Trusts and Estates

Protect your legacy.

You put everything into building your wealth. Don't leave anything to chance. Jaspan Schlesinger LLP offers specialized experience in trust and estates law so you don't have to.

The attorneys in our trusts and estates practice group are versed in estate and business succession planning, asset protection, healthcare planning, tax matters and estate administration. They prepare wills, trust instruments, advance directives, prenuptial and postnuptial agreements, shareholder and operating agreements and other documents necessary to implement your plans for your wealth. They also assist fiduciaries in administering estates and trusts, and provide counsel to clients on a broad spectrum of tax matters.

Carrying Out Your Wishes Efficiently and Effectively

The attorneys in our trusts and estates practice group design and execute strategies to best ensure that your unique familial, business, charitable and tax goals are achieved. We have experience dealing with many common situations that can have complex legal implications, including those involving interests in businesses and real estate, inheritance rights in blended families, the desire for privacy in estate planning, and managing the finances and care of individuals with disabilities and incapacitated persons, just to name a few.

The attorneys in our trust and estates practice group also work collaboratively with our estate litigation attorneys to anticipate future problems that might arise in contentious situations, and to plan for them defensively. With the right strategy in place, we can help you avoid wasteful and costly litigation—and give you peace of mind knowing that your wealth will be distributed from one generation to the next according to your wishes.

In certain situations, when litigation cannot be avoided, our attorneys work together seamlessly. The lawyers in our estate litigation practice group are specialists who dedicate their practices entirely to contested matters, and will seek to ensure that your wishes are ultimately carried out.

Attorneys

Mindy K. Smolevitz
Partner

Michael P. Ryan
Of Counsel

Stephen B. Hand
Of Counsel

Victor M. Finmann
Of Counsel

Case studies

Who Will Manage My Assets If I Should Lose My Mental or Physical Capacity?

A divorced and retired physician who had been a client for over 40 years began to lose his mental capacity and was moved into an assisted living facility in Queens. Prior to losing his mental capacity (but after his divorce and subsequent estrangement from his younger child), we had prepared a revised will and other estate planning documents for him. His revised will made substantial charitable bequests and left a substantial inheritance to his older daughter. The power of attorney we prepared at the same time gave his older daughter full authority to manage his financial affairs and to pay all of his bills, which she has been doing for the last few years. We also prepared a health care proxy that allowed this daughter to be able to make medical decisions on his behalf. Because all of his financial decisions and medical decisions are now being made by his older daughter, with several alternates appropriately named, there is no need to have a legal guardian appointed for him by the court. Instead, his older daughter can efficiently continue to manage his assets and make all necessary medical decisions on his behalf, by simply relying on the terms of the power of attorney and health care proxy form that were prepared for him when he had his full mental capacity.

What Will Happen If My Medical Insurance Isn't Enough to Cover 24/7 Home Healthcare?

A client came to us who had approximately one more year of insurance coverage left on his home healthcare aide coverage. The aide was costing approximately $2,400.00 per month for his 24/7 care: insurance was paying approximately $1,400.00 per month; his family personally paying the difference. We assisted him in applying for Medicaid home healthcare benefits, which he received less than one month after we submitted the application to the Nassau County Department of Social Services. Once granted, his eligibility for Medicaid benefits entirely eliminated the need for his family to pay any portion of his home healthcare costs. When his insurance coverage ran out approximately six months after he enrolled in Medicaid, none of the costs covered by insurance policy had to be paid by either the client or his family.

Where Will My Adult Disabled Child Live Following My Death?

An elderly widowed client had two adult children: his son has a good job as a chef, while his disabled

daughter is nominally employed and receiving supplemental security income (SSI). All three of them lived in the same house. The father was concerned about where his daughter, who was not capable of supporting herself, would live after his death. We revised his will so that on his death, title to his home went into a supplemental needs trust for his daughter. As such, the value of the house will not disqualify the daughter from continuing to receive monthly SSI payments, while providing her with low-cost housing for the remainder of her lifetime. The father died over five years ago, with the result being that title to his home is now in the name of the daughter's trust. As we had planned, her brother lives in the house with her, and from his monthly income, is able to pay a significant portion of the home's monthly maintenance, including the real estate taxes and utility costs. The trust provides that on the daughter's death, title to the house is to go to her brother; if he is not then alive, the house is to go to his children.

How Do We Ensure Our Children Benefit from All of Our Non-Probate Assets?

Two middle-aged clients came to Jaspan Schlesinger, LLP who wanted their assets, on the death of the second of them to die, to go into a trust for the benefit of their two minor children. The trust would provide each with a one-third share of the assets outright upon turning 30, another one-third when each turned 35, and the final one-third at age 40. As part of the estate planning process, we typically ask our clients to advise us as to nature and extent of their assets, and how those assets are held. We learned that on the death of both of them, their combined estates would be worth approximately $3.65 million. However, in reviewing how their assets were held, we discovered that all but $20,500.00 of those assets were in qualified plan, IRA or life insurance benefits. Since each of those assets had named beneficiaries, none of those assets would be governed by the terms of their wills. How, then, could the trusts that the clients wanted to set up for their children be funded? The answer is that we were able to change the beneficiary designation for almost all of those non-probate assets, so that on the death of both husband and wife, almost all of their non-probate assets would be paid into the trusts that we had established in each of their wills for the benefit of their children, and as directed by their revised beneficiary designation forms.

What Can We Do to Save Substantial Estate Taxes on Our Death?

A very wealthy couple became one of our clients over 25 years ago. Their assets at that time were in excess of $20 million. They wanted to know what they could do to substantially reduce their federal and state estate taxes over time. They also wanted to give a full one-third share of their estate to their granddaughter, who they had raised, following the mental breakdown of their daughter. We instructed the clients on how to begin an effective gift-giving program, which has included the use of gifts made through a family limited partnership, the transfer of ownership of an insurance policy on their joint lives, gifts of tuition payments for the benefit of their now great-grandchildren, yearly tax-exempt gifts, and the use of

credit shelter trusts in each of their wills. Over the years and with our assistance, the couple has transferred over $6.76 million of assets to their children, granddaughter and great-grandchildren, with no gift taxes having to be paid by the clients, and without the imposition of any generation-skipping transfer tax on any amounts transferred to their granddaughter. Such tax would ordinarily be due when children who are alive are by-passed in favor of bequests made to the next younger generation. The transferred assets have now appreciated to over $12.5 million, thereby effectively saving the couple from having to pay an approximate 50% in combined federal and state estate taxes on the approximate $5.74 million difference. In turn, their family has saved approximately $2.87 million in combined federal and state estate taxes.

The clients had also signed power of attorney forms with gift-giving authority, which we had prepared for them, so that should they lose their mental or physical capacity at some point in the future, their heirs can continue to make gifts of their assets, in an estate tax leveraged way, so that further potential federal and state estate tax savings can be realized over time.

Who Will Care for My Dog When I Am Gone?

Not all estate issues are dollars and cents. A case in point: When a long-time client's husband passed away in 2011, she became concerned about the care and welfare of her beloved 13-year old Maltese dog if should something happen to her. We prepared a will that named the individual and alternate individuals she would like her dog to live with should she pass on. She also wanted to ensure that the dog's new owner would not be out-of-pocket for any amounts that they had paid in caring from her dog. Accordingly, her will contained a special trust provision that provided a relatively modest, but entirely sufficient, fund to provide for the care of the dog during the remainder of its lifetime, and with any amounts left in the trust on the death of the dog, to go to the client's stepchildren. Several years later, the client came back to us and indicated that sadly, her beloved Maltese had died, but that she had quickly acquired a new Maltese. She was concerned that her will would need to be updated to reflect this change. We assured her that her will did not have to be changed to include the name of her new dog, because the will provision that we had prepared for her, although mentioning her prior dog by name and age, had also provided the same benefits for any "replacement dog or dogs that I (she) may subsequently come to own."