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Using Roth 401(k) Accounts in Your Estate Plan

Roth 401(k) accounts can be used not only to supplement your retirement but also to generate substantial funds for your children (and grandchildren) as part of your estate plan.

Roth 401(k) combines the tax-deferred growth of a traditional 401(k) with the income-tax-free distributions of a Roth IRA. You contribute to a tax-deferred Roth account with after-tax dollars in exchange for being able to withdraw that money together with earnings, free of income tax.

Most importantly, the Roth 401(k) presents a unique estate planning benefit for high net worth individuals. By rolling your Roth 401(k) account into a Roth IRA, you escape the requirement of taking lifetime distributions from

the account, allowing you to pass on 100% of the account to your heirs in a tax-advantaged manner. Of course if you decide that you need the funds, you can withdraw them tax-free.

The chart on page two shows how this works. Assume that in the year 2026 Father rolls his \$1 million Roth 401(k) accumulation into a Roth IRA. Assume the Roth IRA earns 8% per year and Father lives another 10 years. At his death, the account has grown to \$2.2 million which then becomes Mother's IRA (she is the beneficiary). When she dies 10 years later, the account has grown to \$4.7 million and the son, as beneficiary, withdraws the account (as required by IRS) in installments over his 25 year (rounded) life expectancy.

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Protecting Your Assets from Creditors

The protection of personal assets as a result of a lawsuit has become a paramount concern for our clients and has become a major focus of estate planning. Professionals (such as physicians, accountants, attorneys, engineers and architects) as well as other individuals who have a significant exposure to creditors (such as real estate developers and business owners) should consider revisiting their estate plans to review various techniques

which can help ensure that their personal assets are protected from unforeseen situations.

Regardless of your profession or business, every individual should purchase an umbrella liability policy from your property and casualty agent. The purpose of this policy is to protect you from accidents over and above your basic coverage and provide an extra layer of protection so that if you are

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Regulators Analyze Comments to Proposed Electronic Health Records and E-Prescribing Rules

There is a wide consensus in Congress and the Bush administration that the increased use of electronic health record (EHR) technology will have a significantly positive effect on both the treatment of patients and the cost of such care. Recognizing the high cost of acquiring such technology, government regulators issued proposed rules last fall to allow certain healthcare entities to donate EHR and e-prescribing technology to other healthcare providers without violating the anti-kickback statute and Stark self-referral law.

The Centers for Medicare and Medicaid Services and the Office of Inspector General received numerous com-

ments on the proposed regulations, many of which focused on the following areas:

1. The definition of EHR technology was not sufficiently broad.
2. While the regulations dealt with the donation of EHR products, they did not address the subsidizing of technical support on an ongoing basis.
3. The regulations were unnecessarily restrictive in defining the permitted classes of donors and recipients of EHR technology, e.g., while hospitals were permitted to donate EHR technology to physi-

cians on their medical staff, group practices of physicians would be precluded from making a similar donation to other physicians with whom they might have shared patients.

The comment period on the proposed regulations recently ended and the final regulations are expected within the next several months. We are carefully monitoring this issue and will keep you apprised of future developments. ■

Please call Joshua S. Levine, Esq. if you would like to discuss the proposed regulations in greater detail.

Using Roth 401(k) Accounts in Your Estate Plan

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Each year, the remaining balance continues to earn our assumed 8% per year. By the time distributions are completed, the son will have withdrawn \$15 million dollars — all income tax free.

Estate Planning with Roth 401k		
2026 — Father Retires	\$1 Million	Roth IRA
2036 — Father Dies	\$2.2 Million	Mother's Roth IRA
2046 — Mother Dies	\$4.7 Million	Son = Beneficiary
Son's Life Expectancy	25 yrs.	Son takes Installments
2071 — Distributions Completed	\$15 Million — All Income Tax Free	

Successful use of the Roth 401(k) requires some work. Timing the Roth rollover properly is crucial; proper beneficiary designations must be prepared; and the impact of the estate tax on the Roth account at Mother's death must be factored into her overall estate plan. Our attorneys can help you coordinate all the variables so that your beneficiaries and your estate come out winners. ■

Feel free to contact Harris Markhoff, Esq., Ira Langer, Esq. or Andrew E. Roth, Esq. for further information on incorporating Roth 401(k) accounts into your estate plan.

Protecting Your Assets From Creditors

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sued, your own assets are not exposed. For example, if someone is injured while he or she is on your property or if you cause a car accident, the umbrella policy will not only cover your liability for claims of negligence but will also pay for the medical costs of the injured party. This type of policy is a very basic form of asset protection and is relatively inexpensive to purchase. Most people have \$1,000,000 of liability coverage, but we recommend at least \$5,000,000 of insurance. The incremental cost is minor and the added expense is well worth the protection.

The personal umbrella policy will not protect you from professional or business creditors, however. Malpractice insurance and errors and omissions insurance (depending on your profession) are intended to cover this risk. The fear that our clients encounter is that an injured or aggrieved party will sue and receive a judgment that exceeds this coverage. In order to mitigate this possibility, there are certain techniques that we recommend as part of creating an estate plan that can act as deterrents and encourage the creditor to end its pursuit and settle for a dollar amount that is within the liability policy limits.

These techniques can vary in sophistication. Very simple asset protection, often referred to as “poor man’s asset protection”, involves transferring assets to the spouse who has less exposure to creditors. For example, if we assume a married couple in which the husband is a physician and the wife is a teacher and has minimal exposure to creditors, then we would gener-

ally recommend that the husband transfer assets to the wife. All of the assets in the wife’s name are protected from the husband’s malpractice or business creditors.

The planning should not end here. The wife should then prepare a Will in which all of her assets are transferred to certain types of trusts for the husband in case she predeceases him. This protects the transferred assets from creditors even if the wife predeceased her husband.

The next level of asset protection planning involves creating a limited liability company (“LLC”) to hold investment assets, such as real estate and marketable securities. The LLC, if properly formed and managed, can add an extra layer of protection for these assets and deter creditors by creating an extra roadblock against claims.

Domestic and foreign asset protection trusts are another asset protection tool. These trusts are typically formed in locales such as South Dakota, Alaska, Delaware and the Cook Islands and also are meant to make it more difficult for a creditor to reach your assets. You should keep in mind that exotic techniques such as domestic and offshore trusts are more complicated and expensive to set up and maintain than the techniques discussed previously.

The above techniques require a certain tolerance level and are not appropriate for everyone. Also, while these techniques sound simple, there are some significant traps that you need to avoid or else these plans will be ineffective. For example, a transfer of assets utilizing the methods described above can be set aside if it is made to defraud present creditors.

In order to analyze your concerns and prioritize your goals, we invite you to call us to discuss the best alternative for you.

Protecting Your Assets from Your Children’s Creditors After You Die

Instead of relying on your children to plan for their own protection against potential creditors’ claims, there are techniques which you can employ to prevent creditors from reaching the inheritance you leave to your children.

Rather than leaving your inheritance outright to the child, you should consider leaving the inheritance in the form of “generation-skipping trusts” for your children. These trusts provide income to the children and distributions of principal with the consent of another trustee. When the child dies, the trust will be distributed to grandchildren.

The advantage of the trust is that since the child does not have control of the assets (the trustee has the control), creditors cannot attach the trust principal. As a side benefit, this technique enables you to “dictate from the grave” that your estate will not pass to your son-in-law or daughter-in-law upon your child’s death if that is the desired result. ■

Please contact Michael Markhoff, Esq. or Stanley E. Bulua, Esq. to further discuss the protection of your assets.

The personal umbrella policy will not protect you from professional or business creditors.

Good News for Those Who Failed to Receive Minimum Required Distributions

Qualified Plan participants age 70½ or over who do not receive the full amount of their annual minimum required distributions (“MRDs”) are subject to a 50% penalty. The good news is that IRS has announced a new program that – in the case of qualified plans – allows correction of missed MRDs *without the penalty tax*. A voluntary submission must be made to IRS disclosing the MRD failure (which may cover multiple years), together with a \$500 filing fee. The submission must be made before the IRS discovers the failure on its own.

Our attorneys are familiar with these rules and can prepare the necessary IRS applications in a way that achieves maximum benefit for the client. In the event you have questions about prior years’ MRDs, please contact us. ■

Please contact Ira Langer, Esq. or Andrew E. Roth, Esq. for further guidance.

More Good News: Higher FDIC Coverage for Retirement Accounts

Effective April 1, 2006 most retirement accounts at FDIC-insured banks and savings institutions will be insured up to \$250,000, up from \$100,000 previously. The higher insurance coverage applies to (i) traditional and Roth IRAs, (ii) self-directed Defined Contribution Plans (generally, Profit-Sharing or 401(k)) and (iii) Section 457 Plan accounts for state government employees. All deposits at the same insured bank in these various retirement account categories are added together and the total is insured up to \$250,000.

Retirement accounts are insured separately from any other deposits a depositor may have at the same institution. The basic insurance coverage for other deposit accounts remains at \$100,000 for each ownership category. Trust accounts may qualify for separate insurance coverage of \$100,000 per beneficiary (not per depositor). As before, to increase your FDIC coverage you may open up accounts at more than one institution. ■

Please contact Ira Langer, Esq. if you have any questions about retirement accounts at FDIC-insured banks.

In Our Firm

Expanding our Trusts and Estates Department

We are pleased to announce that Susan K. Foster has joined our trusts and estates department. Susan represented estate planning and estate administration clients for many years at the law firm of Winthrop Stimson Putnam & Roberts and later became Vice President of Estate Administration at U.S. Trust Company of New York. We are happy to welcome Susan to Danziger & Markhoff LLP.

Two Partners named in New York Magazine’s “2006 New York Area’s Best Lawyers”

We are thrilled to announce that two of our partners have been included in the 2006 list of “The New York Area’s Best Lawyers” in the upcoming issue of New York Magazine. Harris Markhoff has been named a Best Lawyer in the areas of corporate law and trusts and estates law. Stanley E. Bulua has been named a Best Lawyer in the area of tax law. Our firm extends its congratulations to both Harris and Stan.

Let us know if you would like to receive future issues of our newsletters by e-mail. All we need is your e-mail address. Please either fax your request to our office, attention: Paula Peck at (914) 948-1706 or e-mail Ms. Peck at Ppeck@dmlawyers.com.

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