

# Wills, Trusts & Powers of Attorney – Am I Covered?



Lesser Lutrey  
Pasquesi & Howe LLP  
ATTORNEYS AT LAW

*Life • Legacy • Law*

# Credentials - David M. Lutrey

- 26 years in practice
- Education
  - University of Illinois (1993, BS)
  - DePaul College of Law (1996, JD)
  - Kellstadt Graduate School of Business (1996, MBA Finance)
- Partner at Lesser Lutrey Pasquesi & Howe, LLP
- Former Chairman of the ISBA Trusts and Estates Section Council's Legislation Committee
- Former Adjunct professor at Loyola Law School, Chicago
- Seven-year member of the Illinois Institute for Continuing Legal Education's Estate Planning Short Course Board

# Credentials

## Lesser, Lutrey, Pasquesi & Howe, LLP

- Website – [www.llphlegal.com](http://www.llphlegal.com)
- Boutique Trust and Estate Firm
- Ten attorneys, practicing almost exclusively in the area of trusts and estates
- Collaborative Approach
- Downtown expertise and experience, suburban fees and convenience
- Dedication to Community



# Seminar Agenda

- What is “Estate Planning?”
- Why use Estate Planning?
- What is “Probate?”
- What is a Will and how does it work?
- What are “contract” assets and how do they work?
- What Is a Trust and how does it work?
- What are Powers of Attorney?



# Seminar Agenda, Continued

- What are Estate Taxes and how do we avoid them? (legally, of course!)
- Everyone says I need an Estate Plan, but how do I know if I *really* need one?
- How do I select the right Estate Planning Attorney?
- The Estate Planning process and fees
- Next steps
- Q&A



# There are only two certainties in life:

- Death
- Taxes



# What is an “Estate”

- Collection of assets

- Probate Estate refers to the assets of a probate proceeding and that may be covered by a will
- Taxable Estate refers to the collection of assets subject to estate tax
- Trust Estate refers to the assets in a trust
- Others as well

- Court Proceeding

- Probate Estate – the court proceeding where an estate is taken through the probate process
- Guardianship Estate – the court proceeding where an estate is taken through the guardianship process



# What is “Estate Planning?”

- Using wills, trusts, joint tenancies, beneficiary designations and business entities to determine in advance what persons are to receive your assets when you pass
- “Assets” are all things of value
- Estate planning is not financial planning or retirement planning
- Estate planning is valuable



# Why use Estate Planning?

- “No” estate planning means:
  - No joint tenancy
  - No assets with beneficiary designations
  - No will
  - No Trust
- Laws of Intestacy – “heirship” or “next of kin”
- Some basic rules/common application
  - If you leave a spouse and children, then  $\frac{1}{2}$  to your spouse and  $\frac{1}{2}$  to your children
  - If no spouse, then all to children
  - If no children, then all to spouse



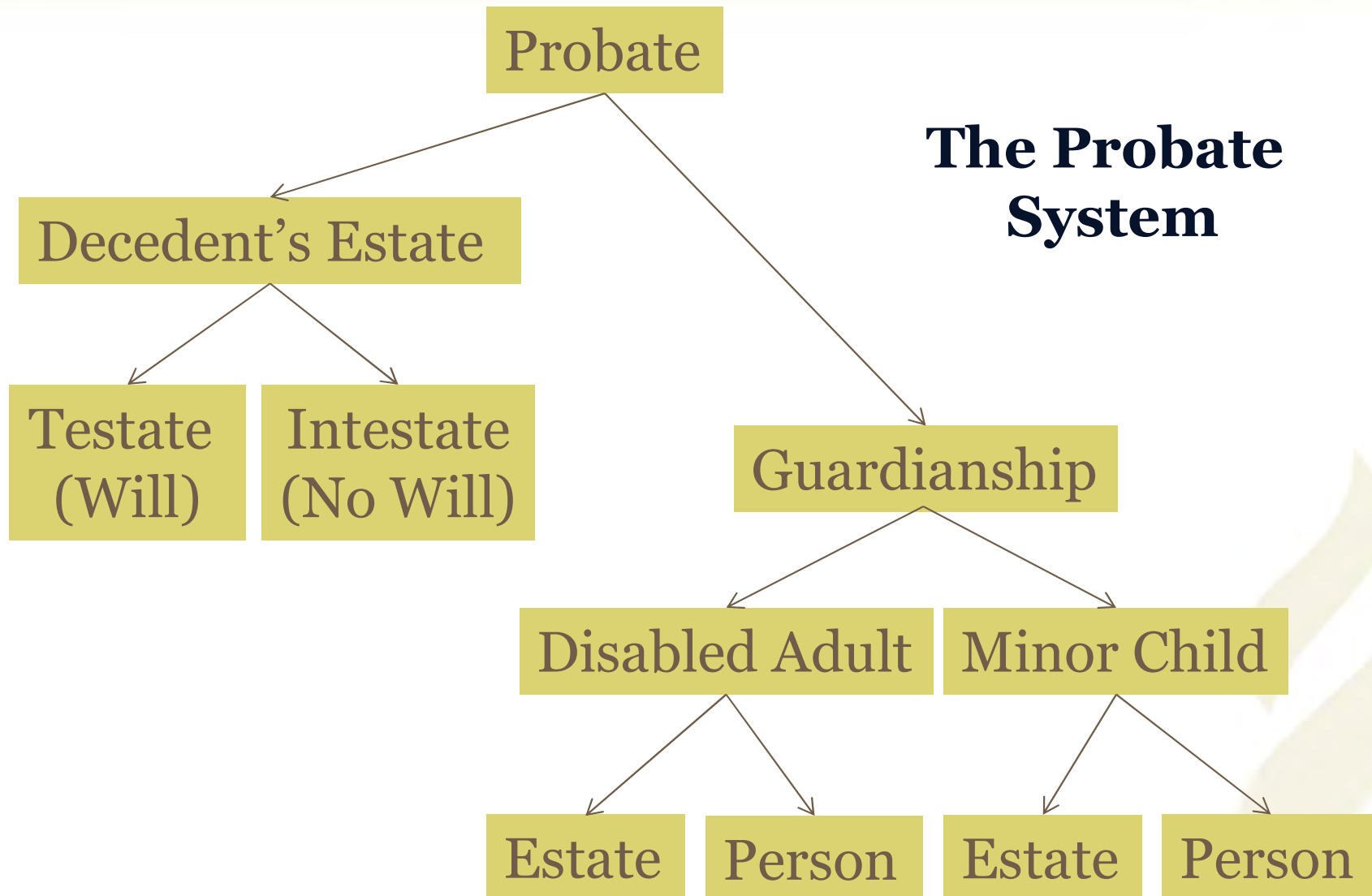
# Okay, if there is no estate planning, your heirs are supposed to get your assets... But what is the procedure?

- That depends...
  - Tangible personal property
  - Cars
  - Real estate
  - Accounts
- Probate

# What is Probate?

- Court-supervised process of ensuring that your creditors are paid and the rest of your things are distributed out to your heirs upon your passing
- Requires lawyers, court appearances and notices to creditors
- Public record
- Takes from six months to several years to complete
- Can cost anywhere from \$5,000 to tens of thousands, depending

## The Probate System



# Wills: The Law's First Estate Planning Tool

- A Will is a set of instructions stating what is to happen to your things and who is going to be in charge when you die
- Still needs to go through Probate
- The probate process is effectively the same, just that the terms of the will are enforced and the ultimate distribution may be changed

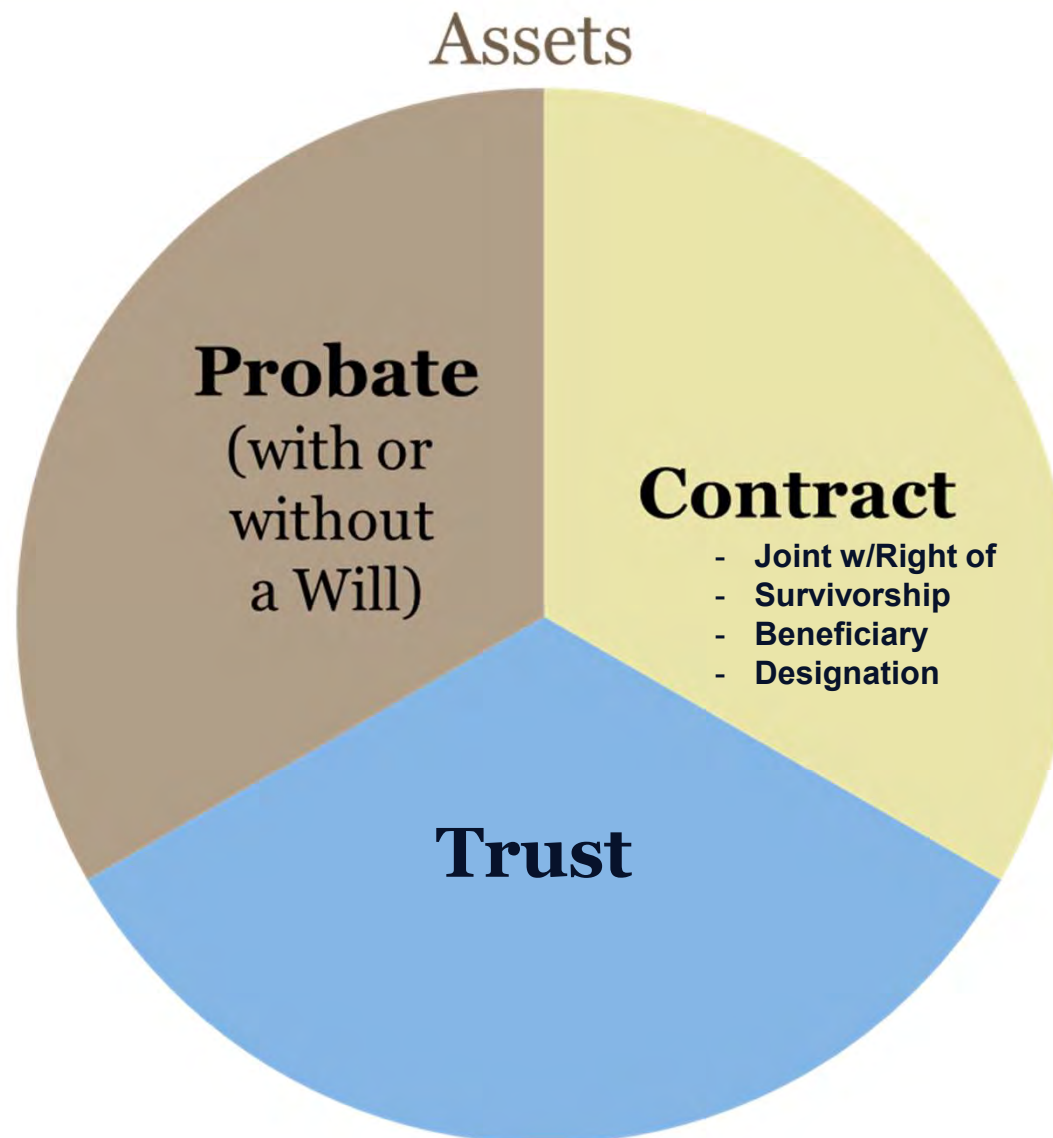


# ... And then came Contract Assets

- Right of Survivorship
  - Joint Tenancy
  - Tenancy by the Entirety
- Beneficiary Designations
  - Life Insurance
  - IRAs, 401(k)s and other Qualified Plans
  - Annuities
  - Pay on Death Accounts



So...



# Types of Assets

- Probate Assets: Assets owned in your own name alone
- Contract Assets: Assets you own with another by virtue of some kind of contract
- Trust Assets: Assets owned by a trust in which you have some beneficial interest





# What is a Trust?

- Theoretical container for assets
- Creation of a new person
- Severance of legal and equitable title
- A list of instructions for disability
- A will substitute



# The Basic Elements of a Trust

- “Grantor” or “Settlor” – person(s) creating the trust
- “Trustee” – person(s) in charge of the trust
- “Beneficiary” – person(s) for whom the trust is maintained
- “Principal” or “Trust Estate” – the assets held in the Trust
- “Current Beneficiary” – Beneficiary entitled to something now, like trust income
- “Remainder Beneficiary” – Beneficiary entitled to the balance of the trust estate at the end of the trust’s term



# Revocable Living Trust

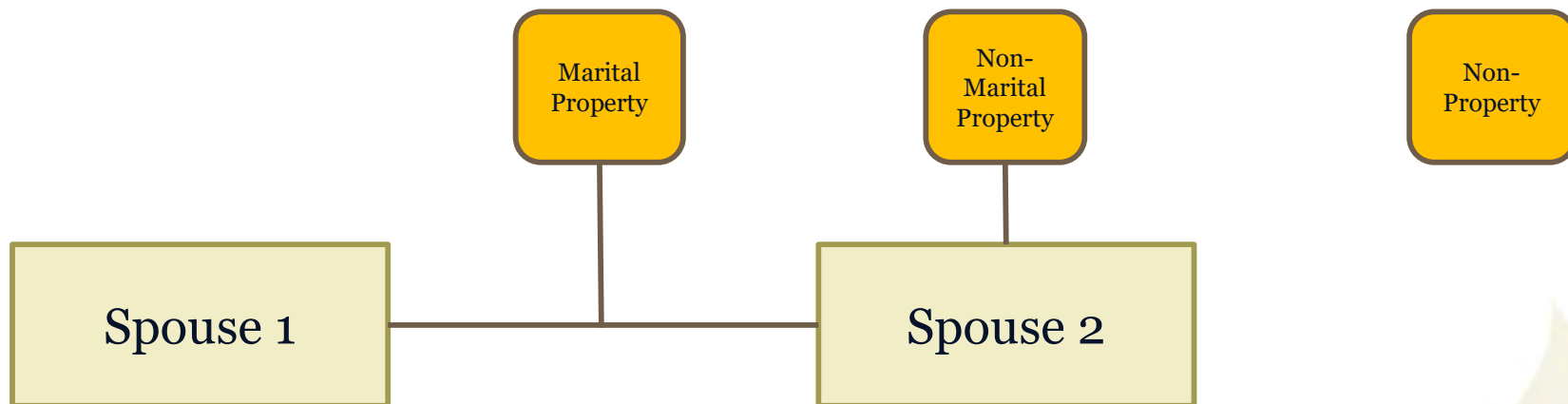
- The Grantor, Trustee and Beneficiary are all the same person
- The Grantor retains all control and enjoyment over property
- Can be revoked or changed at any time for any reason
- Contains successor trustee provisions in the event of death or disability of the Grantor



# Why create a revocable living trust?

- Will substitute:
  - Direct final distribution (Will substitute)
  - Avoid probate upon death
  - Planning for minor children/disabilities
  - Marital planning
  - Maintain privacy
  - Transfer tax planning
- Plan for your own disability:
  - Avoid guardianship
  - Better than powers of attorney for property

## Illinois Family Court Judge



In Illinois family court, the judge has the ability to apportion the “Marital Property” on an equitable basis (using the Judge’s discretion) between the spouses. In doing so, the Judge may consider the both the Marital Property and the Non-Marital Property of both spouses to reach what the Judge feels is a fair overall division.

Although the Judge can consider the Non-Marital Property, the Judge

cannot touch the Non-Marital Property.

Thus, it is important to understand what Marital Property is and what Non-Marital Property is.

In very general terms, Non-Marital Property are those assets that one spouse owned prior to the marriage and never contributed to the marriage. Also, Non-Marital Property includes gifts or inheritance received by that individual spouse and never contributed to the

marriage. For purposes of this discussion, “contributed to the marriage” means either that the asset was used for the enjoyment of the other spouse or that Marital Property was commingled with the Non-Marital property, thus “transmuting” the entirety of the Non-Marital property into Marital Property.

Non-Property includes assets that a spouse might receive in the future,

but only in the absolute discretion of a disinterested person. This would include, for example, a purely discretionary trust over which the beneficiary spouse has no right to compel any form of distribution from the trustee.

**Warning:** This flowchart is a gross oversimplification and is intended for general explanation, not legal advice.

# Advance Directives

- Powers of Attorney
  - Healthcare
  - Property
- Living Will
- Mental Health Declaration
- Do Not Resuscitate Order (“DNR”)



# Transfer Taxes

- Gift Taxes
  - During Life
- Estate Taxes
  - Upon death

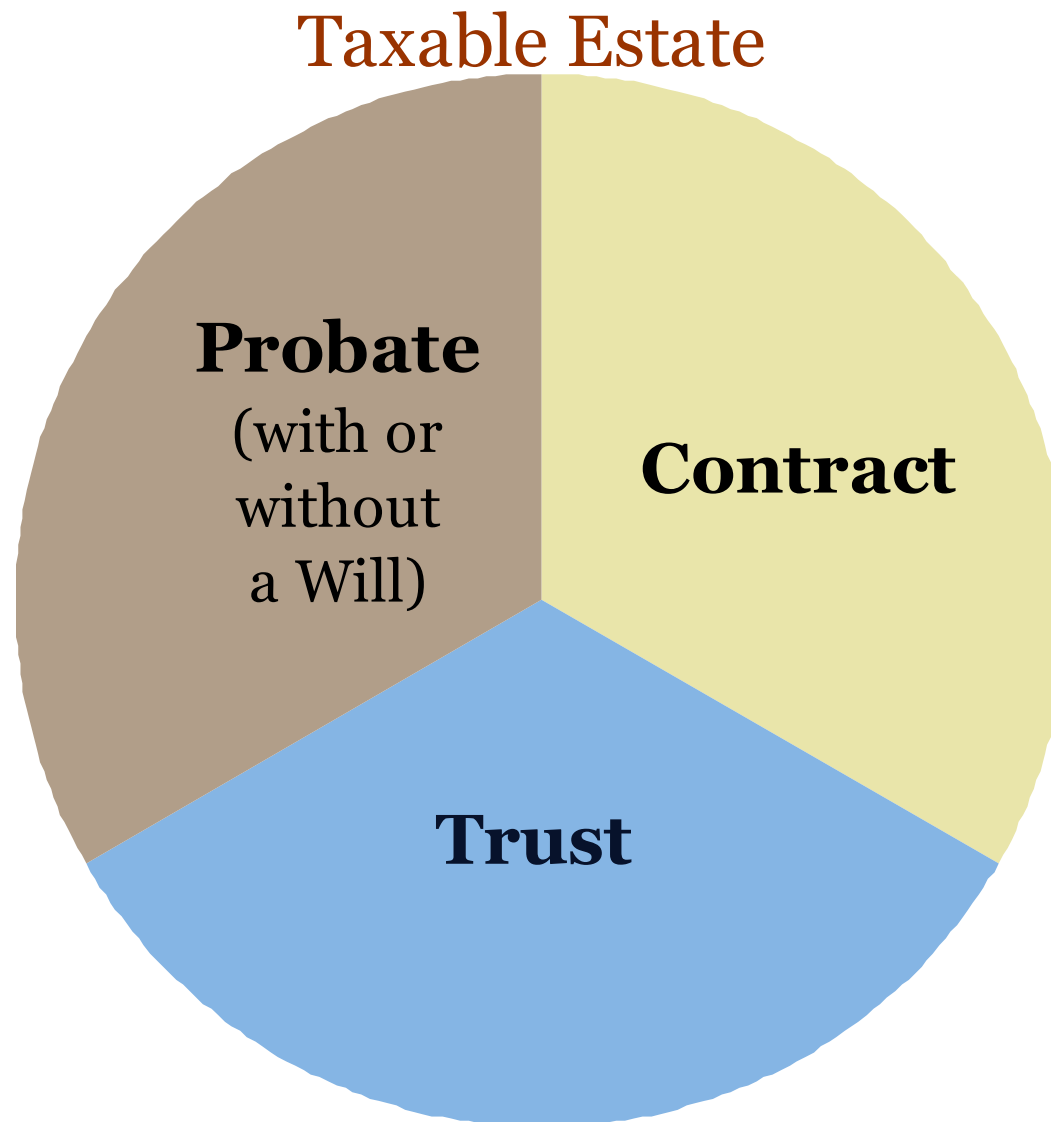


# Taxable Estate

- Virtually anything that you have legal access to at the moment of your passing
- Serves as the tax base for any Federal or State Estate Tax assessed



So...



# Credit Shelter Trust – Estate Tax Planning

- Nature of Estate Tax
- Estate Tax Rates:
  - Federal – 40%
  - Illinois – 16%, but
    - 28.6% on first \$1 m
    - 17% on second \$1 m
    - 10.9% on third \$1 m
- Applicable Exclusion Amounts
  - Federal
  - Illinois



# Do I really need an Estate Plan?

## Common Issues:

- Probate:
  - Time – 6 to 24 months
  - Privacy – everything public
  - Expense – usually \$10,000 - \$15,000 minimum
  - Guardianships and Powers of Attorney – can alter distribution during life
  - Control – who is in charge?
  - Heirship
- Contract Assets:
  - Potential to disinherit – different beneficiaries
  - Race to Bank – joint tenancy
  - Second Marriage – classic house distribution
- Estate Tax Planning



# Do I really need an Estate Plan?

## Factors to consider:

- You would like your family to be able to avoid probate
- You are over age 50
- You would like assistance managing your finances
- You have any assets
- You or family member has an illness or a disability
- You are in a blended family or second marriage
- You wish to maintain financial privacy
- You have special estate planning objectives
- You are in an unmarried relationship



- You would like investments retained for the benefit of your spouse, children or other family members for a period of time
- You have a family member who you know is not the most fiscally responsible
- You wish to benefit charities
- You have a premarital agreement or are about to get married
- You are contemplating marital separation
- You wish to make gifts to or for the benefit of minor children
- You have a family member with special needs
- You wish to provide incentives for your children/grandchildren
- You wish to use a corporate fiduciary



# Factors in Selecting the Best Attorney

- Experience
- Credentials
- Training
- Peer Respect
- Factors that are not always reliable
  - Comfort Level
  - Fees



# Estate Planning Process and Fees

- Process should take about four to five weeks
  - Initial visit
  - Drafts to client for review
  - Client reviews drafts
  - Final visit to sign plan
  - Asset restructuring/trust funding
- Common Fee Structures
  - \$4,200 - \$4,500
- Common Package
  - Trusts
  - Wills
  - Powers of Attorney for healthcare and property
  - Assistance with funding



# Next Steps

- Identify attorney
- Initial consultation
- Legacy Planner
- Review Existing Documents – 2-5 years
- Q & A



# Thank you.



Lesser Lutrey  
Pasquesi & Howe LLP

ATTORNEYS AT LAW

*Life • Legacy • Law*

191 E. Deerpath, Suite 300 ■ Lake Forest, Illinois 60045

PHONE: 847.295.8800 ■ FAX: 847.295.8886

[WWW.LLPHLEGAL.COM](http://WWW.LLPHLEGAL.COM)