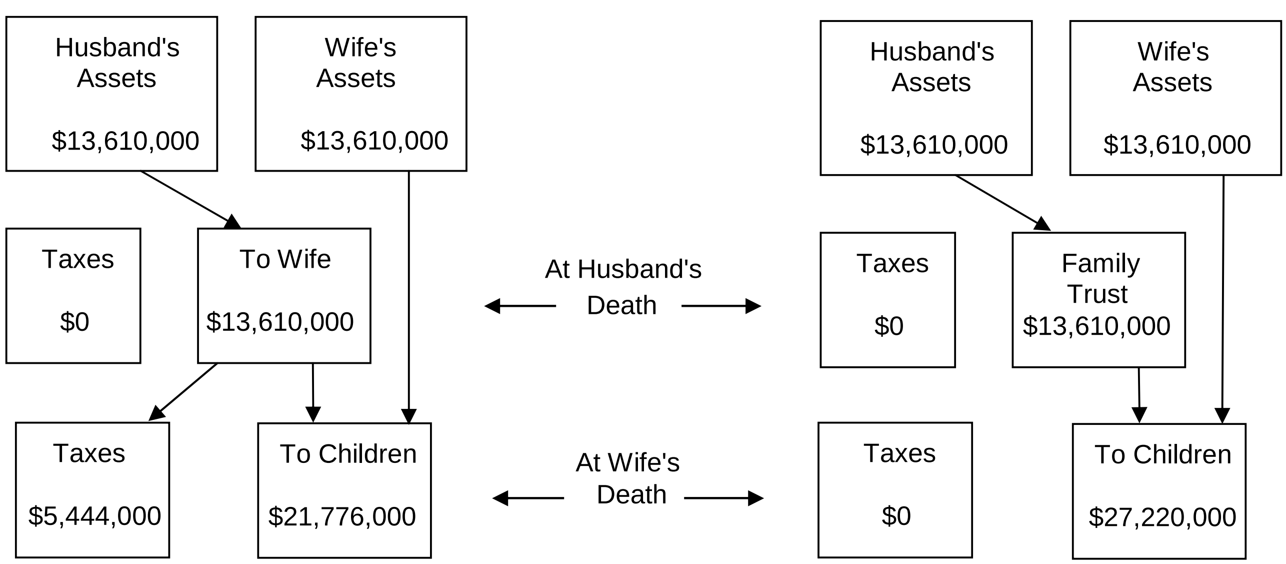
Using the Estate Tax Exemption of Both Spouses. Rather than leave all property directly to your spouse, you can provide that property in an amount equal to your available estate tax exemption be held in a so-called "Family Trust," of which your spouse is a beneficiary. The Family Trust is not subject to estate tax at your spouse's death.

Example. Using the same assumptions as above, assume your estate plan provides for a Family Trust. At your death, the Family Trust is funded with $13,610,000 and your exemption from estate tax shelters the property. At your spouse's death, your spouse's taxable estate will be $13,610,000, which will be fully sheltered from estate tax.

A sound estate plan for a married couple with combined assets in excess of their respective estate tax exemptions will involve planning with a Family Trust. In this way, you can ensure that your property is available to your spouse (and any descendants) during the spouse's lifetime. Moreover, the assets of the Family Trust will be distributed on the spouse's death as specified in the trust instrument, which could include continuing trusts for your beneficiaries if appropriate. If outright distributions to your beneficiaries (or partial distributions at certain ages) are desired, the trust agreement can so provide. In addition, the trust may permit the surviving spouse to control the disposition of the trust assets through the exercise of a power to direct the disposition of the trust property. This is called a "power of appointment" and can provide desirable flexibility.

The following chart compares the distribution and tax implications of leaving your estate directly to your spouse with the tax-efficient use of a trust to shelter your estate tax exemption amount (only federal estate taxes are reflected).

Simple Plan – Outright to Survivor: **Plan with Family Trust:**



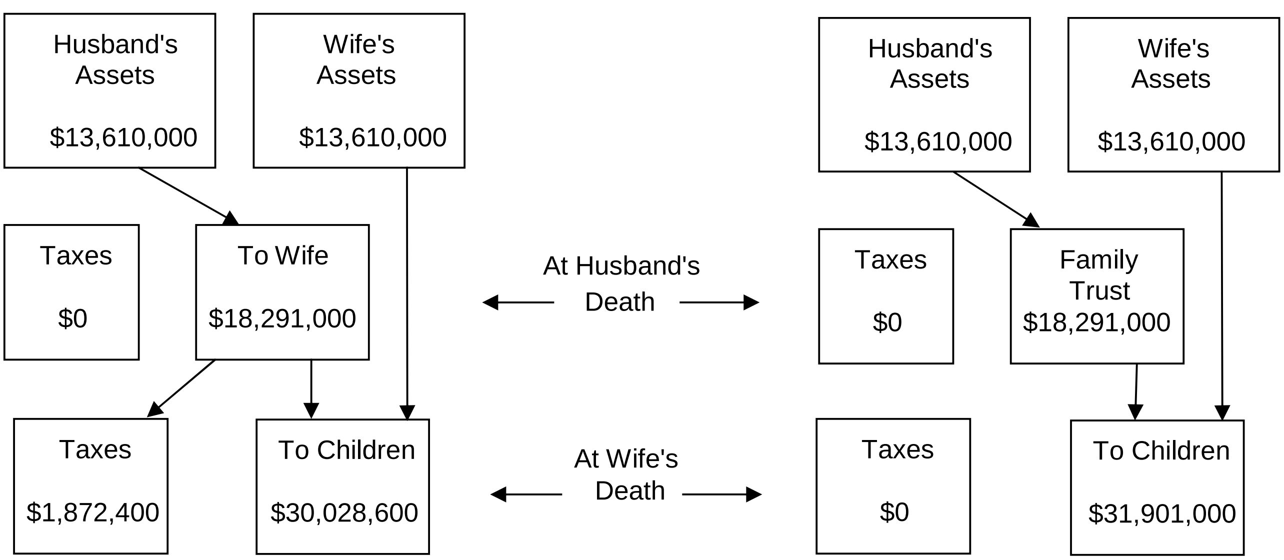
Using the Marital Deduction. If, at the time of your death, your assets exceed the estate tax exemption allocated to the Family Trust, the excess must qualify for the marital deduction if tax is to be avoided entirely at your death. In order to qualify the excess for the marital deduction, you must leave the excess either outright to your spouse or in a qualifying marital trust. There may be reasons why a trust would be preferable. For example, you may want to be able to control where the marital deduction property will pass on your spouse's death. A marital trust may also be appropriate as a vehicle to assist your spouse with the investment and management of the trust property. A marital trust may also be useful to avoid estate tax at your death if your spouse is not a U.S. citizen.

Portability. If the estate of a married decedent does not use all available federal estate tax exemption, the unused federal exemption can be made available to the surviving spouse to be used for either lifetime gifts or as additional estate tax exemption. Thus, if each spouse has $13,610,000 in assets and a simple will leaving all property to the survivor, the survivor's estate will have the full $27,220,000 in federal exemption available and no federal estate tax will be due. However, this so-called "portability" of the federal estate tax exemption is not a substitute for proper planning for a number of reasons.

First, portability does not include any allowance for asset appreciation between the time of the first death and the time of the survivor's death. Using the example above, if the property transferred from the first to die to the survivor appreciated at an annual rate of 3 percent for the ten years between the first death and the survivor's death, the value of that property would have increased to about $18,291,000 by the time of the survivor's death but the additional unused exemption available to the survivor would be only $13,610,000. This means that the $4,681,000 of property appreciation would be taxed at the survivor's death. However, if the first to die's estate plan caused a trust to be funded with that $13,610,000, that property plus all appreciation during the survivor's lifetime would escape estate tax at the survivor's death.

The following chart compares the distribution and federal estate tax implications of leaving your estate directly to your spouse using portability with the tax-efficient use of a trust to shelter your estate tax exemption amount.

Simple Plan – Outright to Survivor with Portability **Plan with Family Trust:**



In addition, portability only applies to the federal estate tax exemption and not to any applicable state estate tax exemption or to the generation-skipping transfer (GST) tax exemption, as explained in more detail below.

Finally, portability is only available for the unused exemption of a decedent's most recently deceased spouse. If a surviving spouse remarries and is widowed a second time, only the second spouse's unused exemption is available to the survivor's estate and the first spouse's exemption is lost.

State Estate Tax Consideration for the Married Couple. Most states traditionally patterned their estate taxation scheme on the federal estate tax. Today, many states, including Florida and New Jersey, no longer have a state estate tax. Some states, including New York, Rhode Island and Massachusetts, among others, have changed their estate tax laws so that the exemption from state estate tax is less than (and, in some cases, considerably less than) the federal exemption. For a resident of such a state (or a resident of any state who owns real property in such a state) with a traditional estate plan designed to avoid estate tax at the death of the first spouse by optimizing use of the federal marital deduction, there will be no federal estate tax due at the death of the first spouse, but there could be state estate tax due if the federal and state estate tax exemptions are different at the time of the first death. For example, a Massachusetts resident dying in 2024 with a taxable estate of $13,610,000 would owe $1,544,800 in Massachusetts estate tax at his death.

As noted earlier, portability does not apply to state estate taxes. Thus, a married couple from Massachusetts who chooses to leave all property outright to the survivor will have effectively "wasted" the first-to-die's $2,000,000 Massachusetts estate tax exemption.

By using a plan that maximizes use of federal and state exemption amounts, it may be possible to defer both state and federal estate tax until the survivor's death. For residents of states like Massachusetts, Rhode Island (and Connecticut in certain circumstances) that recognize independent state-only marital deductions, this permits deferral of all estate taxes until the survivor's death while also taking advantage of the first-to-die’s state estate exemption. For residents of other states, it may make sense to use federal portability to capture unused federal exemption while deferring state taxes.

Having a plan that affords maximum flexibility to respond to a variety of competing tax considerations is important. In addition to the estate tax considerations described above, another factor to consider is how sheltering property in trust may affect income taxes. When a surviving spouse dies, property subject to federal estate tax in the survivor's estate receives a step-up in income tax basis to the property value as of the survivor's date of death, meaning that previous appreciation will escape capital gains tax. This step-up does not apply, however, to property that has been sheltered from federal estate tax in a trust. Sheltered property may therefore escape estate tax but any appreciation on that property from the time of the first death to the death of the survivor will be subject to capital gains tax when the property is sold. As the difference between the estate tax rates and capital gains tax rates narrows, this consideration becomes increasingly relevant. Including a power in long-term trusts that allows property to receive a step-up in basis at a beneficiary’s death if that can be done without triggering estate tax helps to mitigate this exposure.

LIFETIME GIVING

In addition to planning for the disposition of property at death, estate planning can include consideration of lifetime giving to remove assets from your estate. If your estate exceeds the estate tax exemption and estate tax will likely be due on your death (or on the death of you and your spouse), lifetime gifts may substantially reduce that tax. As noted above, you are entitled to give so-called "annual exclusion" gifts up to $18,000 each year to as many persons as you like without gift tax implications. You and your spouse may together give up to $36,000 to as many persons as you like. A gift program that operates over a number of years may produce significant transfer tax savings by removing both the gifted property from your taxable estate as well as the appreciation on that property after the gift. To the extent your gifts exceed the annual exclusion, however, such gifts will be taxable and will reduce your gift tax exemption (although no federal gift tax will need to be paid until you have exhausted your gift tax exemption). You should also be aware Connecticut (but no other states) imposes its own gift tax on lifetime transfers in excess of the annual exclusion. The Connecticut gift tax permits a $13,610,000 exemption for cumulative lifetime gifts made from 2005 through 2024 and, like the federal tax, any such gifts will reduce the amount that can pass free of Connecticut estate tax at death.

Children and grandchildren are frequent recipients of gifts. When they are minors, care must be taken in structuring the gifts. You may wish to make such gifts to an adult acting as custodian for the minor under the state's Uniform Transfers to Minors Act. Typically, the custodian may retain the gift for the minor's benefit until such person reaches age 21, when it must then be turned over. It is also possible to use trusts for minors that are designed to facilitate giving to minors and to postpone the complete distribution of the gifted assets until the recipient reaches a later age.

LIFE INSURANCE TRUSTS

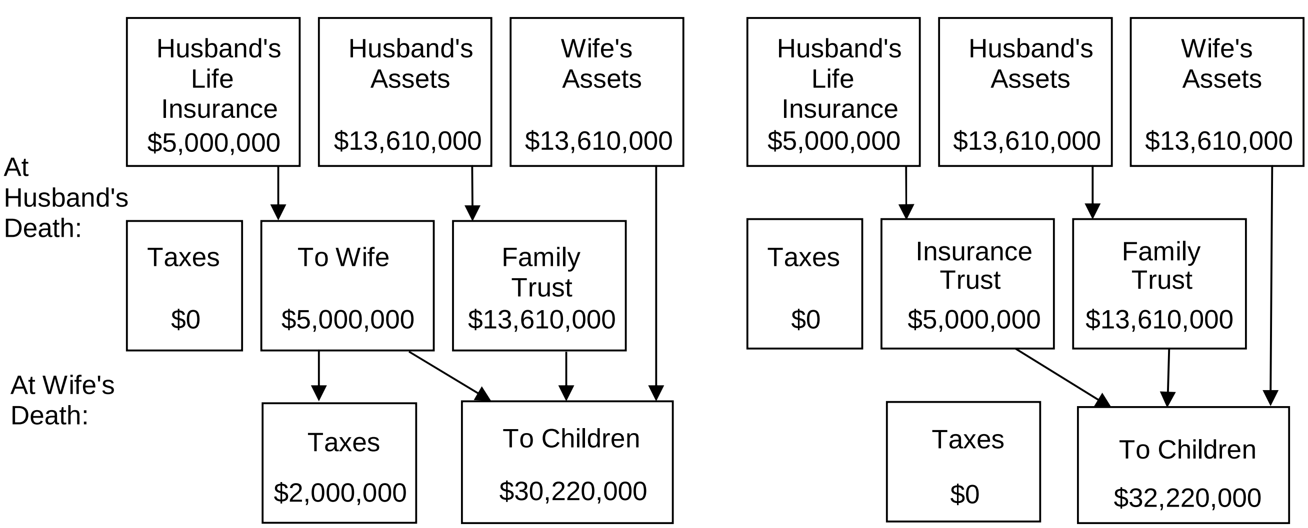
One common method of implementing a gift program involves the use of an irrevocable insurance trust. If an insurance policy is transferred to the trust or purchased by the trust and is completely owned by the trust, cash gifts can be made to the trust each year to pay the premiums without the ownership of the insurance being attributed to the insured. This can keep the full death benefit of the policy out of the estate of both the insured and the surviving spouse. The gifts to the trust can be designed to qualify for the $18,000 annual gift tax exclusion through what are sometimes called "Crummey" withdrawal powers exercisable by the beneficiaries (usually the spouse and children, or in the case of a two-life policy, by children and more remote descendants). At the death of the insured, the trustee collects the insurance proceeds; assuming the trust is properly drafted and administered, the insurance proceeds will not be includable in the insured's taxable estate and will also be exempt from income taxes. The terms of the insurance trust reflect the donor's objectives and may provide for a continuing trust for the surviving spouse and your beneficiaries or for outright distribution. Often, the terms of the insurance trust mirror the terms of the Family Trust in the estate plan.

If you, as the insured, transfer an existing insurance policy to a properly drafted irrevocable insurance trust, you must survive the transfer by three years for the insurance proceeds to escape taxation in your (and your spouse's) estate. In contrast, if the trustee of the trust acquires a new policy (through gifts of cash by you to the trust) there is no three-year survival requirement, and the proceeds will escape taxation regardless of when you die.

Since the insurance trust must be irrevocable, you cannot change the terms of the trust after it is created. However, considerable flexibility can be built into the trust terms to give your trustees certain powers to change the terms of administration and distribution.

The following charts illustrate the advantages of using an insurance trust to hold your life insurance. As the charts reflect, insurance trust planning enables you to "shelter" from estate tax the full insurance death benefit in addition to the estate tax exemption (as with the previous charts, only federal estate taxes are reflected).

Plan with Family Trust; insurance passes outright to wife: | **Plan with Family Trust and Irrevocable Insurance Trust:**



GENERATION-SKIPPING TRANSFER TAX

Estate planning also may include consideration of transfers of property that are subject to the generation-skipping transfer (GST) tax. Federal law imposes a GST tax at a rate equal to the estate tax rate (40 percent) on certain transfers of property to recipients two generations or more younger than the donor. The GST tax is in addition to the federal gift and estate tax. Thus, care must be taken when planning to provide for grandchildren, including for trusts that may benefit grandchildren.

Every individual currently has an exemption from GST tax equal to the estate tax exemption. The availability of the exemption presents significant planning opportunities. For example, you can create lifetime trusts for your children (either during your lifetime or at your death) using your GST exemption that will continue for the benefit of your grandchildren after your children are no longer living. Although the trusts may primarily benefit your children while they are living, such trusts may be drafted so that the trust property is not included in your children's estates for federal estate tax purposes at their deaths. As a result, the property remaining in the trusts will be available for your grandchildren without reduction for taxes at your children's deaths. In contrast, if you had given the same property outright to your children at your death, the balance of that property remaining at a child's death would be included in the child's estate and, depending on the extent of the child's other assets and the status of the estate tax law then in effect, could be subject to tax.

As noted earlier, portability rules do not apply to GST exemption. Thus, a married couple with an estate plan that uses trusts can shelter up to $27,220,000 from GST tax, but if the couple's plan provides that all property passes outright to the survivor at the first death, only the survivor's $13,610,000 of GST exemption will be available to shelter property for subsequent generations.

PLANNING FOR INCAPACITY

***Durable Power of Attorney and Living Trust*.** If you were to become incapacitated and unable to manage your assets, it is important that someone have the authority to act on your behalf during the period of your incapacity. Executing a durable power of attorney while you are competent that names an individual or financial institution to manage your assets in the event of your incapacity is a simple solution to this concern.

You may also wish to consider creating and funding a so-called "living trust." You can create a living trust now in which you name a trustee to manage and invest assets transferred to the trust. As the creator of the trust, you can reserve the right to amend or revoke the trust, withdraw the assets at any time and change the trustee. If you later become incapacitated, the trustee can manage the trust assets on your behalf. A living trust provides a more efficient and flexible way to have your assets managed than through a durable power of attorney, in that distributions can be made from the trust not only for your benefit, but – as long as the trust's terms permit – also for the benefit of your family. In addition, the assets in a living trust are not subject to probate on your death but pass instead according to the terms of the trust agreement, which, unlike a will, is not filed in the Probate Court and available for public inspection.

***Living Will*.** Most states have enacted legislation recognizing your right to request that artificial life-sustaining measures not be taken if you are permanently unconscious or in a terminal medical condition.

***Advance Health Care Directive, Health Care Proxy or Designation of Health Care Surrogate*.** Through the use of an advance health care directive (called a health care proxy in New York and Massachusetts, a designation of health care surrogate in Florida and a Durable Power of Attorney For Health Care in Rhode Island), you may designate someone to make health care decisions for you in the event you are unable – even temporarily – to communicate your wishes yourself.

CHOICE OF FIDUCIARIES

The choice of executor under your will, trustee under your trust and guardian for your minor children can be the most difficult – and the most important – decisions to be made in the planning process. Careful thought should be given to which individual or institution should serve in these capacities.

***Executor*.** Your executor (or personal representative in Massachusetts and Florida) will collect all of the assets that are part of your estate and manage those assets during the period of administration. The executor will also prepare and file the required federal and state tax returns, attend to all necessary Probate Court filings and see to the distribution of your estate to the beneficiaries named in your will. Because of the complexity of the available tax elections, your executor should either have estate tax experience or appreciate the need to obtain the advice of estate tax counsel.

Day Pitney lawyers regularly serve as executor either solely or jointly with a family member or other advisor to ensure that our client's estate is administered in accordance with the client's wishes and the best interests of the beneficiaries.

***Trustee*.** Your trustee administers your trust, and the trustee's responsibilities begin upon the funding of the trust by the executor, which is typically after the administration of the estate is completed (unless you choose to fund the trust during your lifetime). Your trustee should have (or be able to employ agents with) investment skills. The trustee is frequently called upon to exercise discretionary powers in determining how much income or principal to pay to the beneficiaries.

Day Pitney lawyers regularly serve as trustee or co-trustee of our clients' trusts. With our staff of over 85 lawyers and 45 dedicated paralegals, trust administrators, accountants and tax preparers, we are able to provide the personal, hands-on service our clients deserve.

***Guardian*.** If you and your spouse die while your children are minors, a guardian will be appointed by the Probate Court to care for the children while they are minors. You can select the guardian for your children in your will to ensure that the person or persons you choose will have the care and custody of your minor children.

OTHER PLANNING TOOLS

Depending on your individual circumstances, there are a number of additional estate planning tools and opportunities that may be appropriate for you to consider. A brief review of select planning tools follows.

***Qualified Personal Residence Trust (QPRT)*.** By transferring your primary residence (or vacation home) to a QPRT, you are able to pass it to your intended beneficiaries at a reduced tax cost. A QPRT allows you to retain the right to use (or live in) the home for a fixed number of years (the QPRT term). After the QPRT term, the property passes to your chosen beneficiaries (your children or others). The QPRT may be drafted to provide a continuing trust for the non-grantor spouse at the end of the QPRT term. This approach ensures unrestricted use of the residence by the grantor and his or her spouse at least for the lifetime of the non-grantor spouse. The QPRT may also be drafted so that your beneficiaries own the residence (either outright or in trust) at the end of the QPRT term. Under this approach, the grantor will pay rent to the beneficiaries, but it is possible when using a continuing trust to structure the rent as nontaxable.

The advantage of a QPRT over an outright gift is that the gift tax is imposed on the value of the remainder interest that passes on the expiration of the QPRT term, which can be substantially less than the full fair market value of the transferred property. By contrast, an outright gift requires that any gift tax be imposed on the property's full value.

The value of the remainder interest is determined by your age, the QPRT term, the value of the property and the current applicable federal interest rate. A longer QPRT term lowers both the value of the remainder interest and the resulting gift tax liability. However, in order to take advantage of the reduced transfer tax cost, you must survive the full QPRT term. If you do not survive the QPRT term, the property is included in your estate.

Grantor Retained Annuity Trust (GRAT) and Grantor Retained Unitrust (GRUT). GRATs and GRUTs are similar to a QPRT, except that you transfer income-producing assets instead of real estate to the trust and you retain the right to receive an annual payment for a fixed term. If you survive the term, the property passes to your chosen beneficiaries. As in the case of a QPRT, the taxable gift is the value of the remainder interest. Therefore, use of a GRAT results in a gift of property that is discounted from its fair market value. In addition, all appreciation after the date of the gift (in excess of the applicable federal interest rate) will be excluded from your taxable estate.

The value of the remainder interest is determined using the same factors as in the QPRT analysis, taking into account the amount of the retained annual payment. The annual payment from a GRAT is calculated at the initial funding of the trust and remains fixed. The annual payment from a GRUT is recalculated at the beginning of each year of the trust term based on a stated percentage of the current fair market value of the trust.

Family Limited Partnership (FLP) and Family Limited Liability Company (FLLC). FLPs are often appropriate in both gift and estate tax planning. Common to all FLP arrangements is the transfer of individually owned property to the FLP in return for a percentage interest in the FLP entity.

Advantages of an FLP are the ability to transfer FLP interests to family members without complexity; to centralize management without regard to the age, knowledge, or ability of the FLP interest holders; and to make transfers at a gift or estate tax value that is discounted to reflect the lack of marketability and lack of control that often applies to an interest in an FLP.

The Internal Revenue Service has frequently challenged the use of FLPs as a wealth-transfer vehicle, and court decisions over the last several years have highlighted the need for proceeding cautiously in using FLPs. Based on these court decisions, the likelihood that an FLP will be successful is maximized when the taxpayer properly forms the FLP for non-tax planning purposes, manages it on a reasonable basis, and one or more of the following exists: real, independent, third-party control; an unrelated party with real economic interest who behaves accordingly; or actual business activity with sufficient reality to demonstrate that there is an arm's-length purpose for the entity.

Charitable Giving. Charitable gifts will generate income and/or estate and gift tax deductions. Charitable gifts can be made in several different ways.

First, you may make outright charitable gifts either during life or at death. Testamentary gifts are deductible for federal and state estate and inheritance tax purposes, while lifetime gifts are fully deductible for federal and state gift tax purposes. Lifetime gifts of cash are also deductible for federal and state income tax purposes, although the amount deductible in a single year may be limited based on your income and whether the donee is a public charity or a private foundation. Any unused portion of the charitable deduction may be carried forward on your income tax return for up to five years.

A gift of appreciated property (like stock) to charity avoids capital gains tax and generates a current income tax deduction, usually for the fair market value of the property, subject to limitations similar to those applicable to cash gifts. Again, the carry-forward provisions for unused deductions apply.

You may also make certain split-interest gifts to charities. A split-interest gift is a gift of a partial interest in property to charity, with the balance of the interest reserved for noncharitable beneficiaries. Again, such gifts offer immediate income tax deductions if made during your lifetime (and estate and inheritance tax deductions if made at your death) while still preserving an interest in the underlying property for your family. Examples of split-interest gifts are:

- ***Charitable gift annuities*****,** in which you transfer property to the charity in exchange for a specified lifetime annuity;
- ***Charitable Remainder Annuity Trusts (CRATs)*** **and** ***Charitable Remainder Unitrusts (CRUTs)*****,** in which you make a gift to charity and retain for a fixed term (not to exceed 20 years) or life the right to receive a fixed amount each year (an annuity interest) or an amount equal to a stated percentage of the value of the trust assets determined annually (a unitrust interest);
- ***Charitable Lead Annuity Trusts (CLATs)*** **or** ***Charitable Lead Unitrusts (CLUTs)*****,** in which an annuity or unitrust interest is paid to the charity for a term of years, with the remainder passing to your chosen noncharitable beneficiaries;
- ***A charitable gift of the remainder interest in your residence,*** in which you deed the remainder interest in your home to a charity to generate a current income tax deduction (if certain restrictions on the use of the property are met); and
- ***Pooled income funds*****,** in which your gift to charity is combined with other donated funds into certain investment vehicles established by the charity.

INTERNATIONAL ESTATE PLANNING ISSUES

Special considerations apply to multinational families that have U.S. connections. The basic rules to keep in mind in this regard are:

U.S. Income Tax

- U.S. citizens, wherever they reside in the world, and non-U.S. citizens who reside in the U.S. are subject to U.S. income tax on their worldwide income.
- Persons who are not U.S. citizens or residents are subject to U.S. income tax only on their U.S. source income, which includes dividends from U.S. corporations, rental income from U.S. real property and gains on the sale of U.S. real property. U.S. source income does not include interest paid by U.S. banks or interest on U.S. bonds, and does not include capital gains on the sale of U.S. stocks.
- A U.S. resident is a person who either (1) is present in the U.S. for 183 or more days in the current year; (2) is present in the U.S. for at least 31 days in the current year, and the total of the days present in the US during the current year plus one-third of the days present in the previous year plus one-sixth of the days present in the second previous year equals 183 days on a weighted basis (a person who is never in the U.S. for more than 121 days per year will never exceed this figure); or (3) has a U.S. Green Card.

U.S. Transfer Tax

- U.S. citizens, and non-U.S. citizens who are domiciled in the U.S., are subject to gift, estate and GST tax on their worldwide assets.
- Persons who are not U.S. citizens or domiciliaries are subject to estate, gift and GST tax only on their U.S. situs assets, although special rules apply to covered expatriates. For estate tax and GST tax purposes, U.S. situs assets include U.S. stocks, U.S. real property and tangible personal property located in the U.S., but not U.S. bonds or bank accounts. Foreign corporations owned by non-U.S. persons are not subject to U.S. estate tax, even if their assets include U.S. real estate or U.S. stocks. For gift tax purposes, only U.S. real property and tangible personal property are U.S. situs assets.
- A person is domiciled in the U.S. for transfer tax purposes if the person's primary residence, or domicile, is in the U.S., based on the person's intent as evidenced by all factors, including length of stay, ownership of residence, personal and business contacts, location of family, etc.

Treaties. To further complicate matters, the U.S. has income and death tax treaties with dozens of countries that may alter the above rules. Some treaties have "tie-breaker" provisions that apply when a person would otherwise be regarded as a resident of both countries. However, no treaty exempts a U.S. citizen, regardless of where he or she resides in the world, from liability for income and transfer taxes on his or her worldwide assets.

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If you have any questions regarding this communication, please contact Day Pitney LLP at 605 Third Avenue, New York, NY 10158, (212) 297 5800.