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**BN&F NEWS
UPDATE**

Land Trusts
(How to Transfer Assets Without Putting on Heirs)

A land trust is a devise by which title to real estate is conveyed to a trustee under an arrangement reserving to the beneficiaries of the trust the full management and control of the property. The trustee executes deeds, mortgages and leases (and other documents relating to the real estate) and otherwise deals with the property upon the direction of the beneficiaries. The beneficiaries collect rent, improve and operate the real estate and exercise all rights of ownership other than holding or dealing with the legal title to the real estate. The arrangement is created by two documents. The deed in trust conveys title to the real estate to the trustee. Contemporaneously, with the deed in trust, or prior thereto, a trust agreement is executed. The trustee agrees to deal with the "res" of the trust only upon the written direction of the beneficiary or the person holding the power of direction in the trust agreement. The State of Illinois was the first state to recognize land trusts.

By transferring title to real estate to a land trust, the trustee holds a real property interest in the real estate and the beneficiaries hold a personal property interest in the real estate. This can be particularly desirable for property owned in a state other than in the state of residence of the beneficiary, because by converting the real estate to a personal property interest, the beneficiary can avoid the requirement to probate an estate in the state where the real estate is located.

In the trust agreement, the beneficiaries agree to indemnify the trustee for expenditures or outlays incurred by the trustee as a result of holding legal title to the real estate, including circumstances where the trustee is made a party to litigation.

There are several distinctive features of land trusts. Both legal and equitable title to the real estate are vested in the trustee, and the beneficiaries have no interest in either the legal or equitable title to the real estate. The trustee has no powers or duties other than to convey, mortgage or deal with the real estate as specifically directed by the person holding the power of direction, which is usually the beneficiary. The rights to possession, management, control and operation of the real estate, as well as the right to rents, profits and proceeds of sale or mortgage are vested in the beneficiaries. Additionally, as previously mentioned, the rights, privileges and obligations of the beneficiaries are not interests in real estate, but are expressly categorized as personal property.

Depending on the circumstances, land trusts can be desirable for numerous reasons. Land trusts have the benefit of privacy of ownership. The trustee is the only known party to the public. Therefore, the beneficiaries of the trust can remain anonymous. Land trusts also limit exposure to judgments and tax liens because a creditor is frequently unable to determine the beneficiaries of the trust. Land trusts can be employed to avoid marital interests in the trust and also provide insulation from the hazards of individual ownership. Land trusts can also be beneficial because it is possible to procure financing without personal liability. Additionally, the beneficial interest in land trusts can be easily transferred and the beneficial interest in land trusts can be used as collateral for financing purposes. Finally, land trusts can be desirable because partition suits in connection with the property in the land trust are not available to creditors, and they also enable the owner of the property to potentially use land trusts for testamentary and estate planning uses.

For liability and other purposes, it is important to note that with regard to a land trust, the trustee of the land trust is not the agent of the beneficiary and the beneficiary is not the agent of the trustee. As previously mentioned, there are two governing documents for a land trust, the deed in trust and the trust agreement. There are many potential beneficiary designations in the trust agreement, which provides for flexibility. Possible beneficiary designations include a single beneficiary, multiple beneficiaries, joint tenancy, remainder interests, life interests and estates, partnerships, joint ventures, corporations, limited liability companies, trustees and even minors (under the Uniform Transfers To Minors Act). The power of direction in a land trust can be held by one beneficiary, multiple beneficiaries, a majority of beneficiaries (either by the number of beneficiaries or the percentage interest of beneficiaries), or by an individual that is not a beneficiary.

Although land trusts usually hold fee simple interests in real estate, they can also be employed for fractional interests, leasehold estates and personal property. In conclusion, depending on your desired objectives and goals, the use of a land trust can be extremely beneficial.

For more information about how you may benefit from a Land Trust, please contact Larry Elman of our Corporate Law Department.

**2008 Year End Estate and Gift
Tax Planning
(A Tax Gift From Your Uncle Sam)**

While there are a variety of strategies to minimize the impact of estate taxes, one effective, and often overlooked, method to reduce estate tax exposure is to make regular use of the gift tax annual exclusion to reduce the size of one's taxable estate.

You may give up to \$12,000 each year to as many persons as you want without incurring any gift tax. If your spouse joins in making the gift, known as "gift-splitting", you may (as a couple) give \$24,000 to each person annually without any gift tax liability. If you make a gift to a single individual in excess of the \$12,000, or \$24,000 for split-gifts, the gift will be subject to the gift tax. It is important to note that annual exclusion gifts do not reduce your lifetime estate tax exclusion amount, which is \$2,000,000 in 2008 and \$3,500,000 in 2009.

Example: Harold and his wife, Maud, agree to split the gifts that they made during 2007. Harold gives his nephew, Phinneas, \$21,000, and Maud gives her niece, Cleo, \$18,000. Although each gift is more than the annual exclusion (\$12,000), by gift splitting they can make these gifts without making a taxable gift.

Gifts can be made in cash or property. Gifts can be made directly to the beneficiary or, if more control over the beneficiaries' access is desired, to a Uniform Transfers to Minor Account (UTMA) or in trust, provided certain tax law requirements are met. Furthermore, gifts are not treated as income by the beneficiary.

You can also gift to a 529 college savings plan. The money you put in a 529 account is considered a gift and, as such, qualifies for the annual \$12,000 gift tax exclusion. You also can contribute five years' worth of gifts in one year and not incur any gift tax as long as you don't contribute anything for the next four years. So if you had the money available now, for instance, you could contribute up to \$60,000 this year (\$120,000 if you're married) and let the investment grow tax-free. It's also a great way for grandparents to move money out of their estate quickly without incurring taxes.

Example: Grandparents Horatio and Clementine each want to contribute as much as possible to 529 plans for their grandchildren, Bobbie and Frankie, without incurring gift tax. Horatio and Clementine can contribute \$120,000 to 529

plans for Bobbie and Frankie and elect to spread the gifts over five years. As a result, \$240,000 (\$120,000 for each grandchild) is removed from their estates in year one, without incurring any gift tax.

In addition to the annual \$12,000 exclusion, there is an unlimited gift tax exclusion available to pay someone's medical or educational expenses. The beneficiary does not have to be your dependent or even related to you, although payment of a grandchild's expenses is perhaps the most common use of the exclusion. You must make the payment directly to the institution providing the service -- the beneficiary himself or herself must not receive the payment.

Example: Ghengis Kahn, age 75, is a widower with two children (now in their 40s), four grandchildren, and a gross estate worth slightly more than \$4 million.

Ghengis' grandchildren range in age from 14 to 24, and attend either prep school, private college, or graduate school. Total tuition for all grandchildren is \$70,000. One grandchild severely injured a knee, resulting in doctor and hospital bills of \$5,000 after insurance reimbursement.

If Ghengis died today, his estate would be liable for about \$900,000 in Federal estate tax, after allowance for the exclusion amount. But Ghengis has a modest lifestyle and already makes \$12,000 exclusion gifts to his children and to trusts for his grandchildren each year. Ghengis decides to pay the \$70,000 tuition payments and the \$5,000 unreimbursed medical bill, reducing his taxable estate this year by the \$75,000, but none of his exclusion amount is used.

There are additional gifting techniques that can be used to further reduce estate taxes which are not discussed here. However, even the simple gifting techniques mentioned above can make a sizable difference in the amount of estate taxes paid on death. It should also be stated that gifting during lifetime provides the added benefit to the donor of being able to see the positive difference such gifts make in the lives of one's beneficiaries.

**For more information about Estate Taxes
and gifting, please contact Alan Garland or
William Franko of our Estate Planning &
Probate Department.**

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