Trusts & Estates

Barclay Damon's Trusts & Estates Practice Area delivers custom, tailored, practical legal solutions to suit the varying needs of individuals, families, businesses, and major financial institutions' trust departments.

To provide the most comprehensive services to our clients, our Trusts & Estates Practice Area members frequently team with attorneys in our Commercial Litigation, Corporate, Tax, and Restructuring, Bankruptcy & Creditors' Rights Practice Areas on matters involving contested trusts and estates; business succession planning; international tax planning; complex estate, gift, and income tax issues, elder care and Medicaid asset-protection planning, and special needs planning.

In addition to considering the legal, financial, tax, and logistical aspects of each matter, our team collaborates with clients, their financial advisors, and their loved ones to create a plan that best provides the care and financial protection they seek. Our trusts and estates attorneys treat each client's unique needs with the same level of attention, respect, and sensitivity we each would hope to receive in similar circumstances. Whether a client's goal is to protect, incentivize, or assist their heirs, we work with them to efficiently deliver proactive and creative solutions that not only meet the client's specific needs but also minimize adverse tax consequences and other costs that can deplete a client's assets.

Trust and Estate Wealth Management Planning

Barclay Damon's Trusts & Estates Practice Area attorneys counsel clients on the full range of personal estate planning matters designed to pass wealth between generations as smoothly and effectively as possible, including:

- Preparing and executing wills, revocable trusts, irrevocable trusts, powers of attorney, living wills, and health care proxies
- Special needs planning, including supplemental needs trusts
- Asset-protection planning, including marital agreements, crisis Medicaid planning, and asset-restructuring strategies that include income-only and Medicaid trusts
- Elder law and Community and Chronic Care Medicaid for those who remain at home or enter a nursing home
- Asset structuring and valuation, including stocks, bonds, bank accounts, real estate, vacation property, insurance policies, retirement plans, deferred-compensation agreements, employee benefit plans, and closely held business interests
- Charitable-giving techniques, including outright donations, charitable lead and remainder trusts, donor-advised funds, and private foundations
- Estate plan design and implementing wealth management strategies, including analyzing and implementing gifting programs
- Gift planning, including grantor retained annuity and uni-trusts, intentionally defective grantor trusts, and outright transfers of closely held business interests
- Life insurance planning to fund for liquidity, financial, and business needs
- State and federal estate, gift, and income tax counseling and advice
- Preparation and filing of estate and gift tax returns

Business Succession Planning

Our attorneys have a deep understanding of the complex intersection of the estate planning, business law, financial, accounting, and tax issues that arise in business succession planning matters. Whether a family-owned or closely held business, we provide clients with the necessary counsel, advice, and solutions to help their businesses thrive for generations to come. We explore techniques to reduce future estate taxes and design a business succession plan that serves the objectives of the business owner,

whether retirement; continuing the business by a transition to the next generation within the family, a management team, or an ESOP; or exiting by sale to an outside party. Our business succession plans equally strive to meet the objectives of the successor owner, including ensuring future control and management of the business.

We assist our clients with business succession planning issues that include:

- Creating family limited partnerships and limited liability companies to discount the value of the business interests for transfer tax purposes, reducing potential income, estate, and gift taxes
- Establishing methods of funding cross-purchase and redemption agreements, including the use of life insurance, deferred compensation, and other creative structures
- Designing methods of equalizing or providing fair value for family members who do not participate in the business
- Negotiating and preparing operating, shareholders', or other owner agreements addressing management, governance, ownership, and transfer restrictions and buy-sell provisions among the owners or family members
- Solving transfer of ownership and management problems, including family members who do not work for or participate in the management of the business

Elder Care Planning

Our attorneys and paralegals are committed to understanding the wide spectrum of solutions available to clients facing long-term-care costs that could exhaust their estates. We help clients balance competing goals of maintaining autonomy and independence while still leaving a legacy to their family. These aims are not easily reconciled, but we have successfully obtained Medicaid benefits for thousands throughout New York State. Even after our clients have entered a nursing home, it is never too late to discuss options, including:

- Preserving a significant portion of a single person's assets when they enter a nursing home
- Preserving substantially all of the assets when a spouse enters a nursing home
- Strategically transferring assets to get past the five-year look-back period for chronic Medicaid
- Consulting with care managers, financial advisors, and family to develop uniquely tailored plans
- Obtaining Medicaid benefits to pay for aide services allowing clients to remain safely at home

Special Needs and Disability Planning

Our attorneys represent adults with disabilities and families with children with special needs, implementing strategies that maximize access to relevant public benefits, including:

- Advising on self-settled, third-party, and testamentary supplemental needs trusts
- Article 17, 17A, and Article 81 guardianships or supported decision making
- Planning to access Social Security and Medicaid benefits
- Planning with ABLE Accounts
- OPWDD/Waivered Medicaid, including self-direction

Administration

We assist clients with the administration of trusts and estates, including:

- Outlining fiduciary duties and preparing all court filings related to the admission of the last will and testament to probate, appointing fiduciaries, inventorying assets, and judicially settling accounts as necessary
- Providing direction and assisting in the collection, valuation, and distribution of estate, trust, and non-probate assets, including issues related to the valuation, management, and distribution of closely held business interests

- Preparing federal and state estate, gift, and generation-skipping transfer tax returns and utilizing strategies to minimize taxes
- Post-death estate and income tax planning using disclaimers and other planning strategies
- Fiduciary income tax planning and preparation of fiduciary accountings and fiduciary income tax returns

Litigation

We litigate matters involving contested probates; estate and trust accountings; investment performances of trusts and estates; disputes involving closely held businesses; shareholder, operating, and buy-sell agreements; and the rights of a surviving spouse. Our attorneys routinely handle trust- and estate-related matters in Surrogate's courts, the Appellate Division, the NY Court of Appeals, US Tax Court, and the US Supreme Court.

We additionally assist clients with the following litigation matters:

- Will and trust contests
- Beneficiary disputes
- Disqualification of fiduciaries
- Breach of fiduciary duty and abuse of power of attorney claims
- Construction and reformation
- Accounting issues
- Electronic-discovery issues
- Capacity
- Contested Article 81 guardianships

Representative Experience

- Represents siblings in breach of fiduciary duty litigation stemming from the co-trustee siblings' misuse of family assets for over two decades.
- Handled the estate administration and settlement of a multimillion-dollar estate with an individual executor.
- Settled a decedent's revocable inter vivos trust containing all of his assets, including his shares in a business.
- Handled the estate administration and settlement of a $7 million estate as well as the settlement of two trusts collectively valued at $3 million in which the decedent was a trustee.
- Handled an estate administration settlement of a $3 million estate and served as the co-executor with an accountant.
- Handled a trust administration settlement of a $10 million revocable trust with an investment banking company serving as the corporate fiduciary.
- Prepared a petition for the appointment of a guardian in a guardianship proceeding for a disabled individual.
- Prepared an ancillary probate petition for property in New York State.
- Prepared estate planning documents for a $1.7 million estate, including drafting of last will and testaments, health care proxies, and powers of attorney.
- Reconciled the accounting of a $200,000 estate for distribution.
- Prepared objections of accounting for a client's parents' two trusts and his mother's estate.
- Facilitated the transfer of assets for a couple to an intentionally defective grantor trust to shield the assets from estate taxes.

- Handled estate planning for a $6 million estate, including drafting the last will and testaments, health care proxies, and powers of attorney.
- Handled probate proceedings for a $150,000 estate, including conducting familial history research in search of intestate distributees of the decedent to file an affidavit of due diligence.
- Working with clients on the administration of an estate with multiple properties and liquid assets. Successfully oversaw the contentious distribution of tangible personal property among estate beneficiaries.
- Working with the trustee of a revocable trust with 30-plus beneficiaries. In addition to traditional assets, the trust owns several million in antiques that must be strategically sold over a period of time so as not to artificially deflate their market value. A large number of beneficiaries are charitable organizations taking a residuary portion of the trust estate.
- Assisted a client with converting a Family Limited Partnership (FLP) set to dissolve into an LLC designed to hold and manage the family's recreational property. Worked with the client and their family to design a tailored operating agreement that would transition from manager-management to eventual member management as property passed through several family generations.
- Represented a client with significant claims against the executor of the estate for a deceased relative with an insolvent estate, including negotiating the sale of closely held real estate business interests to settle the claim, effectively bypassing creditors with superior claims against the estate.
- Represented a 57-year-old woman who was alleged to be incapacitated against an application under Article 81 of the Mental Hygiene Law. The petitioner obtained an improper temporary order effectively imposing a plenary guardianship on an ex parte basis in deprivation of the client's constitutional rights to due process. Successfully lifted the guardianship and achieved a global settlement of both personal needs and property management issues without the drastic measure of plenary guardianship structure.
- Created a complex estate plan for Native American clients with $20 million in assets, including balancing issues with treaty exclusions from a restriction on transfers perspective and federal estate and transfer tax exemptions, restructuring assets, handling issues for the succession of closely held business interests operating on restricted lands, and restructuring holdings into LLCs.
- Settled two complicated testamentary trusts, including appointing trustees nunc pro tunc and decanting one testamentary trust.
- Handled the sale of a closely held business' $3.5 million in stock to an intentionally defective grantor trust by two brothers.
- Settled a $19 million estate involving NYS and federal estate tax matters, including a sale by a closely held business, a sale of private equity and venture capital positions, managing a closely held business, and working show-dog kennels during the administration.
- Settled an estate involving a fiduciary qualification contest, including handling issues with an ineffective residuary disposition to a non-existing charitable remainder unitrust with a corresponding NYS Department of Tax & Finance ramification on charitable deduction availability; construction issues relating to the application of an in terrorem clause for purposes of the fiduciary-beneficiary's interest in the estate proceeding; and issues involving appeals pending for commercial litigation before the time of the decedent's death related to the closely held business interest and sale to a purchaser now in bankruptcy proceedings.
- Created a complex estate plan for clients with closely held real estate businesses. Restructured and modified the ownership of business interests to accomplish estate planning objectives and avoid potential income tax issues.
- Implemented a gifting plan for closely held business interests to the children involved in running the business. Restructured the ownership of assets between spouses to effectively utilize estate tax exemptions and updated the estate plan to accomplish business objectives and establish revocable trusts to avoid potential ancillary probate issues.

- Formulated and implemented a complex estate plan for a retired executive of a publicly-traded company with $50 million in publicly traded stock holdings. Implemented generation-skipping tax planning through the use of trusts for his children, achieved tax efficiencies through creating intentionally defective grantor trusts (IDGTs) for his children, created zeroed-out grantor-retained annuity trusts (GRATs) to make additional gifts after using up lifetime exemptions, and implemented a sale of a closely held real estate LLC on a discounted basis to further reduce the taxable estate size.
- Settled an estate and trust involving NYS and federal estate tax audits, a real property sale by closely held businesses using a like-kind exchange, a settlement with a family member to resolve claims related to the trust distribution and redemption out of businesses, and a settlement with a beneficiary with debt owed to a related business.
- Administering a $10 million taxable estate, including extensive real estate holdings in a contested estate with a lost will and potential right of election.
- Probating a will in a contested estate that involved an estate claim against a corporate trustee for the improper payment of income to an improper beneficiary for 10 years.
- Settling a $43 million estate, including buying out a minority shareholder, settling various trusts and the fiduciary of a deceased fiduciary, and estate planning for the sole beneficiary.
- Successfully secured a settlement payment to a $15 million estate from the marital trust for payments owed to the decedent. Resolved a federal estate tax audit and guided clients through a difficult estate administration involving illiquid assets.
- Implemented changes to an estate plan for high-net-worth clients with $17 million in assets following their relocation to Florida, including outlining recommendations to confirm the change of domicile, creating a plan regarding their homestead property, and trust planning for one child.
- Effectuated a client's estate plan to shield all $3 million in assets from long-term-care planning costs, effectively using a disclaimer and renunciation to minimize income taxes and to minimize the use of IRA distributions to pay for nursing home care.
- Worked with high-net-worth clients with $9 million in assets on their estate plan, effectively crafting wills and utilizing trusts to avoid up to approximately $600,000 in NYS estate taxes.
- Worked with high-net-worth clients with $11 million in assets on their estate plan, effectively crafting wills and utilizing trusts to avoid up to approximately $900,000 in NYS estate taxes.
- Created an estate plan for a client whose husband passed away and is currently the subject of a wrongful-death lawsuit. Tailored the plan to the client's individual family needs and unique assets.
- Successfully prosecuted a chronic care Medicaid application and protected a modest amount of assets for a client. Also performed forensic accounting to assure no prior gifts would contaminate the client’s plan, helped the family avoid probate, protected life insurance and qualified funds, and reviewed and approved the Medicaid determination.
- Helped a paraplegic move into his daughter’s home, successfully obtain Community Medicaid, and obtain 24/7 care paid for by the Community Medicaid. Also secured rights for the client's daughter to charge him $3,500/month in rent.
- Prepared estate planning documents for a couple, including wills, health care proxies, and powers of attorney.
- Helped an 88-year-old client remain in his home in the community by getting him Community Medicaid that paid for aide service and up to $45,000 in home improvements every three years. Protected the client’s home, the balance of assets, and secured rights for the client’s disabled daughter to be paid $11/hour to look after him.
- Assisted a client with a progressive memory impairment in obtaining Community Medicaid that allowed him and his wife to continue living together in a community. When the client’s disease progressed, helped him successfully enter a nursing home while protecting he and his wife’s assets, which allowed her to remain in the community.