

# THE LISSNER & LISSNER LLP NEWSLETTER

Your Trusted Elder Law, Estate Planning & Administration and Tax Information Source

Law Offices  
250 West 57<sup>th</sup> Street, Suite 615  
New York, NY 10107  
Tel.: 212-307-1499

[www.lissnerlawfirm.com](http://www.lissnerlawfirm.com)  
[Info@lissnerlawfirm.com](mailto:Info@lissnerlawfirm.com)  
Toll Free: 1-800-375-4583  
Fax: 212-757-1825

Fall 2012

## FIRM NEWS

The Firm is proud to announce that over the course of the last year Benjamin Mellors, Esq. and Maria Johnson, JD have joined the Firm's partners, Michael D. Lissner and Barbara H. Urbach Lissner, and of counsel, Robert J. Epstein and Stanley J. Yellin in the practice areas of elder law, estate planning, estate administration, tax planning, tax return preparation, asset protection, guardianship proceedings, Medicaid planning and applications, and real estate. Should you require representation in other matters such as personal injury or other litigation, business matters, etc., please feel free to contact us and we will try to help you locate a trusted attorney who practices in the area you require representation in.

## TAX PREPARATION AND BOOKKEEPING

The Firm is also pleased to announce the launching of **The Ultimate Tax Preparers, Inc. and more...** with offices located at 550 A Flatbush Avenue in Brooklyn and 250 West 57th Street in New York City, which has been established to prepare the many State and Federal personal and fiduciary tax returns that our clients require assistance with. Enrolled IRS agent, Woody R. Raymond, who many of our clients know, will be heading the tax team to professionally, accurately and expeditiously assist with tax questions and prepare and e-file tax returns. **The Ultimate Tax Preparers, Inc. and more...** also offers personal bookkeeping and accounting services. In addition to our office at 250 West 57<sup>th</sup> Street, the Brooklyn office is available for meetings with your Lissner & Lissner LLP attorneys if this location is more convenient for you.

## THE DIGITAL ESTATE

When we first began practicing law in the areas of Elder Law and Estate Planning, we were confident that a complete search of a decedent's home, including a thorough review of their paperwork, files and safes in addition to receipt of their mail, would yield a complete understanding of the decedent's financial picture. We received the decedent's bank statements, passbooks, brokerage statements, tax returns and...let's not forget the bills, which positioned us to efficiently assist the executors in fulfilling their fiduciary duties in administering estates.

Life was simple.  
We could just follow the paper trail.

Fast forward 30 years and we find that while, on the one hand, advances in technology have revealed entirely new possibilities in so many areas, this same technology has also complicated the rather seamless, old fashioned detective work necessary to wrap up a decedent's affairs. These days so many of us have created our very own "Digital Estates" in which we pay our bills, purchase items and services, monitor accounts, e-file returns, receive payments, retain important legal documents and even store personal photos, writings, trade secrets, blogs, accumulate on-line game points that may have monetary value, ON LINE, DIGITALLY and PASSWORD PROTECTED.

In light of this digital revolution, how do you insure both your privacy and, at the same time, make available important information to individuals entrusted with the administration of your estate? Once again, as we have advised so many times before, the answer can be found in advanced planning. The following are some points that we believe may help you in planning your Digital Estate:

\* Think, organize and create an inventory of locations (sites, programs and accounts) on your

computer where you have important information stored. This may include your social media accounts, websites and domains that you own, email and all accounts related to your finances (retail, bank, brokerage, credit card, insurance, loans, pensions, retirement accounts, etc.);

\* Create a list of all of your usernames and passwords which unlock each of the locations on your inventory list, that is, those that will unlock each facet of your Digital Estate for your appointed fiduciary;

\* Create a list of special instructions for your fiduciary regarding, for example, whether you want your website or social media account, with special consideration of their terms of service, to be closed or remain open with certain messages; email notifications of your death; your photos to be purged, printed and/or sent to certain individuals digitally, etc.;

\* Open a safe deposit box and safeguard your inventory, password list and special instructions in this box;

\* Consider utilizing premium software that is designed to protect your information (two that we have heard mentioned are DataInherit and Legacy Locker which charge a fee for storing private information at "banking level security");

\* Purge unnecessary, old and out of date information on your computer on an ongoing basis;

\* Take special precautions to delete private information from your computer when loaning, selling or giving your computer away;

\* Appoint a fiduciary that can handle your Digital Estate both during your life time if you become incapacitated and after your demise. Choose someone that is computer savvy or can seek the appropriate assistance to locate, gather, administer and wrap up your Digital Estate.

And, while you are creating your inventory, lists and special instructions, don't forget to

create a list of your Non-Digital Estate ~ your "real time assets."

*The greater the organization of your estate, the easier the burden on your fiduciary and heirs.*

## **POWER OF ATTORNEY**

The preparation and execution of a comprehensive Durable Power of Attorney is one of the most important planning vehicles available.

A **Power of Attorney** is an advance directive in which you (the "principal") appoint another person or persons (the "agent(s)" or "attorney(s)-in-fact") to manage your financial affairs should you become disabled or incapacitated.

Many people are under the false impression that family members such as a spouse or children have the automatic right to step in and handle things in the event of incapacity. This is not the case. The failure to name a specific Agent by means of a Power of Attorney can result in a costly, time-consuming and often embarrassing legal proceeding usually referred to as a Guardianship Proceeding, wherein a Court appoints a person, **not necessarily a family member**, to handle the incapacitated person's affairs. While a Guardian acts in much the same capacity as an Agent appointed under a Power of Attorney, the Court-appointee can sometimes be a person other than an individual the incapacitated person would have chosen. Further, the costs borne by the incapacitated person in a Guardianship proceeding can be significant.

Because the signing of a Power of Attorney usually gives the Agent or Agents very broad powers over the principal's financial affairs without oversight by a court or government agency, the person named as Agent should be a trusted and reliable family member or close friend who has the principal's best interests at heart, is willing to act as the principal's agent and knows the principal's finances.

A Durable Power of Attorney is effective immediately upon signing and remains valid

regardless of the principal's competence. Powers of Attorney are effective planning tools for the management of the principal's financial affairs by granting the Agent access to the principal's funds which allows the agent to pay the principal's monthly utility bills, rent or mortgage payments, as well as conduct any necessary banking transactions on behalf of the principal. Further, an Agent is able to pay any necessary medical bills, hospital bills or ambulette service bills for the principal.

However, a Power of Attorney should be granted with caution, since it gives the person whom you designate as your Agent broad powers to handle your property during your lifetime, which may include powers to mortgage, sell, or otherwise dispose of any real or personal property without advance notice to you or approval by you.

The powers granted under a Power of Attorney may be modified or tailored to meet your specific needs, and all Powers of Attorney are revocable by the principal at any time on the condition that the principal has capacity to act on his or her own behalf.

### **IT IS IMPERATIVE TO FUND!**

Once again, we want to remind you to review your planning documents and assets and to FUND YOUR TRUSTS. Creating and signing a Trust alone does not accomplish the goals set forth in the Trust document. A Trust can be set up for numerous reasons. Some examples are to: protect assets against the cost of long term health care (**Victim of Nazi Persecution Restitution Trusts®** accomplish this for Survivors of the Holocaust and their families); avoid inheritance tax; insure that disabled or compromised heirs are properly cared for; and arrange for beneficiaries to receive their inheritance at certain ages or upon attaining certain criteria. However, in order to actually accomplish your goals, assets must be reviewed periodically to insure that they have been properly transferred into your Trust. In some instances we also recommend that you have a Pour Over Last Will and Testament. This is a Will that pours

into your Trust any assets that have not been previously transferred into your Trust. Please review your documents to confirm that you have funded your Trust. If you have not, please attend to these matters promptly.

### **HOLOCAUST SURVIVORS NEWS**

As of January 1, 2013, the monthly payments for Central and Eastern European Fund (CEEF) are scheduled to increase to €300 that is, the same as Article 2.

In addition, as of November 1, 2012, the special pensions currently being paid to survivors age 75 or older who were in a ghetto for 3 to 11 months can be paid to any eligible survivor who lived under these conditions, regardless of current age. The amount of these pensions is anticipated to be €300 per month, as of January 1, 2013.

Additionally, there is a reduction in the time, from 12 months to 6 months (previously 18 to 12 months in November of 2011), that victims had to have lived in hiding or under false identity in Nazi-occupied territories in order to be eligible for Claims Conference pensions. It is anticipated that an additional 5,000 survivors will therefore be eligible for monthly pensions starting January 1, 2013, mostly affecting Survivors persecuted in Hungary, Italy, France, Greece and Slovakia. Also, as of November 1, 2012, all one-time payments from the Claims Conference will be €2,556. Recipients of the Holocaust Victim Compensation Fund (HVCF) currently receive €1,900. Those who have already been paid will receive a supplemental payment while those not yet paid will now receive €2,556.

### **ASSET PROTECTION**

REMINDER: Funds received as a result of being a Victim of Nazi Persecution are considered exempt for the purposes of applying for public assistance. To maximize this benefit we often recommend the creation of a **Victim of Nazi Persecution Restitution Trust®** and we are able to assist you in the preparation of such Trust as well as the calculation of exempt benefits.

Survivors as well as families who are not recipients of such exempt funds may engage in other asset

protection plans which we can also assist with.

## **SHOULD YOU GIVE AWAY \$5 MILLION THIS YEAR?**

### **Believe it or not, you have an estate. Do you have an estate plan?**

Proper estate planning yields benefits, not only for those with large estates but also for those with smaller, more modest, estates. Estate planning not only provides piece of mind, it essentially ensures that your assets will be distributed according to your wishes and that your beneficiaries will receive the largest distribution in the most efficient way possible. Also, the nature of estate planning ensures that you will make important decisions, such as choosing a health care agent, naming an attorney in fact and naming a guardian for minor children (to name a few).

### **To Gift or not to Gift? That is the question.**

In 2012 there is a \$5.12 million credit which may be used for gifts over the annual exclusion amount<sup>1</sup> or to shelter an estate from federal estate tax. This means that, for the rest of 2012 (barring any changes by Congress) an individual who has not used any of their exclusion amount can gift (or give away) up to \$5.12 million free from federal gift tax. In other words, you can transfer assets from yourself (and out of your estate) without paying any gift or estate taxes. Individuals who have made gifts in the past would reduce the \$5.12M credit by the amount of such prior gifts.

At first glance the benefits of gifting assets may not be evident. However, consider this: In 2012, the amount which can pass free from federal estate tax upon death is \$5.12M and anything over that amount is taxed at 35%. In 2013 the credit is scheduled to be reduced to

\$1M (from 5.12M) with a maximum rate of 55%. Another possibility: President Obama has proposed a \$3.5M exemption (only \$1M of which can be used for gifts) with a 45% tax rate.

Another point to keep in mind, is that while the focus of most estate planning articles in national publications is on the federal estate tax, state estate taxes are also affected. New York currently provides for only a \$1 million exemption from its estate tax. Amounts in excess of \$1 million are taxed starting at 5.6% and reach 9.6% at only \$3.5 million. However, the New York estate tax is computed differently than the federal tax. Gifts in excess of the annual exclusion are not taken into account in computing New York tax. If President Obama's proposal for a \$3.5 million credit were enacted, an individual with a \$3 million estate would not owe any federal taxes, but they would owe over \$100,000 in New York estate tax. By gifting \$2 million this year, there would be no New York estate tax on the individual's estate assuming no growth in the value of the retained assets.

### **Spousal Lifetime Access Trusts**

Couples typically do not want to give away most of their assets in case they someday need the gifted property. A planning technique referred to as Spousal Lifetime Access Trusts ("SLATs") has been developed with these couples in mind. SLATs allow you and your spouse to use your full remaining gift tax exemption while retaining access to the gifted property by having each spouse create an irrevocable trust and contributing property with a fair market value up to their respective gift tax exemption. Each spouse is the beneficiary of the SLAT created by the other spouse. The beneficiary spouse may also serve as a Trustee of the SLAT for their benefit, thereby giving the beneficiary spouse the authority to determine if and when distributions will be made. SLATs are not subject to estate tax upon the death of either spouse, and you can allocate your generation-skipping transfer tax

exemption to your respective SLAT which will shelter the trust assets from transfer taxes at each generation for as long as the SLAT is permitted to last under state law.

Limitations: The terms of each SLAT would have to be different to avoid the SLATs being deemed reciprocal trusts by the IRS (this can be accomplished by having a third person act as a Co-Trustee with the beneficiary spouse). Also, after the first to die the SLAT created by the surviving spouse would be off limits to the surviving spouse.

In addition to tailoring your estate plan for federal purposes, it is just as important to address New York State estate tax. The New York State exclusion amount or the amount which can pass free from New York State estate tax is \$1 million. In other words, if your estate exceeds \$1 million your estate will be taxed at a rate starting at 5.6%, and can reach as high as 9.6% at \$3.5 million.

In addition to gifting there are other estate planning tools which can be utilized to minimize estate tax liability. Here are two:

### **Qualified Personal Residence Trusts**

Most individuals would like to maximize the inheritance passing to their beneficiaries, but there is concern about giving away too much. A Qualified Personal Residence Trust ("QPRT") allows you to save estate and gift taxes without directly parting with cash or giving up your home.

This is how a QPRT works: You would transfer title of your residence to a QPRT for a specified length of time (such as a term of 15 years) while retaining the right to live in the residence. During that period of time you would be responsible for all of the expenses of the residence, including real estate taxes, maintenance fees, and the cost of ordinary repairs. You would not notice any changes in

day-to day living as a result of the transfer of the residence into the QPRT during this period of time. At the end of the term, the residence would pass to the beneficiaries free from estate tax and you could rent the residence from the beneficiaries at fair market value. It is important to note, if you do not survive the term of years, then it is as though the gift was never made, and the value of the residence at the date of death is included in the estate.

By way of example: Let's assume we have a 60 year old individual who owns a residence valued at \$500K. If the residence were transferred to a QPRT for a 15 year term, the value of the gift would be about \$300K (based on August 2012 IRS rates), which would immediately remove \$200K from potential taxation. If the residence appreciated at 4% per year during the term, it would be worth \$900K at the end of the 15 years. Therefore, assuming our 60 year old survives the 15 year term, an additional \$400K in value will have been removed from the estate (for a total of \$600K).

### **Grantor Retained Annuity Trust**

A Grantor Retained Annuity Trust ("GRAT") allows you to share future appreciation of an asset with the next generation with virtually no gift tax. An individual transfers assets to the GRAT for a specified length of time (such as a term of 2 years), and retains an interest in the GRAT. The income interest will be stated as an annuity percentage of the original asset transferred to the GRAT, and each year the GRAT will pay the individual the required payment. At the end of the GRAT term any remaining assets will be distributed to the named beneficiaries. The amount will be calculated by subtracting the present value of the annuity payments from the original value of the assets placed into the GRAT. If the GRAT couldn't overcome the "hurdle" rate and declined in value, the individual would simply receive whatever was left in the GRAT at the end of the term and nothing would pass to the beneficiaries.

By way of example: Let's assume our 60 year old individual owns an investment portfolio valued at



\$1.5M and transfers the entire investment portfolio to a GRAT for a two year term. Based on the August 2012 IRS rate of 1%, he would be entitled to two annuity payments of approximately \$761,300. If the investment portfolio earned 6% a year over those two years, then after making the two payments, the GRAT would be left with approximately \$117K which would pass to the beneficiaries.

This technique is so popular that President Obama's proposals call for a minimum 10 year term for GRAT's.

*There are many techniques for reducing federal and state estate taxes and they are often dependent on an individual's circumstances and the types of assets owned. Please contact our office so that we may analyze your unique situation and determine the appropriate planning techniques necessary to effectuate a successful estate plan.*

<sup>1</sup> The "annual exclusion amount" is the amount an individual can gift annually free from federal gift tax. The annual exclusion amount in 2012 is \$13,000 for individuals and \$26,000 for married couples if gifting jointly.

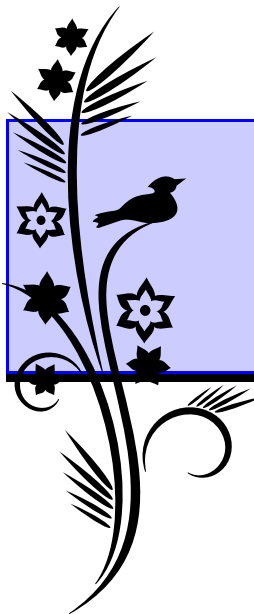
## REMINDER

Please call us if you have any questions, would like to review your current personal planning documents or would like to develop a new elder, estate and/or tax plan. Once retained, we are happy to help you. However, our representation is not continuous which means: upon completion of the assignment that you have requested of us, we will not provide planning for laws or circumstances which might have changed. You must specifically retain us if you desire further representation.

## GOING GREEN

If you have received this Newsletter by mail and would prefer to receive our Newsletter by email, kindly forward your contact information to Linda Semaria: [lsemaria@lissnerlawfirm.com](mailto:lsemaria@lissnerlawfirm.com) with a copy to Barbara H. Urbach Lissner: [bhlissner@lissnerlawfirm.com](mailto:bhlissner@lissnerlawfirm.com)

We hope you will join us in whatever small efforts we can all make to preserve our planet's natural resources.



Good plans  
shape good decisions.  
That's why good planning  
helps to make elusive dreams  
come true.

Lester Robert Bittel (b. 1918),  
writer

*We wish you a colorful fall  
season and beyond, always  
filled with health,  
happiness  
and  
peace.*



***Regardless of how you vote...***

***Remember***

***Election Day is November 6<sup>th</sup>***

