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Time to Review Your Estate Plan

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TRUSTS & ESTATES ALERT - FEBRUARY 27, 2009

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It is recommended that estate plans be reviewed every three to five years, and earlier if there has been a change in your personal circumstances or in the estate and gift tax laws. The **increase in the federal estate tax exemption** as of January 1, 2009—from $2,000,000 to $3,500,000—makes now a good time to review your estate plan, particularly if you are married or your estate plan includes gifts to charitable organizations.

1. Increased Federal Estate Tax Exemption

- The federal estate tax exemption has increased from $2,000,000 (in 2006-2008) to $3,500,000 (in 2009).
- The Massachusetts estate tax exemption is $1,000,000 (since 2006).

In 2003, Massachusetts enacted a separate estate tax system. We then advised married clients (both Massachusetts residents and non-Massachusetts residents who own Massachusetts real estate and/or tangible property) to modify the "marital formula" in their estate plans so as to prevent a Massachusetts estate tax from being assessed at the death of the first spouse. Typically, the marital formula limits the amount of property that may pass to the "family trust" for the benefit of the surviving spouse, children, and other descendants, with the balance of property passing to the "marital trust" for the sole benefit of the surviving spouse. This modified formula limited to $700,000 the value of property that could pass to the "family trust" under the first deceased spouse's estate plan, and thereby avoided a $33,200 Massachusetts estate tax for Massachusetts decedents (and a lesser, calculated amount for non-Massachusetts decedents owning Massachusetts property that would otherwise have been due), if death occurred in 2003.

Now that the federal estate tax exemption has increased to $3,500,000, the importance of this modified marital formula has grown exponentially. This modified formula will now limit to $1,000,000 the value of property that may pass to the "family trust", and will thereby defer—and possibly avoid—a $229,200 Massachusetts estate tax that could be assessed.

While this modified marital formula will prevent a Massachusetts estate tax from being assessed upon the death of the first spouse, you should consider that it necessarily limits the amount of property that may benefit your children and grandchildren—during your spouse's lifetime—to $1,000,000. If you wish to have more funds available for children during your spouse's lifetime, you may wish to alter the marital formula, which will cause some Massachusetts estate tax to be due.

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Please let us know if you would like us to review your documents to see if they contain this modified marital formula.

2. Inflation Adjustments

- *Gift Tax "Annual Exclusion"*
  In addition to the $1,000,000 federal gift tax exclusion (a total of $1,000,000 may be gifted to any one or more persons during lifetime), you may make gifts to anyone, in each calendar year, totaling $13,000 (known as the "gift tax annual exclusion"), without causing a gift tax—up from $12,000 in 2008.
- *Gift Tax "Annual Exclusion" for Gifts to Non-US Citizen Spouse*
  A total of $133,000 may be gifted in each year to a non-US citizen spouse, without causing a gift tax—up from $125,000 in 2008.

3. No Minimum Required Distributions ("MRDs") from Retirement Accounts

- The typical Minimum Required Distribution rules applicable to IRA owners and participants of qualified plans (such as 401(k) and 403(b) accounts) are suspended for 2009 distributions -- both for account owners/participants who turn 70½ years of age in 2009 or are older, and for inherited account beneficiaries of any age. Therefore, you need not withdraw any amount from such accounts for 2009 if you do not wish to. Taking advantage of this suspension may allow your accounts to rebound from losses sustained from the recent economic downturn.
- You still need to withdraw by April 1, 2009 any 2008 MRD if you turned 70½ in 2008 and did not make the full withdrawal in 2008.
- Beneficiaries of inherited accounts who are taking distributions over a 5-year period may now extend that period by one additional year.

4. Donations to Charity Directly from IRA without Inclusion in Taxable Income

- In 2009, individuals age 70½ or older may donate up to $100,000 from an IRA directly to a public charity, without having to include that amount in taxable income. Without this special rule, the income tax deduction for such donations may be limited due to current limits on itemized deductions.