
The Truth About Estate Planning™

Presented by

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Topics for Today

- **Estate Planning Overview**
- **3 Step Strategy, Challenges & Options**
- **Impact of New Law upon Estate Tax Planning**

Topics for Today

- **Opportunities**

With Financial Advisors

With Life Insurance

Reasons to Review Plan

Estate Planning Overview

**Most Estate Plans
Just Don't Work!**

Estate Planning Overview

Smokescreens

- **Will vs. Trust**
- **Avoid Probate**
- **Hourly vs. Flat Fee Billing**
- **Funded vs. Unfunded Trust**

Estate Planning Overview

Keys to an Effective Estate Plan

- **Proper Asset Ownership**
- **Control of Process**
 - **What to Do**
 - **How to Do It**
 - **How to Pay for It**

Estate Planning Overview

Definition of Estate Planning

I Want to Control My Property While I'm Alive and Well;

Plan for Me and My Loved Ones if I Become Disabled;

Estate Planning Overview

Definition of Estate Planning

- **Give What I Have**
- **To Whom I Want**
- **When I Want**
- **The Way I Want**

**All with fully disclosed and controlled
settlement costs, both to Me and Those I
Love**

Estate Planning Overview

The Planning Pyramid

- **Focuses on Client Goals**
- **“Solutions” Make Planning Easier**
- **Exposes Traditional Planning as “Upside Down”**

Estate Planning Overview

Contrasting the Traditional and “Truth” Approaches

- **The Debate Has Centered on Documents**
- **“It’s Not About Documents, It’s About RESULTS!”**

Estate Planning Overview

Traditional Documents Used

- ◆ **Will**
- ◆ **Trust (Testamentary)**
- ◆ **Powers of Attorney**
 - **Financial**
 - **Advance Health Care Directive**

“Truth” Documents Used

- ◆ **Will (Pour-over)**
- ◆ **Trust (Living)**
- ◆ **Powers of Attorney**
 - **Financial**
 - **Advance Health Care Directive**

Estate Planning Overview

Approach

Traditional

Truth

◆ **Reactive**

◆ **Proactive**

Estate Planning Overview

Control

Traditional

◆ **By Others**

Truth

◆ **Rests With
Client**

Estate Planning Overview

Client Education

Traditional

- ◆ **Minimal,
Much After
Death**

Truth

- ◆ **Increased and
as Soon as
Possible**

Estate Planning Overview

Client Understanding / Comfort

Traditional

Truth

◆ **Minimal / Low**

◆ **Increased**

Estate Planning Overview

Team Approach

Traditional

Truth

◆ **Infrequent Use**

◆ **Requirement**

Estate Planning Overview

Funding

Traditional

- ◆ **After Death**
(With Increased
Expense)

Truth

- ◆ **Current and**
Continuous

Estate Planning Overview

Personal Instructions

Traditional

Truth

◆ **Minimal to
None**

◆ **Substantial
(& Encouraged)**

Estate Planning Overview

Updating

Traditional

Truth

◆ **Infrequent or
Non-Existent**

◆ **Continuous**

Estate Planning Overview

Fees

Traditional

- ◆ **Little Known,
Primarily after
Death**

Truth

- ◆ **Fully Disclosed,
Higher Initially,
Lower Overall**

3 Step Strategy™

Estate Planning Overview

- **Work with a Counselling Oriented Attorney**
- **Establish and Maintain a Formal Updating Program**
- **Assure Controlled Settlement Costs After Your Death**

3 Step Strategy™

Three Types of Estate Plans

- **Married Couple**
Under \$2,000,000
- **Married Couple**
Over \$2,000,000
- **Unmarried Individual**

3 Step Strategy™

Personal Planning Goals

- **Catastrophic Illness Protection**
- **Remarriage Protection**
- **Creditor Protection**
- **Divorce Protection**
- **Values Promotion**
- **Dispute Resolution**

3 Step Strategy™

Personal Planning Goals

- **Fiduciary Selection/Protection**
- **Blended Family Issues**
- **Family Business Continuation**
- **Lack of Financial Discipline**
- **Personal Asset Protection**

3 Step Strategy™

Estate Planning Strategy

- **Work with a Counselling Oriented Attorney**
- **Establish and Maintain a Formal Updating Program**
- **Assure Controlled Settlement Costs After Your Death**

3 Step Strategy™

Three Types of Change an Estate Plan Faces

- **Changes in Your Personal Situation**
 - **Personal**
 - **Financial**

3 Step Strategy™

Three Types of Change an Estate Plan Faces

- **Changes in the Legal Environment**
 - **Tax**
 - **Non-Tax (Personal Protections)**

3 Step Strategy™

Three Types of Change an Estate Plan Faces

- **Changes in Your Attorney's Experience**
 - **Static vs. Continuous Improvement?**

3 Step Strategy™

Estate Planning Strategy

- **Work with a Counselling Oriented Attorney**
- **Establish and Maintain a Formal Updating Program**
- **Assure Controlled Settlement Costs After Your Death**

3 Step Strategy™

Three Factors of Overall Cost

- **The Cost of the Documents**
- **The Cost of Updating
(Or Failing to Update)**
- **The Cost After Death**
 - **Transfer of Assets**
 - **Death Tax Return Preparation**

3 Step Strategy™

“The Rest” of the Fees

- **Trust Settlement Administration**
 - **Disability**
 - **Death**
- **Death Tax Return Preparation**
- **Probate Services**

3 Step Strategy™

- ◆ **Traditional Probate**
 - 2.5 to 8 %
- ◆ **“Standard” Living Trust Planning**
 - 1.875 to 6 %
- ◆ **Truth Model**
 - 1.0 to 1.5%

Estate Planning Overview

**EVERYTHING IN ESTATE PLANNING
COMES DOWN TO TITLE!**

- **Tax Savings**
- **Personal Protections**
 - **Catastrophic Illness Protection**
 - **Catastrophic Creditor Protection**
 - **Remarriage Protection**
 - **Divorce Protection ETC.**

Estate Planning Overview

Three Types of Title

- **Individual Name**
- **Joint Name**
- **Contract**
 - **Beneficiary Designation**
 - **Trust**

Estate Planning Overview

Estate Planning Challenges

- **Mental Disability**
- **Asset Transfer Upon Death**
- **Taxation**
- **Personal Planning Goals**

Mental Disability Planning

Planning for Retirement Plans

- ◆ **Contact Financial Institutions (or Human Resources) in advance**
 - **Use their own power of attorney; or**
 - **Get advance approval of your personalized document**

Estate Planning Overview

- ◆ **Estate Planning Options**
- ◆ **No Documents (Joint Tenancy)**
 - **Simple Will & Power of Attorney**
 - **Will with Testamentary Trust & Power of Attorney**
 - **Bare Bones Living Trust**
 - **Truth Model**

Truth Model

3 Step Strategy™

- ◆ **Fully Funded Living Trust**
- ◆ **Prepared Through a Team Approach**
- ◆ **To Meet the Definition of Estate Planning**

Truth Model

- **Supported By Formal Updating Program**
- **With Controlled Settlement Costs Agreed Upon In Advance**

Federal Estate Tax Reduction

Key Tax Savings Provisions

- ◆ **Unlimited Marital Deduction**
- ◆ **\$2,000,000 Applicable Exclusion Amount**

Federal Estate Tax Reduction

Family Trust

also called:

- ◆ B Trust
- ◆ Credit Shelter Trust
- ◆ By Pass Trust

Family
Trust

Federal Estate Tax Reduction

Trustee Instructions:

Split Trusts Into Two Sub-Trusts

Marital

Family

Survivor May Be Trustee and Beneficiary of Both!

Federal Estate Tax Reduction

Trustee Instructions:

Transfer up to Exemption Equivalent to Family Trust, Put Any Excess in Marital Trust

Marital

Excess

Family

1st \$2,000,000

(Today)

Federal Estate Tax Reduction Marital Trust

**Trustee Instructions:
Income to Spouse**

Marital

Federal Estate Tax Reduction Marital Trust

Trustee Instructions:

Principal

- ◆ Full Control
- ◆ Full Use; Limited Control on Death
- ◆ Full Use & Control

Marital

Federal Estate Tax Return

Family Trust

Trustee Instructions:

Income to Spouse

- ◆ **Mandatory**
- ◆ **Discretionary**

Family

Federal Estate Tax Reduction Family Trust

Trustee Instructions:

Principal For “Needs”

- ◆ Health
- ◆ Education
- ◆ Maintenance
- ◆ Support



Family

Federal Estate Tax Reduction

Effect of Growth

Marital

Family

Excess

1st \$2,000,000

To Later

\$ 8,000,000

Beneficiaries *But*

To Later Beneficiaries

Included in Survivor's Estate

***WITHOUT* Federal Estate Tax**

Federal Estate Tax Reduction

Tax Savings Determined By:

- ◆ **Funding of Family Trust**
- ◆ **Applicable Exclusion Amount
(Determined by Congress)**

Federal Estate Tax Reduction

Funding The Family Trust

Available

- ◆ Individual Name Assets
- ◆ Living Trust Assets
- ◆ Beneficiary Designations Payable to Trust

Not Available

- ◆ Joint Assets
- ◆ Beneficiary Designations Payable to Individuals

Federal Estate Tax Reduction

Estate Tax and GST Rates

Old Law:

Graduated rates from
37-55%

New Law:

No rates > 50% in 2002
2003-2006, reduces all
rates by 1%/year
2007-09, 45% max. rate
Repeals in 2010
2011, 55% max. rate

Federal Estate Tax Reduction

Applicable Exclusion Amount

Old Law:

2001:	\$675,000
2002-03:	\$700,000
2004:	\$850,000
2005:	\$950,000
2006:	\$1,000,000

New Law:

2002-03:	\$1,000,000
2004-05:	\$1,500,000
2006-08:	\$2,000,000
2009:	\$3,500,000
2010:	(Repeal)
2011:	\$1,000,000

Federal Gift Tax

Old Law:

- Unified system of estate and gift tax:
- same rates
- same exemption
- \$10,000 annual exclusion from tax
- “Gift-splitting”

New Law:

Same system until 2010
2002: Gift tax exemption goes to \$1M and does **not** increase

In 2010, gift tax remains after estate tax is repealed

2010: Gift Tax top individual rate = 35%

Federal Estate Tax Reduction

Carryover Basis Era

Old Law:

- Decedent's assets transfer at FMV
- “Stepped-up” basis to FMV for heirs

New Law:

Carryover basis (lower of decedent's basis or FMV)

Estate can elect stepped up basis for \$1.3M

Federal Estate Tax Reduction

Carryover Basis Era – Spouse

Old Law:

- “Coupon” for Estate Tax
- Unlimited Marital Deduction (“Bill Gates” Rule)

New Law:

Estate can elect stepped up basis for \$1.3M (previous slide)

Can elect additional \$3M stepped up basis for assets passing to spouse

New Law Economics

Tax Magic: 2011 Revenue Needs

- ◆ Baby Boomers begin to retire
- ◆ Tax revenues begin to drop
- ◆ New demand for public services for retirees (Medicare, Medicaid, SSI)
- ◆ Boomers don't begin to take Minimum Required Distributions until after 2010

Is Repeal Real ?

Tax Magic: Disappearing Ink

- ◆ Entire Act “sunsets” on January 1, 2011
- ◆ For the sake of your family, please die in 2009 or 2010 and don’t hang on until 2011

The Good

News?

- About 98% of Americans are unaffected.
- Most estate planning purposes remain unchanged.
- Brings an immediate (2004) reduction in tax for large estates.

The Bad News?

- Repeal is delayed until 2010
- Actual repeal is limited to deaths occurring in 2010
- Gift exemption capped: \$1M
- Reduces step-up in basis: Capital Gain Tax complexity
- Congress can restore tax without voting for a tax increase

Opportunities with Financial Advisors

- ◆ Reasons to Consolidate Management
 - ◆ to better monitor change in tax rates
 - ◆ to better track basis, timing of basis realization will become more important as we approach 2010
 - ◆ to better diversify and administer

Opportunities with Financial Advisors

- ◆ Capital Gains Tax Planning
 - ◆ Charitable gifting more popular?
 - ◆ Mutual funds less popular? Variable life products more popular?
- ◆ New benefits of Education and Retirement Planning

Opportunities

Life Insurance (Ongoing Opportunities)

- ◆ Debt liquidation
- ◆ Love
- ◆ Income replacement
- ◆ Liquidity: business transition
- ◆ Death before 2004 or after 2010
- ◆ Income taxes on IRD assets

Opportunities

Life Insurance (New Opportunities)

- ◆ Liquidity for capital gain tax liabilities
- ◆ Replace charitable gifts of Cap Gains
- ◆ “Lock in” gift tax exemption by gifting to an ILIT since you can’t count on death tax exclusion

Estate Planning Under the New Law

- ◆ Reasons to Plan Estate Largely Unchanged
- ◆ Still have Estate Tax Problem except for one year and unlikely that repeal will become permanent
- ◆ Non Tax Reasons (Personal Planning Goals) will remain even if repeal becomes permanent

Estate Planning Under the New Law

- ◆ Where Do We Go From Here ?
 - ◆ Plan based upon current law and the law of probability
 - ◆ Continue leveraging techniques
 - ◆ Don't pay gift tax now
 - ◆ If repeal becomes permanent, focus shifts to income tax planning

Estate Planning Under the New Law

◆ Reasons to Review Existing Estate Plan

- ◆ Does the plan instruct as to allocation of Limited Capital Gain Step Up?
- ◆ Funding Formula Clause match Client expectations as to amount in subtrusts ?
- ◆ Estate taxes change each year until 2011 & pressure on Congress to change law
 - Need a formal update system for estate plans
- ◆ ILITs: gifts after 2009?

The Truth About Estate Planning™

**Please don't forget to fill out and hand
in your Evaluation Form**