ESTATE PLANNING *Guide*

Russo Law Group, P.C.

Estate Planning, Elder Law & Special Needs

800-680-1717

vjrussolaw.com

Garden City | Lido Beach | Islandia | Virtual Meetings | Home Visits

FINANCIAL DECISION MAKING

Every adult individual should have a comprehensive New York State DURABLE POWER OF ATTORNEY which can be executed in favor of one or more family members (e.g., spouse, children). This will enable the attorney-in-fact to make financial decisions on your behalf if necessary.

A comprehensive Durable Power of Attorney is a critical part of your plan to protect and preserve your assets. This document should contain expanded powers, such as the authority to make gifts and to sign tax returns, as well as provide for successor agent(s). In addition, this planning tool is essential in avoiding a Guardianship proceeding which can be time consuming, costly and restrictive.

HEALTH CARE DECISION MAKING

Every adult individual should have the following Health Care Decision Making documents:

A. A New York State HEALTH CARE PROXY, which will allow a family member (such as your spouse or child) or another individual of your choice to make health care decisions on your behalf if you are unable to do so. Only one agent can be appointed to act at a time. It can also state your wishes regarding organ donation.

B. A LIVING WILL, which specifies your desires as to life sustaining treatment in the event there is no reasonable prospect of recovery. This document provides guidance to your agent under the Health Care Proxy as to your desires regarding extraordinary life sustaining treatment.

C. A MEDICAL AUTHORIZATION, which allows for the disclosure or release of your health information to the individuals that you have selected to make health care decisions for you. This allows your health care agent(s) to access your health care information to make the most informative decisions about your care.

These Health Care Decision Making documents can be modified according to your personal needs and wishes. Further, if you execute the Health Care Proxy, Living Will and Medical Authorization, you should provide a copy of these documents to your agent(s) and to your family physician so that these documents can be made part of your medical records.

BURIAL DESIGNATION

Under New York Law, you can sign a Burial Designation which will allow you to name an individual in charge of your burial arrangements. You can also provide specific instructions regarding your funeral or burial.

GUARDIANSHIPS

Under your Will, you can name guardians for any children who are minors (under the age of 18 in New York). Upon court approval, this will allow the guardian to take care of your minor children. A legal guardian assumes many of the responsibilities of a legal parent, including financial and health care decisions and basic provisions such as food and housing.

LAST WILL AND TESTAMENT

A Last Will and Testament provides for the administration of your estate and the orderly disposition of your assets upon your demise. There are three areas of consideration in terms of your Will: (i) your decision as to the ultimate distribution of your assets, (ii) appointment of fiduciaries, such as an Executor and a Trustee, and (iii) estate tax consequences based upon the value of your estate.

In your Will, you can set forth your intentions in writing, so that your wishes are carried out upon your passing. These intentions may include all or some of the following:

1. Are there specific bequests that you wish to leave to a certain person? These items may include jewelry, dinnerware, artwork, a car, etc.

2. To whom do you wish to leave your remainder estate? For example, your spouse, your children, your nieces and nephews, or a charity.

3. If your child(ren) are minors, you may wish to have their share held in a trust until an age you feel they are mature enough to have access to it.

4. If your child(ren) are minors, you should consider who will be their guardian(s) and trustee(s), if needed.

5. Who will be the Executor of your estate to carry out the terms of your Will?

6. If you are leaving assets to an individual with special needs, your Will can leave those assets in a protective way.

7. If you are in a second marriage, your Will can specify who will administer your estate and who will be the beneficiaries of your estate.

8. Your Will may establish a trust for a spouse (referred to as a “Supplemental Needs Trust”) which will protect the assets in the event your spouse has long term care needs.

9. Your Will can also provide for the special needs of a beneficiary who is someone other than a spouse (such as a family member who collects disability benefits). All or a portion of your estate can be placed into a Supplemental Needs Trust under your Will. The

trustee can be given broad discretion to expend income and/or principal for the special needs of a beneficiary, without affecting the beneficiary's eligibility for governmental benefits, such as Medicaid.

LIVING TRUSTS

REVOCABLE TRUST

A funded REVOCABLE LIVING TRUST can be utilized regarding asset management, financial decision making, and avoidance of probate. This plan will allow you to place your assets into the Trust to be managed by you, either alone or with a Co-Trustee (i.e., spouse and/or children).

MANAGEMENT OF ASSETS AND INCOME. You would receive the income and/or principal from the Trust at your discretion. You would also have direct access to the principal of the Trust at any time. Further, you would retain the power to alter, amend, or terminate the Trust at your sole discretion. Upon your demise, the Trust Estate avoids probate and allows for the distribution of your Trust Assets according to your desires as stated in the Trust.

AVOIDANCE OF PROBATE. Unlike assets passing under a Will, the Trust Assets will not be subject to probate proceedings. This step can save legal fees and court filing fees for your family and avoid any unnecessary delay in the distribution of the Trust Assets. This is particularly helpful if you own real property in two or more states.

INCOME TAXATION. The Trust income is taxed to you (the person who set up the trust) under the Grantor Trust rules of the Internal Revenue Code.

GIFT AND ESTATE TAXATION. There would be no gift tax upon the funding of the Trust. Upon your demise, the value of the remaining Trust assets would be included as part of your estate for estate tax purposes.

NEW YORK ESTATE TAX PLANNING. In the case of married couples, the revocable trust can be structured to fund a marital trust and a credit shelter trust which can minimize New York State estate taxation.

In addition, the Trust can allow for a partial disclaimer of the trust assets by the surviving spouse to a credit shelter trust. Assets placed in the credit shelter trust would pass without New York Estate tax on the death of the first spouse and by-pass New York State estate taxes on the death of the second spouse.

BENEFITS OF REVOCABLE LIVING TRUSTS

- Asset Management
- Avoids Disputes
- Assures Privacy
- Avoids Delays in Distribution
- Lower Estate Settlement Costs
- Grantor Can Observe the Estate Plan in Action

POUR OVER WILL

In the event that you decide upon utilizing a Living Trust, then as a precautionary measure, you should have a Will which provides for your personal property tangible assets to pass directly to named individuals (such as your surviving spouse or children) and the balance of any other assets outside of your trust to be paid over to the Trust for ultimate distribution in accordance with the Trust provisions.

FAMILY PROTECTION TRUSTS

You can leave assets to a Family Protection Trust(s) which will allow your assets to be left in a protective way for your beneficiaries. Outright distributions to beneficiaries may leave those assets vulnerable to many circumstances that can lead to the assets being wasted. By establishing a Family Protection Trust, the trust assets will still be available for your loved one but may be protected from unfavorable circumstances such as a bad marriage, creditors, bad asset management, or estate taxes.

IRREVOCABLE LIFE INSURANCE TRUSTS

An Irrevocable Life Insurance Trust (sometimes referred to as an “ILIT”) can be created to own life insurance with you as the insured. This will allow the proceeds to be received by the Trust income and estate tax free. The insurance proceeds can provide liquidity for your family and assist with the payment of any estate taxes.

If the insurance policy is owned by you and then transferred to the ILIT, then there is a three-year period from the date of the transfer that the insurance proceeds could be recaptured in your estate for estate tax purposes.

RETIREMENT TRUSTS

A Retirement Trust can be created to give the beneficiaries of your retirement account protections that are otherwise not available to them. Rather than naming beneficiaries directly for your IRA accounts, you can establish one or more retirement trusts with the following benefits:

i. Asset Protection of the funds for your beneficiaries from creditors,
ii. Avoid accelerated income tax exposure by taking advantage of stretching the distributions over a lifetime for qualifying beneficiaries,
iii. Provide assistance with the asset management of the Trust, so that poor financial decisions or inappropriate distributions are not made by the beneficiary, and
iv. Flexibility in naming successor beneficiaries to your IRA, so that you are able to control who inherits the IRA after your primary beneficiary has passed away.

LONG TERM CARE PLANNING

In connection with long-term care which is not covered by Medicare and/or major health insurance, there are several options to consider.

A. One option is to privately pay for your long-term care, if needed.

B. A Second Option is for you to purchase a long-term care insurance policy or a long-term care insurance rider of a life insurance policy. This would allow you to privately arrange and pay for care with the assistance of the insurance.

C. A Third Option would be to access Medicaid to pay for long term care but there are strict financial eligibility rules that would apply to you.

FEDERAL AND NEW YORK STATE TAXES

INCOME TAXES

The Tax Cuts and Jobs Act (“Act”) enacted in 2017 may have had major implications on your taxes and your budget. While the Act, generally, made favorable changes to the seven income tax brackets and doubled the standard deduction, the Act also made unfavorable changes in the form of limiting or eliminating certain deductions that you may otherwise be accustomed to taking. Most of the changes under the Act are set to sunset in 2025.

STATE AND LOCAL TAX DEDUCTION

Most notably the State and Local tax deductions (which include property tax and income tax) are now limited to $10,000. The Act also eliminated the personal exemption, eliminated the deduction for home equity debt (historically capped at $100,000), and lowered the cap on mortgage debt eligible for deductions from $1 million to $750,000. One may be able to work around this limitation by paying a Pass Through Entity Tax (PTET), if eligible.

As a result, although you may be subject to a lower tax bracket, when looking at all of the changes in the aggregate, taxpayers in high-tax states like New York may experience greater taxes.

RETIREMENT ACCOUNTS

When an account owner reaches a certain age, then the account owner is required to take a minimum distribution from their IRA. Depending upon one’s birth date, required minimum distributions are based on a Table published by the IRS (see Tables below).

The SECURE Act of 2019 changed the age at which RMDs begin from 70½ to 72. The Secure Act 2.0 increases the age at which RMDs begin to age 73 for those individuals who reach 72 in 2023 or later. The RMD age changed again in 2033 from 73 to 75.

GIFT TAXES

There are potential gift tax consequences when assets are transferred for less than full consideration. In 2025, the federal annual gift tax exclusion amount is $19,000 per recipient. Therefore, you can give gifts up to the annual gift tax exclusion without having to file a gift tax return or dipping into your lifetime estate and gift tax exemption. Any gifts in excess of $19,000 per recipient per year and not between spouses are subject to federal gift tax reporting requirements and may be subject to gift taxation. Transfers between spouses who are U.S. citizens are also excluded from federal gift taxation.

Other than qualifying annual exclusion gifts and transfers between spouses (as discussed above), cumulative lifetime gifts of up to $13,990,000 in 2025 will be subject to federal gift tax reporting, but no gift tax will be due. If you make gifts in excess of the available annual exclusion, then a federal gift tax return is required to be filed on or before April 15th of the year following the year of the gift (even if no tax is due).

There is no New York State gift tax.

ESTATE TAXES

Federal Estate Taxes

Under current law, your estate is subject to both federal and New York State estate taxation. The federal estate and gift tax exclusion is $13,990,000 ($27,980,000 for married couples) in 2025 and is subject to an annual adjustment. Please note that this increased exemption amount is set to sunset in 2025. In addition, gifts of $19,000 per person can be made in 2025 without any federal gift taxation.

The federal estate tax rate is 40% and the New York State estate tax ranges from 3% to 16% with a credit against federal estate tax. The combined estate tax rate is approximately 50%. Any taxable assets in excess of the federal exclusion amount will be taxed at 40% plus the New York State estate tax, effectively a rate of 50% (approximately).

New York Estate Taxes

In New York, the basic exclusion amount for dates of death on or after January 1, 2025 and before January 1, 2026, is $7,160,000. It is scheduled to increase annually for inflation.

These increases along with proper estate planning will certainly help reduce or eliminate estate taxes assessed at the time of one’s death.

ESTATE TAX PLANNING

There are two concerns regarding Federal and New York State taxes under the current laws. The first concern is the estate tax on your estate if you were to pass away at this time and the second concern is the estate tax on your estate if you were to pass away many years from now with a much larger estate subject to estate tax.

There are options to minimize estate taxes for your consideration.

a. **Annual Gifts.** One approach is to create a gifting program utilizing annual gifts and your federal gift and estate tax exclusion. For example, you could make annual gifts outright to children and/or grandchildren or to a Trust for their benefit. A gift of $19,000 in 2025 per recipient would result in decreasing your estate and saving approximately $7,600 in estate taxes. A gift of appreciating assets also would remove future appreciation from your estate.

b. **Gifts of Lifetime Exclusion Amount.** An additional approach would be to move a greater amount of your assets out of your estate by utilizing the federal estate and gift exclusion during your lifetime. This would remove all future appreciation of those assets from your estate. For example, a $5,000,000 gift today with a three percent annual appreciation would be worth $7,800,000 in fifteen years and potentially save $1,260,000 (assuming an overall 45% Federal and State estate tax rate).

   Since the exemption is a very valuable asset, you would want to leverage the use of this gifting approach as discussed below.

   It is important to note that the basis in assets that you gift during lifetime will have the same basis as you have in the gifted asset. Meanwhile, assets that are inherited are subject to a step-up in basis which can save significant capital gains when the assets are sold after you pass away. When deciding which assets to transfer, the assets with the least amount of appreciation to date and the assets which are projected to have the greatest rate of appreciation in the future would be the preferred assets to gift.

c. **Estate Tax Planning with Leveraging Gifts.** Estate planning is not limited to outright gifts which reduce the estate and gift tax exclusion dollar for dollar. High net worth clients would be wise to take advantage of leveraged gifting. This can be done using a number of gift tax strategies, such as Grantor Retained Annuity Trusts (GRATs), Qualified Personal Residence Trusts (QPRTs) and Charitable Trusts. For estates of significant value, the use of Intentionally Defective Grantor Trusts can be helpful.

d. **Grantor Retained Annuity Trusts (GRATs) Funded with LLC Units.** A Grantor Retained Annuity Trust (GRAT) is an irrevocable Trust which requires that a percentage of the value of the trust property be paid to the Grantor each year (annuity payment) for a term of years. When the term of years end, the trust assets pass to the trust beneficiaries. The value of a gift of property to a GRAT is reduced by the value of the annuity payment to the Grantor because the annuity payments are retained by the Grantor. The value of the gift to the trust can be further reduced if the GRAT is funded by assets which are themselves discounted, such as non-voting minority units of limited liability companies (LLCs) which own real estate. Therefore, combining the GRAT with discounted nonvoting shares in an LLC can maximize gift and estate tax savings.

<u>The following is an example of how this approach works and is for illustration purposes only</u>.

For example, a client with a taxable estate could take a $5,000,000 portfolio of real properties, establish an LLC, and transfer the properties to this LLC in exchange for 4 voting and 96 nonvoting shares of the LLC, called "membership units." This could also be accomplished with business interests and/or liquid assets.

The LLC would then be appraised, and an appraiser would apply a discount typically in the range of 30% or greater (15% to 35%) to the nonvoting units because the units are nonvoting and are not marketable.

The client would then create one or more Grantor Retained Annuity Trusts (GRATs) providing income to the client for a term of years. When each GRAT is created, the client will determine the term and the annual rate of return which would impact the amount of the discount.

As an example, a client, age 65, receives a 30% discount on the nonvoting units of the LLC ($4,800,000 x .30 or $3,360,000) and makes a gift of the units to a GRAT with a twelve-year term and a reversion provision. The client retains an income stream of 5% of the funded value of the LLC units during the GRAT period. Once the client outlives the GRAT term, the assets in the GRAT (the 96 nonvoting LLC units), would pass to children, grandchildren outright or continue in trust for their benefit without estate taxation. At the time of funding the GRAT the Section 7520 rate was five percent (5.00%) and annual growth of principal and income earned is projected to be six percent (6.00%).

By utilizing leveraged gifting and employing an LLC and a GRAT strategy, and assuming the client survives the GRAT term, the client will have gifted $4,800,000 in real estate using approximately $1,438,940 of gift tax exemption.

The client would have reduced the gift of real estate in total by approximately 72%. Once the client outlives the term, the estate tax savings would be approximately $1,512,747. In addition, any future appreciation in the real estate after the term expired would be outside the client's taxable estate, resulting in additional estate tax savings.

This example is based on certain assumptions including the §7520 rate of 5%, income of $5 per annum, appreciation of 3% per annum and a combined federal and state estate tax rate of 45%.

Depending on the value of the taxable estate & the federal estate tax rates in effect at the clients' date of death, leveraging the gift in this way can save the client's estate a significant amount of money in federal and state estate taxes.

e. **The Qualified Personal Residence Trusts (QPRTs).** A client may leverage a gift of his or her home (and/or a second home) by using a Trust called a QPRT (Qualified Personal Residence Trust). A QPRT is a trust that lasts for a term of years. During the QPRT term the client has the right to live rent free in the residence. At the end of the term the residence can remain in trust or pass to children, grandchildren or trusts for their benefit. The client can continue to use the residence under certain conditions.

The primary benefit of the QPRT is that all future appreciation of the home will escape estate taxation once the client outlives the term.

<u>The following is an example of how this approach works and is for illustration purposes only</u>.

For example, a 55-year old client with a taxable estate who owns a $1,000,000 home transfers it to a 20-year QPRT and thereby has made a taxable gift of $283,670. After the client outlives the term, the $1,000,000 (with any additional appreciation) home is now outside of the client's estate. The potential estate tax savings is $858,354. There are additional techniques which can be employed to save additional estate taxes with the use of a QPRT funded by a client's home.

This example is based on certain assumptions including the §7520 rate of 5%, appreciation of 4% per annum and a combined federal and state estate tax rate of 45%.

Please note that if the home is sold by the QPRT during the term, there may be capital gains tax liability. This liability may be reduced (or in some cases eliminated) by use of the $250,000 capital gains tax exclusion for the sale of one's personal residence. It is important to note that the capital gains tax rates are lower than the estate tax rates. Additionally, if a new home is not purchased within two (2) years of the sale, the QPRT must convert to a GRAT, which may reduce the estate tax savings of the QPRT.

If the home is sold by the QPRT after the term, and if the trust is structured as a grantor – type trust then there may be capital gains tax liability. The capital gains tax liability may be reduced if the creator of the trust qualifies for the $250,000 capital gains tax exclusion. *

f. **Spousal Lifetime Access Trust (SLAT).** This is a type of irrevocable trust that benefits the donor's spouse and children. A SLAT can be used for married individuals who want to make lifetime gifts to their descendants but have concerns about permanently gifting a portion of their estate away. With a SLAT, the donor-spouse makes a gift to an irrevocable trust using their gift tax exemption. The SLAT then names the non-donor spouse as the current beneficiary, which allows the trustee to make distributions of trust funds to the non-donor spouse during his or her lifetime. Descendants can then be named as current and/or remainder beneficiaries, so the SLAT can continue as part of a legacy plan for future generations.

   This type of trust can also be built in Generation Skipping to minimize estate taxes on your child's estate.

g. **Freezing the Value of your Estate (IDGTs).** Another additional approach would be to transfer assets with significant potential future appreciation to an Intentionally Defective Grantor Trust (IDGT) which has the effect of freezing the value of the gift with future appreciation escaping estate taxation.

   In this strategy, you would set up a trust and fund it with a gift. The trust would then purchase the asset from you, and you would take back a promissory note with interest. The note would be repaid over time, and the trust asset would no longer be part of your estate for estate tax purposes. Any future appreciation would avoid estate taxation.

h. **Charitable Gifting.** There are several options available for individuals with a charitable intent. Outright gifts can be during lifetime or under your Will. You can create a Private Foundation as a vehicle for your charitable gifts.

   You can also create Charitable Trusts which would allow you to benefit from the trust during your lifetime while creating a charitable donation for income tax purposes and avoidance of an estate tax on the trust assets. This is referred to as a Charitable Remainder Trust.

   There is another Charitable Trust which allows the Charity to benefit during your lifetime while creating a charitable income tax deduction during your lifetime. This is referred to as a Charitable Lead Trust.

   Any consideration as to the use of these deductions must consider pending Income Tax Reform which could have an adverse impact on the benefits of any Charitable Giving.

Take steps now to protect your assets and preserve your dignity. Contact us for a planning meeting today!

Russo Law Group, P.C. advocates for and represents seniors and people with special needs and their families. Call us at (516) 683-1717 or visit us at www.VJRussoLaw.com for more information.

<u>RETIREMENT DISTRIBUTIONS</u>

Table for Determining Applicable Divisor

For Account Owners who turned age 70 ½ <u>after</u> 12/31/19

To calculate the required minimum distribution (RMD), divide the account balance on December 31 of the preceding year by the applicable divisor. The applicable divisor is determined based upon the IRA owner's age attained on his or her birthday in the year of distribution.

This table does not apply to: (i) IRA owners who turned age 70 ½ by 12/31/19, (ii) beneficiaries of a deceased IRA owner, or (iii) to an IRA owner with a spousal beneficiary greater than 10 years younger than the IRA owner. There are also other exceptions to the general rule (such as 401k retirement accounts).

<u>Note: The SECURE Act of 2019, which took effect on January 1, 2020, changed the RMD beginning at age 72. In addition, subject to a few exceptions, this law generally requires an inherited to be paid within 10 years following the death of the account holder.</u>

Age of Retiree	**Distribution period (in years)**	**Age of retiree**	**Distribution period (in years)**
72	27.4	97	7.8
73	26.5	98	7.3
74	25.5	99	6.8
75	24.6	100	6.4
76	23.7	101	6.0
77	22.9	102	5.6
78	22.0	103	5.2
79	21.1	104	4.9
80	20.2	105	4.6
81	19.4	106	4.3
82	18.5	107	4.1
83	17.7	108	3.9
84	16.8	109	3.7
85	16.0	110	3.5
86	15.2	111	3.4
87	14.4	112	3.3
88	13.7	113	3.1
89	12.9	114	3.0
90	12.2	115	2.9
91	11.5	116	2.8
92	10.8	117	2.7
93	10.1	118	2.5
94	9.5	119	2.3
95	8.9	120 and older	2.0
96	8.4		

RETIREMENT DISTRIBUTIONS

Table for Determining Applicable Divisor

For Account Owners who turned age 70 ½ on or before 12/31/19

To calculate the required minimum distribution (RMD), divide the account balance on December 31 of the preceding year by the applicable divisor. The applicable divisor is determined based upon the IRA owner's age attained on his or her birthday in the year of distribution.

This table does not apply to: (i) IRA owners who turned age 70 ½ after 12/31/19, (ii) beneficiaries of a deceased IRA owner, or (iii) to an IRA owner with a spousal beneficiary greater than 10 years younger than the IRA owner. There are also other exceptions to the general rule (such as 401k retirement accounts).

Age	Applicable Divisor	Age	Applicable Divisor	Age	Applicable Divisor
70	27.4	86	14.1	102	5.5
71	26.5	87	13.4	103	5.2
72	25.6	88	12.7	104	4.9
73	24.7	89	12.0	105	4.5
74	23.8	90	11.4	106	4.2
75	22.9	91	10.8	107	3.9
76	22.0	92	10.2	108	3.7
77	21.2	93	9.6	109	3.4
78	20.3	94	9.1	110	3.1
79	19.5	95	8.6	111	2.9
80	18.7	96	8.1	112	2.6
81	17.9	97	7.6	113	2.4
82	17.1	98	7.1	114	2.1
83	16.3	99	6.7	115+	1.9
84	15.5	100	6.3		
85	14.8	101	5.9		

PLANNING WORKSHEET

What is Your Estate Worth?

Most people underestimate the value of their estates. Completing the following worksheet can help you estimate the value of your gross estate. (Note that other items may also be included).

Assets	**Market Value**
Certificates of Deposit, Money Market Accounts, and other Cash..	$________________
Stocks, Bonds, and Mutual funds..	________________
Mortgages and Other Debts Owed to You............................	________________
Other Investments...	________________
Employer-Sponsored Retirement Plan Benefits....................	________________
Individual Retirement Accounts...	________________
Personal Residence...	________________
Vacation Home / Time Share…..	________________
Other Real Estate……...	________________
Business or Partnerships Interests	________________
Life Insurance Face Value...	________________
Automobiles and Recreational Vehicles................................	________________
Jewelry..	________________
Collectibles...	________________
Other (furniture, personal belongings, etc.)	________________
TOTAL GROSS ESTATE...	$________________

NOTE: The above is merely informational and not legal advice. This guide was published in January 2025 and based on New York law. You should contact us for any changes or updates in the law or estate planning. Future changes in law may render the above information inaccurate.

If you have any questions regarding this guide, please do not hesitate to call RUSSO LAW GROUP, P.C. at (516) 683-1717 or contact us at www.VJRussoLaw.com.

Prepared by:

Russo Law Group, P.C.
Attorneys and Counselors at Law

Offices: Garden City • Islandia • Lido Beach

Phone: 800-680-1717 | www.vjrussolaw.com

RUSSO LAW GROUP, P.C.

Estate Planning, Elder Law & Special Needs

800-680-1717 • www.vjrussolaw.com

Garden City | Lido Beach | Islandia

Virtual Meetings | Home Visits