



# **Final Affairs: (Estate) Planning is a Good Thing**

Senior Ministries of the Episcopal Diocese of Newark  
St. Luke's Episcopal Church  
Montclair, NJ  
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# **Circular 230 Disclaimer**

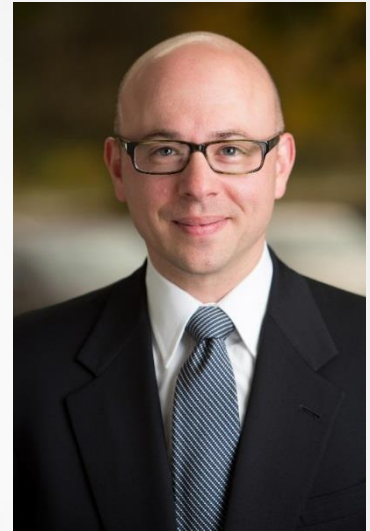


## **Disclaimer Required by IRS Rules of Practice:**

**Any discussion of tax matters contained herein is not intended or written to be used, and cannot be used, for the purpose of avoiding any penalties that may be imposed under Federal tax laws.**

# Lance T. Eisenberg, Esq.

- Attorney at Law since 1999
- Admitted in NJ and NY
- B.A., Business Management and Psychology, Rutgers University
- J.D., Seton Hall University School of Law
- LL.M., Taxation, NYU School of Law
- Named as one of the “New Leaders of the Bar” (formerly “40 under 40”) for 2013 by the *New Jersey Law Journal*
- Recognized as Super Lawyer Rising Star for 2010, 2012-2014 and Super Lawyer for 2015 in Estate Planning & Probate by *NJ Super Lawyers Magazine* and *NJ Monthly Magazine*
- Member of Legal, Wealth and Tax Advisory Committee of the Community Foundation of New Jersey and Gift Planning Council of the Make-a-Wish Foundation of New Jersey



# Berkowitz Lichtstein's

## Scope of Services:

- **Full Service Law Firm**
  - Corporate
  - Litigation
  - Real Estate
  - Employment Law
- **Trusts and Estates**
  - Estate planning
  - Tax planning
  - Asset protection planning
  - Business succession planning
  - Estate and trust administration
  - Probate litigation
  - Charitable giving



# Agenda

- **Estate Planning for Incapacity**
- **Estate Planning for Death**
- **Common Mistakes**
- **Transfer Tax Planning**

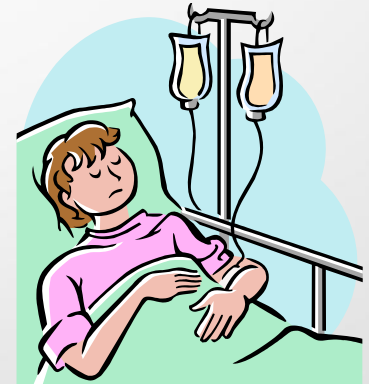
# Without Advance Planning for Incapacity

- **Probate court holds a public hearing to:**
  - Determine mental capacity
  - Appoint a guardian to manage financial affairs
  - Appoint a guardian to make decisions regarding personal care
- **Procedure is:**
  - Costly
  - Time-consuming
  - Embarrassing
  - Risky
  - Limits investments
  - Unnecessary!!!



# In Event of Incapacity, You Maintain Control Over Medical Decisions

- **Advance Directive for Health Care (a/k/a Living Will)**
  - Applies when you are not able to make health care decisions for yourself
  - Types
    - Proxy directive
    - Instruction directive
    - Combined directive
  - HIPAA authorization
  - Organ donation
  - Only one health care representative may serve at a time



# In Event of Incapacity, You Maintain Control Over Financial Decisions

- **Power of Attorney**

- Durable
- General or limited
- Effective immediately or “springing”
- One or more attorneys-in-fact may serve
- Jointly or severally
- Compensation
- Fiduciary – duty to account





# Dying Without A Will

- **Administrator is selected by Probate Court**
  - Spouse, heirs, or any fit person!
- **Intestacy statute controls disposition of assets**
  - In NJ, spouse gets all only under certain circumstances...
    - No descendant or parent survives; or
    - All surviving descendants are descendants of spouse/domestic partner and spouse/domestic partner has no other descendant
- **Assets pass outright to beneficiaries at age 21**
- **Guardian is selected by Probate Court to raise minor children and control inheritance**
- **Unnecessary/increased taxes and expenses**



# Benefits of Having a Will



- **You select your Executor**
- **You control the disposition of your assets**
  - Who inherits what assets
  - How they inherit: outright or in trust
  - When they inherit: at what age or event
- **You select Guardian for minor children and Trustees of any trusts**

# Benefits of Having a Will (cont'd)

- **Reduce or eliminate estate and inheritance taxes**
- **Reduce uncertainty, delays, and costs**
  - Self-proving affidavit
  - Waive bond requirement
  - Waive public filing of inventory and accountings
- **Other:**
  - Spendthrift clause to protect against creditors
  - Disinherit unwanted heirs
  - No contest/in terrorem clause to avoid challenges

# Trusts

- **Minor beneficiaries**
- **Credit shelter/bypass trust**
- **Marital/QTIP trusts**
  - Second marriage
  - Children from other relationship(s)
- **QDOT**
  - Non-citizen spouse
- **Special needs**
- **Substance abuse**
- **Spendthrift**
- **Other**



# Revocable “Living” Trust

- **Trust established by client during lifetime**
- **Client is typically grantor, trustee, and beneficiary**
- **Client can change terms or revoke at any time**
- **To be effective, client should fund trust during lifetime**
- **Successor trustee automatically takes over upon incapacity or death**
- **Upon death, assets pass to beneficiaries/trusts**



# **Benefits of a Revocable “Living” Trust**

- **Continuity of asset management during lifetime and after death**
- **Avoids probate**
- **Privacy/confidentiality**
- **Avoids ancillary probate**
- **Avoids need for tax waivers**
- **Instant liquidity**
- **Difficult to challenge**

# Common Estate Planning Mistakes

- **Not planning for incapacity**
- **No Will**
- **Inappropriate reliance on simple Will**
  - Do-it-yourself Will (holographic or internet)
  - Using an attorney who does not specialize in estate planning
- **Failure to adequately consider fiduciary appointments (executor, trustee, and guardian)**
- **Not planning for cash needs (debts, taxes, expenses, support for survivors, etc.)**
- **Failure to consider tax issues**



# Estate Planning Mistakes (cont'd)

- **Failure to coordinate Will with beneficiary designations:**
  - Life insurance policies
  - Retirement plans/IRAs
  - Annuities
  - “POD” & “TOD” accounts
- **Failure to coordinate Will with asset titling:**
  - Joint tenancy with rights of survivorship
  - Tenants in common
- **Failure to plan adequately for succession of business management and control**
- **Failure to update estate plan after major change**





# Changes in Life Trigger the Need for an Estate Plan Review

- **Marriage**
- **Birth of a child**
- **Divorce**
- **Change in tax laws**
- **Change in assets or size of the estate**
- **Change in state of residence**



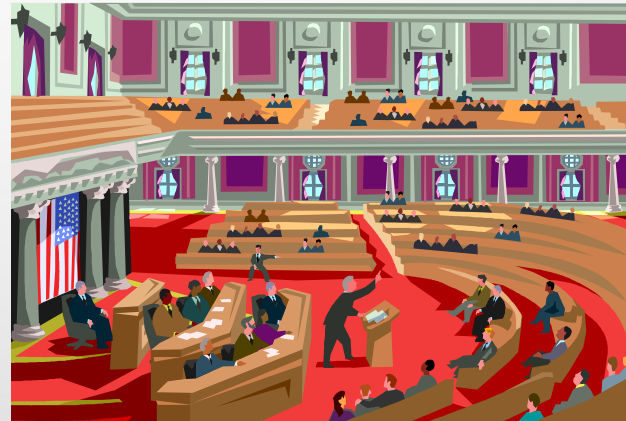
# Applicable Taxes

- **Federal taxes**
  - Income tax
  - Gift tax
  - Estate tax
  - Generation-skipping transfer tax
- **State taxes**
  - Income tax
  - Estate tax (NJ, NY)
  - Inheritance tax (NJ)



# The Taxpayer Relief Act of 2012

- **\$5 million exemption (indexed)**
  - \$5,430,000 for 2014
- **Unification of gift, estate, and GST taxes**
- **40% top rate**
- **Portability**
- **Permanent**
  - Until law changes



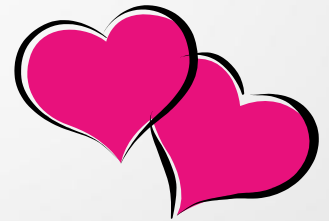
# Federal Estate Tax

- **“Gross estate” taxed**
  - Real and personal property (including joint property)
  - Cash and securities (including retirement accounts)
  - Business interests
  - Life insurance proceeds
  - All other property interests held at death
  - Property transferred within 3 years of death
- **Exemption amount**
- **Portability**
- **Step-up in basis**



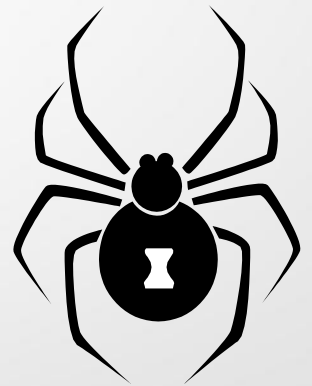
# Federal Estate Tax (cont'd)

- **Unlimited marital deduction available if “gross estate” > exemption**
- **Result: No tax due when first spouse dies**
  - If surviving spouse is US citizen...
    - Outright disposition
    - Disposition to trust meeting certain requirements (“QTIP”)
  - If surviving spouse is NOT US citizen...
    - Disposition to trust meeting certain *stringent* requirements (“QDOT”)



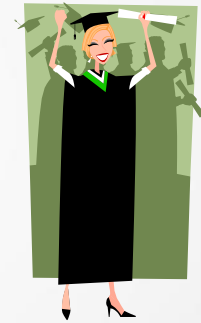
# Portability

- **Basic concept is your spouse can inherit your unused estate and gift tax exemption**
- **Surviving spouse's exemption can be no more than double the exemption amount**
- **Two requirements:**
  - Federal estate tax return must be filed timely (even if estate is below filing requirements)
  - Executor must make an election for portability
- **Not available for non-U.S. citizens or residents**
- **Does not apply to GST tax exemption or NJ estate tax exemption**



# Federal Gift Tax

- **Gratuitous transfers taxed**
- **Current exemption: \$5,430,000**
  - Use reduces federal estate tax exemption (\$ for \$)
- **Current tax rate: 40%**
- **Current exclusions:**
  - Annual exclusion gifts (\$14,000/donee)
  - Direct medical expense payments
  - Direct educational expense payments



# Federal GST Tax

- **Transfers skipping one (or more generations taxed)**
  - Outright
  - In trust
- **Current exemption: \$5,430,000**
- **Current tax rate: 40%**
- **Current exclusions:**
  - Annual exclusion gifts (\$14,000/donee)
  - Direct medical expense payments
  - Direct educational expense payments





# State Estate and Inheritance Taxes

- **21 states and D.C. have a separate state estate tax**
  - Exemptions vary by state – typically \$1,000,000
  - \$675,000 in New Jersey
  - \$2,062,500 in New York
  - No separate estate tax in Florida
- **8 states have an inheritance tax**
  - Maryland and New Jersey have both



# NJ Estate Tax

- **“Gross estate” taxed**
- **Current tax rates: 4.8 – 16%**
- **Current exemption: \$675,000**
- **Unlimited marital deduction**
- **No portability**
- **In order to preserve the full federal exemption for your heirs (using traditional planning), you will incur a NJ estate tax of approximately \$442,000**

# NJ Inheritance Tax

- **Inherited property taxed**
- **Tax depends upon relationship to decedent**
  - Exempt
    - Spouses
    - Descendants (including step-children)
    - Parents and Grandparents
    - Charities
  - Taxed at 11-16% (w/ \$25,000 exemption/beneficiary)
    - Siblings
    - Sons-in-law and daughters-in-law
  - Taxed at 15-16% (w/ \$500 exemption/all beneficiaries)
    - Everyone else



# Estate Tax Planning

- **Most Common Types of Wills**
  - “I love you” Wills
    - All to spouse outright
  - “Disclaimer” Wills
    - All to spouse outright with disclaimer provisions (if desired)
  - “Credit Shelter” Wills
    - NJ or Federal estate tax exemption to trust; balance outright or in trust



# Estate Tax Planning

- **Most Common Types of Wills**
  - “GST tax” Wills
    - Generation-skipping transfer tax exemption to trust; balance outright or in trust
  - “Elective share” Wills
    - Smallest amount under law passes to spouse; balance to others

# Essential Estate Tax Planning

- **Credit Shelter Trust**
  - Basic tax planning for married individuals
  - Built into Will or Revocable Living Trust
  - Takes advantage of both spouse's estate tax exemptions
  - Can defer all estate tax until 2<sup>nd</sup> death
- **Not “necessary” with portability, but there are other good reasons to still use a trust**
  - Ensure that the assets pass to desired beneficiaries
  - State and GST exemption amounts are not portable
- **Have to balance estate tax savings against potential income tax (considering step-up in basis)**

# Estate Tax Planning

## EXAMPLE...

Husband and wife  
\$1,350,000 total assets



# Estate Tax Planning

**“I LOVE YOU” WILLS...**

**Husband dies in 2015, everything  
to Wife outright**

- No tax due



**\$1,350,000**



# Estate Tax Planning

## **“I LOVE YOU” WILLS...**

**Wife dies later in 2015,  
everything to descendants**

- Gross estate: \$1,350,000
  - No federal tax due
  - \$54,800 NJ tax due



# Estate Tax Planning

## “I LOVE YOU” WILLS...

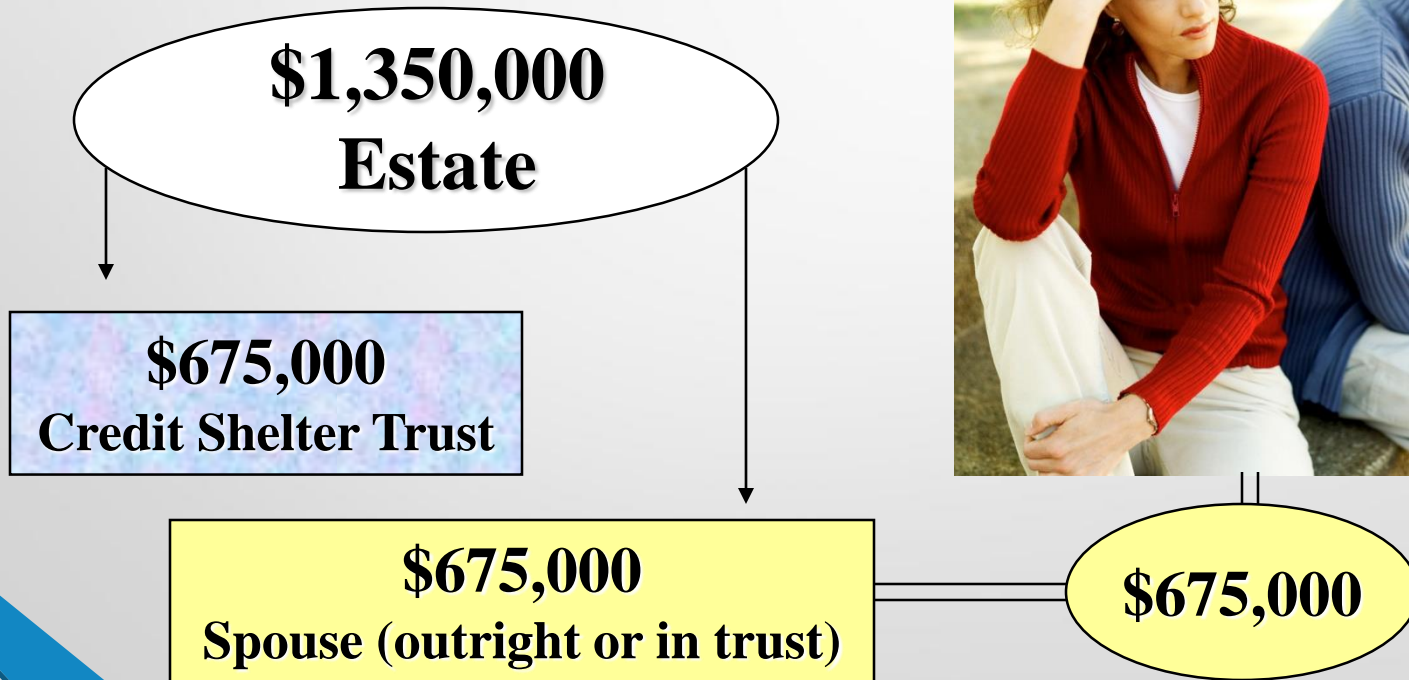
- NJ tax due: \$54,800
- To descendants: **\$1,295,200**



# Estate Tax Planning

## NJ “CREDIT SHELTER” WILLS...

Husband dies in 2015...



# Estate Tax Planning

## NJ “CREDIT SHELTER” WILLS...

**\$675,000**  
Credit Shelter Trust

**\$675,000**



# Estate Tax Planning

## NJ “CREDIT SHELTER” WILLS...

Wife dies later in 2015...

**\$675,000**  
Estate

**\$675,000**

**\$675,000**  
H's Credit Shelter Trust

**\$0**

**Federal and NJ Estate Tax**





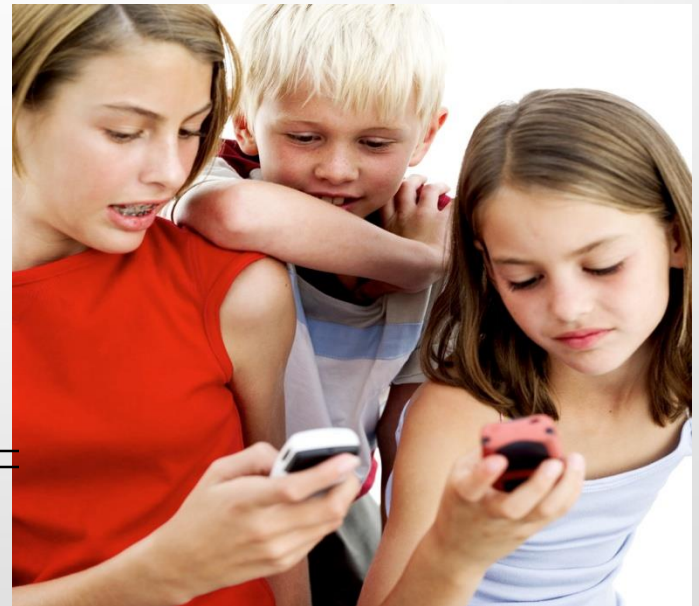
# Estate Tax Planning

## NJ “CREDIT SHELTER” WILLS...

**\$0**

**Federal and NJ Estate Tax**

**\$1,350,000  
To Descendants**



# Estate Tax Planning

## **“I Love You” Wills**

**\$54,800**

**NJ estate tax**

**\$1,295,200**

**To descendants**

## **NJ “Credit Shelter” Wills**

**\$0**

**NJ estate tax**

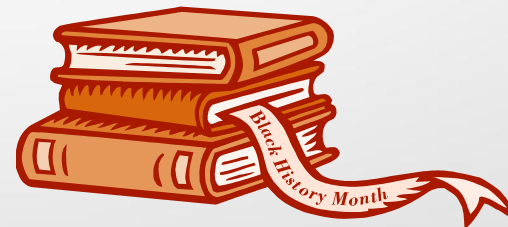
**\$1,350,000**

**To descendants**

**\$54,800**

# Simple Gifting Strategies

- **Gifting Program**
  - Non-taxable gifts
    - **Annual exclusion gifts** (\$14,000/donee)
    - **Direct medical** expense payments
    - **Direct educational** expense payments
  - Outright gifts v. restricted gifts
    - Custodial accounts
    - 529 Plan accounts
    - Irrevocable trusts
    - Education IRAs
- **Consider lifetime taxable gifts**
  - \$5,430,000 lifetime exemption
  - Remove appreciation from estate (but lose step up)
- **Trusts for life insurance**



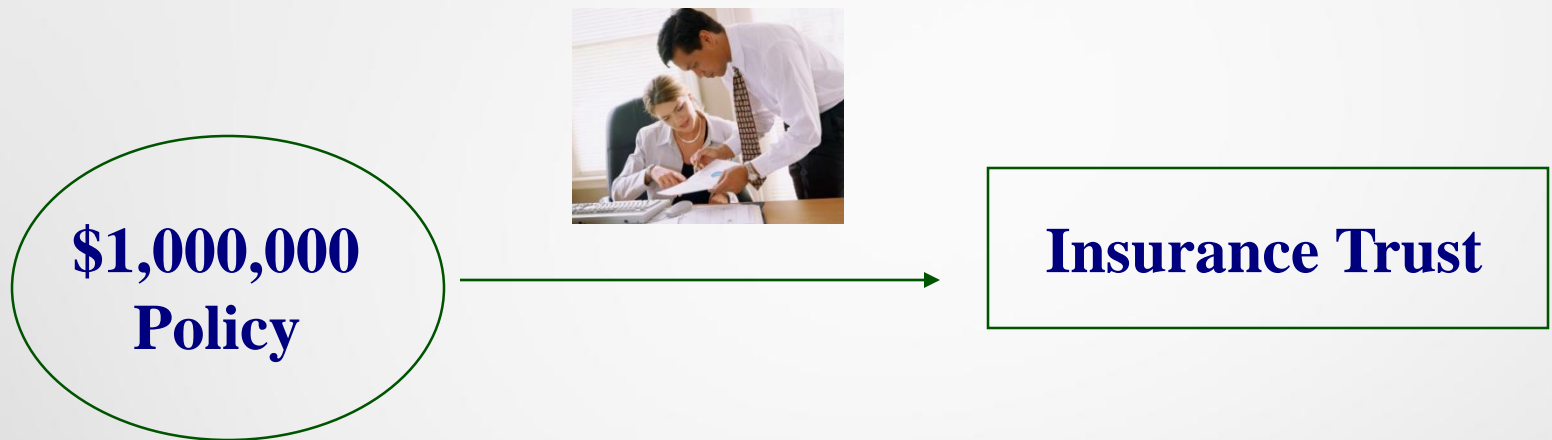


# Life Insurance Trusts

- **Problem: LI policy subject to estate tax (if owned by insured or payable to insured's estate)**
- **Solution: Insured transfers policy to irrevocable insurance trust (and makes policy payable to trust)**
  - Existing policies
    - Transferred to trust
    - Policy out after 3 years
  - New policies
    - Purchased by trust
    - Policy out immediately



# Life Insurance Trusts (cont'd)



- **Transfer may result in taxable gift (of “interpolated terminal reserve value” of policy)**
- **Federal gift tax return(s) may need to be filed**
- **If successful, policy proceeds out of estate**
  - Potential estate tax savings: 40% of proceeds

# More Advanced Estate Planning

- **Promissory Notes**
- **Generation-Skipping Trusts**
- **GRATs**
- **QPRTs**
- **Family Limited Partnerships/LLCs**
- **Sales to Grantor Trusts**
- **Charitable Trusts**
- **Private Foundations**
- **Others...**



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