

MEMORANDUM

To: Jeffrey Epstein
From: Ada Clapp
Date: April 2, 2013
Cc: Eileen Alexanderson
Re: Considerations for New Will/Revocable Trust.

I. Will.

- A. Cash Legacies. Will Debra (or anyone else) receive an outright bequest of cash under Leon's Will or will such legacies be made under his Revocable Trust (see II below)?
- B. Powers of Appointment. Does Leon want to exercise any powers of appointment (see Chart of Family Estate Planning Instruments)?
- C. Initial and Successor Executors. 97 Will names Debra, Barry, John and Richard as Executors. Anthony Ressler is successor if any two fail to act.
1. Does Leon still wish for these individuals to serve?
 2. Consider whether 4 Executors are needed (they must act by majority decisions and can appoint additional co-Executors).
- D. Compensation of Executors. Under 1997 Will, Debra receives no compensation. Aggregate commissions for each other Executor is lesser of (i) NY statutory commissions¹ and (ii) \$250,000, CPI adjusted. Are these amounts still appropriate?

II. Revocable Trust-Provisions of 1997 Revocable Trust.

- A. Tangibles. All Tangibles other than works of art (owned by Leon individually), his first edition books and cane collection, pass to Debra, or if she is deceased, equally to the children. This would include any boats or plane Leon owns directly. Is this Leon's intention?
- B. Works of Art. Individually owned works of art pass to Debra's Marital Trust.
1. Does Leon own any outside of Narrows?
 2. Have any works been promised to a cultural institution?
 3. Leon's interests in Narrows will pass, as part of the residuary estate, to the Marital Trust. Need to determine what happens at Leon's death to the debt secured by some of this art. What assets will be used to pay this debt?

¹ Unless otherwise directed in the Will, under current New York law, an individual Executor is entitled to commissions of \$34,000 on the first \$1 million, an additional \$100,000 on the next \$4 million and then 2% on all amounts in excess of \$5 million. As an example, for a \$4 billion estate, New York statutory Executor's commissions would be roughly \$80 million for one individual Executor and twice that amount if two or more individuals are acting as Executors.

- C. Residences. Under the 1997 Revocable Trust, Debra will receive all residences, outright. Does Leon still wish this?
- D. Pecuniary Bequests. Under the 1997 Revocable Trust:
1. Debra receives \$25 million outright, less amounts she receives in insurance proceeds from insurance on Leon's life. Does this bequest still make sense? Are there any policies payable to Debra?
 2. Does Leon still want to create a \$5 million trust for his sister Judy?
 3. Does Leon wish to make any other cash bequests to anyone else—either upon his death or upon death of survivor of Leon and Debra?
 - a. Turner Trust of \$25 million for family members?
 - b. Rembrandt Trust of \$25 million for friends?

Note: Need to consider the terms of these trusts, who are the beneficiaries, for what purposes distributions may be made, how long the trust will last and where the property will pass upon termination of the trust.
- E. Charity.
1. Will any portion of Leon's estate pass to his foundation or other charity upon his death or upon the death of the survivor of Leon and Debra?
 2. Will any portion be paid to his children's foundations?
 3. Will bequests be directly to charity or via a CLAT as Carlyn proposed?
- F. Residuary Estate.
1. Marital Trust.
 - a. Does Leon still want income distributions to Debra to be limited to not more than 20% of the value of the original trust corpus as provided in the 1997 Revocable Trust?
 - b. Will Leon give Debra a power to appoint some portion of the Marital Trust among his issue?
 - c. Does Leon still wish to direct how tangible property held in the Marital Trust is to be divided among his children at Debra's death?
 2. Children's Trusts. No need to review these provisions with Leon, as you are discussing with him having his residuary estate, if Debra predeceases, or the remainder of the Marital Trust, if she survives pour into a new Dynasty Trust.
- G. Dynasty Trust.
1. Will Leon create this trust during his lifetime or under his Revocable Trust at his death? Will the 1997 Trust be decanted into this trust?

2. Confirm Structure. Trust to be structured as a large common “pot” trust, with a sub-trust for each child? Confirm that each child’s sub-trust gets separately funded as follows:
 - a. \$10 million when the child attains age 30 (to be used by the sub-trust to purchase a residence for the child).
 - b. \$50 million when the child attains age 35 and another \$100 million when the child attains age 40. Confirm that these ages are appropriate.
 - c. Confirm that the balance, if any, remains in the pot trust.
 - d. What are the dispositive provisions of each of the pot trust and the sub-trusts? For what purposes may distributions be made (e.g., Trustees encouraged to withhold distributions if a married child has no prenuptial agreement), when do the trusts terminate, does the child have a testamentary appointment power?

- H. Remote Takers. To whom should property pass if it is undisposed of under the terms of Leon’s Will, his Revocable Trust or the Dynasty Trust?

- I. Trustees. Named successor Trustees are Debra, Barry, John and Richard.
 1. Does Leon still wish for these individuals to serve?
 2. Consider whether 4 Trustees are needed.
 3. Consider when children can become co-Trustees, appoint additional Trustees and remove and replace Trustees.
 4. Compensation. Under the 1997 Revocable Trust, Debra receives no compensation. Aggregate commissions for each other Trustee is lesser of (i) NY statutory commissions (but no paying out commissions)² and (ii) \$250,000, CPI adjusted. Are these amounts still appropriate?

III. Related Planning Documents.

- A. Power of Attorney. Whom do Leon and Debra wish to make financial decisions for them if they are unable to do so for themselves?
 1. Does each want more than one attorney-in-fact? If so, should they be required to act together or may they act separately?
 2. Consider naming successors.

- B. Health Care Proxy. Whom do Leon and Debra wish to make medical decisions for them if they are unable to do so for themselves?
 1. Consider having one in each state in which they spends significant time.
 2. Consider naming successors.

² New York law currently provides that a Trustee is entitled to an annual commission of approximately 30 basis points on the value of the trust principal over \$1 million, (e.g., roughly \$150,000 for a \$50 Million trust) plus 1% of any principal distributions made that year.

- C. Living Wills. Do Leon and Debra wish to have documents that specify the circumstances under which they would want extraordinary life sustaining treatments withheld (e.g., if they are in a permanent vegetative state)? If so, consider having one in each state in which they spend significant time.
- IV. **Right of Election.** Need to address Debra's New York statutory right to elect against Leon's Will if she does not receive 1/3rd of Leon's net estate outright.

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