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BASIC ESTATE PLANNING CONSIDERATIONS

First, you should consider whether or not your estate is of such a value that it would be in your best interest to establish a Unified Credit Trust (a/k/a Marital Deduction Trust). Through the use of this Unified Credit Trust a married couple is able to maximize the amount that is exempt from estate taxes under both federal and state law. First you should know that there is a complete marital deduction for any amount passed to a surviving spouse upon the passing of the first spouse; so there is never any estate tax due when the first spouse dies. Upon the passing of the second spouse, however, the entire estate is subject to tax less the unified credit exemption under federal and state law. By creating the Unified Credit Trust for each spouse and funding them during the married couples' lifetime, the couple can pass up to twice the amount of the unified credit exemption to their heirs tax free upon the passing of the second spouse.

For example, in Massachusetts there is a unified credit exemption of \$1 million for an individual's estate (The federal government also imposes an estate tax. For calendar year 2019 federal law allows a unified credit exemption of \$11.4 million for an individual's estate). The Unified Credit Trusts enable both spouses to take advantage of their unified credit exemption to pass up to \$2 million to their heirs free of estate taxes. On the death of the first spouse, property equal to the unified credit remaining to that spouse (the amount of the unified credit is reduced by the amount of any non tax exempt gifts made by the decedent during the decedent's life) - up to \$1,000,000 maximum - is held in trust. Any amount in excess of the Unified Credit can pass directly to the surviving spouse without tax and the surviving spouse can then also receive 100% of the income from the deceased spouse's trust while retaining full control over the assets in his or her trust until his/her death. At the surviving spouse's death, the assets in the first spouse to die's trust are added to the second spouse's assets and the combined exemption of both spouses, which is equal to the remaining balance of their unified credits, are subtracted from the combined estate to determine the taxable estate. If then, neither spouse used any part of his/her unified credit during their lifetime, they could pass \$2 million in assets to their heirs free of estate taxes.

In terms of valuing your estate, you should consider the value of all your personal and real property as well as life insurance and intangible assets such as stock interests.

The questionnaire I am providing you herewith should be helpful in determining whether you presently have a taxable estate.

Regardless of whether you establish a Unified Credit Trust or a simple testamentary trust (primarily used to ensure that assets left to minors are under the control of a trustee until the minor beneficiaries reach certain ages, designated by you, as to when they are to receive the assets outright) you will need to appoint individuals to serve in various capacities. First, you should consider appointing a guardian or guardians for your minor children. The guardian's responsibility would be to care for the physical well being of the minor children. Secondly, you will need to name a personal representative (formerly referred to as an executor) of the Will, who will be responsible for carrying out your wishes as expressed in the Will and seeing to the distribution of assets. The executor would also be responsible for filing any estate tax returns and probating the Will, if necessary. Finally, you will need to name a trustee who will be vested with the power to carry out the terms of your trust. Since your assets will be held in trust for your children until they reach an age designated by you, the trustee will have the power over the assets you will be leaving for your children. The standard language used in the trust requires that the trustee pay over the income of the trust to the children on a regular basis. The trustee is also granted the authority to make distributions from the trust assets to provide for the health, welfare and education of the children.

Regarding your Will you should first consider whether you would like to make any specific bequests at the time of your death. For example, you may want to leave your stamp collection to your brother, a certain piece of jewelry to your sister or a certain sum of money to an individual or charity. After you have made any specific bequests you should consider how you want the remainder of your estate distributed. If the remainder is being left to more than one individual you should indicate what percentage each is to receive.

As mentioned above, you determine the age at which the beneficiaries under the Trust receive their share of the Trust fund. In deciding this you should consider at what age you think the beneficiaries will be responsible enough to handle the assets that you will be leaving them. You may, if you wish, direct that the principal of the trust be paid over in phases. For example you may direct that the beneficiary receive 50% of the principal at the age of 22 and the balance of the principal at the age of 25.

When preparing an estate plan it is often a good time to consider whether you would like to have drafted a health care proxy and a durable power of attorney. The health care proxy is a document that allows you to appoint an agent to make health related decisions, including decisions regarding the use of artificial life support machines, on your behalf if you are unable to comprehend the consequence of such decisions or communicate your intentions and allows you to express your intentions with respect to said care.

The durable power of attorney allows you to designate an individual as your attorney-in-fact and authorize him/her to act on your behalf.