



SUCCESSION PLANNING

Why is succession planning so important

- Avoid sacrificing land for liquidity
- <http://bit.ly/vwX5Jn>

SUCCESSION PLANNING

1. Discuss your vision and goals for the land with your spouse and write them down
2. Hold a family meeting to discuss vision and goals
3. Establish a family business structure to own the land
4. Choose and train a successor
5. Hold regular family meetings
6. Keep record of importance decisions
7. Set employment policies before hiring any family
8. Create non-financial reasons to keep the land

NOW LET'S EXPLORE HOW THIS RELATES TO OVERALL ESTATE PLANNING?

What is estate planning?
Accumulation, management, conservation, and transfer of wealth based on

- The law
- The taxes
- What you want to have happen...

Because death is inevitable...

GOALS OF ESTATE PLANNING

Effective Transfers

- Decedent's assets are transferred based on his wishes

Efficient Transfers

- Transfer costs are minimized

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IMPEDIMENTS TO ACHIEVING ESTATE PLANNING GOALS

- Unwillingness to face mortality
- Procrastination
- Current good health
- Costs
- Lack of knowledge
- Lack of awareness of the value of assets

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CONSEQUENCES FOR FAILING TO PLAN: SAME AS WHAT WE JUST SAW IN THE VIDEO

Client's property transfer objectives may go unfulfilled
 Transfer taxes may be excessive
 Other transfer costs may be excessive
 Client's family may not be properly provided for financially
 There may be insufficient liquidity to cover client's debts, taxes, and costs at death

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THE FINANCIAL PLANNER'S ESTATE PLANNING PROCESS

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Six basic steps:

1. Establish the client/planner relationship.
2. Gather client information, including the client's current financial statements and establish the client's transfer objectives, including family and charitable objectives.
3. Determine the client's financial status.
4. Develop a comprehensive plan of transfers consistent with all information and objectives.
5. Implement the estate plan.
6. Review the estate plan periodically and update the plan when necessary (especially for changes in family situations).

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CHAPTER 13

BASIC DOCUMENTS IN AN ESTATE PLAN

Wills
 Side Letters of Instruction
 Powers of Attorney for Property
 Durable Powers of Attorney for Health Care
 Living Wills or Advance Medical Directives
 Do Not Resuscitate Orders (DNRs)

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ESTATE SETTLEMENT PROCESS

1. Initial responsibilities (funeral, etc.)
2. Probating Will
3. Appointment of executor or administrator
4. Assembling estate property
5. Managing estate
6. Payment of debts and taxes
7. Distributing estate

TRANSFER BY CONTRACT

Life insurance

- Distribution of proceeds dictated by contract
 - Will would have no effect unless no beneficiary named on contract
- Same is true for **retirement accounts**

Antenuptial or prenuptial agreements

- May substitute for spouse's rights at death

TRANSFER BY OPERATION OF LAW

Intestate succession

- If no will it is determined by state of residence

JTWROS

Family allowance

- Small amount set aside to support family during estate administration
 - Not part of distributable estate

Homestead

- Keeps a certain item of real property away from creditors

TRANSFERS BY WILL

Personal declaration of one's intentions about the disposition property at death

- Allows one to name an executor of choice
- Take advantage of marital deduction
- Spousal rights: Typically a spouse could challenge will if the amount of bequest is less than state law would dictate under intestacy laws
- Direct source of property to pay estate taxes
- Designate guardian for minor children
- Requires: signature, date, witnesses, mental competence, age of majority (for state)

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ADVANTAGES OF A PROPERLY PREPARED AND VALID WILL (1 OF 2)

Permits the selection of an executor/executrix as the decedent's personal representative to administer the estate

Provides for the orderly transfer of assets that are not automatically transferred at death by some other means

Permits the designation of guardian for minors and or dependents

Permits the transfer of assets to charity (is not possible in intestacy)

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ADVANTAGES OF A PROPERLY PREPARED AND VALID WILL (2 OF 2)

A will can provide for the utilization of the unlimited marital deduction

A will can provide for disinheritance of unworthy heirs

A will can help to minimize the estate tax burden

A will can direct the estate's share of any tax burden to be paid as well as sources of funds to be used to pay such taxes

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LIMITATIONS OF WILLS

A will does not prevent disinherited parties from contesting the will

Courts can invalidate certain restrictions or sections of a will (too many constraints on transfer of assets)

A will does not supercede automatic transfers upon testator's death (i.e., contractual arrangements)

A poorly drafted will may be found to be invalid or testator's wishes may not be clearly understood

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LEGAL CAPACITY TO EXECUTE A WILL

Mental Capacity to Make a Will is "Sound Mind"

- The party making the will must:
 - Understand what is being done by writing of will
 - Recognize and recollect the property being disposed by the will
 - Recognize the relationships of those friends and relatives who have any claim to testator's assets

"Sound Mind" Rules

- The legal capacity is not as rigorous as capacity rules required to form legal contracts

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COMMON CLAUSES (PROVISIONS) IN WILLS (2 OF 3)

Clause for identification and selection of executor/executrix (and successors)

Guardianship Clause

- Names the guardian for minors or other legal dependents

Appointments and Powers Clause

Clause directing payment of debts and taxes (includes the sources from which to pay them)

Attestation Clause

- A provision at end of the document signed by the witnesses as authentication of testator's will

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UNDOING A WILL...

Revoking a Will

- To revoke a will the testator can:
 - Simply destroy the old will by shredding or burning it
 - Create a new will specifically revoking the old one

Codicil

- A supplement to a will
- A separate document that must meet all the legal requirements of a will
 - Modifies, explains, or amends will
- The testator must be competent each time a codicil is written
- Frequently used due to a change in family circumstances (birth of child) and is less expensive than drafting an entire new will

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STATUTES AFFECTING WILLS (2 OF 2)

Divorce Statutes

- Invalidates a provision in a will that leaves assets to a former spouse

Anti-Lapse Statutes

- Presumption that if a close relative such as a child or sibling is not alive then the testator would have wanted the assets to flow to their heirs

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ADVANTAGES OF PROBATE

- Validation of the decedent's will
- Executor activities supervised by court
- Time frame established for creditor's claims
- Provides forum for resolving estate issues

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DISADVANTAGES OF PROBATE

- Lack of privacy because will becomes a matter of public record
- Time consuming
- Court costs result from the administration process
- Executor commissions and attorney fees are generated from probate property

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PROBATE VS. NON-PROBATE ASSETS

<p>Fee simple property</p> <p>TIC property</p> <p>Community Property</p> <p>Invalid Beneficiary Designations</p>	<p>State-contract law</p> <ul style="list-style-type: none"> ▪ Life insurance ▪ Annuities ▪ Retirement accounts ▪ Pay on Death /Transfer on Death accounts
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PROBATE AVOIDANCE METHODS

- Titling property in joint tenancy with right of survivorship or tenancy by the entirety
- Property passing by contract (such as life insurance, IRAs, pension plan benefits, etc. passes outside of probate)
- Totten Trusts & Payable on Death Accounts are nonprobate
- Transferring property by deed
- Living Trusts hold nonprobate property

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INTESTACY

What is it?
Intestacy is a legal distribution scheme provided by the state legislature for a decedent who dies without a valid or complete will.

- Dying without a valid will, or
- Dying with a will that does not dispose of all of the decedent's probate property.

A decedent who has a valid will is said to die "testate."

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RISKS TO DYING INTESTATE

A surviving spouse may receive the same share of the decedent's probate estate as a child

- 1 child vs. 10 children

A spouse may share assets with in-laws

The decedent's children are usually treated equally in intestacy, which may not be equitable

The Probate Court will appoint an administrator and require a surety bond making the cost of probate increase

The decedent with a valid will can appoint an executor to serve (and without bond)

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POWER OF ATTORNEY AND APPOINTMENT (1 OF 3)

Legal document authorizing a trusted person (agent) to act on one's (principal) behalf

- General Power of Appointment (very broad)
 - Causes inclusion in gross estate
- Limited Power of Attorney (more specific)

Does not survive the death of the principal except general power of appointment (usually given to spouse)

A power of attorney permits an agent to act, a power of appointment permits the agent to appoint assets

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POWER OF ATTORNEY AND APPOINTMENT (2 OF 3)

<p>Power of Attorney</p> <ul style="list-style-type: none"> ▪ A stand-alone document that allows an agent to act for the principal and may include the power to appoint assets ▪ Power to act ▪ Ends at the death of the principal ▪ May be general or limited ▪ May be revoked at anytime by the principal 	<p>Power of Appointment</p> <ul style="list-style-type: none"> ▪ A power, usually included in a trust or power of attorney, allowing the power holder to direct assets to another ▪ Power to transfer assets ▪ May survive the death of the grantor ▪ May be general or limited ▪ May be revoked at anytime by the principal
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POWER OF ATTORNEY AND APPOINTMENT (3 OF 3)

Durability Feature

- Power remains in effect even if the principal becomes incapacitated or disabled

Springing Power

- A power that "springs" into existence upon some defined event or determination (e.g., the principal is unconscious or leaves the country)

Example of a Power of Attorney

- Exhibit 2.9, page 40

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POWER OF ATTORNEY FOR PROPERTY

Specific type of power of attorney

- May be durable or not and springing or not

Used to allow an agent to manage the principal's property

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PROS/CONS OF POWER OF ATTORNEYS

Advantages

- Eliminates need to go to court to appoint a guardian of the estate
- Allows agent to sell or manage property if needed

Disadvantages

- Agent may abuse the power
- If agent holds a general power of appointment, then the assets will be included in the agent's gross estate if the agent predeceases the principal

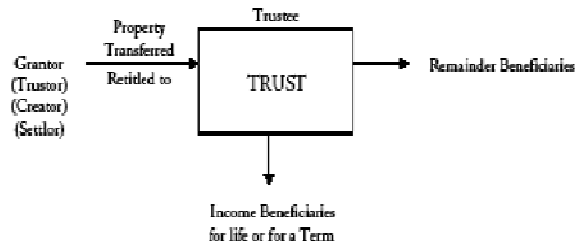
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INTRODUCTION

Trusts are used for:

- The management of assets
- Flexibility in the operation of the estate plan (except charitable trusts)



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DEFINITIONS

Legal Title - title held by the trustee

Beneficial Title - title held by the beneficiaries

Grantor - the person who creates and initially funds the trust

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WHY USE A TRUST? (2 OF 3)

Split interests in property

- Valuable asset that grantor does not want to sell or split up (e.g., gifting farm to 5 kids where only 2 will participate)

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PARTIES

- Grantor (a.k.a. settlor, creator, trustor)**
 - Person who creates and initially funds the trust
- Trustee**
 - Manages the trust and carries out the provisions in the trust document
 - Must act in the best interest of all beneficiaries
 - Duty of loyalty and care
- Beneficiary**
 - Income - has the right to income
 - Remainder - has the right to property when trust terminates

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WHY USE A TRUST? (3 OF 3)

- Trusts Avoid Probate (Living Trust)**
 - Revocable living trust - managed by the grantor and is for the benefit of the grantor during lifetime
 - Becomes irrevocable at death
 - Does not avoid estate taxes
- Trusts Avoid Taxes**
 - Transfer future appreciation
 - Avoid transfer tax on subsequent generations
 - Reduce gross estate

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WHY USE A TRUST? (1 OF 3)

- Management of Assets**
 - Assist those not capable of managing assets
- Creditor Protection**
 - Spendthrift Clause
 - States beneficiary cannot assign, pledge or promise to give the assets of the trust to anyone, and if a promise is made, it is void.
 - Also should allow the trustee to make distributions on a discretionary basis
 - Most states do not allow the grantor to create a spendthrift trust for protecting his assets

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TRUST DURATION – THE RULE AGAINST PERPETUITIES

All interests in a trust must vest within lives in being plus 21 years

Some states have adopted a statutory rule against perpetuities (90 years)

IRS recognizes both rules

Some states have abolished the rule against perpetuities but include laws that prohibit the trustee from selling property

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TAXATION OF TRUST (1 OF 2)

Income Tax - Hybrid Entities

- Distributed - Taxed to beneficiaries
- Accumulated - Taxed at trust rates
- See Exhibit 8.1, page 263

Simple Trust - mandates distribution of income

Complex Trusts - permits accumulation of income

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Estate Settlement Process

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TAXATION OF TRUST (2 OF 2)

If the trust is revocable - not a completed gift


If the trust is irrevocable - generally completed (unless retained interests)

See Exhibit 8.2 (page 270) on tax issues related to trusts


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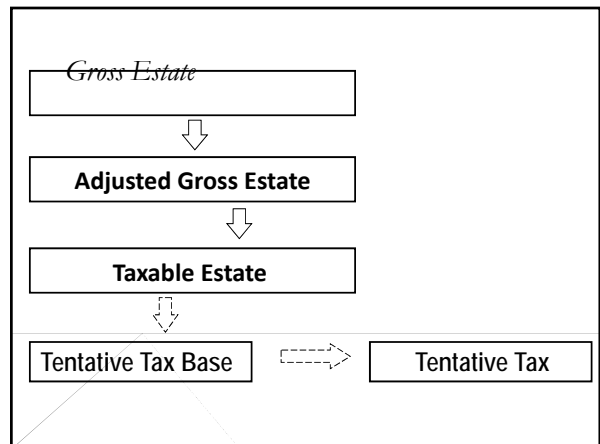
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ESTATE TAX UPDATE AND ESTATE PLANNING STRATEGIES

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ESTATE FORMULA

Adjusted Gross Estate

Less Marital Deduction – discussed in Chapter

Less Charitable Deduction – discussed in

Equals Taxable Estate

Plus Post '76 Gifts – added back to gross up (total transfers)

Equals Tentative Tax Base

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INTRODUCTION TO DYNASTY TRUSTS (1 OF 4)

When properly drafted, a dynasty trust will not vest ownership of trust property in any individual beneficiary

The Rule Against Perpetuities

- Delaware, Alaska, and South Dakota are the states where most individuals create dynasty trusts

Taxation of Dynasty Trusts

- A dynasty trust pays tax on its income to the extent that the income is not distributed to the beneficiaries

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DEDUCTIONS FROM ADJUSTED GROSS ESTATE

Marital Deduction

- Unlimited
- Tax-Free
- Property included in decedent's gross estate
- Actually passes to spouse

Charitable Deduction

- Qualified charities only
- 100% deductible
- Simple

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INTRODUCTION TO DYNASTY TRUSTS (2 OF 4)

Basic Structure and Types of Dynasty Trusts

- Grantor funds the trust with personal property
- Trust document usually designates the state whose laws will govern
- Usually wise to name two independent trustees
- Typically name two or more "Trust Protectors" who are individuals that are not beneficiaries of the trust with the authority to remove the trustee
- Grantor should never serve as trustee or trust protector of a dynasty

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CURRENT STATUS OF FEDERAL ESTATE TAX LAW

Year	Applicable Credit	Max Rate
2011	\$5,000,000	35%
2012	\$5,000,000	35%
2013	\$1,000,000	55%

IN NEGOTIATION BY CONGRESS...

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INTRODUCTION TO DYNASTY TRUSTS (3 OF 4)

Basic Structure and Types of Dynasty Trusts

- The trust instrument often gives the trustee the authority to terminate the trust in whole or in part if it is appropriate to do so
- Trustee is typically empowered to purchase assets for the beneficiary's personal use

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INTRODUCTION TO

DYNASTY TRUSTS (4 OF 4)

■ Dynasty trusts and business succession planning

- A dynasty trust can be used to acquire and hold closely held or family business stock
- A dynasty trust provides creditor protection, avoidance of transfer taxation at each generational level on the value of the business, as well as protection from the claims of a divorcing spouse

■ Funding the trust

- Usually cash or personal property
- Should avoid real property because of anti-alienation provisions enacted by states

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GENERAL DRAFTING ISSUES FOR DYNASTY TRUSTS

Power of appointment - usually available

Termination - usually ends when last descendent dies

- May have trust committee giving them the ability to terminate

Trustee - broad investment powers

Spendthrift clause appropriate

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