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Dear Estate Planning Clients:

Once again we transition into another year. Hopefully, the New Year will be filled with joy and success.

Thank you for trusting me with the task of either preparing or updating your estate plan. Part of what I do for you as a past client is to keep you up-to-date regarding developments that might affect your estate plan. The beginning of the year is often a good time to evaluate the condition of your personal and financial affairs. My hope is that this letter will be relevant to your needs and that you will take a moment to contact me if you have any questions. As always, I am happy to be of service.

**HOLLYWOOD TACKLES ESTATE PLANNING!**

Sometimes Hollywood can help inform audiences about important aspects of estate planning. The George Clooney movie *The Descendants* does just this by raising some interesting estate planning issues. First, the movie explores the legal effect of making decisions about health care and life support in an Advance Health Care Directive. As George Clooney's character learns in the movie, once a person has executed their Advance Health Care Directive and made choices about withdrawal of life support, those decisions cannot be ignored or changed by the person's spouse or the person's agent.

Second, the movie also explores the difficult work of a fiduciary (such as an executor or trustee) to identify heirs and to secure agreement among the heirs to a course of action related to an asset. Often overlooked when making the initial decisions in creating an estate plan, the job which an executor or a trustee must undertake to identify, locate and contact the heirs and beneficiaries can be the most time-consuming task of all. In addition, trying to maintain contact with and secure agreement among all beneficiaries also can be a daunting task. Bottom line: being an executor or a trustee is no easy job so it is critical to choose the right person for that job when creating your estate plan.

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### **ESTATE TAX CHANGES:**

The federal estate tax (or the so-called "death tax") is a tax imposed by the federal government on the value of all assets and property left by a deceased person. Effective at the beginning of last year, the estate tax will apply to estates that exceed \$5,000,000 per person at a 35% tax rate. As a result of this change, the estate tax will impact only those individuals worth more than \$5,000,000 at the time of their death, or couples worth more than a combined \$10,000,000. But these figures apply only for the remainder of 2012.

If Congress and the Administration do nothing to change the current law before the end of 2012, then for 2013 the estate tax will apply to estates that exceed \$1,000,000 at rates of 55%. Yes, that's a significantly lower threshold and a much higher rate! In the event that the law does not change for 2013, then we will need to evaluate other strategies to manage the potential impact of that lower threshold and higher applicable tax rate. I will keep a close eye on any developments in this regard and will keep you informed of anything that might require an adjustment to your existing estate plan.

An interesting feature of the current (2012) estate tax law is the "portability" of the individual estate tax exemption between married couples. What this means is that any unused portion of a deceased spouse's federal estate tax exemption can be claimed by the surviving spouse to be used upon their death. What this means is that upon the death of the first spouse, the surviving spouse can file a form to claim any unused (or left-over) portion of the deceased spouse's exemption, so that the surviving spouse's estate will benefit not only from their own exemption, but also from the additional claimed left-over amount of their pre-deceased spouse's exemption. However, this "portability" feature of the estate tax law will disappear under the current law that will take effect in 2013.

In general, your revocable living trust has been prepared to allow for changes in the federal estate tax structure. The current tax law changes should not require any major revision to anyone's revocable living trust, as long as the revocable living trust was originally drafted to include estate tax planning. Of course, if you have any questions about this, please feel free to contact me.

In summary, there likely is no need to take any action at this time, and I will keep you informed as developments warrant. As always, if a change in law affects your particular plan I will contact you immediately.

### **GIFT TAX:**

In addition to the estate tax, the federal tax law also sets forth provisions applicable to gift tax, or the tax that must be paid by the person making a gift, if the gift exceeds a certain threshold. The gift tax was changed last year, unifying the tax rate and the lifetime exemption with the estate tax for 2012. The gift tax now has a top rate of 35% and a lifetime exemption amount of \$5,000,000 – unified with the individual estate tax exemption.

With regard to the annual gift tax exemption, that remains \$13,000 per recipient per year. What that means is simple: Anyone can give up to \$13,000 in gifts to any one person in any annual period without any gift tax implications. Gifts to spouses (who are U.S. citizens) and payments directly to hospitals or educational institutions are excluded from gift tax and, therefore, such payments may exceed the \$13,000 threshold without triggering any gift tax or eroding the lifetime gift tax exemption.

### **MAXIMIZE YOUR VALUE:**

You have spent considerable time and energy in creating your estate plan. It is crucial that you continue to receive value from it. To ensure that we preserve that value, we should periodically review the plan as well as your current situation to make sure the two remain in sync. Among the more common developments affecting your estate plan are:

- (1) Whether your personal situation, or the personal situation of any of the individuals you have identified to play a role in your estate plan – such as executor, trustee or guardian – has changed in the time since we created or last updated your estate plan;
- (2) Whether your financial picture has changed in the time since we originally created your estate plan (such as the purchase of additional substantial life insurance or the purchase of a new home or additional real estate); and

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- (3) Whether the law has changed in ways that impact the assumptions we made when we first created your estate plan.

If there has been any change in your personal or financial situation, please contact me so that we can discuss whether we should make any adjustments to your estate plan to accommodate those changes.

**RECONSIDERING SOME OF YOUR ESTATE PLANNING DECISIONS:**

I strongly recommend that you take some time to review the names of those who you have identified in your estate planning documents as playing critical roles – guardians for minor children, successor trustees, executors, power of attorney agents, health care agents – in order to ensure that you are still comfortable with giving those responsibilities to the people you selected at the time you prepared your estate plan. Often times, people's situations change. Sometimes those changes can impact the criteria you used when selecting those people in the first place. Part of the process of updating your estate plan is to make appropriate changes to the list of role-players when situations change for those role-players.

**PROPER TITLING OF ASSETS:**

If we created a revocable living trust and you have re-financed your home since we created your trust, we should make certain that your home (and any other real estate) is still properly titled in your trust. Often times when you re-finance, lenders require the property be titled out of your trust in order to conduct the re-financing. In some cases, those lenders (or the escrow company) will title the property back into the trust following the funding of the loan, but sometimes that does not happen. Consequently, title to your home could be outside of your trust, potentially jeopardizing our work. Therefore, if you have a trust, have re-financed in the time since we created the trust, and you do not know for certain whether your title to your home was affected by the re-financing, please contact me so that we can make sure title is properly listed and, if it is not, then we can make the changes necessary to correct title.

The same is true if you purchased new real estate (such as a new home, a rental property, or even a timeshare). If that was the case, then we should discuss how the new real estate was titled at the time you bought it. If title is not listed in your trust, then we can make the changes necessary to correct title.

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In addition, if you have opened additional accounts or acquired additional assets in the time since we created your estate plan, please take the time to understand how title is held to those accounts and how the beneficiary(ies) are designated (if applicable) to those accounts. Your estate plan will work most efficiently if everything is properly titled to ensure all assets are distributed in accordance with the same set of decisions.

#### **PROPER BENEFICIARY DESIGNATION:**

I recommend that you take the time to verify that your assets have been properly titled and the beneficiaries properly designated to accomplish all of the goals important at the time we created your estate plan. If your estate plan includes a revocable living trust, then please make sure your home is titled in the name of the trust, that your taxable investment accounts and business interests are titled in the name of the trust, and that your tax-deferred retirement accounts identify the correct designated beneficiaries. If you have any questions about any of these tasks, please feel free to contact me so that I can provide you with the help you need.

#### **INVESTMENTS AND YOUR ESTATE PLAN:**

With the continued ups and downs we all have experienced in the financial markets and real estate recently, some of you may be wondering whether any changes should be made to your estate plan. In general, changes in the value of assets should not affect the estate plan that we created, unless that change in value is a significant increase. Otherwise, as long as your assets are properly titled and the beneficiaries on your accounts properly designated, there is nothing that should need to be done as a consequence of the change in an asset's value.

#### **HOMEOWNERS INSURANCE AND YOUR REVOCABLE LIVING TRUST:**

If your estate plan includes a revocable living trust and you have re-titled your home into your trust, I recommend that you inform your insurance agent of this fact. Some insurers require that you inform them that your home is titled into the trust in order to insure the home even though you have purchased and continue to pay premiums for your property and liability (a.k.a. "homeowner's") policy. Additionally, some insurers will not recognize your trust as being "insured" under the policy unless it is listed as an additional named insured

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under the policy. Please check with your insurance agent if your insurer requires your trust to be listed as an additional named insured.

**REFERRING CLIENTS TO ME:**

The first quarter of the calendar year is my busiest time because many people are evaluating what they need to accomplish and want to complete during the next year. New Year's Resolutions are often the trigger for the preparation of an estate plan, will or trust. I hope you keep me in mind if the subject of Wills or Trusts comes up with any of your family or friends. Typically, my clients fall into one or more of the following categories:

- People with young children who want to nominate guardians and establish trusts to fund the children's education and provide for their children's future.
- People who own assets (including real estate, businesses, investments, life insurance and more) and want to control how those assets are managed and distributed in the event of either incapacity or death.
- People who want to minimize the loss of their net worth due to the impact of the Probate Court process in the event of their death or incapacity.
- People who want to minimize the impact of federal estate taxes on the value of the assets they wish to pass on to others following their death.
- People with existing estate plans who want to ensure that everything is still in order and up-to-date.

As always, I thank you for your support and for the referrals that you have given me in the past and into the future.

Very truly yours,

Richard L. Collari Jr.