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*If you have any questions
about this Advisory,
please contact:*

LEONARD LEADER
203-363-7602
lleader@wiggin.com

VERONICA BAUER
561-701-8701
vbauer@wiggin.com

ROBERT BENJAMIN
212-551-2602
rbenjamin@wiggin.com

MICHAEL CLEAR
203-363-7675
mclear@wiggin.com

KAREN CLUTE
203-498-4349
kclute@wiggin.com

DANIEL DANIELS
203-363-7665
ddaniels@wiggin.com

HELEN HEINTZ
203-363-7607
hheintz@wiggin.com

ARSINEH KAZAZIAN
212-551-2632
akazazian@wiggin.com

PCS ADVISORY: NON-TAX REASONS FOR ESTATE PLANNING

The primary focus of estate planning is often on tax-saving strategies; however, since the newly-enacted federal estate tax laws have doubled the federal, estate, gift and GST tax exemptions to \$10,000,000 per person, indexed for inflation, it is important to point out that there are many other valuable reasons why estate planning should be a priority. Below is a summary of several non-tax reasons for effective estate planning.

ORGANIZATION AFTER DEATH

The grief following the death of a loved one is challenging enough to deal with even absent the stress and uncertainty of a disorganized estate. To minimize that stress, and to avoid any fighting that can result from it, it helps to have a solid plan in place to help guide your family in dealing with your estate. In addition to a will and revocable trust, this may include: (1) a recent list of assets and/or advisors; (2) a list of any debts; (3) a list of passwords to digital assets; and (4) instructions or memoranda regarding last wishes.

ENSURING YOUR WISHES ARE HONORED

If you die "intestate," meaning that you do not have a valid will at the time of your death, your assets will pass to individuals based on a set of laws adopted by the

state in which you are domiciled. So you do have an "estate plan" even without a will, or will and revocable trust, it is just not a plan that you picked. Estate planning documents ensure that your assets pass to the individuals of your choosing and in the manner you prescribe.

Beyond the flow of assets, estate planning documents allow you to make decisions regarding the fiduciaries who will help manage your affairs after your death. This includes appointing someone to facilitate the administration of your estate, known as an executor, and someone to care for any minor child you may have at your death, known as a guardian. Without valid estate planning documents, the probate court becomes involved in the appointment of these individuals; at minimum, this creates added time and expense, but at worst, this process could result in the appointment of individuals whom you would not have chosen yourself.

PROBATE AVOIDANCE

In many cases, proper estate planning can reduce, or even eliminate, the involvement of the probate court in the administration of a decedent's estate.

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DAVID KESNER
 203-498-4406
 dkesner@wiggin.com

CHARLES KINGSLEY
 203-498-4307
 ckingsley@wiggin.com

ERIN NICHOLLS
 203-498-4319
 enicholls@wiggin.com

BETH SCHARPF
 212-551-2634
 bscharpf@wiggin.com

MATTHEW SMITH
 203-363-7639
 msmith@wiggin.com

In Connecticut, there is no way to fully avoid probate (as a tax return must be filed with the probate court), but probate court oversight can be minimized by having no—or very few—assets pass through your “probate estate,” meaning the assets that pass by virtue of your will. One of the most effective ways of reducing the assets in your probate estate is to fund a revocable trust. Like a will, a revocable trust facilitates the transfer of property at death, but it does so without as much probate court oversight. In New York specifically, the probate process is often costly and time-consuming due to delays in the Surrogate’s Courts, and is a public proceeding. An additional benefit to having a revocable trust is that court proceedings can be avoided when there is a change in the trustee.

Beyond the initial administration of an estate, courts in Connecticut will have ongoing jurisdiction over any trust created under a will. This jurisdiction often results in costly administrative proceedings, such as the filing of periodic probate accountings. However, this burden can be reduced by establishing continuing trusts (e.g. for a surviving spouse or descendants) under a revocable trust, over which the probate court will not have that same ongoing jurisdiction.

PRIVACY

What comes as a surprise to many of our clients is that a will is made public upon

the death of the testator. That means that the provisions of a will become part of public record, and other court filings—such as detailed lists of assets owned at death—become susceptible to inspection by the public. Estate planning prior to death can largely curtail any unwanted disclosure. Such planning may include funding a revocable trust prior to death, as mentioned above, but it can also include the use of a business entity or irrevocable trust.

TRUST PLANNING

People often discuss trust planning in terms of its tax advantages, but that is just one of its myriad benefits. Below are non-tax reasons to consider when contemplating trust planning.

- **Delaying Inheritance.** There are many reasons why clients may not want their children or other beneficiaries to have immediate access to their inheritance. For example, clients will often want their children to get accustomed to money management before having full reign over a large amount of money. In this instance, it may be appropriate to put the inheritance in a trust that staggers distributions over certain age milestones. Without any structure, it is likely that a beneficiary would be able to gain full access to an inheritance at a young age.

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

- **Asset Protection.** Another fear that clients have is the susceptibility of their children’s inheritance to the claims of creditors, such as a divorcing spouse. In this instance, a trust from which only an independent trustee can make distributions can be put in place. If administered correctly, this “asset protection trust” can help insulate an inheritance from creditors.
- **Protection for Descendant.** A trust is an effective vehicle to ensure a family’s wealth can be preserved for descendants. For surviving spouses, a trust ensures that assets do not go to a new spouse, but are preserved for the descendants of a prior marriage. Using a trust for children ensures that assets may be preserved for grandchildren and that assets will not be redirected to an in-law’s family.
- **Special Needs Planning.** In order to preserve the availability of government assistance for a beneficiary who has special needs, it is important to keep his or her inheritance in a specialized trust, often referred to as a supplemental or special needs trust.
- **Planning for Special Assets.** Some types of assets, such as business interests, art, and real estate located outside a state of domicile, can benefit from trust or entity planning, such as a limited liability company or limited partnership. Using a trust or a business entity for ownership of special assets helps facilitate succession planning and structure, and can help ensure that the family business or family vacation home stays in the family for generations.

CHARITABLE PLANNING

Charitable giving at death is never a self-effectuating process; it requires affirmative planning during your lifetime. If a client is charitably inclined, it likely makes sense for that person to seek the advice of counsel, since certain types of assets lend themselves better to charitable giving, depending on the particular circumstances and the goals of that client.

We welcome the opportunity to discuss any of the non-tax reasons for estate planning available to you. Please do not hesitate to contact your Wiggin and Dana attorney to discuss your estate planning needs.