The Guttenberg Press

Preserving Your Assets ... Planning Your Future

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Summer 2007

Dear Friend:

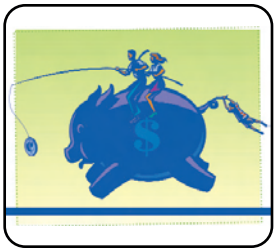
These are exciting times as we share with you the announcement of our relocation of our offices to The Atrium at Greenspring. (See article on back page.)

It was 15 years ago (July 1, 1992) when we opened our office in the Commercentre. While we have preserved our boutique flavor in the trusts and estates arena and cherish our commitment to our clients, we have expanded our practice thanks to a growing and exceptional clientele and a wonderful and committed team. While words cannot adequately express this, let me simply take this opportunity to thank you – our clients, referral sources, colleagues and friends – for your support, encouragement, friendship and, most of all, the supreme confidence you have placed in us over the years.

It's so wonderful, indeed, to be able to share in each other's personal and professional growth and successes and look forward to a continuing warm and thriving relationship.

With appreciation,

10 Costly Estate Planning Mistakes and How To Avoid Them



As we were preparing for our move, I was looking at my first newsletter after we opened our practice in July, 1992 where we discussed, simply, the importance and consequences of a Will vs. No Will. In this issue, I have decided to get back to the basics and reflect upon what we have observed over the last 15 years to be the most common estate planning mistakes that can be easily avoided and cured. Some of the gaffes may seem simplistic but they can be costly. Here's our top 10 list:

#1 Procrastination and Inaction. Clearly, the most common mistake we've seen is not getting around to estate planning. Unexpected death or disability can occur at any time and serious adverse and unintended consequences can result from a failure to adopt at least a minimal estate plan (Wills, General and Health Care Powers). And, all too often we have clients who have a well-thought out estate plan but place the "signing" segment on the back-burner. So it's important to get something in place -- even if one's personal or financial situation is constantly changing.

#2 Failure to Update Estate Planning Documents. Once estate planning documents are in place, many would like to be "done with it." That's natural, but many changes require revisiting your estate plan. Here are 3 situations which mandate a review of your estate planning:

- *Changes in Personal Circumstances* — such as birth, adoption, divorce, death and other changes in family structure or your health may require or warrant a change of beneficiaries or re-evaluation of your goals as to the disposition of assets and selection of fiduciaries.

- *Changes in Financial Circumstances/Assets* — may require more sophisticated documents and structure, including the use of various trusts.

- *Changes in Tax Laws* — as we know from the dramatic changes in federal and state estate tax laws in recent years, such changes almost always require revisions in estate planning documents and structure, particularly to take advantage of the opportunities presented. For instance, failure to incorporate a Maryland QTIP Trust after 2006 can result in the payment of Maryland estate taxes upon the death of the first spouse (see **#10** below).

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#3 Being Donor and Custodian of a UTMA/UGMA Account. Creating and contributing to a UTMA/UGMA account of which you, as donor, are the custodian will cause the account to be includible in your estate and possible subject to unnecessary estate taxes.

#4 Titling Property as Joint Tenants with One Child. Many "do-it-yourselfers" add a child or others to bank accounts, investment accounts, real estate deeds or other property as an expedient method to avoid probate, pay bills and plan for disability. This causes many unintended adverse consequences. For instance, upon the death of the joint tenant, the surviving joint tenant becomes the sole owner of the asset. There is no legal requirement for the surviving joint tenant to share these assets. This can cause income tax and equalization issues and engender family disharmony. A joint tenancy with a child also subjects the entire joint account to the creditors of the child who is a joint owner. We have seen this to be detrimental (and quite a shock) to the parent.

#5 Incorrect Beneficiary Designations of Retirement Plans and Life Insurance Policies/Failure to Coordinate with Overall Estate Plan. A well thought out estate plan can be undermined by incorrect beneficiary designations. Here are some common errors and missed opportunities:

- *Naming minor children as beneficiaries* (typically, secondary after spouse) would necessitate a judicial guardianship proceeding (with ongoing judicial supervision) if the child ever receives the funds before age 18. The solution is to name a trust under the Will for the minor children as beneficiary, thereby coordinating the way assets flow to the minor under the Will.

- *Simple failure to revise designations upon marriage, remarriage, birth of additional children....etc.* Clients are often amazed as to their beneficiary designations upon review many years later.

- *Ignoring use of retirement plans as an opportunity to save estate taxes.* As part of a sophisticated estate tax planning strategy, we typically recommend that the tax planning trust under the Will (either Marital, Bypass or Disclaimer) be designated as the beneficiary (or contingent beneficiary) under retirement plans (and life insurance policies) in order to fully maximize both spouses' estate tax exemptions.

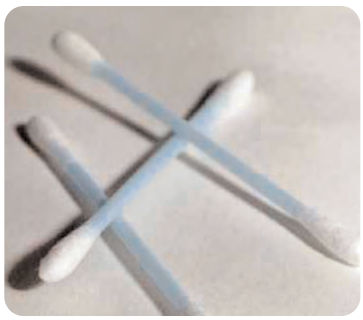
#6 Not Planning for Disability. A well-drafted Will with appropriate trusts (as well as asset titling and beneficiary designations) is vital and the centerpiece of estate planning. But that segment involves only planning for the disposition of assets after death. Many never really pay careful attention to planning for incapacity during lifetime. Two documents that must be part of everyone's estate plan are the (1) Durable General Power of Attorney which appoints an agent (typically a spouse and an alternate) to make financial decisions, pay bills, etc. and (2) Health Care Power of Attorney (and Advance Directive) which appoints an agent (typically spouse, then an alternate – usually older children) to make health care decisions and directives as to end-of-life decisions. A Revocable Living Trust may be appropriate in the right circumstances for disability planning (management of assets during incapacity) and testamentary planning (disposition of assets after death).

#7 A Will or Revocable Living Trust Does Not Cover Everything. Many people mistakenly believe that their Will dictates where all their assets will pass. However, many assets including accounts that are held jointly or with "POD" (payable on death) or "TOD" (transfer on death) designations (that pass automatically to the joint or designated payee upon death) and retirement plans and life insurance policies (that pass by beneficiary designation) become the property of the joint owner or beneficiary. A Will does not govern those assets unless a trust under the Will is designated as beneficiary which may be advisable if a minor child is involved or to reduce estate taxes- (see **#5** above).

#8 Improper Ownership of Life Insurance. Life insurance in the name of the insured can result in the payment of estate tax, which diminishes the value of the policy. This can be avoided by putting the policy into a special irrevocable trust. We encourage many of our clients to consider this, and most have taken advantage of this opportunity.

#9 Failure to Utilize the Federal and State Estate Tax Exemption Twice. If you are married, with proper planning you and your spouse can shield double the federal and state exemption amount from estate tax. In 2007, the federal exemption is $2,000,000 and the Maryland exemption is $1,000,000. (The New York exemption is also $1,000,000.) The mistake occurs when the first spouse dies and leaves his/her entire estate to the surviving spouse, thereby in effect losing the deceased spouse's individual exemption. Instead, it is often beneficial to have a mechanism where the spouse leaves all or a portion of their estate to a trust, called a Bypass, Credit Shelter Trust or Disclaimer Trust, which could allow a pool of assets to bypass tax in both estates and increase the amount ultimately passing to children and other family members.

#10 Failure to Provide for a Maryland QTIP Trust. As we have informed our clients, this is the single most prevalent trap if only because most estate plans were prepared before June, 2006 when Maryland introduced this trust to counteract the harsh effects of its new estate tax. A Maryland QTIP could serve to defer (and possibly eliminate) Maryland estate taxes while still preserving the full federal estate taxes. All sophisticated estate plans of Maryland domiciliaries (or even those with substantial real property in Maryland) should include this trust.



Reach of "Kiddie Tax" Broadened to 18-Year Olds and Students Under Age 24: But Opportunities Still Exist

Kiddie Tax Before 2007 Legislation

At one time, wealthy parents could significantly lower their family's tax bill by transferring investment assets to minor children. This tax technique, called income shifting, worked by taking income out of the parent's higher tax bracket and placing it in the lower tax bracket of their children.

To curtail use of this tax technique, Congress enacted the "Kiddie tax" rules. which, until 2006, stated that children under 14 who had more than a small amount of unearned (investment) income (such as capital gains and dividends) had to pay tax at their parents' marginal tax rate (the rate of tax on the last dollar earned). The threshold amount is currently $1,700 in unearned income.

In 2006, Congress made a dramatic change by increasing the "kiddie tax age" by 4 years, so that the tax applied to children under 18.

May, 2007 Legislation Extends Age to "Under 24"!

In legislation signed by President Bush on May 25, 2007, the reach of the kiddie tax was extended even further. (The tax legislation was actually tucked into the Iraq spending bill.) Under the new law, the age limit will increase starting in 2008 to children who are under 19, or even under 24 -- if the child is a full-time student with earned income not exceeding one-half of his/her support.

0% Capital Gains for 2008 Prompts 2007 Legislation

The tax savings strategy that touched of this change involved parents in high tax brackets transferring ownership of large amounts of stock, mutual funds shares and other assets to children in lower tax brackets. Under current law, the top tax rate on long-term capital gains and most corporate dividends generally is 15%. But for taxpayers whose income puts them in the two lowest ordinary income brackets (10% and 15%) the rate is only 5% this year (2007) and 0% next year (2008).

Given the 0% capital gains tax for low-income taxpayers in 2008, investments advisors had begun suggesting that high-income family members consider gifts of appreciated securities to lower income family members who could then sell those securities tax-free in 2008! Raising the age to include children who are 18 or even under 24 (if full-time students) essentially thwarts this technique in 2008 as the income of such children would be taxed at the parents' rate.

Tax Planning Opportunities Still Remain

- **The technique can still work for 2007!** The 2008 effective date still enables the "older child" who is a full-time college student (*i.e.*, too old for Kiddie Tax this year, but would be "caught" in the new law in 2008) to sell the appreciated stock in 2007 and realize long-term capital gains at a 5% rate in 2007.

- **Utilizing the $1,700 threshold.** The Kiddie Tax rules don't kick in until a child has over $1,700 of "unearned" income (*e.g.*, dividends, interest, capital gains). That would enable a child to build up about $21,000, earning about 8% a year, before picking up enough income to trigger the higher (parents') tax rate.

- **The Section 529 Alternative.** The extension of the "kiddie tax" to older children makes it all the more desirable, from a tax standpoint, for parents (and grandparents) to consider investing in a "Section 529 Plan" to finance a child's college education. As long as the money is used for qualified college expenses, withdrawals from these plans are tax-free and avoid the Kiddie Tax altogether.

- **Tax-free gifts to children.** While the Kiddie Tax may deter some wealth transfers designed to shift income, gifts to children and grandchildren may effectively lower or eliminate potential estate taxes. The following 3 key gift tax exclusions should always be considered:

- $12,000 **annual** gift tax exclusion ($24,000 for married couples)

- Larger gifts (in excess of annual exclusion) up to $1,000,000 **lifetime** exemption

- **Unlimited** gifts for tuition and medical expenses (paid directly for donees) -- not counted towards 12,000 annual or $1,000,000 lifetime exemption.

Things We've Been Up to Lately

In addition to our move (see back page), it has been an exciting year of personal and professional announcements. We are delighted to share with you the following ...

- The marriage of **Rikki Guttenberg** (daughter of Aryeh and Sandy) to **Chaim Ambinder** which took place on January 1, 2007 -- ushering in a wonderful New Year!

- The birth of **Menashe Guttenberg** (Aryeh and Sandy's third grandchild!), born on March 1, 2007. Proud parents are Leba and Gary Guttenberg of New York City.

- We welcome our new practice administrator, **Erin Stickles**, who joined us in April, 2007. Erin formerly managed a medical practice and her organizational skills, efficiency and effervescent personality have already enhanced the office and client service. Erin is the sister of our attorney, **Amanda Hunt Franklin**. July, 2007 will mark the anniversary of Amanda's 8th year with our office– from paralegal to star attorney!

- The graduation of **Talia Lefkowitz** (daughter of **Liz Lefkowitz**) from University of Maryland School of Nursing. Liz was honored with the "pinning" at the May 18, 2007 graduation.

- On January 25, 2007, Aryeh presented a seminar to Maryland CPA's dealing with the new approaches our firm is implementing for clients in dealing with the new Maryland estate tax and the Maryland QTIP Trust and the fluctuating federal estate tax.

We've Moved!

As you may have heard, we have relocated our office to the Atrium at Greenspring. The Atrium is a 2-story modern professional office complex located in the Greenspring Shopping Center on Smith Avenue. Our office (Suite 201) now encompasses one side of the second floor of the beautiful atrium and it is strategically designed to accommodate our speciality practice. The move was prompted by our current and projected growth. The location should be easily accessible for our clients and we know you will enjoy the amenities.

Our client service will be the same as you have been accustomed to for the last 15 years. All client files have been securely transferred over to our new office. The move-in date was July 1. This is a good opportunity for us to thank all of you who, through your trust and confidence in us, have helped catapult our trusts and estates practice to the esteem and level it holds today.

We look forward to seeing you at our new space!

Our new office address is as follows (telephone and fax numbers will remain the same):

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