HERMENZE & MARCANTONIO LLC
ESTATE PLANNING PRIMER FOR MARRIED COUPLES – 2016

(New York)

I. Purposes of Estate Planning.

A. Providing for the distribution and management of your assets after your death.

B. Maximizing your family's inheritance by minimizing taxes and administration expenses.

C. Protecting assets left to your surviving spouse, children, and other beneficiaries from certain claims by third parties (such as spouses and creditors).

D. Minimizing, to the extent advisable, surrogate's court supervision over the settlement of your estate.

E. Providing for the management of your financial and personal affairs should you become incapacitated.

II. How Property is Titled and How it Passes at Death.

A. Property held jointly with right of survivorship or as tenants by the entirety.

1. Passes automatically by operation of law to surviving joint tenant(s).
2. Passes outside of probate.
3. Subject to estate taxes.

B. Property passing by beneficiary designation.

1. Examples: Life insurance, IRAs, retirement plans, annuities, "in trust for" (ITF) accounts, and "transfer on death" (TOD) accounts.
2. Passes outside of probate to person(s) named as beneficiary.
3. Subject to estate taxes.

C. Property titled in your own name.

1. Includes most types of property not covered by A and B above.
2. Passes at death according to the terms of your Will.
3. Subject to estate taxes.
4. If you have no Will, property titled in your own name passes pursuant to state law of intestacy.

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5. Disadvantages of intestacy:

   a. Prevents you from choosing the beneficiaries of your estate and the amount of property they will receive. Instead, this would be determined by New York law. Example: In a first marriage, if one spouse dies without a Will, leaving a surviving spouse and child, intestacy law says that the survivor will receive first $50,000 of probate estate, plus one-half of the remaining balance, and child will receive other one-half of the remaining balance.

   b. Complicates estate administration and increases costs.

   c. Prevents you from selecting your own Executors, Trustees, and Guardians.

   d. Limits your ability to do tax planning.

   e. Prevents you from making special provisions to address unique family circumstances, e.g. you would not be able to establish trusts for disabled or minor beneficiaries.

III. Federal Estate and Gift Tax Overview.

A. Federal estate and gift tax rate.

1. Federal estate and gift tax rate is 40%.

2. Rate applies to lifetime and at-death transfers in excess of your exemption amount ($5,450,000 in 2016) to beneficiaries other than spouses.

B. Unlimited marital deduction.

1. Transfers between spouses are free of federal estate and gift tax.

2. Example: A spouse with an estate of $100 million can leave entire estate to a surviving spouse, and there will be no federal estate tax due.

3. Not an exemption, but rather a deferral for transfers between spouses–U.S. will collect its tax at the survivor's death when property passes down to the next generation.

4. So, the unlimited marital deduction only avoids the estate tax temporarily.

5. Unlimited marital deduction applies to outright transfers between spouses, and also where assets are left in trust for a surviving spouse, in order to provide non-tax benefits for the surviving spouse, children, or other beneficiaries, provided trust has terms of a qualified Marital Trust (see section VII.G below).
6. Unlimited marital deduction is not available for transfers at death where surviving spouse is not a U.S. citizen, unless special trust structure (a "Qualified Domestic Trust") is used.
7. Unlimited marital deduction is not available for lifetime gifts to a non-citizen spouse, but up to $148,000 can be gifted annually to a non-citizen spouse without using any portion of exemption amount.

C. <u>Federal estate and gift tax exemption</u>.

1. Each person has a federal estate and gift tax exemption of $5,450,000 in 2016.
2. Exemption amount is indexed for inflation. Amount was $5,430,000 in 2015.
3. The exemption amount is a combined exemption for both federal gift and estate tax purposes, meaning that you can give away a total of $5,450,000 during life or at death, or during life and at death combined, free of any federal estate and gift tax. The 40% rate applies to non-marital transfers in excess of your exemption amount.

D. <u>Exemption “portability”</u>.

1. Beginning 1/1/11, estate tax law provides for “portability” of a deceased spouse’s exemption by a surviving spouse.
2. If election is made on a timely filed federal estate tax return for the estate of the deceased spouse, the surviving spouse may keep (“port”) the otherwise unused gift and estate tax exemption of the deceased spouse for the surviving spouse’s own future use, <u>in addition to</u> the survivor’s own exemption amount.

3. For example, if a spouse dies in 2016 leaving his or her estate to a surviving spouse, without otherwise using his or her federal estate and gift tax exemption, if portability election is properly made, the survivor will have an exemption after the first spouse's death of $10,900,000, consisting of the survivor's own $5,450,000 exemption plus the deceased spouse's unused $5,450,000 exemption "ported" by the survivor .
4. Exemption portability does NOT apply to New York estate tax exemption of first spouse to die (see section IV.A below).
5. Exemption portability does NOT apply to generation-skipping transfer tax exemption of first spouse to die (see section IX below).
6. Ported exemption of first spouse is lost by surviving spouse if surviving spouse remarries and then is predeceased by his or her new spouse. This cancels out the ported exemption of the first deceased spouse, and replaces it with the unused exemption of the second deceased spouse (which may have been used up by that spouse).
7. Critical to assess need to make a timely portability election upon death of first spouse.
8. Consideration should be given regarding who should be named as Executor of the first deceased spouse's estate, as this is the person or entity who decides whether or not to elect portability, which could have significant tax ramifications for the first spouse's estate.

E. Annual and "med-ed" gift exclusions–do not reduce your estate and gift tax exemption.

1. You can make "annual exclusion" gifts of $14,000 per year to as many people as you wish, free of federal estate and gift tax, without using up any of your estate and gift tax exemption.
2. A married couple can make combined annual exclusion gifts of $28,000 per year per person to as many people as desired.
3. $14,000 annual exclusion is increased periodically for inflation.

4. Medical payments on behalf of others made directly to providers do not use up any of your estate and gift tax exemption, and do not count toward your $14,000 annual exclusion amounts.

5. Tuition payments on behalf of others made directly to schools do not use up any of your estate and gift tax exemption, and do not count toward your $14,000 annual exclusion amounts.

F. Charitable deduction.

Transfers to qualified charities are gift and estate tax free.

G. Capital gains tax.

1. Capital gains tax on most assets subject to estate tax are eliminated at death. Beneficiaries receive an unlimited cost basis “step-up” on appreciated assets equal to their fair market value at the date of death. For example, if father purchases a stock for $1, and at his death when the stock passes to his son, the stock is worth $100, son’s new cost basis in the stock is $100. If son sells the stock for $100, there would be no capital gain.

2. Beneficiaries of assets gifted during life do NOT receive basis “step-up”. For example, in the preceding paragraph, if father gifted the stock to son the day before he died, when the stock was worth $100, son’s cost basis in the stock would remain $1. If son sells the stock for $100, there would be a capital gain of $99.

IV. New York Estate Tax Overview.

A. New York estate tax rate and exemption.

1. The maximum New York estate tax rate is 16%.

2. Each person has a New York estate tax exemption of $3,125,000 until April 1, 2016. This exemption will increase annually, as shown below.

3. The exemption is not available to all estates. The benefit of the exemption is phased out for estates valued between 100% and 105% of the exemption amount. Estates valued at 105% or more of the exemption amount lose

the benefit of the exemption altogether, thereby subjecting the entire estate to New York estate tax.

4. The following table contains the increasing New York estate tax exemption amounts and the dollar amount at which they are fully phased out:

Date of Death	New York Exemption	Full Phaseout of Exemption
April 1, 2015 to March 31, 2016	$3,125,000	$3,281,250
April 1, 2016 to March 31, 2017	$4,187,500	$4,396,875
April 1, 2017 to December 31, 2018	$5,250,000	$5,512,500
January 1, 2019 and after	Will match federal estate tax exemption	105% of federal estate tax exemption

5. The New York estate tax exemption is <u>NOT</u> portable.

6. Each spouse has a $3,125,000 New York estate tax exemption, but a married couple does not have a combined exemption of $6,250,000.

7. Where a married couple has combined estates of over $3,125,000, careful planning is necessary to preserve the exemption of the first spouse to die (see section VII.C below).

B. <u>Unlimited marital deduction</u>.

1. Transfers between spouses are free of New York estate tax.

2. Operationally identical to federal unlimited marital deduction described above.

C. <u>New York has no gift tax</u>. However, taxable gifts made within three years of death are subject to New York estate tax unless they were made before April 1, 2015, or on or after January 1, 2019, or unless they were made when the decedent was not a New York resident.

V. <u>Estate Taxes of Other States</u>.

A. Fifteen states and the District of Columbia have an estate tax, and seven states have an inheritance tax.

B. States with estate taxes include Connecticut, Massachusetts, Rhode Island, Vermont, New Jersey, and Maine, and other popular second home locations.

C. Ownership of real estate and personal property in a state with an estate tax exposes you to the estate tax of that state. Special planning considerations may apply.

VI. <u>Ownership of non-U.S. assets</u>.

A. Assets located in foreign countries owned by U.S. citizen or resident are subject to U.S. estate and gift tax, and may also be subject to tax law of the country of location.

B. Special disclosure obligations may apply to such assets.

C. Special planning considerations apply.

VII. <u>Estate Planning for Married Couples Using Tax-Optimal Trusts</u> .

A. <u>Common Goals</u>:

1. Postpone estate taxes whenever possible until the surviving spouse's death.
2. After death of first spouse, permit survivor use of all the couple's assets.
3. Minimize estate taxes when the couple's combined assets pass to the children or other beneficiaries at the survivor's later death.
4. Protect assets left to surviving spouse for future benefit of children or other beneficiaries from certain claims of future spouses and other third parties (such as creditors).

B. <u>For married couples whose combined estates do not (and will not) exceed $3,125,000, simple plan may suffice for estate tax purposes, but not necessarily for non-tax purposes</u>.

1. At death of first spouse, entire estate of first spouse is left outright to the surviving spouse.
2. No New York or federal estate taxes are due at the first spouse’s death.
3. Survivor has full use of all assets during survivor’s lifetime.

4. At survivor's later death, if total estate value is less than survivor's $3,125,000 New York estate tax exemption, there will be no federal or New York estate tax due.
5. A simple plan does not protect a couple's assets for the surviving spouse, children, and other beneficiaries from certain claims of future spouses and other third parties (such as creditors), and does not ensure that the couple's assets will pass to the couple's common children or other intended beneficiaries. This can be accomplished through the use of an Estate Tax Sheltered Trust, discussed in the next section.

C. <u>For married couples whose combined estates may exceed $3,125,000, consider a tax-effective estate plan using an "Estate Tax Sheltered Trust" to utilize the New York estate tax exemption of the first spouse to die and to provide non-tax benefits</u>.

1. Simple plan with no trust does not utilize $3,125,000 New York estate tax exemption of first spouse to die. See Example 1.
2. Alternative tax-effective plan of first spouse to die directs or allows up to $3,125,000 of his or her estate to pass into an Estate Tax Sheltered Trust. See Example 2.
3. This transfer to the Estate Tax Sheltered Trust utilizes the New York estate tax exemption of first spouse to die.
4. Balance of estate of first spouse to die passes to surviving spouse, either outright or in a qualified marital trust, and thus qualifies for unlimited marital deduction.
5. No federal or New York estate tax is paid at death of first spouse.
6. At surviving spouse's later death, entire value of Estate Tax Sheltered Trust, <u>including all appreciation</u>, passes to children or other beneficiaries free of New York estate tax. New York estate tax savings, compared to simple plan with no Estate Tax Sheltered Trust, is $391,600. Tax savings would be greater for larger estates.

7. Estate Tax Sheltered Trust can also achieve non-tax benefits for family members as discussed in section G below.

8. Estate Tax Sheltered Trust can be designed to allow optional use by surviving spouse (see section F below).

D. Improving upon portability by utilizing an Estate Tax Sheltered Trust.

1. Portability allows a surviving spouse to use the federal estate tax exemption of the first spouse to die by porting the exemption, rather than by capturing it through the use of an Estate Tax Sheltered Trust. See Example 3.

2. However, relying on portability alone poses certain risks:

   a. The first spouse's estate may fail to take advantage of portability by timely filing a federal estate tax return at the first spouse's death.

   b. If the surviving spouse remarries and the survivor's new spouse predeceases the survivor, the first spouse's exemption ported by the survivor is lost.

   c. The first spouse to die loses control of his or her exemption amount ported by the survivor. The survivor can use the first spouse's exemption to make transfers to beneficiaries other than the couple's children or other intended beneficiaries. For example, assume both spouses in a second marriage have children from a prior marriage. The first spouse dies in 2016, and that spouse's $5,450,000 federal estate tax exemption is ported to the surviving spouse. The surviving spouse can utilize the first spouse's exemption to make a gift or at-death transfer of $5,450,000 to the survivor's own children and thereby deprive the first spouse's children of the use of the first spouse's exemption. This would expose all of the first spouse's assets to federal estate tax.

3. Using an Estate Tax Sheltered Trust to capture the federal exemption of the first spouse to die, rather than relying on portability, has certain advantages:
    a. Prevents unintended future loss of the exemption.
    b. Preserves the exemption for intended beneficiaries.
    c. Also removes, from taxable estate of surviving spouse, the <u>future appreciation</u> on the assets in the Estate Tax Sheltered Trust (portability is limited to the dollar amount of the exemption of the first spouse ported by the surviving spouse).
4. Estate Tax Sheltered Trust utilizes the federal estate tax exemption of first spouse to die. See Example 4.
5. Balance of estate of first spouse to die passes to surviving spouse, and thus qualifies for federal and New York estate tax unlimited marital deduction.
6. No federal estate tax is paid at death of first spouse, but a New York tax in the amount of $444,800 would be payable at the first spouse’s death. However, beginning in 2019, there will no longer be any New York estate tax payable by utilizing this option.
7. At surviving spouse's later death, entire value of Estate Tax Sheltered Trust, <u>including all appreciation</u>, passes to children or other beneficiaries free of federal and New York estate tax.
8. Must weigh certain income tax benefits of portability against utilizing Estate Tax Sheltered Trust. Assets in Estate Tax Sheltered Trust do not receive a step-up in basis at the surviving spouse’s death, whereas assets passing at the survivor’s death through portability will receive a stepped-up basis.

E. <u>Designing the "Estate Tax Sheltered Trust"</u>.

1. Surviving spouse may be the sole Trustee or a co-Trustee, depending on your objectives and how the trust is written.

2. Surviving spouse can receive all the income, and can withdraw up to 5% of the trust principal annually without the Trustee's approval. In addition, Trustee can distribute additional principal to surviving spouse as needed to maintain his or her lifestyle.
3. Children, grandchildren, and other family members can be beneficiaries of the trust along with the surviving spouse, and can receive income and principal as needed for their support and education.
4. An Independent Trustee may terminate the trust if family or financial considerations require, or if there would be no estate tax benefits to continuing the trust.
5. Surviving spouse can, at his or her later death, modify the distribution of property to family members.

F. "<u>Disclaimer" plan leaves options open</u>.

1. Can permit surviving spouse to decide, at time of first spouse's death, whether or not to use the Estate Tax Sheltered Trust. The trust may be unnecessary if the couple's combined assets are less than the survivor's federal and/or New York estate tax exemptions, or if it would be preferable to rely on portability of the first spouse's federal estate tax exemption.
2. Flexible wait-and-see approach.
3. Decision must be made by surviving spouse within 9 months of the first spouse's death.
4. Disclaimer Estate Tax Sheltered Trust must be set up in each spouse's estate planning document.
5. Surviving spouse may not accept the benefit of the assets that could fund the Disclaimer Estate Tax Sheltered Trust until the decision to make the disclaimer is made.

6. This technique is not effective for couples wishing to protect their assets for the surviving spouse and children from claims of future spouses and other parties (such as creditors).

G. Combining Estate Tax Sheltered Trust planning and Marital Trust planning.

1. As indicated above, use of an Estate Tax Sheltered Trust can be beneficial to preserve the New York and/or federal estate tax exemptions of the first spouse to die.
2. Many couples are also concerned about preserving combined estate for future benefit of that couple's children, grandchildren, or other intended beneficiaries, and protecting the surviving spouse from certain demands and claims of future spouses and other third parties (such as creditors).
3. An Estate Tax Sheltered Trust may be designed to protect trust assets from such claims.
4. If value of couple's assets exceeds the available estate tax exemption amount of the first spouse, additional assets can be held in a qualified Marital Trust for the survivor, which can provide similar protections.
5. Terms of Estate Tax Sheltered Trust and Marital Trust for the survivor are designed to allow survivor use of assets, but to provide that at survivor's later death, assets must pass to children of current marriage or other intended beneficiaries, as opposed to a future spouse, children of a future marriage, or other unknown beneficiaries.

H. Important Details!

1. How assets are titled can defeat tax plan.
2. Assets should be titled so plan works regardless of which spouse dies first.

VIII. <u>The Next Level of Planning After Utilizing Both Spouses' Federal and New York Estate Tax Exemptions.</u>

A. <u>Gifting -- Even though estate and gift tax rates are the same, making lifetime gifts may be more tax efficient than holding property until death</u>.

1. $14,000 annual exclusion and direct medical and tuition payments are available only for gifts, not at-death transfers.
2. All future income earned on gifted property is removed from your eventual taxable estate.
3. All future appreciation of gifted property occurs outside of your eventual taxable estate.
4. Consider capital gains tax consequences upon sale of gifted property. Recipient of gift receives the donor's cost basis in the property, whereas if the recipient inherited the property through the donor's estate, the property would receive a stepped-up basis.

B. <u>Look for things that are relatively cheap to give away now</u>. Allow appreciation to accrue in the hands of future generations, and outside of your estate.

C. <u>Prime Example -- Life Insurance</u>.

1. Can have little current value.
2. Value for gift tax purposes is current cash value plus cost of annual premiums.
3. Effective lifetime gift of policy entirely removes from your taxable estate the much greater face value of policy at your death.
4. <u>Consider gifting a life insurance policy to an irrevocable life insurance trust</u>.
    a. An effective way to remove life insurance proceeds from your taxable estate and your spouse's taxable estate.
    b. Insurance proceeds would be payable to the trust at your death (rather than directly to your spouse).

c. Your spouse, children, and other family members can be beneficiaries of the trust and have access to income and principal to maintain their lifestyles.

d. See our Advanced Estate Planning Primer for additional planning techniques.

IX. **Generation-Skipping Transfer Tax Overview**.

A. As wealth passes from generation to generation, federal government assesses a federal estate tax at each generational level.

B. Prior to 1986, you could "skip" the estate tax on the wealth passing to your grandchildren by leaving the property in trust for your children, with them having access (but not unlimited access) to the trust property. At children's later deaths, trust property would pass to your grandchildren, free of estate tax at that time, because the children's access to the trust property would not be enough of an ownership interest in the trust property to bring it into their taxable estates.

C. In 1986, Congress passed the Generation-Skipping Transfer Tax ("GST"). The GST rate is equal to the federal estate tax rate (40%). It is imposed on transfers during lifetime or at death, whether outright or in trust, to grandchildren or more remote descendants, if the transferred property is not subject to estate tax at each generational level.

D. Each person has an exemption from the GST equal to $5,450,000 (indexed annually for inflation). Thus, a married couple can structure their estate plan so that up to $10,900,000 of the couple's estates (after the payment of estate or gift taxes at their generational level) can be held in lifetime trusts for their children. Children will have use of the trust property to maintain their lifestyles, but at their later deaths, the trust property passes to the couple's grandchildren free of estate, gift, and GST tax. Assuming no growth in the trust assets during the lifetimes of the couple's children, transfer tax savings at the children's later deaths can be $4,360,000 ($10,900,000 x 40%). Assuming trust asset growth over the lifetimes of the children, savings is much greater. There may also be significant state estate tax savings.

E. In addition to significant transfer tax savings, trust structure may also better protect children's inheritance from creditors or from a spouse in the event of the child's divorce or death.

F. For couples without children, generation-skipping tax planning utilizing lifetime trusts can be beneficial to transfer wealth to nieces and nephews and other younger beneficiaries.

G. Estate planning at death that relies solely on portability (i.e. does not use an Estate Tax Sheltered Trust) may not take advantage of both spouses' GST exemptions.

X. Planning for the Distribution of Assets at the Surviving Spouse's Death.

A. At the survivor's death, children, grandchildren, and other beneficiaries may receive their inheritances either outright or in trust.

B. Trusts can be drafted to provide for distributions of income (i.e. interest, dividends, rents) and principal to the beneficiaries, as needed for their health, support, and education. The trusts can also provide for distributions directly to guardians of minor beneficiaries to help defray their expenses.

C. Trusts can last for the beneficiaries' lifetimes or could terminate at various ages to be determined by you.

D. Trusts are appropriate for minor and disabled beneficiaries, and for other beneficiaries who require assistance with the management of their inheritances.

E. Properly drafted Lifetime Trusts may better protect a beneficiary's inheritance from possible claims by spouses and other third parties (such as creditors).

F. A Supplemental Needs Trust for a beneficiary with a disability can preserve that beneficiary's eligibility for means-based government entitlement programs (such as Title XIX and SSI), and can be used to supplement such benefits. See our outline on this topic: A Financial Safety-Net for your Child with a Disability.

XI. Selection of Fiduciaries.

A. Executor - Administers estate.

1. Collects and protects estate assets; pays debts, taxes and expenses; and distributes probate property pursuant to terms of Will.
2. Personally liable for proper administration of estate.
3. Appointment terminates when estate is distributed.
4. When the bulk of a deceased person's assets are held in a Revocable Living Trust (see section XII below) and no Executor is appointed, the Trustee of the Revocable Living Trust performs these functions.

B. Trustee - Administers continuing trusts.

1. Holds and invests trust assets; pays taxes and expenses; and distributes income and principal to beneficiaries pursuant to terms of trust.
2. Considerable discretion in areas of investment and distribution of trust funds.
3. Personally liable for proper administration of trust.
4. Appointment ends when trust terminates, so appointment can last for many years.

C. Who can serve? Either individuals (such as family members or trusted friends) or professional fiduciaries (such as banks, trust companies, accountants, and attorneys) can serve as Executors and Trustees depending upon family, investment, and tax considerations.

D. Guardian - Protects minor children.

1. Makes personal decisions on behalf of minor child.
2. Appointment terminates when child attains majority.
3. Essentially acts as "surrogate parent" to child.
4. Person or couple should be capable of and willing to raise your child.

XII. **Using Revocable Living Trusts to Minimize Surrogate's Court Supervision over Estate Administration.**

A. A Revocable Living Trust is a property ownership arrangement set up by you during your lifetime dictating how property in the trust will be managed for you and your family during your lifetime and after your death.

B. You can be the Trustee of the trust. If you are unable to act as Trustee, a successor Trustee would take your place. Your successor Trustee can be an individual (such as your spouse, other family member, or trusted friend) or a professional Trustee (such as a bank, trust company, accountant, or attorney).

C. While you are living and competent, you have full access to and control over the property held in the trust. You can amend or revoke the trust at any time. Generally, no separate income tax return needs to be filed for the trust prior to your death.

D. If you become incapacitated, your successor Trustee can manage the trust assets for you, and make distributions to you and other family members, as needed for health and support. This could avoid the need for a surrogate's court appointed "Conservator".

E. Revocable Living Trust can act as a "Will substitute" after you die and direct the distribution of your property to family members without mandatory surrogate's court supervision. This could simplify and expedite the settlement of your estate and reduce estate settlement costs. However, Revocable Living Trusts do not reduce estate taxes.

F. A Revocable Living Trust is suitable for detail oriented people who seek as much family control as possible.

XIII. **Planning for Incapacity -- Planning for the Management of Your Assets and Your Person if You Are Living but Incapacitated.**

A. Durable Power of Attorney.

1. Gives another person (your "attorney-in-fact") power to execute financial and business transactions on your behalf (e.g. paying your bills, managing and selling your assets, and filing your taxes).

2. Purpose: To avoid the necessity of a surrogate's court-appointed guardian or conservator to manage your affairs in the event you become incapacitated.

3. Virtues: Easy, inexpensive, largely effective.

4. Cautions: Can be immediately effective (you must completely trust your attorney-in-fact!); may not always be accepted by third parties; lack of specific directions to attorney-in-fact.

B. Revocable Living Trust. See Section XII.D above.

C. Living Will and Health Care Proxy.

1. New York statute allows you to appoint a health care agent to make health care decisions on your behalf in the event you are unable to do so yourself. These decisions include the withdrawal of life support systems in the event of terminal illness.

2. Authorizes your health care agent to have access to your medical records under the federal privacy law (HIPAA).

3. New York Court of Appeals decision suggests you may sign a Living Will stating the type of treatment you would desire in the event of physical or mental disability, including your wishes regarding the withdrawal of life support.

This outline deliberately over-simplifies technical aspects of tax, property, probate and trust laws in the interest of clear communication. Examples are in some cases based upon unstated assumptions. Under no circumstances should you or your advisor rely on the contents of this outline for technical advice, nor should you reach any decisions with respect to planning without consulting a qualified advisor.

DATED JANUARY 1, 2016

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EXAMPLE 1

SIMPLE PLAN FOR ESTATES SUBJECT ONLY TO NEW YORK ESTATE TAX

(Based on federal estate tax exemption of $5,450,000 and New York estate tax exemption of $3,125,000. Assume couple's combined assets equal $5,000,000.)

FIRST SPOUSE'S ESTATE
$5,000,000

↓

No federal or New York estate tax (unlimited marital deduction).

OUTRIGHT DISTRIBUTION TO SURVIVING SPOUSE - INCLUDIBLE IN SURVIVOR'S ESTATE
$5,000,000

↓

Entire estate subject to New York estate tax; tax is $391,600.

Entire estate is protected from federal estate tax by survivor's own $5,450,000 exemption, or the $10,900,000 exemption obtained through portability.

CHILDREN OR OTHER BENEFICIARIES
$4,608,400

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EXAMPLE 2

TAX-EFFECTIVE PLAN FOR ESTATES SUBJECT ONLY TO NEW YORK ESTATE TAX

(Based on federal estate tax exemption of $5,450,000 and New York estate tax exemption of $3,125,000. Assume couple's combined assets equal $5,000,000.)

FIRST SPOUSE'S ESTATE
$5,000,000

No federal or New York estate tax because of unlimited marital deduction.

No federal or New York estate tax because of first spouse's federal and New York exemptions.

DIRECT DISTRIBUTION TO SURVIVING SPOUSE - INCLUDIBLE IN SURVIVOR'S ESTATE
$1,875,000

ESTATE TAX SHELTERED TRUST FOR SURVIVING SPOUSE
$3,125,000

Entire estate is protected from New York estate tax by survivor's $3,125,000 exemption.

Entire estate is protected from federal estate tax by survivor's own $5,450,000 exemption, or the $10,900,000 exemption obtained through portability.

No federal or New York tax because Estate Tax Sheltered Trust is not included in survivor's estate.

CHILDREN OR OTHER BENEFICIARIES
$5,000,000

POTENTIAL ESTATE TAX SAVINGS COMPARED TO SIMPLE PLAN IN EXAMPLE 1 = $391,600

EXAMPLE 3

SIMPLE PLAN FOR ESTATES SUBJECT TO BOTH FEDERAL AND NEW YORK ESTATE TAX UTILIZING PORTABILITY

(Based on federal estate tax exemption of $5,450,000 and New York estate tax exemption of $3,125,000. Assume couple's combined assets equal $10,900,000.)

FIRST SPOUSE'S ESTATE
$10,900,000

No federal or New York estate tax
(unlimited marital deduction).

OUTRIGHT DISTRIBUTION TO SURVIVING SPOUSE -
INCLUDIBLE IN SURVIVOR'S ESTATE
$10,900,000

Entire estate subject to New York
estate tax; tax is $1,210,800.

Entire estate is protected from federal estate
tax by survivor's $10,900,000 exemption
obtained through portability.

CHILDREN OR OTHER BENEFICIARIES
$9,689,200

EXAMPLE 4

TAX-EFFECTIVE PLAN FOR ESTATES SUBJECT TO BOTH FEDERAL AND NEW YORK ESTATE TAX UTILIZING ESTATE TAX SHELTERED TRUST RATHER THAN PORTABILITY

(Based on federal estate tax exemption of $5,450,000 and New York estate tax exemption of $3,125,000. Assume couple's combined assets equal $10,900,000.)

<u>FIRST SPOUSE'S ESTATE</u>
$10,900,000

No federal or New York estate tax because of unlimited marital deduction.

No federal estate tax because of first spouse's federal exemption.

Entire amount subject to New York estate tax of $444,800.

<u>DIRECT DISTRIBUTION TO SURVIVING SPOUSE - INCLUDIBLE IN SURVIVOR'S ESTATE</u>
$5,005,200 (estate reduced by New York estate tax of $444,800)

<u>ESTATE TAX SHELTERED TRUST FOR SURVIVING SPOUSE</u>
$5,450,000

Entire estate passes free of federal estate tax because of survivor's $5,450,000 exemption.

Entire estate subject to New York estate tax; tax is $392,182.

No federal or New York estate tax because Estate Tax Sheltered Trust is not included in survivor's estate.

<u>CHILDREN OR OTHER BENEFICIARIES</u>
$10,063,018

POTENTIAL ESTATE TAX SAVINGS COMPARED TO SIMPLE PLAN IN EXAMPLE 3 = $373,818