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**FROM THE MANAGING DIRECTOR**

Larry Bingham,  
*Managing Director, Co-founder in 1974*

“Wealth preservation”, “wealth transfer planning” and “wealth transmission” are a few of the words many large law firms currently use to promote their estate planning services. It’s true, one of the primary goals of estate planning is to minimize estate and gift taxes and thereby maximize the “wealth” available for desired beneficiaries upon death. But, these somewhat cold and sterile words do not convey the importance of detailed estate planning to the welfare and security of a family’s life and they do not capture the very personal way in which the attorneys in Seigfreid Bingham’s Estate Planning & Administration Group help clients of all asset levels achieve their family goals.

Estate planning is not just planning for death. It is lifetime planning that carries through after the death of a family member. The decisions to buy a home or take out a life insurance policy are as much a part of family estate planning as the making of a will or trust. The decision to send a child to college is a family estate planning matter because it requires the marshaling of family assets for a particular purpose. We can help families develop and implement plans

for their future. Without planning, the occurrence of a single event can severely disrupt the family’s welfare, plans and goals.

Because the assets, needs, dreams and hopes of every family differ, our Estate Planning & Administration Group takes a very personal, individualized approach. Before we make recommendations, we work closely with the family members to help them determine the full extent of their assets and identify their complete family estate planning goals. We also work closely with financial experts including financial planners, insurance agents, stockbrokers, accountants, banks and philanthropic organizations. Together, we develop a customized plan that best achieves the family’s objectives.

I invite you to learn more about estate planning and our Estate Planning & Administration Group by reading this edition of our firm newsletter. Upon doing so, I hope you will allow us the opportunity to help you achieve your family’s life planning goals.

# Have You Reviewed Your **ESTATE PLAN RECENTLY?**

Over the past several years, there have been numerous developments in the law concerning: (1) the unified credit applicable to estate taxes; (2) bequests to grandchildren; (3) beneficiary designations for IRAs and other retirement distributions; (4) durable powers of attorney and living wills; and (5) the amount of financial information that must be given to trust beneficiaries. If you have not reviewed your estate plan with an attorney recently, here are several reasons why you should.

***You may need to re-title some assets to take full advantage of the recently increased estate tax credit.***

As indicated on page 3, the amount available to each person as a credit against federal estate taxes has increased and is expected to continue to increase. In order to take full advantage of this credit and reduce your estate tax, it is important to title assets correctly. For instance, a married couple often titles ownership to their house and other assets in joint tenancy. But, if their total assets, including the death benefits of life insurance, are more than \$1,500,000, the use of joint tenancy usually increases the couple's estate taxes. By reviewing your estate plan and assets, we can determine the appropriate titling of your assets in order to enable you to fully use your estate tax credits.

***You can now make larger bequests to your grandchildren without paying the generation skipping transfer tax.***

The changes in the estate tax credit also affect the amount that you can leave to your grandchildren without incurring the generation skipping transfer ("GST") tax. The GST tax is a special tax on bequests to grandchildren, which is in addition to the estate tax. The exemption from GST tax is scheduled to increase on the same schedule as the estate tax credit. This year, you can leave \$1,500,000 to your grandchildren without paying the GST tax. In future years, that amount will change. If you would like to leave significant assets to your grandchildren, we can advise you on the best way to do so in order to avoid or minimize the GST tax.

***You can now distribute IRA funds to your children over their lifetimes.***

The rules affecting beneficiary designations for IRAs and other qualified retirement distributions have become more flexible. It is now possible, through a properly worded beneficiary designation, to permit your children to withdraw these assets over their lifetime, paying income taxes only on the amount withdrawn that year and allowing the rest to grow income tax deferred over their lifetime. By discussing your current beneficiary designations, along with the overall liquidity of your estate and the maturity of your children, we can help you evaluate whether changes in your beneficiary designations should be made.

***It is important to clearly express your wishes with respect to health care and end-of-life decisions.***

As the Terri Schiavo case indicates, without written documentation, your family and the courts may have difficulty knowing and enforcing your wishes with respect to medical and other important decisions. A durable power of attorney allows you to select someone you trust to make financial and health care decisions for you at any time, including a time when you are disabled. If it meets with your personal or religious desires, you should also have a living will. A living will states that if you are unable to indicate whether a procedure should be done and this procedure would artificially prolong the dying process, then you do not want this procedure performed. Examples of procedures considered artificially life prolonging when you are terminally ill or in a persistent vegetative state include artificial ventilation and CPR. Comfort care, such as medication to alleviate pain, would still be provided. We have significantly revised these documents in the last several years. If you have not recently updated your power of attorney and living will, now is the time.

***Unless your trust states otherwise, the trustee will have burdensome reporting duties.***

Recently, both Kansas and Missouri adopted a different version of the Uniform Trust Code ("Code"). This Code is an extensive framework of statutes governing the creation, administration, interpretation and termination of trusts. The Code's provisions are default rules, meaning that they are automatically applicable

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*“ In order to take full advantage of the recently increased tax credit, it is important to title assets correctly. ”*

## CLIENTS IN THE NEWS

Congratulations to the following clients on their recent accomplishments and awards. We're proud to represent you!

### WOMEN WHO MEAN BUSINESS

Recently honored by the Kansas City Business Journal as Women Who Mean Business are clients:

**Kathy Bennett, Bennett Packaging of K.C.**  
**Rae White, Floor Décor Center**  
**Melody Warren, Transportation Logistics Systems, Inc.**

### HAPPY BIRTHDAY

This year celebrating significant milestones are clients, **Andrews McMeel Universal** and **Helzberg Diamonds**. Andrews McMeel Universal is celebrating its 35th anniversary in business and Helzberg Diamonds is celebrating its 90th!

### NEW CONTRACTS

Continuing **EPIQ System Inc.'s** growth, in September, EPIQ's BSI subsidiary won contracts with Delta Airlines and Northwest Airlines to administer their Chapter 11 bankruptcy cases.

### HISPANIC BUSINESS 500

Recently making Hispanic Business Magazine's list of the 500 largest U.S. Hispanic-owned companies is client **Carlos Ledezma's** car dealership in Independence, Cable-Dahmer Chevrolet, coming in at #50.

# Recent Estate and GIFT TAX CHANGES

#### Gift Tax Basics.

A gift is taxable if it doesn't meet one of the many exceptions. Exceptions include gifted amounts of less than the annual exclusion amount (currently \$11,000 for each person to whom you make a gift and scheduled to increase to \$12,000 in 2006), gifts to your spouse, tuition or medical expenses you pay for someone else and gifts to qualified charities. In addition, each person has a unified credit that shields taxable gifts in an aggregate amount of \$1,000,000 from federal gift tax.

#### Estate Tax Basics.

The money and property you own when you die (including life insurance proceeds payable to your estate or heirs) is taxable to the extent it exceeds allowable deductions. Allowable deductions include funeral expenses, debts you owe at the time of your death, the marital deduction for property that passes from your estate to your surviving spouse and the charitable deduction for property that

passes from your estate to a qualified charity. In addition, each person currently has a unified credit that shields \$1,500,000 of the person's taxable estate from estate tax. That means a married couple with good planning and appropriate titling of assets can shelter up to \$3,000,000 of assets from estate taxes. The gift tax and estate tax are "unified" meaning that any use of this gift tax credit during your lifetime will reduce (dollar for dollar) the total estate tax credit available at the time of your death.

#### Recent Changes.

Recent changes in the law gradually increase the estate tax credit and reduce the estate tax rate. As described in greater detail below, the unified credit applicable to estate taxes is scheduled to increase each year through 2010 and then drop back down to \$1,000,000 in 2011. However, we do not expect the credit to drop back to \$1,000,000. Instead, we expect that legislation will be enacted at some point in the future to increase and freeze the unified credit at a fixed amount.

| <i>year</i> | <i>assets exempt from estate tax*</i>                     | <i>highest estate and gift tax rates</i>                                  |
|-------------|-----------------------------------------------------------|---------------------------------------------------------------------------|
| 2005        | \$1,500,000                                               | 47%                                                                       |
| 2006        | \$2,000,000                                               | 46%                                                                       |
| 2007        | \$2,000,000                                               | 45%                                                                       |
| 2008        | \$2,000,000                                               | 45%                                                                       |
| 2009        | \$3,500,000                                               | 45%                                                                       |
| 2010        | Estate taxes repealed for one year only, gift tax remains | Gift tax rate will be top individual income tax rate (35% if not changed) |
| 2011        | \$1,000,000                                               | 55%                                                                       |

\*Gift tax credit stays at \$1,000,000



# *FLIPs, GRATs, ILITs and other* **SOPHISTICATED ESTATE PLANNING TECHNIQUES**

By *Cindy A. McClannahan*

Sounds like alphabet soup, but FLIPs, GRATs and ILITs are just a few of the more sophisticated techniques available for accomplishing our clients' specific estate planning goals. Read on to learn more about these techniques and consider their potential usefulness in achieving your own estate planning goals.

### ***Irrevocable Life Insurance Trust (ILIT).***

An ILIT can be used to reduce an individual's estate tax when his or her unified credit is insufficient. If an individual owns life insurance that has a death benefit payable to the individual's estate or heirs, it will be subject to estate tax unless he or she leaves the proceeds to a charity or a surviving spouse. If the individual leaves the proceeds to a surviving spouse who has other assets, they may be subject to estate tax upon the spouse's death. If an individual is already using his or her unified credit to protect other assets, then the individual may want to protect the life insurance by transferring it to a separate trust, called an irrevocable trust. For example, an individual who has life insurance death benefits totaling \$1,000,000, and is relying on his or her unified credit to shield other assets from estate tax, will save \$450,000 in federal estate taxes if the individual is in the 45% estate tax bracket. Unlike a revocable living trust, the provisions of an irrevocable trust cannot be changed once established. However, the individual has flexibility when creating the trust

to determine the beneficiaries (e.g., spouse and/or children) and to specify when the proceeds will be distributed to them.

### ***Grantor Retained Annuity Trust (GRAT).***

A GRAT is an excellent tool for individuals who are already gifting \$11,000 per year (scheduled to increase to \$12,000 per year in 2006) to each of their children and wish to make additional gifts while retaining an income stream from the gifted property for some period of time. For example, a parent who owns a publicly held stock that he or she believes will appreciate significantly in the future may want to transfer the future appreciation in the stock to his or her children now. To minimize gift taxes on that stock, the parent may establish a special irrevocable trust, called a GRAT, and transfer the stock to that trust. The GRAT could direct the trust to pay the parent a set amount for some period of time, such as five years, and to distribute the remaining stock to the children at the end of the term of the trust. The value of the children's interest, discounted for the income stream kept by the parent, would be a taxable gift by the parent. That taxable gift could be shielded by the parent's unified credit. Alternately, the parent may choose to "zero out" the gift (i.e., direct the trust to pay the parent the current

value of the stock over the trust term and give the appreciation to the children at the end of the term). Since the parent retains the right to receive the current value of the stock at the time the GRAT is created, the taxable gift would be zero.

### ***Family Limited Partnership (FLIP).***

A FLIP can be used by parents to transfer ownership of real estate and securities to their children while still retaining some control over those assets. To establish such a partnership, the parents transfer real estate and/or securities to the FLIP and one or more of their children transfer a nominal amount of cash. In return, the parents and the children receive general units in the FLIP that give them control over its operation. One of the parents can be named the managing general partner, which will allow that parent to make all of the day-to-day operating decisions of the FLIP. The parents also receive limited partnership units, which are passive, non-voting units. The parents can then use these units to make gifts to their children and grandchildren. Restrictions on the limited partnership units prohibit the children and grandchildren who receive the units as gifts from borrowing against them or transferring them without first offering them to the other partners. Due to these restrictions, an appraiser will give an opinion that the partnership units have a value less than the value of the underlying assets owned by the FLIP. This "discount" allows the parents to gift more assets to their family without incurring gift tax.

*“Sounds like alphabet soup, but FLIPs, GRATs and ILITs are just a few of the more sophisticated techniques available for accomplishing our clients' specific estate planning goals.”*

## *CLOSELY-HELD, FAMILY-OWNED BUSINESSES*

Our firm's sophistication in estate planning (as described in the article to the right) arises in large part from the high concentration of closely-held, family-owned businesses among our clientele. For these closely-held businesses, we provide important succession planning services.

The issues of succession involve not only the technical aspects of tax and general business law, they often include sensitive or emotionally charged issues for family members. The survival of a family-owned business often depends on the family's ability to resolve issues like:

- When should family members currently holding key management positions retire?
- Who should succeed as the next CEO?
- Must the business offer every family member a job?
- How do we reconcile the interests of family members who work for the business and those who pursue other interests?

Because family dynamics play a powerful role in discussions of this type, we often recommend expansion of the usual estate planning team of legal, accounting and investment professionals to include a family counseling specialist who is skilled in facilitating and managing communications among family members. A team effort that coordinates all of these disciplines helps assure the longevity of the family-owned business and helps achieve the goals of the family and its individual family members.

For many of our closely-held business clients, we perform a full spectrum of legal services, in addition to estate planning services, and have done so for generations. This deepens our understanding of their companies and of the family members' desire to preserve a family legacy. For at least three of these clients, we have had the privilege of assisting the families in transferring ownership of their businesses from the first generation to the second, and in planning for further transfers for the benefit of the third generation. We believe their success in transitioning these businesses to future generations is, at least in part, a testament to our own success.

## *Meet our estate planning and* **ADMINISTRATION GROUP**



The attorneys and paralegals in our Estate Planning & Administration Group are: Amy Hohensinner, Tanya Braa, Judy Galate-Swartzbaugh, Katie Zogleman, Bob Bartunek, Kate Milberger, Karla Shepard, Tim Fisher (standing), Gary Brouillette, Larry Bingham, Al Stopperan, Jack Selzer, Cindy McClannahan, Mark Gilgus (seated).

Our Estate Planning & Administration Group is uniquely qualified to provide estate planning services. Over one-third of the shareholders in our law firm have extensive estate planning experience, with those estate planning shareholders averaging 28 years of experience. Included in our estate planning team are five attorneys who hold advanced legal degrees (LL.M.) in taxation and three attorneys who earned undergraduate degrees in accounting. Few, if any, other full-service law firms in the Kansas City area can claim that level of estate planning specialization and experience. This sophistication, combined with our personalized approach, makes us particularly adept at developing customized estate plans for estates of all sizes and degrees of complexity.

Additionally, the attorneys in our Estate Planning & Administration Group have substantial general practice experience forming, acquiring, operating and selling businesses. This dual tax / accounting expertise and general corporate practice experience not only enables our Estate Planning & Administration Group to minimize estate and gift taxes for our clients, it also helps them furnish overall business and legal advice on matters such as formation of business

entities, real estate transactions, stock purchases and sales, mergers and acquisitions, insurance, and compensation and benefit plans.

The paralegals in our Estate Planning & Administration Group serve an important role in working with our clients. With direction and supervision by our attorneys, our paralegals help transfer assets to appropriate trusts and help administer the wills and trusts after funding. Because our paralegals possess great attention to detail, good accounting skills and substantial experience in estate administration, we typically are able to delegate a significant amount of the funding and administration work to them, saving our clients from higher legal fees.

Estate Planning is about the well being of families and our family of attorneys, paralegals and support staff are here to help you. If you need any assistance establishing or updating your estate plan, please call any one of the attorneys in our Estate Planning & Administration Group. We will put our experience and expertise to work for the benefit of you and your family.

# Four new associates

## JOIN SEIGFREID BINGHAM

Seigfreid Bingham continues to recruit fantastic young lawyers. We are proud to announce, and introduce you to, our most recent hires—Heather Jones, Ryan Scott, Kate Milberger and Jason Tupman, who have joined our firm as associates.

### Heather Jones



Heather will be practicing primarily in the areas of general business law, real estate and construction. She brings to Seigfreid Bingham over four years of experience, having previously practiced as a member of Swanson Midgley in Kansas City. In discussing her move to Seigfreid Bingham, Heather said: "I am excited about working with and learning from attorneys who are leaders in their respective fields. I look forward to working with Seigfreid Bingham's clients as well as growing my own practice."

Heather worked for one year as an intern for Judge Kathryn H. Vratil, Federal District of Kansas. She received her law degree from the University of Kansas in 2000, earning a CALI Award for Academic Excellence in Agricultural Law. She completed her undergraduate education at the University of Illinois, graduating with high honors in 1997, earning a Bachelor of Science in Agriculture Economics.

### Ryan Scott



Ryan will be practicing primarily in the areas of general business law, technology and intellectual property. He just moved here from Omaha, Nebraska, where he practiced for two years at the Baird Holm McEachon law firm. In talking about joining Seigfreid Bingham, Ryan said: "I am very excited to join Seigfreid Bingham for a multitude of reasons, but first and foremost because I share the same values as Seigfreid Bingham with respect to providing quality, efficient legal work for our clients."

Ryan obtained his law degree from the University of Kansas in 2003, earning the CALI Award for Academic Excellence in Dispute Resolution. He obtained his Bachelor of Science degree in General Management and a Minor in Finance from Kansas State University, where he was a member of the Golden Key National Honor Society.

### Kate Milberger



Kate will be practicing in the areas of general business law, health law and estate planning. Excited about the start of her legal career at Seigfreid Bingham, she said: "I look forward to the great opportunity to practice law in the unique environment at Seigfreid Bingham. Here I will have the chance to learn from excellent attorneys with many years of experience, and thus be well prepared to meet the wide range of clients' business and estate planning needs."

Kate received her J.D. from the University of Kansas in 2005, with a Tax Law Certificate, graduating Order of the Coif. In 2005, she received the UMB Excellence in Estate Planning Award, given annually to the most outstanding student in estate planning. Kate obtained a Bachelor of Arts degree in Psychology and a Bachelor of Science degree in Business Administration from the University of Kansas in 2002, graduating with highest distinction.

### Jason Tupman



Jason is practicing in the areas of general litigation, construction law and employment law. Jason will concentrate on providing litigation services to clients as well as advising clients regarding employment law issues. Jason chose Seigfreid Bingham, in part, because "it is a perfect place for a young lawyer to draw from the experience of many talented attorneys." He looks forward to working in the employment law field in particular because "it provides opportunities to make the workplace better for both the employer and the employee."

Jason received his law degree in 2005 from the University of Oklahoma, graduating with honors and Order of the Coif. There he served as Assistant Managing Editor of the Oklahoma Law Review and earned Academic Achievement Awards in Legal Research and Writing Legislation. Jason did his undergraduate work at Pittsburg State University, where he received a Bachelor of Arts degree in Political Science in 2002.

## FIRM MEMBERS IN THE NEWS

*Our attorneys, paralegals and staff continue to serve as leaders in the legal and civic community. We proudly acknowledge a few of their recent honors and accomplishments.*

**Jim Seigfreid** last month celebrated 50 years of practicing law and was honored by his selection to make remarks on behalf of this year's class of senior counselors at the annual meeting of the Missouri Bar.

**Steve Kyle** and **Heather Jones** were elected to serve on the 2005-2006 Board of Directors of the Lawyers Association of Kansas City.

**Amy Hohensinner** was just elected as Education Director on the Board of the Kansas City Paralegal Association. She joins **Judy Galate-Swartzbaugh**, current at-large member of the KCPA Board.

**Bob Bjerg** just started his term as President of the Johnson County Bar Foundation and, together with his wife Kathi, is chairing the Foundation's annual fundraiser for the Sunflower House.

**Mark Gilgus** was just appointed to the Cultural Arts Task Force for Lee's Summit.

**Bob Levy** is currently serving as Chairman of the Board of Truman Medical Center and will be attending the annual meeting of the University Health Systems Consortium to accept the Consortium's award naming Truman one of the nation's five best hospitals.

**Jeanette Schmeltz** and **Robin Fusco** annually spearhead Lee Denim Day at our firm, this October raising \$880 for the Susan B. Komen Foundation.

**Bob Bartunek** was recently elected to the Board of Trustees of Donnelly College.

## What we did

### LAST SUMMER

## Chick Golf Rocks

That's the slogan adopted by our firm's women lawyers for their 2nd annual season of monthly golf outings with our female clients. In May, we sent invitations and t-shirts bearing the "Chick Golf Rocks" slogan, in pictogram, to known golfers, but the ability to ride in a cart is all that is really required. Golf is just our excuse to get together with our women clients for a fun evening of socializing. The hackers and true golfers meet at the Drumm Farm Golf Course in Independence, Missouri once a month from May through September, starting with cocktails in the clubhouse at 5:00 p.m. We then hit the tees around 5:30 p.m. for a quick round of nine holes before sundown, gathering afterward at a local restaurant to share our stories of golf, work and family. Call Rachel Baker, or anyone of our other women attorneys, if you're interested in joining us next year. The more the merrier, but sorry, men, it's females only!



## Bashers Rule

Seigfreid Bingham's co-ed softball team celebrated its 15th anniversary this past summer. Nicknamed "Burrell's Bashers" after the late Bill Burrell, one of the founding members of our firm, the team took the field for the first time in June of 1990 and has competed in 16 consecutive seasons since that time in the Kansas City Lawyers Softball League. During those 16 years, Burrell's Bashers has advanced to the semi-finals eight times, played in four championship games and won two championships. While the success on the field is gratifying, equally satisfying is the opportunity for attorneys, paralegals and staff to socialize together during and after the games. The games also play an important role in our recruitment efforts, giving our summer law clerks an opportunity to get to know everyone in a fun, social setting. Burrell's Bashers finished the 2005 season with a modest 4-4 record, bowing out of the playoffs in the first round. But the team will be back in 2006 and for many seasons to come. Go Bashers!

# HAVE YOU REVIEWED YOUR ESTATE PLAN RECENTLY?

...continued from page 2

to trusts unless the trust's terms specifically change the rules. These new rules require a trustee to provide certain current and future beneficiaries with notice and information regarding the trust's existence, and they may require the trustee to give detailed financial information to your children after the first to die of you and your spouse, even if your child is not a current beneficiary of your trust. Many clients prefer to keep this financial information private. We can help you amend your trust's language to reduce or waive these requirements.

**Action may be needed to reflect the changes in law and changes in personal circumstances.** As you can see, most of these changes in law are favorable. However, this comes at a cost of increased complexity in an area that is already quite complex. In order to take advantage of these and other changes, and to address changes in your assets, marital status and other personal circumstances, we recommend that you consult with an estate planning attorney at least once every three years so that the provisions of your estate planning documents and the titling of your assets can be adjusted as needed. So if you haven't done so, we invite and encourage you to call any one of the attorneys in our Estate Planning & Administration Group.

# FLIPs, GRATs, ILITs...

...continued from page 4

## **Business Succession Plan.**

If an individual owns 100% of a business and decides to include a family member, key employee or other person in that business, it is important that they enter into a written shareholders agreement or similar agreement. The agreement sets forth provisions concerning when the company or a shareholder may purchase another shareholder's stock (e.g., when a shareholder quits, retires, divorces or becomes bankrupt) and states whether or not the shareholder must sell his or her stock at the shareholder's death or whether the shareholder can leave the stock to family members. In order to attempt to avoid confusion and disagreement regarding the purchase price of the stock in those circumstances, it is very important that the agreement either set forth the value of the stock or establish a formula for determining that value. In addition, it is important to have a written business succession plan outlining who will succeed the current controlling shareholder in operating the business and when. It can be folded into the shareholders agreement or set forth in a separate document, but it should contain as much detail as possible about the order of succession and the timing.

## **Charitable Remainder Trust. (CRT)**

There are a number of charitable gifting techniques, the most common of which involves a CRT. Typically, an individual transfers assets to a CRT to retain income

from those assets (either a specific dollar amount or a percentage of the value of the trust assets) for himself or herself during life and, upon death, to the surviving spouse for life. Upon the second death, the remaining assets pass to one or more charities set forth by the individual in the CRT document. An individual who creates a CRT receives various tax benefits. First, the individual receives an income tax deduction upon establishing the CRT. This deduction will take into account the initial value of the assets being contributed, the amount of income the individual(s) reserve and the length of time for continued receipt of that income. As a result, the charitable deduction decreases as the individual's income stream increases. The second tax benefit relates to the deferral of the capital gains tax. Each year, as the individual receives income from the CRT, the individual pays tax on the income received. Often the income stream received by the individual is higher than if he or she had personally sold the assets, paid the capital gains taxes and reinvested the balance. Why? The CRT can sell the assets and reinvest the full proceeds because it does not pay any tax. Instead, the individual is taxed when he or she receives a distribution from the CRT. When a distribution is paid by the CRT, usually part is characterized as ordinary income and part as capital gains.



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