

# TESCHER & SPALLINA, P.A.

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April 9, 2008

*Personal and Confidential*

**VIA FEDERAL EXPRESS**

Mr. and Mrs. Simon Bernstein  
c/o Simon L. Bernstein  
Life Insurance Concepts  
950 Peninsula Corporate Circle  
Suite 3010  
Boca Raton, Florida 33487

**Re: Estate Planning**

Dear Shirley and Si:

Enclosed are drafts of each of your Wills and Revocable Trusts, the children's Family Trusts, and each of your Durable Powers of Attorney, Designations of Health Care Surrogate and Living Wills. The following is a brief summary of the enclosed documents.

Will of Simon L. Bernstein. The Will is a simple one since most of the dispositive provisions are contained in your Revocable Trust Agreement, discussed below. The Will disposes of your tangible personal property (jewelry, personal effects, etc.) by leaving all such items to Shirley, or if she has not survived you, to your children in equal shares. We have made provision in your Will for any residences that you own individually to pass to Shirley if she survives you. The remaining assets of your probate estate are directed to be distributed to the Trustees of your Revocable Trust. As discussed, we have designated Shirley and Bill as the Personal Representatives of your estate, and either of them will serve alone if the other is unable to serve.

As an aside, I checked the Palm Beach County property records and your residence is currently titled in Shirley's name alone and the condo is titled in both your names as tenants by the entireties (see enclosed). Interestingly, neither of these properties is designated as your homestead. You should file a homestead application on your residence and retitle this property in your joint names. This will cap increases to the value on your residence to 3% each year, afford you protection under the Florida Constitution for creditor purposes, and save you taxes on \$50,000 in assessed value each year. With regard to the condo, we can prepare a deed transferring the property to Shirley's trust. This will pass outside of probate under her trust at the time of her death (either to you in a protected manner or to your children as the case may be).



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Will of Shirley Bernstein. Shirley's Will is essentially identical to Si's Will, described above. Si is appointed as the Personal Representative of Shirley's estate, and Ted is designated as successor if Si is unable to serve. With regard to your jewelry and other valuables, Florida allows disposition of tangible personal property by separate written memorandum apart from the Will. We will provide each of you with forms so that you may provide specifically to whom you want certain items to pass at each of your deaths.

Simon L. Bernstein Trust Agreement. This Trust is a Revocable Trust, which means that you may alter, amend, revoke or terminate the Trust, in whole or in part, at any time and from time to time during your lifetime. Except in the event of your incapacity during your lifetime, this Trust has no legal or tax significance. It is designed for two specific purposes: to avoid the need for a guardianship should you become incapacitated during your lifetime, and to avoid a full probate of all of your assets since any assets titled in your name as Trustee under this Trust Agreement will pass in accordance with the Trust Agreement without being subjected to probate administration.

After your death, the Trust becomes irrevocable and contains all of the dispositive provisions of your estate. Assuming Shirley survives you, the Trust directs that your assets will be distributed in two parts, a Marital Trust and a Family Trust. The Family Trust will be funded with assets totaling your remaining estate tax exemption amount (currently \$2 million less any taxable gifts made during your lifetime). The balance of the remaining Trust assets will fund the Marital Trust.

Both trusts provide for mandatory income distributions during each year of Shirley's life, and both trusts also provide for discretionary distributions of principal during Shirley's life for her "Welfare" (which is a broad standard under the Trust). Upon Shirley's death, she has been given a special power to appoint the remaining assets of both the Marital Trust and the Family Trust to any of your lineal descendants and their spouses (a power to redirect and reallocate), and any assets that Shirley does not appoint will be divided among and held in a separate trusts for your children. The shares created for your children will be distributed to each of their respective Family Trusts and administered as provided under those trusts (discussed below).

As discussed, under both of your Revocable Trusts, we have excluded Ted and Pam (and their lineal descendants) from inheriting. In the unlikely event that all your other children and their respective children do not survive the two of you, then Ted and Pam (and their lineal descendants) become eligible beneficiaries.

You have been named as Trustee of your Trust during your life, and Shirley and Bill are designated as your successor if you are unable to serve (or either of them alone as the case may be). Shirley is designated as the Trustee of the Marital Trust and Family Trust and she has the power to designate a co-Trustee to serve with her and she may remove and replace a co-Trustee. Bill is named as her successor if she is unable to serve.

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In the event that separate trusts are established for your lineal descendants under your Revocable Trust (if their Family Trusts are not then in existence), each of them will serve as Trustee of their separate trusts, and the administration provisions of their separate trusts would pay them each all of the income, and discretionary principal for their Welfare (again a broad standard). They would each have the power to appoint a co-Trustee to serve with them and they could remove and replace a co-trustee. We have given them special powers of appointment at their deaths, similar to those discussed below under the Family Trust headings. Again, these trusts would only be established if the Family Trusts are not in existence at the death of the survivor of the two of you. As you intend to fund the Family Trusts during your lifetimes and are designating those trusts as the ultimate receptacles for your collective estates, these provisions are only precautionary in nature.

Shirley Bernstein Trust Agreement. Shirley's Revocable Trust is virtually identical to Si's Trust above, except that Si has been named as successor Trustee of your Trust, and Trustee of the Marital Trust and Family Trust (Ted is named as Si's successor). Si has the power to appoint a co-Trustee and name successors. Again, we have provided for the possibility that separate trusts are established for your children under your Trust, with the same provisions discussed above. We have also provided for a specific gift in the amount of \$200,000 to be distributed to Matthew Logan at your death. This amount will be held in a separate trust for his benefit and Debbie shall serve as Trustee thereunder until Matthew attains age 25 at which time he will serve as co-Trustee with Debbie.

### Family Trusts

Family Trusts for Children. These trusts are irrevocable and will be the ultimate receptacles for your collective estates. We have prepared trusts for all of your children, including Pam and Ted in the event that you change your mind regarding them participating in your estates (or gifts during your lifetimes). Each of these trusts is intentionally defective for income tax purposes, so that you will be responsible for the income tax consequences of these trusts, and the Independent Trustee (to be determined) of these trusts has the discretion to reimburse you for these taxes. By paying the taxes on these trusts, you are making additional tax free gifts to your children which do not count against your annual exclusion gifts (\$24,000 for the two of you), or your lifetime exclusions of \$1,000,000 each. Additionally, any sales to these trusts (estate freeze techniques that we can discuss further) while you are living will not trigger any gain recognition, as these trusts are treated as your alter ego for income tax purposes.

The Family Trusts name each of your children as the principal beneficiary, and their respective children (if any) are also designated as beneficiaries while such children (grandchildren) are dependent on your children. All of these beneficiaries will receive distributions of income and principal in the Independent Trustee's discretion. The language we have included regarding the Independent Trustee's discretion is fairly extensive and you should read through it carefully to determine if it is consistent with your own ideals and beliefs. We can modify this language as you wish. Upon the death of the survivor of the two of you, we have designated each of your children (or more remote lineal descendants) to serve as co-Trustees of their separate trusts at age 30 and sole Trustee at age 35 (there would still be an

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Independent Trustee serving), and they would each have the ability to distribute income and principal to themselves for their Needs (health, education, maintenance and support) without the consent of the Independent Trustee.

Upon each of your children's deaths, they have been given a power to appoint the remaining assets of each of their Family Trusts to any of your lineal descendants or their spouses. Any assets that they do not appoint, will be divided among and held in separate trusts for their respective children. If one of your children appoints assets to a spouse, then that spouse will receive assets in a separate trust which will distribute income and principal on a discretionary basis for Needs. Upon the death of the spouse, the remaining assets will be distributed to their surviving children and held in further trust and administered in the same fashion as your children. These provisions are the same at every generation.

Si is designated as the grantor and co-Trustee of the Family Trusts along with Shirley, and we have left open the designation of the Independent Trustee. You will need to designate someone other than Bill, as he works for you and is not independent under the tax code. We have provided that there will always be an Independent Trustee serving over the Trusts due to their wholly discretionary nature (this is for tax reasons). We can discuss this further after you have had time to review the trusts.

We have provided for flexibility with regard to the removal and replacement of the Trustees and Independent Trustee. During your lifetimes, while you are serving as Trustees, either of you can remove and replace the Trustees and Independent Trustees, and we have given your children the power at the death of the survivor of the two of you to do the same.

When we met, we discussed your making gifts of limited partnership interests to the trusts during your lifetime. We can discuss this further after you have had an opportunity to review the documents.

#### **Ancillary Documents**

Durable Powers of Attorney. We have prepared Durable Powers of Attorney for each of you designating the other as your attorneys-in-fact to act for you in accordance with the terms of the Power of Attorney.

Health Care Surrogates. We have prepared Designation of Health Care Surrogates for each of you naming the other as surrogate to make health care decisions in the event that either of you is unable to make such decisions.

Living Wills. We have also prepared and are enclosing Living Wills for each of you. These documents permit you to express your wishes to not be kept artificially alive in the event that you have one of the three conditions described in the Living Wills.

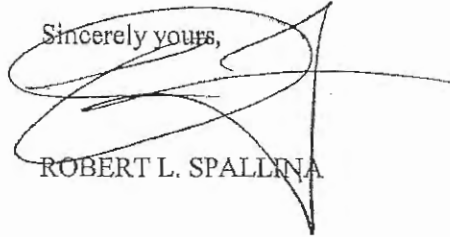
After you have had time to review the enclosed, please contact us with any questions or changes you may have. We know that there is a lot to digest here and would be happy to set-up a meeting to

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review the documents with you in person. You will receive from us under separate cover the buy-sell agreement and related documents related to the business. We look forward to hearing from you shortly.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'R. Spallina', written over the typed name. The signature is stylized with a large loop and a long horizontal stroke extending to the right.

ROBERT L. SPALLINA

RLS/wp

Enclosures

cc: Donald R. Tescher, Esq.

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