



Scholten Fant

Attorneys

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Dear Estate Planning Client,

As you may be aware from news reports, in 2010 the federal estate tax is no longer in effect, replaced by new capital gains rules. However, under current law, it is scheduled to return in 2011. It is also possible Congress will act during 2010 to reinstate the estate tax, perhaps retroactively.

Your existing Trusts were designed to take maximum advantage of your respective estate tax exemptions to maximize the assets you can give to your family estate tax free at the death of the survivor. This was accomplished by using a formula that provides that assets equal in value to the estate tax exemption go into a Family Trust at the death of the first spouse to die. This trust is exempt from estate tax at the death of the survivor. Now, because there is no estate tax, there is no exemption. This may create uncertainty as to how the formula operates.

Despite this uncertainty, in our opinion if one or both of you died in 2010, assuming a cooperative family environment, there is sufficient flexibility in your Trust Agreements and the Michigan Trust Code to properly address the estate tax environment then in effect. For this reason we do not think it is necessary to amend your Trust Agreements at this time. **However**, in some situations a prompt review of your Trust Agreements and your estate planning should be undertaken. We recommend this review in the following situations:

- (1) Either or both of you now have a terminal illness/injury which may result in death in 2010;
- (2) Later this year you are diagnosed with a terminal illness or have injuries from an accident that may result in death in 2010;
- (3) When the estate tax returns in 2011, many legal commentators predict that the per person exemption will be set at \$3,500,000 per person or higher. However, under present law the exemption is set at \$1,000,000 per person and it is possible this will continue.

At present there are a number of estate tax reduction opportunities which are expected to be eliminated or significantly curtailed later this year. If your total estate exceeds \$2,000,000, and you want to protect your estate from estate taxes

John P. Van Eenenaam
Thomas R. Reinsma
John S. Lepard
Thomas M. Boven
Randall Allen White
Thomas W. Sobel

James R. Nelson
Ronald A. Bultje
Mary M. Mims
Rodney L. Schermer
Mark A. Kleist
Robert E. Sullivan

Bruce P. Rissi
Todd M. Anthes
Michael L. Bevens
Daniel R. Martin
Bradford W. Springer
Douglas J. Rooks

Scott R. Sewick
Bradley J. Fisher
Ryan C. Keenan

Harvey L. Scholten
(1912-2002)
Howard W. Fant
(1911-1993)
R. Neal Stanton
(1936-1996)

100 North Third Street
P.O. Box 454
Grand Haven, MI
49417

p 616.842.3030
f 616.846.6621

246 South River
Suite 100
P.O. Box 9008
Holland, MI
49422

p 616.396.1265
f 616.393.0052

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at the death of the survivor if the exemption is set at \$1,000,000 per person, then contact me promptly to pursue these tax minimization opportunities.

- (4) If there have been changes in your personal, family, or financial situation that impact your estate planning documents. Also, if you or a family member beneficiary has significant creditor/liability issues, asset protection planning should be considered. In addition, if a child/grandchild has a mental or physical condition that may result in a need for SSI, Medicaid, or other public assistance, this contingency should be planned for in your estate planning documents with a special needs trust.
- (5) If you own real estate where there is a significant difference between the taxable value and the state equalized value, there are planning opportunities currently available, as a result of two decisions by the Michigan Court of Appeals, to avoid the "uncapping" or increase of the taxable value to the state equalized value at the death of the survivor. Further, if the property is family legacy property you want to continue in the family beyond your generation, planning for this can be done with a limited liability company, a trust, or a joint property arrangement.

Two final matters are pertinent. The first is the new capital gains rules which apply to the beneficiary who receives assets from a person who dies in 2010. Thus it is important at this time is to save all records, including cancelled checks, which show what you paid for various assets, particularly jewelry, antiques, real estate, home improvements, boats, etc.

Second, once the estate tax exemption is finalized by Congress and the President for the years 2011 and beyond, we may be in contact with you again.

I would have preferred to have personalized this letter and to have first reviewed your estate planning documents and file. However, time constraints and the number of clients to be notified prevent this as a practical matter.

If you have questions or want to schedule an appointment, please call.

Very truly yours,

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