

Attorney at Law

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Estate Planning | Wills & Trusts

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## The Launch

Dear colleagues and friends, welcome to the first newsletter from my desk. I have recently launched my own solo practice focusing on estate planning, beginning with the core documents consisting of a Will, Revocable Living Trust and Powers of Attorney, as well as advanced techniques, such as Irrevocable Life Insurance Trusts, Qualified Personal Residence Trusts and Gift Trusts. The goal is to provide efficient, high-quality legal services to clients of all ages and income levels in Chicago and the surrounding suburbs through clear communication and customized documents that suit the needs of the client.

The newsletter will provide valuable information regarding developments in Illinois and Federal law as well as the latest techniques to preserve your wealth. This is an exciting area of the law that is constantly evolving and proper planning can provide significant benefits to the client. I look forward to working with each of you in the near future. Thanks for reading!

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## 2010 Estate Tax Update

According to *Bloomberg Business Week*, the House Ways and Means Committee planned to begin work in April to retroactively reinstate the federal estate tax on multimillion-dollar estates that expired on December 31, 2009. The legislation would likely extend the 2009 law, which applied a 45 percent tax rate on the value of estates that exceeded \$3.5 million per individual. One possibility being considered would give heirs the option to pay the very complicated capital gains tax that replaced the estate tax for 2010 if that is more beneficial to the estate.

The estate tax was replaced on January 1, 2010, with a capital gains tax that requires heirs pay rates of between 15 percent and 28 percent on any bequeathed assets they sell. The reason that the capital gains tax is so complicated is because it applies to all profit since the assets were acquired by their original owners, thus requiring the estate to locate records that may be several decades old in order to determine the decedent's basis in the asset.

Needless to say, the estate tax will return in some form in 2011, and may even be applied retroactively to the beginning of 2010. Due to the uncertainty, it is crucial to make sure that your estate planning documents provide for flexibility to deal with every situation that Congress may throw our way.

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## **Pet Trusts in Illinois**

Illinois pet owners are allowed to set aside funds and name caretakers for their pets by establishing a trust specifically for the benefit of one or more pets. A Pet Trust allows the owner to provide for the pet's care in case of the owners disability or death. In order to establish a Pet Trust, it is important to carefully consider the individual who will be named as trustee of such trust. The trustee's responsibilities will include collection of the assets allocated to the trust, management and investment of the trust assets, payment of the debts and taxes and the distribution of the remaining trust assets to the designated beneficiaries as provided in the trust document. It is also important that the value of the assets allocated to a Pet Trust is a reasonable amount for the care of the pet or pets. An amount that is deemed to be excessive may be reduced by the court.

This is a valuable tool for Illinois residents who have pets that they wish to provide for in case of disability or death. If you fall into this category, make sure that your pet is provided for in your trust.

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## **Another Piece of the FLP Puzzle**

The Indiana District Court has provided another nugget of guidance regarding the organization and operation of a Family Limited Partnership (FLP).

In *John W. Fisher and Janice B. Fisher v. United States of America* (March 11, 2010), the court held that the FLP interests gifted by the Fishers to their children and grandchildren were transfers of future interests in property and, therefore, not subject to the gift tax exclusion under §2503(b)(1). The determining factor in the case was the IRS argument that the children could not unilaterally transfer the gifted interests and, therefore, had no present interest in the gifts. Under the operating agreement, the FLP had a right of first refusal, which the court said effectively prevents the children from transferring their interests in exchange for immediate value, unless the transfer is to a Fisher descendant.

This is another valuable piece of the FLP puzzle. If you own or operate an FLP, make sure that you or your client will not be caught in this trap.

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## **Definition of the Month: *Per Stirpes***

The term "*per stirpes*" is commonly used in trust documents to provide for the distribution of a deceased individual's share to his or her descendants in equal shares. The literal translation of this Latin term is "by the roots."