ESTATE PLANNING HANDBOOK FOR CLIENTS

of

ANDREWS & YOUNG, PC

What is it that clients generally hope to achieve through an estate plan or wealth preservation plan?

- To maintain control of their assets as long as reasonably possible;
- To create a plan to protect themselves and their loved ones if incapacity strikes;
- To leave their assets to whom they want, when they want and in the manner they want;
- At the lowest cost possible (including taxes and administration costs).

What do we at Andrews & Young, PC do when working with a client in these areas?

We work with clients and their advisors to create and maintain a plan to preserve wealth, and protect loved ones, over time.

Introduction.

In this handbook we set forth in a very cursory manner some of the questions, tools and techniques that many clients encounter when seeking to establish an estate plan, or to protect and preserve their assets for themselves and their loved ones. We welcome any comments and questions you may have. Feel free to call us or email us at any time.

For more information about our firm visit www.newlondonlegal.com.

By way of disclaimer, the laws change all of the time, new approaches to old problems arise, and everyone's situation is unique, so **do not** rely on this handbook as legal advice, and make sure you consult with a qualified attorney. ***In compliance with regulations issued by the Internal Revenue Service, we inform you that any Federal tax advice contained in this communication, was not written to be used and may not be used by any person to avoid any penalties under the Internal Revenue Code.***

OWNERSHIP ISSUES

The manner in which you own your assets has a huge effect on your estate plan. Regardless of the design of your estate plan, asset ownership is an essential part of the plan.

- **Neither your Will nor your trust will have any effect on property owned in a manner that will cause it to pass directly to a co-owner or beneficiary at the time of your death.** For example, property owned jointly with rights of survivorship, whether it be your

©Copyright 2011. Reproductions are acceptable as long as authorship is credited.

ANDREWS & YOUNG P.C. • ATTORNEYS AT LAW
1020 HARTFORD TURNPIKE (RTE. 85), WATERFORD, CONNECTICUT 06385 • (860) 444-2101

house or your bank account, will automatically pass to the surviving owner at your death, regardless of any contrary provisions in your Will. The same is true for any asset that has a named beneficiary, such as insurance policies and retirement accounts. It sometimes makes sense to own property in this manner, but it is essential to consider the effects of such ownership on your overall plan. Too often a client will establish a Will which gives property equally to children, and then adds one child's name to his bank accounts. The result of that is that one child gets all of the bank accounts, plus half of everything else.

- **If you establish a living trust, in most cases the trust should own your assets prior to your death and should be named as beneficiary of your life insurance.** If assets are not owned in this manner, they will be subject to probate, or even worse pass directly to beneficiaries in a manner that upsets the intent of your plan. However, this issue is complicated and the advice of your attorney as to whether specific assets should be owned by your trust should be requested. If your estate is large enough to be subject to estate taxes, you should consider establishing an irrevocable life insurance trust to own your life insurance.

- **It is important to have a named beneficiary for retirement assets.** There are income tax advantages that are not available to your loved ones unless they are named as beneficiaries of your IRA, 401(k) and other retirement accounts. Generally these accounts should never pass to your probate estate, which is what will happen if you do not name a beneficiary. Sometimes it makes sense to name your trust as beneficiary, but it usually makes sense to name a beneficiary directly rather than naming the trust. Again, the advice of your attorney on this issue is essential.

DECISIONS YOU NEED TO MAKE:

In order to establish an appropriate plan for you, you must decide a number of issues.

ALL CLIENTS: Some issues are applicable to everyone:

1. Who do you want to act as your fiduciaries and successor fiduciaries (executor, trustee, attorney-in-fact, health care representative, guardian of minor children)?

2. Who do you want to benefit in your Will or trust? What do you want to give to each beneficiary, specific items or amounts or a percentage of your estate?

3. Do you want to give assets outright to beneficiaries, or in a way that will help protect the assets from unwise decisions of beneficiaries, and claims of creditors of beneficiaries, and people who might take advantage of or prey upon a beneficiary. (See discussion about “Clients Who Establish Trusts”, below).

4. Do you also want to make charitable gifts? If so, which charities and how much?

5. If you give a specific item and do not own that item at death, should the beneficiary of that item get anything?

6. If a beneficiary fails to survive you, should his share pass to his children?

7. Who (or what charity) do you want to receive your estate if your primary beneficiaries die before you?

©Copyright 2011. Reproductions are acceptable as long as authorship is credited.
ANDREWS & YOUNG P.C. • ATTORNEYS AT LAW
1020 HARTFORD TURNPIKE (RTE. 85), WATERFORD, CONNECTICUT 06385 • (860) 444-2101

8. Do you want to allow your representatives to make anatomical gifts if medically appropriate?

CLIENTS WHO ESTABLISH TRUSTS: In addition to the decisions listed above, you may also want to establish a trust (testamentary or revocable) for your beneficiaries. Some reasons to establish a trust include:

- You have children or other beneficiaries who cannot wisely manage their money (even if they are old enough to legally manage it),
- You have a disabled beneficiary,
- Your estate is large enough to require tax planning,
- You own out-of-state real estate and want to eliminate ancillary probate proceedings.
- You want to leave your assets in a way that will protect them from the claims of creditors of your beneficiaries or people who may prey upon your beneficiaries.
- You want to leave assets to a beneficiary for life, but want to ensure that the remaining balance will ultimately pass to other beneficiaries.
- You want a mechanism to manage your property should you become disabled
- You want to insure privacy of your affairs after your death

Living Trust (i.e, a trust established while you are alive) versus Testamentary Trust (i.e., a trust that is included in you Will)

Advantages to a living trust:

1. The trust is not filed with the probate court, and therefore the provisions of the trust remain private.
2. The trust is not subject to probate court jurisdiction. In Connecticut avoidance of probate does not reduce probate court fees in connection with the administration of a decedent's estate, but it may reduce attorney fees and other administration expenses connected with the preparation of formal accounts and other probate documents, provided that the trust is fully funded prior to your death. It also will reduce the ongoing probate fees and administration costs for the administration of the trust if the trust is expected to continue after the settlement of the decedent's estate. It may also speed up the administration process.
3. If you own out-of-state real estate, that property can be transferred to the trust, thus avoiding probate proceedings in those states (known as "ancillary probate").
4. A trust can be used to administer your property while you are alive, but incapable, thus avoiding the need for a conservatorship.
5. If insurance proceeds are payable to the trust and/or other assets are owned by the trust, cash will be available almost immediately for the benefit of your family.

©Copyright 2011. Reproductions are acceptable as long as authorship is credited.

ANDREWS & YOUNG P.C. • ATTORNEYS AT LAW
1020 HARTFORD TURNPIKE (RTE. 85), WATERFORD, CONNECTICUT 06385 • (860) 444-2101

6. It is highly recommended that the trust is fully funded (although careful consideration needs to be given to beneficiary designations for retirement assets such as 401(k) plans and IRAs).

In spite of the benefits of a revocable trust, in many situations it is better to use a testamentary trust.

Advantages of a testamentary trust:

1. If you are concerned that your funds will be exhausted on convalescent care for yourself or your spouse and want to be able to qualify for Medicaid (Title 19) assistance, only a testamentary trust will give some protection for your assets against the claims of the State.

2. It generally is somewhat less expensive at the planning stage to create a trust in your Will because when you establish a living trust you still need to have a Will and a living trust is more complicated and longer than a testamentary trust.

3. If you do not expect the trust to ever be used, it may not be worth the cost of establishing a separate trust. For instance, if trust provisions are being included in the will only to provide a mechanism for handling funds for young children if both spouses should die, the likelihood is that the trust will never be used, since it is unusual for both parents to die while the children are young.

4. If you are concerned that your chosen trustee may need some oversight, a testamentary trust is a better choice, since the Probate Court will retain jurisdiction over the trust until its termination.

Trust Provisions

Regardless of whether you elect to have a living trust or testamentary trust (or irrevocable trust), you will need to consider the provisions to be included in those trusts. Some issues to consider are:

1. Who do you want to act as trustee and who do you want to act as successor trustee if your first choice cannot serve?

2. What will be the trust provisions for your beneficiaries? Some examples follow:

    a. Should one trust be established for all children until a certain age, at which time separate trusts are established or should separate trusts are established at outset?

    b. Should provisions be included to charge certain distributions (such as graduate school) against the share that beneficiary will receive?

    c. Should all income be distributed to the beneficiaries at a specified age?

    d. Should the trust continue for the life of the beneficiary with all distributions in the discretion of the trustee to achieve creditor protection and to protect against beneficiaries mistakes and unwise decisions, or should the beneficiary be given the right to demand distribution of the principal at specified ages?

©Copyright 2011. Reproductions are acceptable as long as authorship is credited.

ANDREWS & YOUNG P.C. • ATTORNEYS AT LAW

1020 HARTFORD TURNPIKE (RTE. 85), WATERFORD, CONNECTICUT 06385 • (860) 444-2101

FAMILY MEMBERS WITH SPECIAL NEEDS: If any of your beneficiaries are disabled due to either a physical or mental disability, you need to consider special provisions for them. If such beneficiaries receive or expect to receive government benefits that are asset or income sensitive, in general you should not give those beneficiaries their shares outright. Rather, a special needs trust drafted to comply with government regulations should be utilized.

CLIENTS WITH ESTATES IN EXCESS OF ESTATE TAX EXEMPTIONS: If the combined estates of you and your spouse (including the face amount of any life insurance) are in excess of the federal or state tax exemption, you need to consider a more complex estate plan. In 2011 and 2012, federal taxes will apply only to estates in excess of $5,000,000, and any amount over the exemption will be taxed at the rate of 35%. However, unless Congress changes the law, in 2013 the exemption is scheduled to revert back to $1,000,000 and any amount over the exemption will be taxed at the rate of 49%.

Connecticut taxes apply only if your combined assets exceed $2,000,000. The Connecticut rates are lower than the federal rate.

In addition to the exemption, any amount passing to a spouse, no matter how large, passes free of both federal and Connecticut estate tax. For example, if you have $3,700,000 and your spouse has $300,000 and you leave everything to your spouse, there will be no estate tax on the first death. The problem arises on the second death. By leaving everything to your spouse you have increased his or her estate to $4,000,000, causing the estate to be subject to Connecticut tax, and in 2013 possibly also to federal tax.

Under the federal law currently in effect, it is possible for the second spouse to die to utilize the unused exemption of the first spouse to die. The problems with relying on this provision are (1) it is scheduled to end in 2013 unless Congress changes the law, (2) the estate of the first spouse to die must file a federal estate tax return when that might not be otherwise required, and (3) this provision is not included in Connecticut law.

Since these exemptions and laws change frequently, it is best to utilize a plan that will achieve your tax reduction goals no matter what the estate tax laws are. Some possible approaches are described below.

Formula Credit Shelter Trust. If in the same fact situation ($3,700,000 owned by you and $300,000 owned by your spouse), but you left $2,000,000 in a properly drafted trust (known as a "family trust", "bypass trust", "B trust", “credit shelter trust" or "exemption equivalent trust") that amount would be excluded from your spouse's estate even if your spouse was the sole beneficiary of the trust during his or her life. Any balance of your estate could be left to your spouse, either outright or in a separate trust, usually referred to as a "marital trust". The result in this example is that no federal or Connecticut estate taxes would be paid either on your death or on the death of your spouse.

For larger estates it makes sense to leave the difference between the federal and state exemptions (currently $3,000,000) in a trust for the benefit of your spouse and allow the trustee to elect to treat the property in that trust as marital property for state tax purposes (thereby paying no state estate tax), but as non-marital property for federal purposes (thereby utilizing the full federal exemption which should reduce or eliminate federal taxes on the second death). This type of trust is known as a QTIP (qualified terminal interest property) trust.

Disclaimer Trust. A variation on this concept is to use a “disclaimer trust”. Instead of providing a formula by which the first $2,000,000 of your assets is automatically left to a credit shelter

©Copyright 2011. Reproductions are acceptable as long as authorship is credited.

ANDREWS & YOUNG P.C. • ATTORNEYS AT LAW

1020 HARTFORD TURNPIKE (RTE. 85), WATERFORD, CONNECTICUT 06385 • (860) 444-2101

trust, you could provide that all assets be left to your spouse unless your spouse disclaims (refuses to accept) the assets. Any disclaimed assets would pass into the trust. This device is most useful if the combined estates of you and your spouse may exceed the allowed exemption, but where that result appears to be unlikely. The surviving spouse can then decide the appropriate amount to put into the trust when the amount of assets is known. The disadvantage to a disclaimer trust is that the surviving spouse cannot be given the right to make gifts from the trust or a power to change the ultimate disposition through her will. Furthermore, sometimes surviving spouses are overwhelmed with a sense of insecurity, or do not receive good advice and fail to make disclaimers within the allowed time (within nine months after the date of death) even when appropriate. In addition, if the surviving spouse utilizes the property the ability to disclaim is lost.

Everything to QTIP Trust. Yet another variation is to provide that the entire estate of the first spouse to die passes to a qualified terminal interest property (QTIP) trust for the benefit of the surviving spouse. The trustee is given the authority to make a tax election as to how much of the trust would be treated as marital property and how much would be treated as a credit shelter trust. It is possible to include provisions that would allow the surviving spouse to withdraw the portion elected to be treated as marital property after 16 months after the date of death. As with the Disclaimer Trust, this approach is useful where it is uncertain whether you will have taxable estates. This approach overcomes the disadvantages of the disclaimer approach set forth above. However, the disadvantage of this approach is that in order for the trustee to make an election to treat any portion of the trust as marital property, a federal estate tax return must be filed.

If you need this type of plan several additional decisions need to be made.

1. Do you want to use a disclaimer, QTIP election, or a formula to fund the trust?

2. Should your spouse's share of your estate pass to him or her outright or be held in a marital trust?

4. Who will be the beneficiaries of the family (credit shelter) trust? This trust can be for the sole benefit of the surviving spouse or can be for the benefit of spouse and children or only for your children (or any other persons you wish to benefit).

5. How will the trust be divided and managed after the death of your spouse? Do you want to utilize separate trusts for your children or other beneficiaries to protect the assets from their creditors and help your beneficiaries manage the property, or would you prefer to simply distribute the property at a stated age or ages?

6. Your spouse (or any other beneficiary) can be given a power to withdraw the greater of 5% or $5,000 of the principal each year (known as a "5 and 5 power").

7. Your spouse can be given the power to distribute principal to children and/or grandchildren, or if desired, to their spouses or to other persons or charities. This power can be effective during the spouse's life (a life time power of appointment) or through the spouse's will or trust (a testamentary power of appointment). These powers may not be used for any amounts that were disclaimed by the spouse.

©Copyright 2011. Reproductions are acceptable as long as authorship is credited.
ANDREWS & YOUNG P.C. • ATTORNEYS AT LAW
1020 HARTFORD TURNPIKE (RTE. 85), WATERFORD, CONNECTICUT 06385 • (860) 444-2101

8. Who should be named as trustee and successor trustee? If the surviving spouse is trustee, principal can be distributed only with a limited standard such as "for support, maintenance and health". If an independent trustee is utilized, the trustee can be given the power to distribute (or "spray") income and principal to spouse, children, grandchildren, etc. for any purpose. In addition, more creditor protection is achieved if an independent trustee is appointed.

CLIENTS WITH LARGE ESTATES: If the combined estates of you and your spouse are more than double the amount of the exemptions, you may want to consider an even more complex estate plan. To calculate the size of your estates, you need to include the face amount of any life insurance, plus your interest in all other assets, such as real estate, stocks, IRA's, 401(k)'s and deferred annuities. Some of the more complex planning devices that are available to our clients are briefly discussed below.

Irrevocable Insurance Trust: An irrevocable trust is often set up as an insurance trust. Enough money is transferred to the trust to allow the trustee to purchase insurance on your life. The benefit is that the insurance proceeds will be available upon your death to provide liquidity to your estate for taxes and administration expenses without increasing the value of your taxable estates. This type of trust is often used to purchase second-to-die insurance for situations where the insurance is needed only for liquidity purposes after both spouses have died.

Qualified Personal Residence Trust ("QPRT"): Under a QPRT either your primary or secondary residence is transferred to the trust. During a specified term of years (the "income term"), you retain the right to use the residence. After the income term is over, the trust can hold the residence for your spouse or lease it to you or distribute it to your children.

There are two advantages of this trust. First the value of the gift of the residence to your children is reduced due to the fact that you retain the right to use the house for the income term. For example, if a 60 year old transferred his $300,000 house to a QPRT (when the applicable federal interest rate is 7%), retaining the use of the house for a period of 10 years, the value of the gift to the children is only $124,311.

The second advantage is that the future appreciation of the house is removed from your estate. In the same example as above, if a 4% growth in the property is assumed and the estate is in the 50% bracket, the potential estate tax savings is $159,881.

The benefits of this type of trust change with the interest rate, the age of the donor and the term of the trust. Although a longer income term results in more savings, too long of a term should not be selected since there is no benefit at all if the donor fails to outlive the income term.

Grantor Retained Annuity Trust ("GRAT"): A GRAT is similar in concept to a QPRT, but instead of transferring a home to the trust, other assets are transferred. The Grantor retains an annuity of a specified percentage of the assets each year for a term of years. At the end of the term, the asset passes to the remainder beneficiary of the trust (usually a child). As with the QPRT, the advantage of the GRAT is that the value of the gift if reduced and the growth of the asset is removed from your estate. Also like a QPRT, the savings varies with the age of the donor, the length of the term and the applicable interest rate. This type of trust works best if the trust assets produce income and/or appreciate in value at a rate in excess of the applicable federal rate.

©Copyright 2011. Reproductions are acceptable as long as authorship is credited.

ANDREWS & YOUNG P.C. • ATTORNEYS AT LAW

1020 HARTFORD TURNPIKE (RTE. 85), WATERFORD, CONNECTICUT 06385 • (860) 444-2101

Charitable Remainder Trust ("CRT"): In a CRT you reserve an annuity interest either to yourself or your beneficiaries, or both, either for a term of years or for life. Once the annuity interest terminates, the balance of the trust goes to charity. There will be a charitable deduction for estate tax purposes for the portion of the trust that goes to charity. If you set up the trust during your life and take an annuity interest, with the remainder passing to the charity upon your death, you also get an income tax deduction. This device works best when the property that is transferred to the trust has greatly appreciated in value. The trust can sell the property without paying capital gains tax and the entire proceeds can be invested, thereby increasing the funds available to you. You will pay income tax on the income and capital gains portions of the annuity as you receive it. It is common to use a portion of the annuity payment to purchase life insurance to replace the asset that has been transferred to the trust.

Charitable Lead Trust ("CLT"): The CLT is essentially the reverse of a CRT. You give a charity an annuity interest for a term of years and the balance of the trust would pass to your beneficiaries upon your death. Although you can set up the trust to qualify for an income tax deduction at the outset, if you take that approach all of the future income of the trust would be taxed to you even though the charity receives the income. Hence the main tax advantage to a CLT is the reduction in the valuation of the gift to your children.

Family Limited Partnership ("FLP") or Limited Liability Company ("LLC"): A partnership is established and assets are transferred to it. You can make yourself the general partner of the FLP, thereby retaining control of the assets. Once the assets are in the FLP you can transfer limited partnership shares to your children. Since they are limited partners, they have no vote in the management of the assets. Furthermore, since the limited partnership shares have no control over the property and would be difficult to sell, the IRS may allow a discount in the value of the shares. For example, if the value of the assets transferred to the FLP totaled $500,000, and a 30% limited partnership interest was transferred to your child, instead of valuing the gift at $150,000 (30% of $500,000), it might be possible to value the gift between $90,000 and $105,000, for a reduction in the gift of about $50,000. It is necessary to have the limited partnership share valued by an appraiser to determine the actual discount, which can be expensive. A limited liability company ("LLC") may also be used in this manner.

In considering the use of a FLP or LLC, especially where the use of valuation discounts is contemplated, it is important to keep in mind that the IRS has been increasingly hostile to FLP's and LLC's, and you should not be surprised if the IRS challenges this type of arrangement. Such challenges can be very time consuming and costly. The arrangement is less likely to be challenged by the IRS if the assets held by the FLP (or LLC) are business assets and if there is a valid business purpose for the arrangement. It also is essential that your beneficiaries have a real and present interest in the entity for this to work. If the person who establishes the FLP or LLC retains too much control or puts too many restrictions on the transfer of interests both the discounts and the annual gift tax exclusion will be lost.

Domestic or Foreign Asset Protection Trusts. Traditionally within the United States it was not possible to establish a trust for your own benefit and prevent your creditors from reaching these assets to pay your debts. Within the last twenty years or so, interest has developed in allowing a person to create such a trust (a self-settled trust). There are now thirteen states that by statute allow such trusts to be created. It has been estimated that in Delaware alone, more than 1,000 of such trusts have been created since 1997 with overall assets exceeding two billion dollars.

In addition some foreign countries have allowed such trusts for some time. In some cases those trusts have been heavily promoted and some commentators say over sold by asset planners. In

©Copyright 2011. Reproductions are acceptable as long as authorship is credited.

addition, there are at least a few disturbing judicial decisions where persons who have established such trusts have been jailed for failure to bring assets transferred into foreign asset protection trusts back into this country to pay creditors, and we have some concern that the reasoning in these decisions might perhaps be extended into the area of domestic asset protection planning.

Consequently, until the courts begin to hand down decisions on whether domestic asset protection trusts will be respected and upheld in Connecticut against creditors who obtain judgments here against those establishing the trusts in states that do all self settled trusts, the law in this area will be unsettled, and great care must be taken in considering all relevant factors when establishing a domestic asset protection trust. The professional community seems to be somewhat split on the wisdom of utilizing these structures. We think these structures have some promise, but this is an area of the law which must be watched for developments.

TERMINOLOGY

People - Roles:

Executor: Your executor is the person (or entity) who is responsible for the administration of your probate estate after your death. That is, he or she files your Will with the Probate Court, determines what assets were owned by you at the time of your death, files a list of those assets with the Probate Court, makes sure all creditors have been paid, files all appropriate tax returns, prepares an accounting of all assets received and all payments made, and distributes the remainder of the estate in accordance with your Will. Although the executor is responsible for the administration, most individual executors work closely with an attorney. An executor has no power or authority prior to your death. The job of an executor involves a lot of responsibility and hard work. It is important to name someone who will see that the job gets done and who will seek help from professionals when appropriate.

Administrator: An administrator does the same job as an executor in estates where an executor is not appointed in the Will or where there is no Will.

Trustee: A trustee oversees the administration of any trusts you have established. The trustee's job is similar to the executor's job. However, the trustee's role continues until the trust is distributed, which can be a very long time. In addition, the trustee usually is given more discretion than an executor as to when, to what extent and to whom distribution of income and principal are to be made.

Guardian: A guardian takes care of personal and financial affairs of a minor child. A parent is the child's natural guardian. If no parent survives, the Court will appoint a guardian. A guardian should be named in your Will if you have minor children to insure that your children will be cared for by the persons you want and to insure that no family battles over custody will take place after your death. It is possible to appoint different people to act as the guardian of the persons and of the estates of your children. (A guardian also can be named for developmentally disabled adults. However, this is a separate provision with a different procedure.)

©Copyright 2011. Reproductions are acceptable as long as authorship is credited.

ANDREWS & YOUNG P.C. • ATTORNEYS AT LAW

1020 HARTFORD TURNPIKE (RTE. 85), WATERFORD, CONNECTICUT 06385 • (860) 444-2101

Conservator: A conservator does the same thing for an adult person who is unable to handle his own affairs due to disability or incompetence as a guardian does for a child. In some states a conservator is also referred to as a guardian.

Fiduciary: This is a general term referring to anyone in a position of trust, including executors, administrators, trustees and guardians.

Grantor / Settlor / Trustor: Any of these terms can be used to describe the person who established a living or irrevocable trust.

Estate Planning Documents:

Will (Also Known as Last Will and Testament): Your Will is your formal instruction to those who survive you as to how your assets should be administered and distributed.

Testamentary Trust: A testamentary trust is established in your Will to take affect after your death. The trust allows property to be held for the benefit of a person (the beneficiary) while giving the control over investment and distribution to another person (the trustee) who in some cased can also be a beneficiary. The provisions of the trust are set by you to conform to your desires as to how the property should be administered. The important thing to remember is that, with certain limitations, a trust can include any provisions you want.

Living Trust (Also known as a Revocable Trust): This type of trust is established during your lifetime by a separate instrument. The trust can be revoked (i.e. terminated) or amended at any time. It is possible to set up the trust but fund it with only a small amount of cash during your life. A Will (known as a "pour-over Will") is also written which provides that the any of your assets not transferred to the trust during your life will be transferred to the trust upon completion of the probate process. Theses trusts can be useful to minimize probate costs and expenses, provide a way to manage your assets during your incpacity and as a means to leave your assets to your beneficiary other than through a Will and in a wasy that shields them from claims of creditors of your beneficiaries.

Irrevocable Trust: Like the revocable trust, an irrevocable trust is established during your lifetime. Unlike the revocable trust, the irrevocable trust cannot be revoked or amended. An irrevocable trust can be used to make an immediate gift of property to a child or other person where you prefer that someone other than the beneficiary manage the property.

Health Care Directives: In 1993, the Connecticut legislature approved a form which combines all disability planning relating to health, including the Living Will, Appointment of Health Representative, Designation of Conservator of the person and Anatomical Gifts. This is a useful approach since it allows health care providers to have all pertinent information in one document. This document does not take effect unless and until you are incapable of making your own health decisions.

Living Will: A Living Will is a separate document from your Last Will and Testament. A living Will is normally included as part of your Health Care Directives. As the name implies, a Living Will has effect only while you are alive. The Living Will directs your doctors not to use life support systems if you are terminally ill or are in an irreversible coma and unable to make decisions at that time. The statute that authorizes Living Wills

©Copyright 2011. Reproductions are acceptable as long as authorship is credited.

ANDREWS & YOUNG P.C. • ATTORNEYS AT LAW
1020 HARTFORD TURNPIKE (RTE. 85), WATERFORD, CONNECTICUT 06385 • (860) 444-2101

provides protection for medical personnel and institutions that rely on the Living Will. You may appoint a health care representative who is given authority to see that the terms of your Living Will are followed.

Note: There were significant changes to the living will statute in Connecticut that took effect on October 1, 1991. Consequently, living Wills executed before 1992 should be reviewed and new living Wills executed where appropriate.

Designation of Health Care Representative: This document also is normally included in your Health Care Directives. It designates a person to act as your health representative to make health care decisions for you if you are not capable of making your own decisions. Health powers are no longer included in Connecticut's statutory short form power of attorney, so health powers included in short form powers of attorney signed after September 30, 2006 are not effective.

A Designation of Health Representative covers many more situations than a Living Will. For instance, a Living Will gives no guidance in the situation where you are terminally ill and develop an unrelated problem where surgery is normally recommended. (For example, doctors might recommend heart bypass surgery for someone terminally ill with cancer.) Therefore it is important to designate a health representative in addition to signing a Living Will.

Authorization to Release Medical Information (HIPAA Release): Due to federal restrictions, medical providers cannot release your medical information without written authorization from you. It is important to have the authorization in place so that your family and designated decision makers can get the information necessary to determine whether you are capable of handling your own affairs and to make medical decisions for you if you are no capable. Unlike the Health Care Directives, this document takes effect immediately.

Financial Durable Power of Attorney: (This document is sometimes referred to simply as a power of attorney.) A power of attorney authorizes a person or persons to act in your behalf in connection with your financial affairs. The statutory short form power-of-attorney, which is the form most commonly used, is very broad in scope, giving your attorney-in-fact the power to do almost anything with your assets. The power can be limited or expanded in scope if desired. The short form power-of-attorney has many limitations that a well-drafted power-of-attorney can help overcome.

Springing Power of Attorney: As of October 1, 1993, it is possible to use a "springing power of attorney" in Connecticut. A springing power of attorney is like any other power of attorney except that it specifies that it will not take effect until you are incapable of making your own decisions (or until the occurrence of some other specified event). This provides some protection against your attorney-in-fact taking over your finances while you are still capable of managing your own affairs. The only evidence of your incapability that is required is an affidavit signed by a person you designate in the document. The affidavit can be signed by the designated attorney-in-fact or any other persons you name, and may also require the written concurring opinion of your attending physician.

If you own assets located outside of Connecticut, the springing power should be used with caution since it may not be accepted in some other states.

©Copyright 2011. Reproductions are acceptable as long as authorship is credited.

ANDREWS & YOUNG P.C. • ATTORNEYS AT LAW

1020 HARTFORD TURNPIKE (RTE. 85), WATERFORD, CONNECTICUT 06385 • (860) 444-2101

<u>Designation of Conservator</u>: The Living Will, Health Power Of Attorney and regular Power of Attorney all help avoid the need for a conservatorship. However, in some situations a conservatorship may still be required (especially if you choose not to utilize all of those documents). You can gain some control over the conservatorship process by naming the person you would want to act as your conservator if it is ever needed.

Designating a conservator can actually prevent the need for a conservatorship since it reduces the possibility of someone other than your designated attorney-in-fact from trying to take over your finances by having a conservatorship established.

You can also waive bond for your conservator. In other words you can direct the Probate Court not to require your conservator to purchase a probate surety bond. A surety bond amounts to an insurance policy to cover errors and wrongful acts of the conservator. The cost depends on the value of your assets and must be paid every year.

Generally a designation of conservator of your estate (i.e., a person to handle your financial affairs) is included in our powers of attorney and a designation of conservator of your person (i.e., a person to make health and personal care decisions) is included in our health directives.

Hopefully this information will answer some questions and help you think about what other questions and concerns need to be discussed with us when formulating your estate plan.

\\ayg01\dept\research\estplan\handbook 2011 short.doc

©Copyright 2011. Reproductions are acceptable as long as authorship is credited.

ANDREWS & YOUNG P.C. • ATTORNEYS AT LAW

1020 HARTFORD TURNPIKE (RTE. 85), WATERFORD, CONNECTICUT 06385 • (860) 444-2101