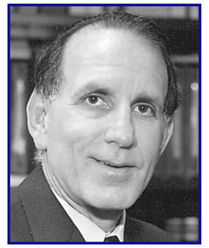
2013-2014 Client Newsletter

$11.95

Living Trusts & Estate Planning



Dear Valued Client:

Enclosed is our updated Living Trust and Estate Planning newsletter for your review. My daughter Lindsey Donoff is now working with me as an Associate Attorney. She graduated Law School at the American University in Washington, D.C.

On January 2, 2013, President Obama signed the American Taxpayer Relief Act into law.

The Estate Tax exemption for lifetime and gift tax exemption will be $5.25 Million for 2013 and indexed for inflation, for years to come, and the tax rate will be 40% over that amount. Of course, these are supposed to be "permanent" changes to the law governing these type of taxes, but as we know, anything can happen in the future, so don't be surprised if the Estate Tax for example, if complete repeal vs. just lowering the exemption and a higher tax rate becomes a hot topic in the near future. The gift tax exemption was increased to $14,000.00 per year.

With the increase in the unified credit to $5.25 Million in 2013 and there after many clients will no longer be concerned with the Federal Estate Tax.

However, there are many other non tax reasons to continue Estate Planning with the use of a Living Trust. Some of the most common reasons are avoiding the cost and expense of probate, dealing with second marriage issues, protecting your assets from your children's spouse (spendthrift trusts), planning for incapacity, and many other objectives which clients prefer in their own estate plans. Along with having your Estate Planning Documents updated according to the current law.

It is still very important to spend your money while you are alive and always make gifts to your family with a warm hand rather than a cold one.

With over 39 years of Tax and Estate planning experience I know my law firm can answer all of your questions and give you the best advice.

Stay healthy and enjoy everyday of your life.

Sincerely,
Craig Donoff
Craig Donoff, P.A.

Craig Donoff is a tax attorney with over 39 years of experience. He graduated from the University of Maryland with a business degree. He graduated from the American University Washington College of Law, Washington, D.C., where he received his Juris Doctor Law Degree.

Craig Donoff has two (2) Master of Law Degrees (LLM in Taxation and Estate Planning) from the University of Miami Law School. He is one of the few attorneys in the U.S. with two (2) LLM degrees. He practices exclusively in the areas of Living Trusts, Estate Planning and Post Mortem Estate Tax Planning and Administration.

He is also the author of two books: "How to Plan Your Estate in Florida" and "Avoiding Probate - A Lawyers View." Mr Donoff conducts over 50 Living Trust and Estate Planning seminars per year.

In 1997, Craig Donoff was selected by his peers as a Leading Florida Attorney in the area of Trusts and Estate Law.

If you enjoy reading my newsletter, the highest form of compliment I can receive is the referral or introduction to your friends, family or business associates.

Don't keep us a secret!

LAW OFFICES OF CRAIG DONOFF, P.A.

Town Executive Center
6100 Glades Road, Suite 301
Boca Raton, Florida 33434
Information@craigdonoffpa.com
(561) 451-8220
Fax (561) 451-8223

Concord Centre II
2999 NE 191st Street, Suite 809
Aventura, Florida 33180
Dade (305) 935-0496
Fax (305) 935-9542

WWW.DONOFFLAW.COM

WHAT HAPPENS AFTER DEATH?

1. As soon as possible, meet with your trust attorney to have him review the details of the trust so you understand your obligations and benefits. He will need: (a) a current financial statement listing all of the decedent's assets and liabilities as of the date of death, (b) the decedent's original Will and any original codicils, (c) at least four copies of the decedent's death certificate.
2. Have your attorney file the decedent's original Will and Notice of Trust with the Clerk of the Probate Court in the County of the decedent's residence for safe-keeping. The law requires that you file the original Will within 10 days of the date of death.
3. If the decedent had a trust and any portion of that Trust became irrevocable at the decedent's death, then you must give notice to the decedent's heirs and beneficiaries within sixty days of the decedent's death advising them of the terms of the trust and that they are entitled to a copy of the trust.
4. Your attorney will want to review a list of all of the assets and liabilities as of the date of death to determine whether or not a Federal Estate Tax Return, "Form 706" will be required. If the gross estate of the decedent is $5,250,000 or more in 2013, and thereafter, the Form 706 is required and must be filed by you under penalty of perjury within nine months of the decedent's date of death, or a Federal Estate Tax Return could be filed for portability purposes.
5. Fiduciary income tax returns (Form 1041) may be required if any of the trusts become irrevocable at the death of the first spouse. Fiduciary income tax returns may also be required after the death of the second spouse if the trust administration is not completed quickly. Your attorney will obtain the taxpayer identification numbers for the irrevocable trusts for you from the Internal Revenue Service.
6. Do not ignore the terms of the trust. Otherwise, the Internal Revenue Service may deny you the tax benefits, which were the main reason you established the trust in the first place.
7. DO NOT make changes to the ownership of any assets, including bank account registrations, until you have met with your Trust attorney, otherwise valuable estate planning opportunities (e.g., disclaimers) may be lost.
8. Update your Will, Trust, and Durable Power of Attorney for both health care decisions and property.

THE ULTIMATE GOAL OF ESTATE PLANNING

The ultimate goal of estate planning is to provide for the management and transfer of your property in the event of your death or incapacity, at the smallest financial and emotional cost to your family. A properly structured estate plan allows you to choose your beneficiaries, provide for the management of your assets and eliminate or reduce taxes. Without careful planning, your property may pass to unintended beneficiaries, may be reduced in value by unnecessary taxes or unsound investments, may be without adequate investment oversight or may be unavailable to you and your family in the event of your illness or incapacity. All of these potential problems may cause financial insecurity or bitterness during your lifetime or after death.

Estate planning also addresses such questions as who should own property and what property to own, whether it should be owned jointly or separately, whether trusts are needed for management, control or tax savings, and whether lifetime gifts should be made.

Key Estate Planning Terms

1. **Annual Gift Tax Exclusion** - Allows individuals to gift up to $14,000 a year ($28,000 for married couples) to any number of individuals without incurring federal gift taxes.
2. **Beneficiary Designation** - Specifies the person or organization who will receive the proceeds of life insurance, savings accounts, IRAs, annuities or retirement accounts upon the death of an owner. This designation supersedes any provisions included in an individual's Will or Trust. Be sure to update beneficiary designations especially if you want to qualify for the "stretch provisions" of the IRA regulations.
3. **Irrevocable Life Insurance Trust (ILIT)** - A trust that owns an insurance policy on the grantor's life and removes the value of the death benefit from the grantor's estate. At death, the insurance proceeds are paid to the trust or to chosen beneficiaries to provide a source of liquidity to pay estate taxes and other settlement costs. After the surviving spouse's death, the money in the trust passes estate tax free to children or grandchildren. This also may be referred to as a Crummy Trust.
4. **Qualified Personal Residence Trust (QPRT)** - A trust created by transferring a residence or second home into the trust and, therefore, out of an individual's estate. The grantor retains the right to live in the residence for a specified period of time, usually 10 to 20 years, after which the residence passes to the trust's beneficiaries, typically at a discounted value. If the grantor were to die before the terms of the trust were enacted, the entire value of the residence would be included in his or her estate.
5. **Probate** - A legal process guided and supervised by the courts in which an executor or administrator collects the decedent's assets to pay the death taxes, debts and expenses of the decedent and to make the appropriate distribution of his or her remaining assets.
6. **Revocable Living Trust** - Allows an individual to act as trustee and retain lifetime control over trust assets. At his or her death, trust management is transferred to a successor trustee. A revocable trust helps to avoid probate and ensure the continuous management of trust assets and the flow of income (usually to the surviving spouse and children) in the event of the grantor's death, disability or incapacity. Because the grantor maintains control over the trust assets, he or she must pay income tax on those assets at his or her income-tax rate. Similarly, the trust principal is included in the grantor's estate for estate tax purposes.
7. **Survivorship (Second-To-Die) Life Insurance** - A policy that insures two lives and pays a death benefit only upon the death of the surviving spouse. Because a person can pass an unlimited amount of assets to his or her spouse - postponing tax liability until the second spouse's death - a married couple may not need insurance proceeds to cover estate taxes until the second spouse dies.
8. **Trust** - A legal arrangement made by the grantor which transfers legal title of property to an individual or institution (the trustee) to be administered for the benefit of another person (the beneficiary).
9. **Unified Credit** - A trust that enables both spouses to take advantage of their unified credit exemptions to pass up to $10.5 million to heirs in 2013. Upon the death of the first spouse - up to the $5.25 million maximum - is transferred to the trust. The surviving spouse receives income from the trust and principal for the surviving spouses' health, maintenance and support. At the surviving spouse's death, the assets in the trust and the second spouse's $5.25 million exemption pass to beneficiaries free from estate and income tax - even if the trust assets have appreciated in value.
10. **Unlimited Marital Deduction** - The unlimited marital deduction allows married persons to leave any amount of property to their spouse (if a U.S. citizen) free from federal estate and gift taxes. Although the marital deduction does not eliminate estate taxes, it does postpone them until the surviving spouse dies.

AARP States That Probate Procedures Costly, Cumbersome

The nation's probate court procedures are cumbersome and time-consuming, leading in many cases to unreasonable and arbitrary legal fees, says a new AARP report.

Probate, a court-supervised method for distributing a deceased person's property, involves paying debts — including tax and legal fees — and distributing remaining property to beneficiaries.

Entitled "A Report on Probate: Consumer Perspectives and Concerns," the study looked at probate costs and procedures, including attorneys' and personal representatives' fees, in 200 randomly selected court cases in San Diego, Milwaukee and Wilmington, Delaware.

The study found that, in many cases, the often outdated probate process creates unreasonable legal fees, estimated to be nearly $1.5 billion nationally each year. It also found legal fees can consume 5 to 10 percent of the value of the estate.

For the past 39 years, I have been a firm proponent of Living Trusts as a way to avoid probate.

Craig Donoff

Law Offices of Craig Donoff, P.A. Background

Craig Donoff, P.A. is a law firm dedicated to offering the highest quality legal and estate planning services—at affordable rates.

Craig Donoff, P.A. has been recognized as the leader in providing education about estate planning. The attorneys of Craig Donoff, P.A. are recognized experts on the revocable living trust in the Sun Sentinel, Miami Herald, and Senior World newspapers. The attorneys of Craig Donoff, P.A. staff insures that estate planning documents can be individually written and produced in the most timely manner. This advanced technology has enabled the firm to provide high quality legal service at a reasonable cost.

While these systems and procedures guarantee efficiency and excellent quality controls, Craig Donoff, P.A. remains a law firm committed to personal service designed to meet the exact needs of each individual client.

The Craig Donoff, P.A. estate plan is not a "Do it yourself" plan. The clients meet personally and privately with the attorney and the attorney supervises all aspects of the preparation of their plans.

Craig Donoff, P.A. attorneys present free seminars about revocable living trusts on a regular basis. The seminar is presented in a way which is completely understandable by the lay person. By way of concrete examples, the attorneys are able to communicate the facts about revocable living trusts and estate planning in an entertaining and informative manner.

In addition to providing seminars, the attorneys and trained legal assistants at each office are more than happy to discuss questions about revocable living trusts with you. There is no charge for the initial consultation.

If you would like a free appointment or information on the next seminar in your area, please call our office.

Your Phone Calls Are Very Important To Us!

Our clients are our greatest resource and your questions and concerns are of our utmost priority.

We endeavor to return all phone calls. If your call is an emergency, please state so and I or one of my associates, will assist you or call back as soon as possible. We will usually call back no later than the evening of the day following your call. (Most calls are returned the same day) Ours is a busy office, and an attempt is made to return **"all calls on a timely basis."**

When leaving a message, be sure to leave your name (first name too, please) and your telephone number. Please do not assume that we have your number handy.

If we contact you and do not reach you, we will try at least two additional times. If you do not hear from us within 48 hours, please assume we could not reach you. We will leave messages if you have an answering machine.

Please do not leave complicated messages. When speaking to my assistant, please remember that she is not an attorney and you should not seek legal advice or answers. However, it is sometimes not necessary to speak to me personally.

Top Ten List of Items That May Require an Estate Plan Review

The following is a list of some events that would suggest your estate plan be reviewed. Of course, this list is not exhaustive; there are other items that would trigger a review of your estate plan.

1. Your estate plan has not been reviewed within the last 12 months.
2. You or a child has gotten married or divorced.
3. There has been a change in your health, or the health of your spouse or an immediate family member.
4. There have been significant changes in the financial situation of you or your immediate family.
5. There have been significant changes in the relationship between you and the people you have named as beneficiaries, trustees, guardians, or other fiduciaries of your estate plan.
6. You want to do tax planning to save you or your family money and taxes.
7. You have inherited or will be inheriting money or assets.
8. You have invested in or are going to invest in a new business and need to form an entity or enter into a buy-sell agreement.
9. You have retired or are contemplating retiring from a business or profession.
10. You would like to do estate planning for your parents to
    a. minimize their estate taxes
    b. protect your inheritance in case you get sued or divorced
    c. eliminate estate taxes at your death on your inheritance.
11. There have been changes in the law that may affect your estate plan.

EVERY ESTATE IS PLANNED...
Either by You or by the IRS

The estate tax structure can effectively reduce your estate by up to 40%. By following these basic steps of estate planning, you can significantly reduce this tax impact.

1. **Prepare a Will.** Be sure it keeps pace with changes in tax laws and your own circumstances. Unfortunately, seven out of ten Americans die without a Will and, consequently, the laws of their states decide the disposition of their assets.
2. **Use your Federal Unified Estate and Gift Tax Exclusion.** In 2013, the IRS allows each of us (except nonresident aliens) to pass $5.25 million of assets to beneficiaries free of federal estate taxes. Using the applicable exclusion amount during your lifetime can effectively reduce your estate by the value of the gifted property as well as any income earned or subsequent appreciation on the property.
3. **Monitor retirement plan assets.** Determining the appropriate strategy for dealing with the estate and income taxation of these accounts depends on your individual objectives. We recommend that you consult your attorney or tax advisor on this issue. Be sure to update your beneficiary designations to qualify for the "stretch" IRA tax rules.
4. **"Gift away" what you don't need.** Lifetime gifts can not only reduce your estate and subsequent estate tax liability, but also shelter asset appreciation from taxation. You may transfer up to $14,000 per person each year without incurring any gift tax; spouses together may gift up to $28,000 per person. (Additional gifts made directly to educational institutions for tuition or to medical care providers are also excluded from gift tax.) Gifts to charities may be exempt from gift tax. In addition, these charitable donations may qualify for current income tax deductions.
5. **Keep enough assets liquid to satisfy estate taxes.** Generally, the IRS demands that any estate tax liability be satisfied within nine months of the date of death. Be sure your heirs aren't forced to sell investments at the wrong time because of a shortage of liquid funds.
6. **Have a trustee or an irrevocable trust purchase your insurance policy.** Usually life insurance proceeds avoid probate and are exempt from income tax. However, they are subject to estate tax if you own or have rights in the policy. Purchasing the policy within an irrevocable trust may prevent life insurance proceeds from increasing your estate tax liability.
7. **Start soon.** Update your plan as soon as possible. The only people that will benefit are you and your family.

TESTAMENTARY SPENDTHRIFT TRUSTS BECOME MORE POPULAR

This is a Trust created after a client's death to protect a child's inheritance. For example, your daughter is married and is having marital problems. You want to make sure her inheritance is protected if there is a divorce or her husband is a spendthrift and cannot properly manage money. A Trust can be drafted to give your daughter an <u>income</u> for life and the power to invade trust principal for her health, maintenance and support. Upon your daughter's death, the balance of the Trust will revert to your grandchildren, per stirpes (by the blood).

Additionally, your Trust can stipulate under what circumstances your children may have access to the Trust assets.

5 Common Estate Planning Mistakes

1. Mistake: Improper Use of Jointly-Held Property
   If used excessively, or by the wrong parties, jointly-held properties (such as joint tenancy) can become a nightmare of unexpected tax and non-tax problems. When creating a joint tenancy with someone other than your spouse, a gift is made and gift taxes may be due. A lawsuit against your joint tenant may unexpectedly expose your share of the property to a judgment. Jointly-held property can also result in additional estate taxes and be in conflict with your Will and trust distributions provisions.
2. Mistake: Improper Disposition of Assets
   An improper disposition of assets occurs whenever the wrong asset goes to the wrong person, in the wrong manner, at the wrong time. Over-utilizing the unlimited marital deduction (leaving a large and complex estate to a spouse who lacks the ability to manage it), leaving inappropriate assets to children, or transferring a business to family members who are not involved or interested in the business are examples of improper disposition of assets.
3. Mistake: Improper Policy Ownership and Beneficiary Designation of Life Insurance
   Congress has provided strong incentives for an estate owner to purchase life insurance. If policy ownership is properly arranged, life insurance provides income-tax free death benefits, gift tax leveraging and removal of the proceeds from the insured's estate. Many people, however, unwittingly fail to take advantage of these benefits due to improper or poorly arranged, policy ownership. In addition, an improper beneficiary designation can also subject death proceeds to gift taxes!
4. Mistake: Lack of Liquidity
   Most peoople have no idea of the size of their estate and are surprised to learn how much it will cost to settle their estate at death, and how quickly taxes and other expenses must be paid. Since estate taxes must generally be paid within nine months of death - in cash - most estates may be forced to sell assets (at a fraction of their value) in order to raise adequate cash to pay estate taxes.
5. Mistake: Leaving Everything to the Surviving Spouse
   Depending on the circumstances, leaving everything to your spouse - estate tax free - may cause a considerable increase in estate taxes at his or her subsequent death. The first spouse to die also loses the opportunity to shelter - from estate taxes - an amount equal to the applicable exemption amount that would go to the next generation. Furthermore, the surviving spouse may have no interest or capacity in managing estate assets of business interests left in his or her care.

REASONS TO DO ESTATE PLANNING
...that have nothing to do with estate taxes.

Estate planning is the opportunity to direct the use of property interests, both during life if incapacity occurs, and after death, to determine who will receive our property, and how and when it will be received.

Estate planning also directs who will manage our property, both for us and for our heirs. By preparing an estate plan, assets will be managed and distributed to carry our specific wishes and goals.

Although estate tax planning may be a part of the plan, estate taxes are not the only reason to do estate planning.

Paying for Incapacity

Although none of us want to think about what would happen if we became incapacitated, it is an important part of estate planning. If you should experience a period of incapacity without a plan in place, a court may determine who would make decisions relating to your assets, medical treatment, social environment, and living arrangements through an expensive court-appointed guardian.

Through estate planning you may arrange for the appointment of a person, institution, or a combination of the same to make these decisions, and follow your instructions.

Avoiding Probate vs. the Benefits of Probate

The cost and delays of probate are often the subject of great concern. The legal process of probate can be costly, and with the proper planning, probate can be avoided in almost every case.

The probate process can also be time-consuming and complicated. Probate costs 6% and takes 2 years or longer!

Select a Person to take Care of a Minor or Incapacitated Person

The gift of assets to a person under age 18, or who is incapacitated may require the appointment of a guardian. The appointment of a guardian will increase the cost of managing the gifted assets, and may restrict the use of the assets.

A minor or incapacitated person will also need a guardian to make decisions relating to medical, educational and residence details in the event his or her parents are deceased.

Determine How the Property Will be Used After Your Death

Without any planning, the laws of the state of your domicile will determine who receives your property, and how they receive it. Through estate planning, you make all of these decisions.

Deal with Second Marriage Issues

Many families are "second marriage" families, and the law provides rules for what will happen if no plan is put in place, or grants options to a surviving spouse, even if there is a plan.

The plan must be designed to deal with the law to be sure that the necessary adjustments are made to take care of both your surviving spouse and your children from a prior marriage.

Protect Your Assets From a Child's Spouse

Without proper planning, your child's spouse may benefit from the property you leave to your child, or worse, the new spouse or former son-in-law or daughter-in-law may benefit from your property.

For example, if your child predeceases his or her spouse, or if the assets you give to your child are converted to marital assets and then they divorce, your child's spouse may obtain the benefit of the property you intended for your child.

With proper planning, the benefits can be protected for your child's lifetime and pass to your grandchidren, or other beneficiaries you select.

Determine Beneficiaries of Retirement Plans

The failure to review and understand the beneficiary rules of retirement plans and IRA's can have a negative impact on the value of the interests your beneficiary receives. The options are numerous, and all to often little, if any, thought is given to who should be the beneficiary, and what impact the designation will have on other beneficiaries.

All IRA's (Individual Retirement Accounts) should be reviewed to qualify for the inherited IRA (Stretched) provisions of the new law. Now your children and grandchildren can continue to withdraw based on their life expectancies. Spouses can still rollover to each other on a tax deferred basis.

Estate-planning can provide peace of mind, pleased with the knowledge that our wishes will be carried out and our family will be provided for in the manner we desire.

Business Succession Planning

A closely-held business may make up a major part of the value of an estate, and be the source of support for a family. This, combined with the family's desire to know that the family business will continue after the death of the family member who is key to that business are important, as well as providing sufficient benefits to the employees who have contributed to the success of the business.

Provide for Special Needs Child

The failure to properly plan for special needs situations can result in the loss of government benefits, and the assets given may need to be spent before these government benefits can be obtained.

A plan may provide for the creation of a Supplemental Needs Trust to prevent disqualification from governmental benefits. Your assets can be used for expenses covered by a governmental program, and for other family members.

There are many reasons, other than taxes, to prepare an estate plan. The failure to do estate planning can result in our assets passing in a fashion that may not be desirable, and may cause adverse consequences, and complications to our family and beneficiaries.

LIVING TRUSTS

Advantages of a Living Trust

1. Avoids all probate and related costs – both financial and emotional
2. Completely flexible – can be changed or cancelled at any time
3. Lets you keep control even at incompetency and after your death
4. Prevents a conservatorship at physical or mental incapacity avoiding a nursing home
5. Preserves privacy – completely confidential
6. Allows for a quick distribution of assets to beneficiaries
7. Very hard to contest
8. Professional asset management with corporate trustee
9. Minimizes emotional stress on your family
10. Avoids problems of joint ownership
11. Prevents unintentional disinheriting
12. Inexpensive, easy to set up and maintain
13. Protects minor children from court-imposed guardianships
14. Can protect dependents with special needs
15. Saves estate taxes