Estate Planning

The goal of estate planning is to provide for the management and transfer of your property, in the event of your death or incapacity, at the smallest financial and emotional cost to your family.

The following memorandum covers the basics of estate planning and should help you assess whether your current plan adequately provides for your family.

WHY EVERYONE NEEDS AN ESTATE PLAN

Through a properly-structured estate plan, you can minimize taxes, make crucial decisions regarding the distribution of your assets, and provide for protection of your loved ones in the event of your death. Absent proper estate planning, your death may result in assets passing to unintended beneficiaries or being reduced in value by unnecessary taxes or unsound investments, all of which may result in financial insecurity or family disharmony. For example, if you are a Connecticut resident and are survived by a spouse and two children, but you do not have a Will or a Revocable Trust governing the distribution of your estate, your spouse will receive $100,000 and one-half of the balance of your probate estate, and your children will receive the remainder. This distribution could trigger unnecessary taxes and deprive your spouse of assets needed for support.

Estate planning also enables you to select the individuals who will manage your affairs in the event of your death or incapacity. Those who die without naming Executors, Trustees and Guardians to manage their affairs invite conflict and controversy as to who should fill these roles. Those who become incapacitated without proper estate planning have no guarantee that a court-appointed Guardian or Conservator will follow their wishes regarding medical and financial matters.

OVERVIEW OF ESTATE AND GIFT TAXES

The federal government currently imposes a gift tax on lifetime gifts and an estate tax on transfers at death. Since the maximum federal estate and gift tax rate is 40%, the estate planning process is likely to focus in large part on reducing or eliminating these taxes.

A properly-structured estate plan can reduce these taxes dramatically by taking advantage of available deductions and exemptions, including: (1) the gift and estate tax "unified credit," which permits every individual to transfer a specified amount of assets (often referred to as an "exemption") tax-free either during lifetime or at death, and (2) the "unlimited marital deduction," which provides for tax-free transfers during life and at death between a married person and his or her U.S. citizen spouse (special marital deduction rules apply to non-U.S. citizens).

As a result of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, (the "2010 Tax Act"), the Federal estate, gift and generation-skipping transfer ("GST") tax exemptions increased to $5,000,000 (indexed for inflation) for the years 2011 and 2012. The American Taxpayer Relief Act of 2012 (the "2012 Tax Act") made this exemption amount permanent.

The tax act passed in 2017 further adjusted these exemption amounts setting them at $10,000,000 (indexed for inflation) for 2018 through 2025. As indexed for inflation, the federal estate and gift tax exemption is set at $11,700,000 for 2021.

Under the 2012 Tax Act, the estate, gift and GST tax rates all are set at a maximum rate of 40%. This is an increase from the 2011 and 2012 rates of 35% but still a significant decrease from the 2001 rate of 55%. Furthermore, the 2012 Tax Act permanently unifies the gift tax and estate tax so that the entire exemption can be used during lifetime or, if unused during lifetime, at death. Prior to December 31, 2003, the estate and gift tax exemptions were unified at the same amount, however from 2004 to 2011 while the estate and GST tax exemptions increased, only $1,000,000 of the total exemption was available for lifetime use.

TAX PLANNING FOR MARRIED COUPLES

I. The Benefits of a Tax-Efficient Estate Plan

If you leave all of your assets to your spouse, the "marital deduction" may permit all federal estate tax to be postponed until his or her death.[1]

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[1] Please note that if your spouse is not a U.S. Citizen, special rules apply. Specifically, the marital deduction is not available to shelter outright bequests to your spouse.

Accordingly, at first glance, it might appear to be effective tax planning to leave your entire estate to your spouse. However, if you do so, he or she ultimately may have to pay estate tax both on his or her own assets and on all of the assets inherited from you (to the extent your spouse did not spend or give away those assets). Accordingly, the marital deduction merely defers the payment of estate tax and does nothing to reduce the ultimate amount of taxes due.

If you wish to reduce, rather than merely defer, the payment of estate tax, you and your spouse need a tax-efficient estate plan that utilizes the estate tax exemptions available to both of your estates. Until recently, in most cases, this could best be accomplished at the first spouse's death by leaving an amount equal to the then-applicable estate tax exemption in an "Estate Tax Sheltered Trust" for the surviving spouse's benefit. The assets in such a trust are available to the survivor during life but are not included in his or her estate at death.

Example

Suppose a husband has assets worth $16,700,000.[2] The husband dies in 2021 with a simple Will[3] leaving his entire estate to his wife. The wife dies later that same year with a taxable estate of $16,700,000. Federal estate taxes of roughly $2,000,000 are imposed, leaving the children with a net inheritance of roughly $14,700,000.

Federal estate tax would be eliminated if the husband's Will instead left the amount exempt from estate tax ($11,700,000 in 2021) to an Estate Tax Sheltered Trust for his wife's benefit and the balance of his assets directly to his wife. At the wife's death, the $11,700,000 held in the Estate Tax Sheltered Trust would not be subject to tax. Rather,

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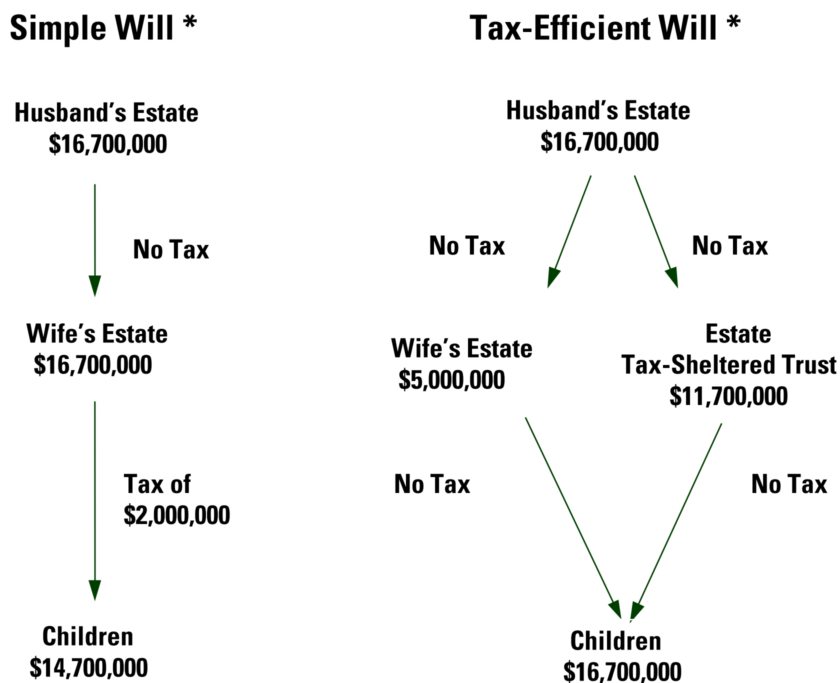
[2] As discussed in section V of this memorandum, it is not recommended that one spouse hold title to all of a couple's assets.

[3] As discussed towards the end of this memorandum, many of our clients decide to use a "Revocable Trust" (or "Living Trust"), rather than a Will, as their primary estate planning document. While a Revocable Trust may help avoid some of the expenses and delays associated with the estate settlement process, having a Revocable Trust in and of itself does not reduce estate taxes. Accordingly, while the following analysis of estate taxation is phrased in terms of provisions found in Wills, it is equally applicable to those clients who create Revocable Trusts.

her taxable estate would be limited to the $5,000,000 of assets that she received outright and would pass tax-free to the children by virtue of her estate tax exemption.

By taking advantage of the estate tax exemptions available to both of their estates, the husband and wife can transfer $16,700,000 federal estate tax-free to their children in 2021. In fact, the amount passing tax-free to their children will be even greater if the assets in the Estate Tax Sheltered Trust appreciate between the death of the husband and the death of the wife, as that trust will not be taxable as part of the wife's estate regardless of its value at her death.

The following illustration contrasts the plan leaving all assets to the surviving spouse (the "simple will" plan), with the "tax-efficient will" plan that includes an Estate Tax Sheltered Trust:



* This simplified illustration assumes death in 2021 and a flat federal tax rate of 40%. This analysis ignores the effect of state death taxes.

II. Designing the Estate Tax Sheltered Trust

In order to avoid estate taxation on trust assets at the surviving spouse's death, the Estate Tax Sheltered Trust must satisfy numerous technical restrictions contained in the tax code. For example, your spouse cannot be given an unlimited right to withdraw the principal of the trust. Subject to these restrictions, the provisions of the trust can be tailored to reflect your wishes. For example, if you want to provide maximum benefits to your surviving spouse, you can provide that he or she will receive the entire income of the trust and any principal needed for support. You may also give your spouse a right to withdraw up to 5% of the trust principal every year without regard to need, as well as a right to direct who will receive the trust funds remaining at his or her death. Alternatively, you may wish to include children or other family members as eligible beneficiaries of the trust and give your Trustees the power to pay any income not needed by your spouse directly to your children and grandchildren. This "sprinkle power" can result in significant annual income tax savings for the family.

Depending on the terms of the trust, it may be possible for your spouse to be the sole Trustee. Otherwise, a co-Trustee can be named in your Will or selected by your spouse after your death. Your family can be given the right to remove and replace this co-Trustee.

III. Disclaimer Will to Preserve Options

At the time you sign your Will, you may be uncertain whether the potential tax savings will justify the creation of an estate tax sheltered trust, or you may prefer to let your spouse make that decision after your death. Flexibility in such cases can be achieved through the use of a ''Disclaimer Will,'' which is a hybrid between a simple Will and a tax-efficient one. A Disclaimer Will leaves your entire estate to your spouse but allows him or her to decide whether a portion of your estate should be added to an estate tax sheltered trust.[4]

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[4] Although a Disclaimer Will can be an attractive solution for those who require this additional flexibility, there are certain limitations involved with this structure. As a result, Disclaimer Wills are not frequently implemented by clients whose combined estates clearly exceed the applicable estate tax exemption amount.

IV. Is There a Need for a Marital Trust?

In order to postpone all federal estate tax until your spouse's death, the balance of your estate (after setting aside the estate tax exemption amount) typically is left either outright to your spouse or in a qualifying "Marital Trust" for your spouse's benefit.

If your spouse is a U.S. citizen, a Marital Trust generally offers no estate tax benefit over an outright marital distribution, but may be preferable if you wish to name a Trustee to assist your spouse with the management of the trust assets, or to make certain that property passes at your spouse's death to your children or other beneficiaries you select. This latter reason may be particularly important if you have children from a prior marriage. If your spouse is not a U.S. citizen, a special type of Marital Trust known as a Qualified Domestic Trust will be required to postpone estate tax until your spouse's death, as outright distributions to non-citizen spouses do not qualify for the marital deduction.

The Internal Revenue Code sets out certain requirements that must be followed in designing a Marital Trust. Specifically, your spouse must be the only beneficiary of this trust and must receive all of the net income produced by trust assets annually. Beyond these and certain other limitations, the trust can be designed to reflect your wishes and can provide your spouse with access to as much or as little of the trust assets as you specify.

V. Equalization of Estates

The manner in which you own your assets can greatly impact the effectiveness of your estate tax planning. For example, jointly-owned assets and assets owned by the surviving spouse are not available to fund the Estate Tax Sheltered Trust at the first spouse's death. Similarly, as discussed more fully towards the end of this memorandum, certain retirement plans and other "non-probate" assets do not pass pursuant to the terms of your Will and may not be available to be added to the Estate Tax Sheltered Trust. Accordingly, under ordinary circumstances, both spouses will wish to "equalize" their estates by dividing ownership of their assets between their individual names, at least until both estates equal or exceed the estate tax exemption then in effect.

If your assets are not equalized in this manner currently, you may wish to consider having the wealthier spouse give property to the other. Such outright gifts between U.S. citizen spouses do not trigger gift tax, but special rules govern the taxability of transfers between spouses if one or both are not U.S. citizens. If you or your spouse is not a U.S. citizen, it is crucial to discuss this issue with your Cummings & Lockwood attorney before making any gifts to the non-citizen spouse.

VI. Exemption Portability

The use of an Estate Tax Sheltered Trust or Disclaimer Will represents traditional estate planning for a married couple—planning that allows them to pass on a total of twice the exemption amount to their beneficiaries. The 2010 Tax Act introduced into the estate tax law the concept of "portability" of any unused federal estate tax exemption at the first spouse's death so that any unused exemption of the first spouse to die could be transferred to the surviving spouse and saved for later use. This means, for example, that if the first spouse to die has an estate of $6,000,000 which passes into an Estate Tax Sheltered Trust, the unused estate tax exemption of $5,700,000 may, under most circumstances, be used by the surviving spouse to shelter $17,400,000 at his or her later death. (This hypothetical $5,700,000 may not be used, however, if the surviving spouse remarries and survives the "new" spouse.) The 2012 Tax Act made this portability feature permanent.

While this new portability feature of the estate tax exemption will certainly be useful in correcting flawed estate plans after a client's death, we do not recommend relying on portability in lieu of a traditional plan. It is important to keep in mind that there are some limitations to portability, including the fact that there are currently no states that allow portability of state estate tax exemptions, meaning that state exemptions may be wasted and state estate taxes increased by relying on portability. In addition, the GST exemption is not portable and in many cases the best way to use the GST exemption is to combine it with the estate tax exemption when the first spouse dies. Also, under the traditional system of using the exemption of the first spouse to die at the time of that spouse's death, the exempt amount **plus** all of the appreciation on that amount between the death of the first spouse and the death of the surviving spouse escapes taxation, whereas portability only protects the unused exempt amount of the first spouse to die without appreciation or indexing for inflation.

PLANNING FOR YOUR CHILDREN'S INHERITANCE

If you leave property to your children and make no further provisions, each child generally will be entitled to full use and control of his or her inheritance upon attaining the age of majority, which varies from state to state but is usually age 18 or 21. A court-appointed guardian will manage the child's property until that time. The guardian will be entitled to reasonable compensation and will be required to account to the court for approval of his or her actions on an ongoing basis.

If you wish to avoid the necessity and cost of a court-appointed guardian, or wish to provide for the management and protection of your children's inheritance beyond the age of majority, you should leave that inheritance to a trust designed for that purpose under your Will or Revocable Trust. The Trustee of such trust would manage the trust funds and distribute them to your children as needed, until each child reaches the age you selected for outright receipt of his or her inheritance. This structure serves to limit your children's access to their inheritance until they are mature enough to manage the funds properly and spend them wisely.

Some parents prefer to establish a single family trust for all children and authorize the Trustee to distribute trust funds among the children as needed until the youngest attains a designated age. Others prefer to establish a separate trust for each child, to last until the child attains a designated age or the Trustee decides that the child is ready to receive the funds outright.

Trusts can be designed to accomplish a variety of financial and family goals, such as to provide for a child with special medical needs, to offer a child some protection in the event of future divorce or creditor problems, to assist a child who may not be able to manage finances well on his or her own, or to provide for the support of any grandchildren or more remote descendants who may inherit from your estate.

GENERATION-SKIPPING TAX PLANNING

When planning for your children and future generations, you also must consider the impact of the Generation-Skipping Transfer Tax ("GST Tax"). This tax is imposed on transfers to grandchildren and their descendants, whether the transfers are made directly to them as gifts or bequests, or from certain trusts for their benefit. GST Tax is imposed <u>in</u> <u>addition</u> <u>to</u> the federal estate and gift tax, at a rate equal to the <u>maximum</u>

federal estate and gift tax rate (40%). Every individual has a $10,000,000 exemption (indexed for inflation, and set at $11,700,000 for 2021) from GST Tax.

As the GST Tax exemption can be used to pass assets to grandchildren and more remote descendants free of GST Tax, careful use of the exemption can achieve dramatic tax savings for your family. Conversely, inadvertent application of this tax as a result of improper planning may result in the imposition of significant unnecessary taxes and unintended inequity among family members.

LIFETIME GIFTS

Your estate may be large enough (or may grow to become large enough) that an estate plan that takes full advantage of the available exemptions and deductions is not sufficient to entirely eliminate the imposition of federal estate tax. If so, the impact of the estate tax may be substantially reduced through lifetime giving. Generally, the best assets to give away are those that are likely to appreciate in value or generate substantial income in the future, because a gift of such assets will avoid the imposition of federal estate tax on that future growth and income.

Lifetime gifts are subject to a federal gift tax, which is imposed currently at the same tax rates as the federal estate tax. Connecticut, unlike all other states, also imposes a state gift tax on lifetime gifts, at graduated rates of up to 12% depending on the amount transferred. No other state currently imposes a state gift tax.

Under federal gift tax law, each person is entitled to give up to $15,000 annually to each of as many persons as desired without either paying federal gift tax or using up any lifetime gift or estate tax exemption.[5] A program designed to take advantage of this "annual exclusion" from gift tax can be very effective. For instance, if you are married and have two children and four grandchildren, you and your spouse together can give $30,000 annually ($15,000 each) to each of the six younger family members, or a total of $180,000 without incurring any tax or using any federal tax exemption.

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[5] The $15,000 "annual exclusion" will be adjusted for inflation in future years. Connecticut residents can use the annual exclusion to shelter gifts from Connecticut gift tax as well without using up any Connecticut lifetime gift or estate tax exemptions.

Even if your gifts exceed the available annual exclusions, no federal tax will be due until your cumulative lifetime gifts exceed the amount exempted from gift tax by your $11,700,000 lifetime gift tax exemption. However, because the lifetime gift tax exemption and the estate tax exemption are linked, lifetime gifts will reduce the amount that subsequently can be transferred tax-free at your death.[6]

If you wish to give assets away but do not want the gift recipients to have immediate control over the gifted assets, an "Estate Reduction Trust" can be established for the beneficiaries. With proper planning, you can include your spouse as a beneficiary of such trust, if desired.

LIFE INSURANCE TRUSTS

Although life insurance proceeds generally are not subject to income tax, they are subject to federal estate tax. For this reason, it is advisable to include provisions for your life insurance as part of your estate plan.

Planning for life insurance is made easier by the fact that many life insurance policies (especially group term insurance) have little or no value during your lifetime. Accordingly, such policies are ideally suited for gift-giving because a transfer of such policies often has no gift tax consequence and makes no impact on your current financial situation.

If you decide to give away your life insurance to reduce your estate, you likely will make that gift to an Irrevocable Life Insurance Trust specifically designed to hold such policies. If you transfer your life insurance in this manner and live for at least three years after doing so, the insurance proceeds will avoid estate taxation both at your death and at the death of your spouse, regardless of how large either the insurance proceeds or the

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[6] For Connecticut residents (and for residents of any other state making gifts of property located in Connecticut), such gifts may also trigger Connecticut state gift taxes if they exceed $7,100,000 in the aggregate over your lifetime.

balance of your estate may be. If you establish such a trust with new insurance, this three-year waiting period is avoided.[7]

When an Insurance Trust is established, the Trustee (who can be your spouse) generally holds the insurance policies owned by the trust until the proceeds are collected, and then invests the proceeds for the benefit of your family. The Insurance Trust provisions can be very generous in terms of the benefits provided to your family. Typically, the Trustee is authorized to distribute any trust assets at any time to your spouse. The Trustee also may be given discretion to make distributions directly to your children or grandchildren.

To achieve the desired tax benefits, an Insurance Trust must be irrevocable and therefore cannot be altered by the person who established it. However, a beneficiary of the trust (such as your spouse) may be given a limited right to distribute trust property, including the insurance policy, to other family members. A trust beneficiary also can be given the right to alter the trust provisions for the benefit of the next generation.

Example

Suppose a husband predeceases his wife in 2021. He has $5,000,000 of term life insurance, and other assets worth $20,700,000. Even if the maximum Estate Tax Sheltered Trust of $11,700,000 is established at the husband's death, the wife will die with a taxable estate of $14,000,000 ($9,000,000 she inherits from his estate plus the $5,000,000 of insurance proceeds). If she later dies in 2021, federal estate taxes of roughly $920,000 will be imposed.

Federal and state death taxes can be eliminated on the life insurance if the husband transfers the life insurance to an Insurance Trust more than three years before his death. If he does so, the $5,000,000 of life insurance proceeds held in the Insurance Trust and the $11,700,000 held in the Estate Tax Sheltered Trust will avoid estate tax at the wife's death. Her taxable estate will now consist only of the $9,000,000 of assets in her sole

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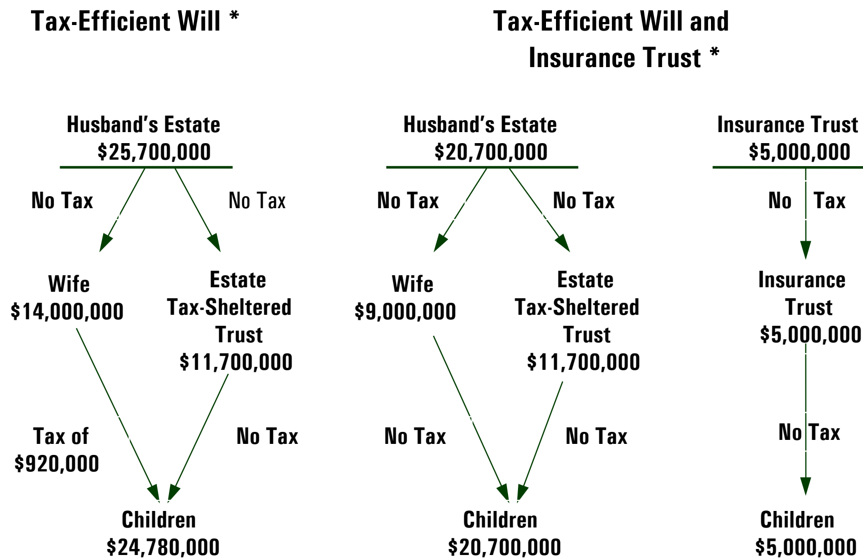
[7] If you wish to avoid the three-year waiting period, the Insurance Trust should be the initial applicant for, owner and beneficiary of any new life insurance policy. Accordingly, you should contact your Cummings & Lockwood attorney to discuss the preparation of a Life Insurance Trust as soon as the purchase of life insurance is contemplated.

name. Since the wife's estate tax exemption is sufficient to shelter her $9,000,000 from federal estate tax at her death, the husband and wife will have transferred their full $20,700,000 of assets and $5,000,000 of insurance free of federal estate tax to their children.

The following chart illustrates the distribution of assets and tax consequences under each option:



* This simplified illustration assumes death in 2021 and a flat federal tax rate of 40%. This illustration ignores the effect of state death taxes.

SELECTION OF EXECUTORS, TRUSTEES AND GUARDIANS

While the need for a professional Executor or Trustee will depend in large part on the complexity of your personal and financial circumstances, the benefits of a well-structured estate plan can be jeopardized unless your Executors and Trustees have good judgment in family matters and have the ability to make complex investment and tax decisions.

Your Executors collect and invest your assets during the period that your estate is being administered, provide distributions to your family as needed, file required tax returns, and make all necessary tax elections and decisions. The period during which the estate is being administered often provides unique opportunities to achieve substantial tax

savings for the estate and its beneficiaries. Your Executors should either have the professional expertise to make the right decisions or the wisdom to retain and follow the advice of a tax attorney who specializes in estate administration. Your Executors also should have access to the investment expertise needed to take your place as the ''manager" of your family's resources during the period that your estate is in administration.

Your Trustees take over from your Executors after your estate is settled and must manage any portion of your estate left in trust. Responsible for meeting your objectives and providing for your family's needs, your Trustees will oversee investment of the trust assets, financial planning and tax compliance.

If you have minor children, your Will should name Guardians to care for these children in case both you and your spouse die while they are minors. While your chosen Trustees will manage your children's inheritance and provide funds for their expenses, it will be the Guardians who fulfill your role as parents and make personal decisions concerning your children's development and welfare.

COORDINATING YOUR WILL WITH YOUR NON-PROBATE PROPERTY

Your Will does not govern the distribution of all property that you own at death. Rather, some property passes at your death by operation of law, by contractual arrangement or by beneficiary designation without reference to your Will. Such assets are referred to as "non-probate assets" and include:

- Assets owned jointly with right of survivorship, which will pass by operation of law to the surviving joint owner.
- Assets held in “transfer on death” or “trust” accounts which pass by designation to the named beneficiary at death.
- Assets held in trust, such as a Revocable Trust or Insurance Trust, which will pass according to the trust agreement.
- Life insurance proceeds (on policies not owned in trust) which will be paid to the named beneficiaries.
- Retirement plans and employee benefits, such as pension, profit-sharing, deferred compensation, 401(k) and IRA accounts, which will be paid to the named beneficiaries.

Absent estate planning (such as the establishment of an Insurance Trust) non-probate assets are fully taxable for estate tax purposes even though they are not disposed of pursuant to your Will. For this reason, it is crucial to coordinate these assets with your Will and the balance of your estate plan.

Planning for your non-probate retirement plans and employee benefits may be a particularly important part of your estate planning since these assets often are subject both to estate tax and deferred income tax.

REVOCABLE TRUST

You may decide to utilize a ''Revocable Trust'' (also known as a "Living Trust"), rather than a Will, as your primary estate planning document. A Revocable Trust is like a Will in that it provides instructions for the distribution of your property (and the establishment of any desired trusts) at death. However, a Revocable Trust offers certain advantages when compared to a Will, including: (1) trusts established under a Revocable Trust are not subject to ongoing probate court jurisdiction and thus avoid certain potentially costly administrative requirements, such as the filing of periodic probate court accountings, that are required of trusts created under a Will, (2) a Revocable Trust can avoid the need for court appointment of a Guardian or Conservator to manage your assets in the event of your incapacity, (3) a Revocable Trust can help avoid some of the expenses and complications associated with probate of a Will (especially if you own property in more than one state, which otherwise would require an "ancillary probate" proceeding) and (4) in many states the use of a Revocable Trust may result in state income tax savings for your beneficiaries after your death.

As its name suggests, your Revocable Trust can be revoked or changed at any time during your lifetime. You can be Trustee of your Revocable Trust with a named successor Trustee to assume full responsibility at such time as you are no longer capable of managing the trust assets.

Even if you execute a Revocable Trust, you still will need a Will to dispose of any assets not owned by your Revocable Trust at the time of your death. Such a Will, however, is greatly simplified in most cases, as it merely provides for assets not added to your Revocable Trust during your life to be added to the trust upon your death.

DURABLE POWER OF ATTORNEY

Whether or not you establish a Revocable Trust to guard against future incapacity, we recommend that you sign a Durable Power of Attorney naming a family member or trusted advisor to manage your assets in the event you are no longer capable of doing so.

LIVING WILL

Many states, including Connecticut, New York and Florida, have enacted laws that encourage physicians and hospitals to follow the wishes of a terminally ill patient who has signed a Living Will expressing his or her intent that no extraordinary life support measures be used. The law also permits you to appoint a "Health Care Representative" to make medical and life support decisions for you if you cannot act. If you are concerned about these issues, you should execute a Living Will and/or appoint a Health Care Representative.

CHARITABLE GIFTS

Complete estate planning should include consideration of the tax benefits and personal satisfaction that can result from making charitable gifts. Charitable planning includes evaluating the potential tax benefits of charitable gifts, as well as the implementation of a variety of sophisticated techniques such as charitable lead trusts, charitable remainder trusts and family foundations. Because lifetime charitable gifts often generate income tax deductions that testamentary gifts do not, charitable gifts made during your lifetime often yield greater tax savings than do similar gifts made at death.

DESIGNING YOUR ESTATE PLAN

This memorandum encompasses a very general discussion of the basics of estate planning. We caution you that an estate plan must be personalized to your unique objectives and financial situation, which requires a comprehensive review by a qualified estate planner. Your Cummings & Lockwood attorney would be glad to discuss any of the issues raised by this memorandum and to assist you with a thorough review of your estate plan.

Revised January 2021

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This document is intended to convey to you the principal characteristics involved with estate planning as they apply to common situations. For this reason we have deliberately simplified technical aspects of the law in the interest of clear communication. Under no circumstances should you or your other advisors rely solely on the contents of this document for technical advice, nor should you reach any decisions with respect to this topic without further discussion and consultation with a Cummings & Lockwood attorney.

In accordance with IRS Circular 230, we are required to disclose that: (i) this memorandum was not intended or written by us to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer; (ii) this memorandum was written to support the promotion or marketing of the transaction(s) or matter(s) addressed by the memorandum; and (iii) each taxpayer should seek advice on his or her particular circumstances from an independent tax advisor.