



In the Spotlight:

Worth magazine's December/January 2009 issue named **Gideon Rothschild** as one of its "Top 100 Attorneys" providing counsel to private clients. This is Gideon's third year receiving this honor.

Gideon Rothschild contributed to the first edition of the *PLC Cross-Border Private Client Handbook*. Gideon's contribution focuses on domestic and international estate planning concerns for US and non-US residents. Gideon's section is available on our website.

The American Institute of Certified Public Accountants (AICPA) features **Gideon Rothschild**, with several other trusted business advisors, in an online video about the need for CPAs to be proactive with their clients regarding asset protection planning. The video is part of AICPA's "Trusted Business Advisor Resource Center" created to support advisor members.

Daniel S. Rubin is a contributor to a recently published book, *Pearls of Practice: Plan for Success, A Guide to Financial Management*. The book is specifically designed as a financial guide for medical professionals. Dan's chapters cover estate planning and asset protection.

The November/December 2008 issue of AICPA's *Planner* newsletter features an article by **Daniel S. Rubin** on asset protection planning entitled "When You're Counseling Clients, Don't Forget About Asset Protection Strategies".

Lori Anne Douglass was quoted in the November 2008 issue of *Black Enterprise* magazine concerning the transfer of wealth from one generation to the next. Lori will also be speaking at the 2009 "Women of Power Summit".

Ira Zlotnick and **Gideon Rothschild** co-authored "Coming to America" concerning the benefits of US situs trusts for non-US persons. The article was published in the August 2008 issue of the *STEP Journal*, a publication of the Society of Trust and Estate Practitioners.

Estate Tax and the New Administration

On January 20, 2009, Barack Obama will become the 44th President of the United States and, for the first time in fifteen years, the Democratic Party will have control over both the executive and legislative branches. Among other major policy decisions, President-elect Obama and the Democratic controlled Congress will almost certainly significantly re-shape the scope of the federal estate tax.

Under current law, the value of an individual's estate that can pass free of federal estate tax (referred to as the "applicable exclusion amount") stands at \$2 million for those dying in 2008 and \$3.5 million for those dying in 2009. The maximum federal estate tax rate imposed on the value of an individual's estate in excess of the applicable exclusion amount is 45% and although current law provides for a repeal of the federal estate tax in 2010, it further provides for the reinstatement of the federal estate tax for 2011 and beyond with an applicable exclusion amount of only \$1 million (indexed for inflation from 2001),

and a 55% maximum federal estate tax rate.

During the campaign, Obama proposed freezing the federal estate tax at 2009 levels - a 45% tax rate and an applicable exclusion amount of \$3.5 million. However, Obama's estate tax proposal was put together before the current economic crisis, while he was trying to appeal to both political independents and disaffected Republicans, and without the certainty of the substantial majorities that the Democratic Party subsequently won in both houses of Congress.

Season's Greetings from all of us at Moses & Singer. We wish you and your family a Happy Holiday and a Healthy and Prosperous 2009.

In light of all of these factors, together with the tremendous need for the federal government to raise revenues, many estate planning professionals believe that there is now a significant likelihood that the scope of the federal estate tax will be broadened to reach significantly more taxpayers - and to reach deeper into their pockets.

Moreover, other estate and gift tax revenue raising options are

currently being considered, as well, including:

1. Eliminating the use of Qualified Personal Residence Trusts as a device to save estate taxes on the value of an individual's home.
2. Restricting the utility of Grantor Retained Annuity Trusts by requiring a remainder interest (i.e., a taxable gift, subject to gift taxation) equal to at least ten (10%) percent of the value of the property transferred.
3. Invalidating discounting techniques involving "family limited partnerships" and fractional interest discounts unless they involve an actual for-profit business.

Unfortunately, a wait-and-see approach may not work - historically, major tax bills occur in the first year after a presidential election (for example, 1997 and 2001). Accordingly, significant new tax legislation may well be passed before the end of 2009, and under Supreme Court precedence there is nothing unconstitutional with making the law effective retroactively to the beginning of the year - January 1, 2009! Therefore, we would strongly encourage all of our clients to revisit their planning as soon as possible.

Recent Economic Turmoil Offers Silver Lining

The recent turmoil in the financial markets provides high net worth clients with an estate planning opportunity that may be too

valuable to ignore. Our previous newsletter noted that the applicable federal rates (AFR) have reached historic lows. These rates are the IRS promulgated rates used to calculate the amount of split interest gifts such as a GRAT, QPRT and CRAT, and other common estate planning techniques including intra-family loans and sales to grantor trusts. Add to these historically low rates the fact that many individuals have stock portfolios and real estate investments that have declined in value. The confluence of these events (together with the likely tax reform under President-Elect Obama) can result in enormous opportunities for gift and estate tax planning.

By way of example, let us assume our hypothetical client, Donald, makes a loan at 3% interest to his son, Junior, of \$10 million for 5 years. Junior invests the funds in a diversified portfolio. If we assume that the market will recover and rebound to its earlier highs in the Dow 13,000 range during the next 5 years, the total gain will be approximately 40% or 8% per annum. After re-paying the loan with interest, Junior will have received in excess of \$2 million gift tax free.

What if Donald didn't have cash to loan? He could instead create a 5-year GRAT and gift low value stock instead. A zeroed-out GRAT is a grantor retained annuity trust wherein the grantor transfers property to a trust in exchange for a stream of payments for a term of years whose present value is equal to the amount transferred using the AFR rate. Per Table A on page 3, assuming a 10% increase in

values per year, and an annuity payment that increases 20% per year, at the end of the 5-year term Junior will receive \$2,921,017.05 gift tax free. Alternately, a trust for Junior's benefit can receive the remainder. This remainder can also be used to pay life insurance premiums on Donald's life or provide support for Donald's wife and Junior.

If you would like to explore how these strategies may be applied to meet your objectives, please call one of our partners.

How (and Why) to Bring Up a Pre-Nup

Long before you pop the "M" word, you should pop the "P" word.

As a result of the high divorce rate, changing divorce laws, the trend toward marrying later and greater longevity, the number of pre-nuptial agreements has skyrocketed in recent years. The idea of bringing up a prenuptial agreement, however, still makes many people uncomfortable. Many people have preconceived notions about pre-nups. While pre-nups have received a lot of public and media attention recently, many people still don't understand their value or how to broach the subject.

Why?

Bringing up the subject of a prenuptial agreement can be a great way to learn more about one another's expectations, dreams and hopes. Whether you have a high net worth or are just

Table A

| Year | Beginning Principal | 10% Growth | Annual Payment | Remainder |
|----------------|---------------------|-----------------|------------------|-----------------|
| 1 | \$ 10,000,000.00 | \$ 1,000,000.00 | \$ 1,501,929.00 | \$ 9,498,071.00 |
| 2 | \$ 9,498,071.00 | \$ 949,807.10 | \$ 1,802,314.80 | \$ 8,645,563.30 |
| 3 | \$ 8,645,563.30 | \$ 864,556.33 | \$ 2,162,777.76 | \$ 7,347,341.87 |
| 4 | \$ 7,347,341.87 | \$ 734,734.19 | \$ 2,595,333.31 | \$ 5,486,742.75 |
| 5 | \$ 5,486,742.75 | \$ 548,674.27 | \$ 3,114,399.97 | \$ 2,921,017.05 |
| Summary | \$ 10,000,000.00 | \$ 4,097,771.89 | \$ 11,176,754.84 | \$ 2,921,017.05 |

Important Estate and Gift Tax Changes to Remember for 2009

- Annual exclusion gifts increase to \$13,000 per donee.
- Annual exclusion gifts to non-citizen spouses increase to \$133,000.
- Estate tax exclusion increases to \$3.5 million from \$2 million. It is therefore recommended that married persons each have at least \$3.5 million in assets in separate names (not including retirement plan accounts, life insurance or joint property).

starting out, have children or don't have children, there are dozens of reasons a pre-nup might be beneficial to you and your future spouse. Here are just a few reasons:

- To protect your pre-marital assets (such as your home, pension plan, stock portfolio, or property with sentimental value)
- To protect gifts and inheritances you may receive in the future
- To ensure that in the event of death or divorce, difficult disputes over property will be avoided (such as with regard to family businesses, stock options, professional degrees,

licenses and practices, pension plans, and copyrights)

- To ensure that children from a prior marriage receive their intended inheritance
- To insulate ownership in a professional practice or business
- To protect yourself from your partner's pre-marital debt, (such as credit card debt or student loan debt)

When and Where?

Sliding a pre-nup across the dinner table a week before the wedding is not the appropriate time or place to bring up this

important topic. Conversations about concerns, expectations, and responsibilities are best conducted early in the relationship. As your relationship gets more serious, your conversations should get more detailed and specific.

Where do you normally discuss topics important to your relationship, such as life goals, finances or family? Find or create a calm, neutral spot where you will both feel open, at ease and unpressured. Whether you're sitting on your living room sofa, taking an afternoon walk, you'll want to create an environment where both of you are most comfortable -- mentally and physically.

How?

Even when couples understand the reasons for pre-marital agreements, many aren't sure just how to initiate the discussion. Here are some suggestions to get you started:

- Be open, honest and direct
- State your specific concerns
- Present an idea to be implemented by the two of you over time
- Invite discussion about any underlying issues that arise

Conversation starters – some possibilities

"Let's talk about our future, what we both want; our lifestyles; our present and future finances. I want to make sure all our money issues are addressed and resolved in an agreement. Then

we won't have them hanging over us when we get married."

"My children are very concerned about our marriage and what it might mean for their inheritance. I'm worried about this too. Since most of my assets are from their father, they are entitled to those assets. They will be happier about this marriage if we do some prior planning. That will make me happier too."

"I worked very hard to acquire a nest egg, and I want to make sure I have it in the unlikely event the unthinkable occurs between us."

Pre-nup No-no's!

- Presenting the idea of a pre-nup as a fait accompli

- Springing a pre-nup upon your intended at the last moment
- Being overbearing or heavy handed

REMEMBER: Don't let a pre-nup fall to the bottom of your "To Do" list. The longer you wait, the harder it will become to reach an agreement before the wedding. The discussions you have revolving around the pre-nup are conversations you will have once you are married. Getting to know your partner's position on these important aspects early can help head off more difficult discussions during the marriage. If you can't talk about touchy issues during courtship, it doesn't bode well for the marriage.

The foregoing is a brief outline from "Pre-nups for Lovers: A Romantic Guide to Prenuptial Agreements," by Arlene G. Dubin. See also www.prenupsforlovers.com.

Moses & Singer's **Trusts and Estates and Wealth Preservation** practice provides a full range of legal services for private clients. In addition to substantial experience in the traditional areas of will and trust drafting and estate administration, the firm's attorneys utilize the latest techniques to implement effective plans for business succession and tax minimization. The firm is also recognized as a leader in wealth preservation strategies to protect client assets from future creditors and potential litigation exposure.

Our **Matrimonial** lawyers are nationally-recognized for their experience in marital agreements and litigation. We are one of only a handful of full-service firms in New York that expertly represent clients in marital agreements and divorce and custody litigation. We specifically advise clients concerning five major types of marital agreements, including pre-nuptial, post-nuptial, co-habitation, paternity/parenting and separation or property settlement agreements. By drawing on the resources of our interdisciplinary practice areas, such as trusts and estates, tax, real estate, employee benefits, corporate and litigation, we offer our clients complete and thorough representation.

Gideon Rothschild
Co-Chair
212.554.7806
grothschild@mosessinger.com

Irving Sitnick
Co-Chair
212.554.7821
isitnick@mosessinger.com

Lori Anne Douglass
212.554.7803
ldouglass@mosessinger.com

Arlene G. Dubin
212.554.7651
adubin@mosessinger.com

Steven Glaser
212.554.7820
sglaser@mosessinger.com

Daniel S. Rubin
212.554.7899
drubin@mosessinger.com

Arthur M. Schneck
212.554.7825
aschneck@mosessinger.com

Alvin H. Schulman
212.554.7888
aschulman@mosessinger.com

Theodore Sternklar
212.554.7860
tsternklar@mosessinger.com

Ira W. Zlotnick
212.554.7870
izlotnick@mosessinger.com

Kerrie C. Horrocks
212.554.7827
khorrocks@mosessinger.com

Alan H. Kupferberg
212.554.7805
akupferberg@mosessinger.com

Jenna R. Millman
212.554.7877
jmillman@mosessinger.com

Marlene Soukavanitch
212.554.7859
msoukavanitch@mosessinger.com

Disclaimer

Reading this newsletter or contacting Moses & Singer LLP does not create an attorney-client relationship. This newsletter is intended as a general comment on certain recent developments in the law. It does not contain a complete legal analysis or constitute an opinion of Moses & Singer LLP or any member of the firm on the legal issues herein described. This newsletter contains timely information that may eventually be modified or rendered incorrect by future legislative or judicial developments. It is recommended that readers not rely on this general guide in structuring or analyzing individual transactions or matters but that professional advice be sought in connection with any such transaction or matter.

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Attorney Advertising

It is possible that under the laws, rules or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.

Copyright © 2008 Moses & Singer LLP
All Rights Reserved