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Dear Clients, Friends, and Professional Colleagues:

This is another in an occasional series of newsletters to update you about the firm and our areas of practice.

The firm continues its practice in the areas of estate planning, estate administration, trust administration, tax work related to these areas, elder law, estate and trust litigation, and organization and administration of nonprofit corporations and private foundations.

In the tax area, as has been widely reported, the federal estate tax exemption, per person, has increased from \$600,000 to \$625,000 this year. It will increase to \$650,000 next year and, unless there is legislation to change the schedule, the exemption will finally increase to \$1 Million per taxpayer by the year 2006. What this means is that, with good coordinated planning, a typical family estate, consisting of the assets of both husband and wife, in the amount of \$2 Million, can pass tax free to children and grandchildren for decedents dying in 2006 or thereafter. In order to keep both estates free of tax, a family trust is often used in the will, the amount of which is defined in terms of the federal estate tax exemption. Most wills involving this kind of planning contain a formula clause defining the size of the family trust and, because of the formula nature, these wills do not have to be revised in connection with the increase in the federal estate tax exemption. There are some legislative efforts pending to accelerate the effective date of the full \$1 Million exemption.

In large estates there is still an estate planning need to consider gifts of assets during lifetime to younger family members. A person may make a tax free gift of

November 1998

Page 2

\$10,000 per year per donee so long as the gift is of a present interest in property. For example, if the ultimate estate tax bracket, in the estate of the survivor of a husband and wife, is 40%, this means that an asset finally transferred at death, after being discounted by tax, is worth 60¢ on the dollar to the recipient, whereas a lifetime gift within the gift tax exclusion is worth 100¢ on the dollar. Gifts can be of cash, securities, or other interests in property and must be fully completed before year end.

There are several more sophisticated techniques available in connection with tax free or tax deferred wealth transmission, either to family members or to charity.

One technique is the use of an irrevocable life insurance trust by which a trust is set up with life insurance purchased by the trust. Properly structured this device can take life insurance proceeds out of the estate of both the husband and wife and make the proceeds fully available to pay estate taxes on other assets.

Another technique is the qualified personal residence trust. Under this technique clients may make a gift of a residence, often a second home, to a trust for the ultimate benefit of children. The gift, on account of the application of actuarial tables, can be valued for gift and estate tax purposes at a substantial discount.

In addition, charitable remainder trusts are relatively common ways of satisfying charitable giving purposes at death while, at the same time, obtaining an additional income tax deduction benefit during lifetime. In the charitable giving area, increased attention is being paid to using retirement plan assets (such as assets in an IRA or 401(k) plan) with a beneficiary designation in favor of a charity. This has the advantage of avoiding both estate taxes and income taxes on the proceeds payable to charity.

It should be noted that both the qualified personal residence trust and the irrevocable life insurance trust have been on the "tax reform" wish lists of the President and the Internal Revenue Service, although there are no bills presently pending which would impair their usefulness.

In the gifting area, it should also be noted that gifts can be made to grandchildren or other minors (most commonly through an education fund) by several trust techniques which allow utilization of the \$10,000 per year gift tax exclusion. Also,

November 1998

Page 3

gifts made by direct payment of certain educational and medical expenses are excludible even if they exceed the \$10,000 limitation.

In the non-tax area, Colorado law has been fairly stable in our areas of practice. In 1995 our probate law was amended to provide stronger protection for surviving spouses and children in the estate administration area. The forced share provisions for surviving spouses still may be waived or limited through the use of pre-nuptial or post-nuptial agreements.

The Medicaid planning area continues to be a moving target, and we note increasing interest around the country in legislation to improve the asset protection (from creditors) features of trusts, both generally and with specific reference to Medicaid qualification.

There is much news to report regarding the personnel at Wade Ash Woods Hill & Farley.

Walter Ash has retired recently and his clients may contact any of the other lawyers in the firm for help in keeping their planning current. John Silver and Mary Moser, formerly estate planning partners with the Denver firm of Fairfield and Woods, P.C., have joined our firm. They bring a wealth of knowledge and experience in the areas of estate planning, estate and trust administration, and nonprofit corporation administration. Jim Wade recently traveled to Beijing as part of a small international delegation to advise law reform organizations in China regarding the development of a trust law code. He has also traveled to Tokyo to give some lectures to lawyer associations and trust bankers on guardianship reform and trust practice in the United States. Jim Wade, Jim Hill, and Mike Farley continue to be active in committees in the American College of Trust and Estate Counsel and the Real Property, Probate and Trust Law Section of the American Bar Association. Jim Hill is presently serving as Chair of the ABA Section fiduciary litigation committee. Steve Warden continues his activities with the Seniors Inc. and the National Association of Elder Law Attorneys. Bobbie Ruh has given several programs on sophisticated estate planning to estate planning councils. David Swank and Mike Farley recently co-authored an article in *Trusts and Estates* magazine. Herb Tucker has been a panel member in several recent legal education programs in the areas of protective proceedings and fiduciary litigation. Jim Wade has

WADE ASH WOODS HILL & FARLEY, P.C.

November 1998

Page 4

recently revised his publications, *The Colorado Probate System* and *Colorado Law of Wills, Trusts, and Fiduciary Administration*. Cindy Smith, our legal administrator, currently holds the position of President of the Mile High Chapter of Legal Administrators.

We have had a busy year with lots of changes. We continue to be available to consult with our professional colleagues and to provide services to our clients in our areas of practice.