



## Trusts and Estates Seminar

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## Today's Discussion

- I. Firm History and Introduction
  - II. Overview of the Estate Plan Everybody Should Have
  - III. Discussion of Advanced Estate Planning Techniques
  - IV. Questions and Answers
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# I. Firm History and Introduction





## II. Overview of the Estate Plan Everybody Should Have





## A. What do you need?

- Revocable Living Trust
- Pourover Will
- Nomination of Guardian for Minor Children
- Advance Healthcare Directive
- Durable Power of Attorney for Assets
- Community Property Declaration
- Certification of Trust
- Assignment to the Trust
- Trust Transfer Deed Conveying Real Property into Trust



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## B. Why do you need this type of estate plan?



# 1. Revocable Living Trust

- Facilitates probate fee avoidance
- Probate fees can exceed \$40,000 for an estate with a gross value of \$1,000,000
- Trust administration is usually simpler, faster, and more private than probate
- Assets held in a revocable trust are managed in the same manner as assets held outside of trust
- Revocable living trusts are very common and financial institutions are familiar with the trust method



## 2. Pourover Will

- Provides testamentary treatment to assets that have not been transferred into the trust and need to pass through probate
- Provides that such assets will pass according to the instructions of the revocable living trust



### 3. Nomination of Guardian

- Provides guidance to the Court regarding who should be minor children's physical guardian if the parent's are gone
- Along with the Children's Trust created in the Revocable Living Trust, provides comprehensive plan for minor children's physical care and financial needs



## 4. Advanced Health Care Directive

- Gives another person (agent) the authority to make decisions regarding medical care and treatment
- Agent simply carries out your desires so that the agent is relieved from having to make difficult decisions



## 5. Durable Power of Attorney

- Gives another person (agent) the authority to conduct business affairs
- Effective upon principle's incapacitation



## D. How long will the process take?

- Approximately thirty minutes to complete questionnaire
- One to one and one-half hours for first meeting with attorney
- Attorney drafts documents over next week
- One to one and one-half hours for second meeting with attorney for final questions, changes, and signing



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## E. Do I need to update my current estate plan?

- Changes in family relations, economic position, employment status, and external factors require an evaluation of your current estate plan



# 1. Changes in Family Relations

- Marriage
- Dissolution of Marriage
- Death of a spouse
- Changes regarding child, grandchild, or other beneficiary
- Birth of a child
- Death of a child
- Marriage or dissolution of a child
- Adoption of a child
- Medical issues of a beneficiary
- Substance abuse issues of a beneficiary
- Financial irresponsibility of a beneficiary



## 2. Changes in Economic Position and Employment Status

- Asset values substantially increase or decrease
- Change in insurability
- Change of employment
- Change in business interests
- Property acquired
- Change in health or health of spouse
- Retirement



### 3. External Changes

- Changes in laws
- Change of residence out of state
- Death of executor, trustee, or guardian



## F. Why do I want to avoid probate?

- Probate is the legal process of passing property from a deceased person to their beneficiaries or heirs
- Can be cumbersome, time consuming, public, and expensive
- A properly created estate plan can avoid the probate process



# 1. Probate Fee Table

Estate Value	Combined Attorney and Personal Representative Fees
\$100,000	\$8,000
\$200,000	\$14,000
\$300,000	\$18,000
\$400,000	\$22,000
\$500,000	\$26,000
\$600,000	\$30,000
\$700,000	\$34,000
\$800,000	\$38,000
\$900,000	\$42,000
\$1,000,000	\$46,000
\$2,000,000	\$66,000
\$3,000,000	\$86,000
\$4,000,000	\$106,000
\$5,000,000	\$126,000



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## G. Will I have to pay taxes upon my death?

- Estate Tax
- Gift Tax
- Generation Skipping Tax (GST)



# 1. Estate Tax

- Levied at top rate of forty-five percent (45%)
- Applied against a deceased person's gross estate which includes assets of a revocable living trust
- Estate taxes are levied upon the assets of the gross estate which exceeds the lifetime exclusion (\$3,500,000 in 2009)
- Transfers to a spouse or charity escape estate tax



## 2. Gift Tax

- Levied at top rate of forty-five percent (45%)
- Every person has a \$1,000,000 lifetime exclusion
- An annual gift tax exclusion of \$12,000 per recipient
- Transfers to a spouse or charity escape estate tax
- Preferable to the estate tax because the gift tax is exclusive while the estate tax is inclusive



### 3. Generation Skipping Tax (GST)

- Levied at top rate of forty-five percent (45%)
- Applies to transfers to grandchildren or more remote heirs
- Every person has a \$2,000,000 lifetime GST exclusion



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## H. What are the tax benefits of a revocable living trust?

- Insure that both spouse's unified credits are used by taking advantage of the unified credit first and then the marital deduction
  - The unified credit of the first spouse to die is wasted without a proper estate plan in place
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### III. Advanced Estate Planning Techniques





## A. Techniques Available to Reduce the Taxable Estate

- Lifetime gifting
- Utilizing fractional share interest discounts
- Establishing grantor trusts
- Constructing a qualified personal residence trust
- Creating family partnerships and limited liability companies



## B. Reducing the value of the estate through lifetime gifting

- Every person has a lifetime gift tax exemption of \$1,000,000
- Gifts in excess of the exclusion may still be beneficial as the gift tax is exclusive while the estate tax is inclusive
- Annual gifts of \$12,000 per donee do not count against the lifetime exemption
- A married couple may combine their exclusions and gift \$24,000 to a donee (\$48,000 to donee and spouse) gift tax free



## C. Utilizing fractional share interest discounts

- Generally used to reduce the value of real property or business interests
- The market value of a partial interest in property is discounted from its pro rata share of the whole because of reduced control and difficulty of sale
- Can simply transfer a two percent (2%) interest in a property
- The transfer must be irrevocable



## D. Establishing grantor trusts

- The grantor irrevocable transfers property to a trust while retaining an interest for a number of years with the remainder to the beneficiary
- The remainder is subject to gift tax and its value is determined per IRS tables
- Grantor retained annuity trusts (GRATs), grantor retained unitrusts (GRUTs), and grantor retained income trusts (GRITs)
- A rolling GRAT works by the grantor applying the annuity received from a GRAT and using it to establish a new GRAT



## E. Constructing a qualified personal residence trust (QPRT)

- The grantor transfers a personal residence into a trust while continuing to enjoy the use of the property for a set term before transferring the residence to the children
- The gift tax is calculated at the time of the transfer upon the value of the remainder interest
- Great tool to reduce the value of vacation homes
- The transfer is irrevocable



## F. Creating family partnerships (FLPs) and limited liability companies (LLCs)

- Reduces the value of assets by transferring assets into the FLP or LLC due to discounts for lack of marketability and lack of control
- Discounts average an estimated thirty percent (30%)
- The FLP or LLC needs a legitimate business purpose and must be treated as a separate business



## IV. Questions and Answers

