



A PRACTICE ROOTED IN SERVICE™

ESTATES AND TRUSTS QUARTERLY

Volume 1 Issue 1

Fall 2005



Welcome to the inaugural issue of the Estates and Trusts Planning and Administration newsletter from Leech Tishman Fuscaldo & Lampl, LLC (LTFL). This publication outlines current issues and updates in estates and trusts law.

PROTECTING YOUR ESTATE: FEDERAL ESTATE TAX EXCLUSION

The Federal Estate Tax Exclusion is the amount of an individual's estate excluded from Federal Estate Tax. In 2005, the exclusion is \$1.5 million for an individual and \$3 million for a married couple. The Federal Estate Tax Exclusion amount will increase to \$2 million in 2006 and \$3.5 million per person in 2009. There is a one-year repeal of the Federal Estate Tax in 2010 and the Federal Estate Tax Exclusion then drops back to \$1 million.

Congress will likely raise the Federal Estate Tax Exclusion amount within the next few years. In the interim, you should make sure that your estate plan takes full advantage of the exclusion

"Everything you work for your entire life can come undone if not planned for properly," says **Pete A. Fuscaldo**, LTFL partner. "Many prefer not to think about their own mortality, yet preparations are crucial to protecting your estate, and your family."

Married couples can maximize the Federal Estate Tax Exclusion by setting up credit shelter trusts for each spouse in their wills. Each spouse then titles assets in his or her individual name to fully fund the credit shelter trust. Holding property jointly is also possible if Qualified Disclaimers are used.

You should review your wills and asset titles regularly with your LTFL attorney to confirm that you are taking full advantage of the increasing Federal Estate Tax Exclusion.

UNDERSTANDING PRIVACY LAWS: UPDATING POWER OF ATTORNEY

A Power of Attorney allows someone to make financial and health care decisions for you in the event of incapacity. In contrast, a Living Will provides for the cessation of life support if you are terminally ill. Most of our clients typically sign both Powers of Attorney and Living Wills.

"Signing both helps you direct your health care if you become unable to communicate your intentions," explains **Ted Tishman**, LTFL partner. "If your chosen representatives do not have this authorization, health care professionals cannot provide them with the medical information they may need to carry out your wishes."



The explosive growth of the Internet has increased the incidents of privacy invasions and identity theft. Congress has responded with new privacy laws. The Health Insurance Portability and Accountability Act (HIPAA) is a new federal law that restricts healthcare providers (i.e. doctors, hospitals, nursing homes, and other health and medical professionals) from releasing information about you.

The impact of HIPAA on Powers of Attorney is best illustrated by example. Assume that you name someone other than a spouse as your agent pursuant to a Power of Attorney. Assume further that you are incapacitated. Health care providers are barred from releasing medical records to the agent unless your Power of Attorney references HIPAA, and designates the agent as your "personal representative" for purposes of getting and sharing personal information about you under HIPAA.

We recommend our clients sign a new Power of Attorney that both references HIPAA, and designates the agent as your "personal representative."

CARING FOR YOUR LOVED ONES: SPECIAL NEEDS TRUSTS

One out of five or 53.9 million Americans reports some form of disability. Seven out of 10 Americans are either directly impacted by a disability, or have a family member, friend or associate who has a disability.

When properly drafted, a Special Needs Trust may enable a person under a physical or mental disability, or an individual with a chronic or acquired illness, to hold, in trust, an unlimited amount of assets, without those assets being considered countable assets for purposes of qualification for governmental benefits that are based upon need.

“A Special Needs Trust is a valuable estate planning and investment tool for parents of a disabled child,” explains **Richard “Dick” Scott**, partner with extensive experience in the area of estate planning for families with disabled individuals. “It is very common for parents to create the Special Needs Trust as a means for holding assets to benefit disabled children after the parent’s death. Additionally, the disabled or chronically ill individual may at some time during his or her lifetime come into funds from third party sources which could include personal injury settlements, bequests from relatives or friends, Social Security or other types of insurance back payments, and the like. A government approved ‘pooled’ or ‘pay-back’ trust protects those monies.”

Estate planning for families with disabled individuals requires special expertise. A poorly drafted estate plan can make a disabled person ineligible for government benefits such as supplemental security income (SSI) and Medicaid.



SPECIAL NEEDS TRUSTS: AN EXAMPLE

Question. John and Sally are married and in their early 40s. The couple has three minor children, two of whom are in good health. Bill, the youngest, is a special needs child and receives government assistance. John and Sally want each of the children to eventually inherit one-third of their wealth, but are concerned that any inheritance by Bill will make him ineligible for government assistance. How can we provide for Bill without jeopardizing the support he receives from the government?

Answer. A Special Needs Trust is a solution for John and Sally. Bill’s one-third share of John and Sally’s wealth will pass to a trustee. The trustee will have absolute discretion over distributions from the trust for Bill. The special needs trust will pay for expenses not covered by the government aid such as travel, education, recreation, telecommunication, and haircuts. Distributions for items such as food, clothing, housing and medication are prohibited as they are covered through his support from the government, which he can continue to receive. The Special Needs Trust assets pass to Bill’s two siblings at his death rather than to the government.

For more information about how to set up a special needs trust,
contact an LTFL estate planning attorney by calling (412) 261-1600.

KEEPING WHAT YOU HAVE: ASSET PROTECTION PLANNING

Asset protection planning involves determining a strategy and applying a lawful series of techniques that protect your assets from claims of future creditors. The techniques are designed to deter potential creditors from pursuing your assets, generally by making it difficult or impossible for future creditors to grab hold of your assets or collect judgments against you.

In cases where significant sums are involved, asset protection planning may include setting up a series of domestic or offshore trusts and/or partnerships to hold legal title to your assets. A future creditor who recognizes how difficult it would be to collect on any judgment it may win, might decide it makes little sense to pursue a claim, or be willing to settle for pennies on the dollar.

“An important point to keep in mind is that there is a very sharp dividing line between “legal” asset protection planning, and actions to defraud creditors,” says **David J. DelFiandra**, LTFL associate lawyer. “For that reason and the fact that there are many different techniques to protect different categories of assets, it is essential to have a knowledgeable attorney guide you through the process.”



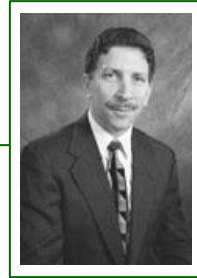
ESTATE PLANNING AND ADMINISTRATION

ATTORNEY PROFILES

Ted Tishman co-founded the firm with Anthony P. Leech in 1994. While Ted today leads the estate planning and estate administration practice, he applies his cross-disciplinary experience in corporate and tax law in supporting the firm's clients.

Ted spent four years with Arthur Andersen's tax/audit practice. He serves on the adjunct faculty of the Robert Morris University Master's of Taxation program, where he teaches courses on Federal Estate and Gift Taxes and Estate Planning.

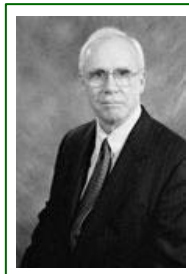
Ted is a member of the Allegheny County, Florida, and American Bar Associations, as well as the Pennsylvania Institute of Certified Public Accountants and the American Institute of Certified Public Accountants. Ted is a 1979 graduate of Duquesne University School of Law. He earned his bachelor's degree in Finance from Duquesne University in 1976. He is also a CPA.



Pete A. Fuscaldo joined as a partner of Leech Tishman Fuscaldo & Lampl in 1997. Today he leads the firm's taxation practice and serves as corporate, tax, and general business counsel for a number of growing business ventures and professional service entities.

He is an adjunct professor of Robert Morris University's Master's of Taxation program, where he teaches Federal Estate and Gift Taxes and Estate Planning.

Pete is a member of the Allegheny County Bar Association, serving on the taxation and probate and trusts sections. He is also a member of the Allegheny Tax Society. He earned his law degree from the T.C. Williams School of Law at the University of Richmond, Richmond, Virginia, in 1991 and his bachelor's degree in Accounting from Duquesne University in 1988.



Richard "Dick" S. Scott merged his well-established estate planning and estate administration practice with Leech Tishman Fuscaldo & Lampl in 1999, bringing his more than 35 years of estate-related legal expertise.

A long-standing volunteer with non-profit organizations serving the disabled (Achieva [formerly ARC - Allegheny], ARC-PA, ARC-US, Easter Seals), Dick is well known in the community for his estate planning work for people with disabilities and their families.

Dick is featured in the Probate and Estate Planning Section of the Bar Register of Preeminent Lawyers. He is a member of the Allegheny County and Pennsylvania Bar Associations, and serves on their probate and trust law sections. He is also a member and past board member of the Pittsburgh Estate Planning Council. A 1967 graduate of University of Pittsburgh School of Law and 1964 cum laude graduate of Princeton University, Dick provides a wealth of valuable experience on estate issues to our firm's clients.



David J. DelFiandra is a member of the estate planning and administration, taxation, and employment groups. He joined Leech Tishman Fuscaldo & Lampl in October 1997. David's work spans estate planning and administration, federal and state taxation and employment law. He represents both employers and employees.

He serves on the faculty of the Robert Morris University Master's of Taxation program, teaching Federal Estate and Gift Taxes and Estate Planning. David also teaches Estate Tax Planning in Duquesne University's School of Leadership and Professional Advancement as part of the Certified Financial Planner Program.

David earned his law degree from Duquesne University School of Law in 2000, where he was a member of the Duquesne Law Review. He earned a bachelor's degree in Business Administration - Accounting from The Ohio State University in Columbus, Ohio, in 1996. David is licensed to practice in Pennsylvania and West Virginia.