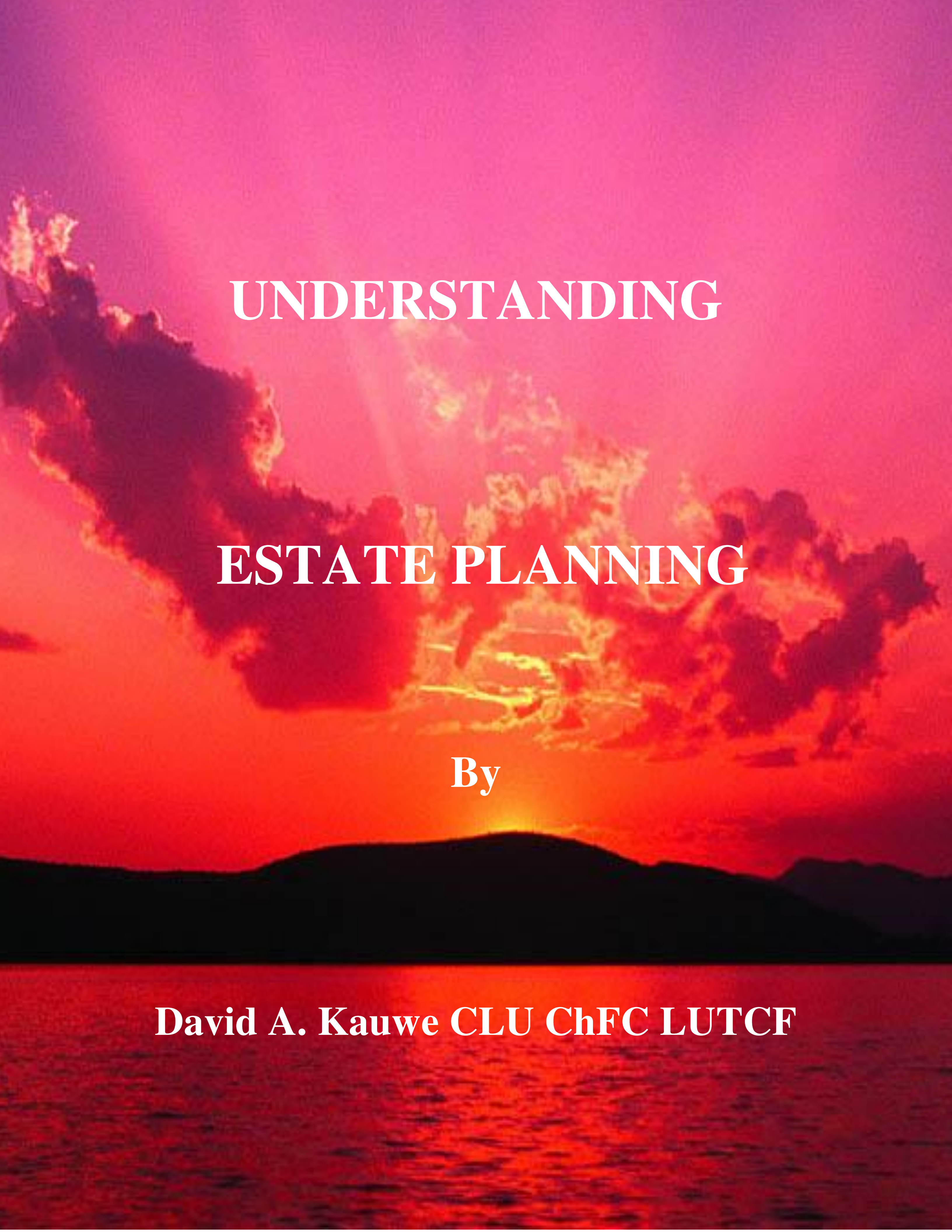

UNDERSTANDING

ESTATE PLANNING

By

David A. Kauwe CLU ChFC LUTCF

First Edition

***Disclaimer:** This book has been written for informational purposes and should not be relied on solely in planning your Estate. For financial, investment, legal or tax advise, please consult a competent professional in those appropriate areas to gain the best recommendations for your specific needs, goals and objectives.

David A. Kauwe CLU ChFC LUTCF has been for over 30 years providing financial, insurance, investment, and estate planning advise for his clients and along with Greg Connor of Connor Law in Durham, NC provides excellent estate planning solutions to their clients. Mr. Kauwe may be contacted directly by email at info@hawaiiandaves.com or by direct mobile phone (919) 698-8832.

Each person's situation merits individual consideration and may require specialized applications of the entailed techniques.

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Dedication

This ebook is dedicated to all those who may, after sitting through meetings with insurance salesman, financial services providers, attorneys, income tax specialists, and finally estate planning professionals, still feel like everyone's been speaking Greek to them or that they need to be a Philadelphia Lawyer to understand the rules and regulations that exist to part them from their hard earned life's savings instead of passing on a financial legacy to their heirs and chosen charities.

I'd like to give a special thanks and acknowledgement to Dinar Daddy for giving me the forum and encouragement to finally sit down and pen this book.

Lastly, I wish to show my appreciation for my loving wife, Tammy and our two daughters, Rachel and Hannah for hanging in there with me through the many lean years. I look forward to the next 17 years which I'm sure will bring just as much excitement and wonder as the past 17.

Foreword

The purpose of me writing this book is to publish to all the world some basic estate planning definitions and techniques so you might be somewhat educated as to the types of questions and situations to consider and pose to any estate planning specialist you wish to employ to assist you in planning your estate.

Over the past 30 years, I have seen case after case where the lack of planning in one's estate has decimated family's incomes, relationships, and ultimately their legacies.

If I can help a few people to take some wise steps in protecting their estates for their use in later years and then for their heirs and beloved charities instead of unnecessarily giving most of it away to the IRS, our court system and the legal profession, then I will have accomplished my goal.

David A. Kauwe CLU ChFC LUTCF

Understanding Estate Planning

Introduction

I would like to begin with giving you my industry background so you know that I know what I'm sharing with you. I started this journey 30 years ago as I entered the Insurance and Financial Services industry with the Mutual of Omaha companies. I worked several years as an agent in Southern California. I worked up the corporate ladder as a Unit Manager, then with the Home Office for Mutual as a Regional Management Training Consultant. I then took over the Utah Territory as the Division Office manager for Salt Lake City. After deciding to make a lateral move, I moved to Grand Junction, Colorado as the Branch Manager for Bankers Life and Casualty. Several years later, I moved to North Carolina with the Penncorp Insurance Companies as the Branch Manager for the Raleigh, NC office.

I have since then went out on my own as an Independent Agent for several insurance carriers having held a Life and Health License, Series 6 & 63 Licenses, a 65 License and the Long Term Care and Medicare Supplement License as well as a Property & Casualty License.

In 1989, I culminated 4 years of specialized study and earned the Chartered Life Underwriter, Chartered Financial Consultant, and Life Underwriting Training Council Fellow Designations.

I trained with an Estate Planning Attorney, Mike Loveridge from SLC in the benefits of Estate Planning using the Revocable Living Trust. I worked with several companies in providing comprehensive estate planning packages for my clients. I recently started Triangle Estate Planners and teamed up with Greg Connor of Connor Law in Durham, NC to provide the most competitive and comprehensive Estate Planning Packages in North Carolina to our clients. You can find us on the web at www.hawaiiandaves.com/tep.html

How Will This Help You?

In contemplating this task I determined that you will be helped in 6 specific areas.

1. By knowing definitions and basic concepts, you will be able to ask intelligent questions when you sit down with an estate planning specialist.
2. By understanding how a Revocable Living Trust works you can avoid several common pitfalls of Estate Planning. You will also save your estate and therefore your heirs potentially hundreds of thousands of dollars in probate fees, court costs, attorney fees, and Estate taxes.
3. By understanding how an Irrevocable Insurance Trust works, you may be able to reduce your Estate Tax liability and provide an income tax free as well as estate tax free benefit to your heirs.
4. By understanding some more advanced concepts you can make sure heirs will inherit the maximum amount of estate possible with little to no government interference.
5. By properly setting up your estate you will be able to maintain your privacy and minimize the time required in settling your estate.
6. By planning your estate you'll be able to control the distribution of your estate based on your wishes and not what the state in which you reside determines is appropriate.

Chapter 1

Estate Planning Defined

Estate Planning can be defined by three phases of life we all go through.

1. Creation
2. Conservation
3. Distribution

1. Creation

When we start out in our lives like the Game of Life, many of us choose to get an education and others choose to get a job right away. To create an estate we generally have to acquire assets much like the Game of Monopoly. One way to create an instant estate is to purchase life insurance. This creates an estate that can be passed on to your heirs. Over our lives if we are careful our net worth will continue to increase. In our younger years we generally can be more aggressive in building our estates as we anticipate that we have more time to accumulate our estate. Minimizing taxation is important to overall growth.

2. Conservation

As we draw closer to retirement age we enter into the conservation phase of life. This is where we want to conserve our assets, grow them more securely, and minimize the impact of taxes on our retirement incomes.

3. Distribution

The final phase of Estate Planning is when we plan for the orderly distribution of our estate with as little as possible interference from Taxes, State and Federal, Income and Estate, Probate, and any other sources that could drain our resources away from our estates.

Chapter 2

Basic Estate Planning Techniques

A. The most basic of all estate planning techniques is to have a will. Actually everyone no matter where they live in the US, does have a will. If you do not have a formal will or other valid estate transfer device and you pass away, you die "Intestate". The state of your legal residence becomes your domicile state and the will drafted by that state will take precedence in the settling of your estate. Please take note, that the State Will may not have the best results for your situation, i.e., You have a spouse and 1 son who is 18. The State Will may state that your estate will be divided up 50% each to your spouse and your son, not taking in account his lack of maturity or judgment and may not be ready to handle the type of inheritance he may receive at his legal age of 18.

B. In 2009 each person had a Gift Tax Annual Exclusion of $13,000 that they can gift to anyone in a given year without having to incur a gift tax. The gift tax is a tax that the giver pays to give assets away to others.

C. Each person has a Lifetime Federal Unified Credit Exemption beginning in 2011 of 1 million dollars. That means they can give up to $1,000,000 of their estate and not incur any estate tax. This exemption can be use for gifts in excess of the Gift Tax Annual Exclusion made each year so that it is reduces the Lifetime Credit by the amount that exceeds the Gift Tax Annual Exclusion. All Estate taxes are also calculated against the Lifetime Credit. Example. Joe gives his son $20,000 worth of real estate in a year. His $1,000,000 of Lifetime Credit is reduced by $7,000 ($20,000-$13,000) so he now has $993,000 he can pass tax free to his heirs.

D. The Unlimited Martial Deduction is an exemption that the IRS allows for a spouse to transfer all their estate to the other without incurring an estate tax at the first death. If this is done however, you lose one of your Federal Unified Credit exemptions. The IRS is more then happy to charge the tax later at the second death on a larger amount of estate.

Chapter 3

Advanced Estate Planning Techniques

A. Revocable Living Trust The first advanced technique I would like to address is the Revocable Living Trust also known as an "Inter-vivos" Trust. This is a tool that is used to mainly avoid the process known as "Probate". Probate is the process whereby a will is proven valid and the estate debts are paid and the remaining assets are distributed to the heirs. There are several main reasons to utilize a Living Trust.

1. First of all, any asset that is placed into the Living Trust is not subject to the probate process. The average cost to probate an estate across the US is 5% of the Gross Estate. The Gross Estate means the Current Market Value of the asset without subtracting out any loans owed on the asset.
2. By avoiding Probate you eliminate the average time it takes to go through the process which is 12-18 months.
3. By avoiding Probate you also keep your estate private as a Living Trust is not a matter of public record unlike a Will.
4. A Living Trust avoids the need for a conservator appointed in a "Living Probate" situation in the event of a mental or physical incapacitation. This allows a spouse with one signature to carry on the affairs of the couple when one becomes incapacitated due to illness or injury.
5. A Living Trust allows any appreciatable asset to receive a "Stepped-Up Basis when it is passed to the beneficiaries. This means there is less capital gains to have to pay taxes on.
6. A Living Trust allows for greater control on when assets are distributed to heirs.
7. A Living Trust allows for protection for children from previous marriages to receive their inheritance and not be unknowingly disinherited.
8. Properly structured a Living Trust with a Credit Shelter Provision will allow both spouses to take advantage of the Federal Unified Credit Exemption of $1,000,000 saving $345.800 in Estate Taxes.
9. By using a QTIP-Qualified Terminable Interest Property provision in your Living Trust, you will also be allowed to defer any Estate Taxes that would have been due on the amount over the Unified Credit of $1,000,000 for the deceased spouse until the death of the second spouse.

Chapter 3 cont.

Advanced Estate Planning Techniques

B. Irrevocable Life Insurance Trust The next advanced technique I would like to address is the Irrevocable Life Insurance Trust also known as an "ILIT". This is a tool that is used to provide cash for Estate Taxes that doesn't add to the Estate. When a Life Insurance policy is purchased and owned by the ILIT its' value remains outside of the Estate for Estate Tax purposes. These life insurance proceeds provide the least expensive way to pay for Estate Taxes. Let's consider the four alternatives:

1. The first way would be to use cash on hand to provide for Estate Taxes. This would be a $1+ the lost future potential earnings on that $1 asset sold to $1 tax paid, exchange.

2. The second way to provide the needed cash could be liquidating assets such as an Estate Sale. Typically, people go to these sales not to pay top dollar for the assets but to get bargains. Generally, people pay 20-25% of the value of the asset. So this would be a $4-5+ the lost future potential earnings on that $1 asset liquidated to $1 paid tax, exchange.

3. The third way involves borrowing to pay the Estate Taxes, if you can even get credit to pay the Estate Tax Bill. Fortunately, the IRS is very accommodating. They will allow you to pay them on time but then you will be paying $1+ interest on that $1 bringing you to $2-$3 to $1 paid tax, exchange.

4. The final way to pay for Estate Taxes is to purchase a Life Insurance policy. It provides the needed funds at the very time that the taxes will be due. Even with clients in their golden years the cost to provide $1 of Estate Tax will never reach the $1 level. It usually ends up costing about 60-75 cents on the dollar.

So to re-cap, one can pay $1+ cash to $1 tax paid, exchange. $4-5+ Liquidated assets to $1 tax paid, exchange. $2-3 Borrowed $$ to $1 tax paid, exchange or 60-75 cents to $1 tax paid, exchange.

In my humble opinion, Life Insurance is the least expensive way to provide for Estate Taxes when considering all the alternatives.

Chapter 3 cont.

Advanced Estate Planning Techniques

C. Generation Skipping Trust Next we have the Generation Skipping Trust. This is a tool uses to minimize estate taxes by setting up a trust which will be passed on to the third generation, your grandchildren skipping your children. In 2011 you are allowed to leave just over $2,000,000 per couple to this trust for your grandchildren and not be subject to a Generation Skipping Transfer Tax. This allows you to have those assets grow tax-free and not be taxed to your grandchildren and future generations free of this Generation Skipping Transfer Tax. The Generation Skipping Transfer Tax is a costly one as it can be as high as 55% of the amount passed on so this Trust can literally save millions to your heirs.

D. Charitable Remainder Trusts There are a couple of variations on this trust. Charitable Remainder Unitrust and Charitable Remainder Annuity Trust. The basis concept is a donor donates assets to a irrevocable trust with the ultimate beneficiary being a charity. The donor in return gets the following:

1. A current income tax deduction for the current value of the charity's right to receive the trust assets at some time in the future. (This is called the remainder interest.) and the Assets are no longer in the estate when it comes time to calculate estate taxes.
2. A percentage of the trust's assets annually when it's a Unitrust or CRUT or a set amount of the trust's assets when it's a Annuity Trust or CRAT.

The Trustee sells the assets and reinvests for a greater return. The trust does not realize a capital gain on the sale of the appreciable assets thus providing more in which to earn for the trust. When the named beneficiary of the trust dies the Charity then receives the remaining assets of the trust.

Chapter 3 cont.

Advanced Estate Planning Techniques

E. Grantor Retained Trusts There are a couple of variations on this trust. Grantor Retained Income Trust, Grantor Retained Unitrust and Grantor Retained Annuity Trust. The basis concept is a donor donates income producing and appreciable assets (real estate, stocks, bonds, certificates of deposit, etc.) to a irrevocable trust for a fixed term with the ultimate beneficiary receiving the Trust assets or if kept in Trust the income generated from the Trust. The donor in return gets the following:

1. All interest earned annually from the Trust.
2. If the donor survives the term, the remainder of the Trust including any appreciation of the assets is then passed on to the beneficiaries and is excluded from the estate of the donor for Estate Tax purposes.
3. If the donor survives the term, the Trust assets are transferred to the beneficiaries and little to no gift taxes have to be paid.

To receive the total benefit of this Trust, the donor must survive until the completion of the term of the trust, which may vary as desired. If the donor does not survive until the end of the term, the Trust property will be included in the Donor's Estate for Estate Tax purposes. Many individuals utilize Life insurance to cover for this contingency.

The difference in the various types of GRITS GRUTs or GRATS is simply how the Annual payouts are calculated.

F. Charitable Lead Trust Most commonly a Charitable Lead Annuity Trust (CLAT). The CLAT essentially is the opposite of the CRAT in that the charity receives the annuity income and the individuals (usually children or grandchildren) receives the principal balance after the CLAT term ends. The CLAT is similar to the GRAT in it's concepts and actual results.

G. Other Techniques There are several additional techniques that can be used to reduced liability such as Limited Family Partnerships, Limited Liability Companys, etc., Contact Mr. Kauwe for further details.

Chapter 4 - Examples

Scenario 1

ESTATE ANALYSIS

FIXED ASSETS:

Home	$ 250,000	Other Real Property	$ 50,000
Personal Property	$ 80,000	Vehicles	$ 20,000
Rec. Vehicles	$ - 0 -	Business	$ 80,000
Stock in Closed C	$ - 0 -	Separate Property	$ - 0 -
Mortgages Payable	$ 100,000	Property Earning No $$	$ - 0 -
Professional Part.	$ - 0 -	Promissory Notes	$ - 0 -
Stock in "S" Corp	$ - 0 -	Accounts Receivable	$ - 0 -
Rents Due	$ - 0 -	First/Second Trust Deeds	$ - 0 -
Inheritance	$ - 0 -		

Total Fixed Assets
$ 480,000

LIQUID ASSETS:

Checking	$ 10,000	Savings	$ 2,500
Credit Union	$ - 0 -	T-Bills	$ 200,000
C.D.'s	$ 250,000	Money Market	$ 50,000
Stocks/Bonds	$ 100,000	T.S.A.'s	$ - 0 -
Mutual Funds	$ - 0 -	I.R.A./S.E.P	$ - 0 -
Pensions	$ 200,000	401-K	$ - 0 -
E.S.O.P.	$ - 0 -	Deferred Compensation	$ - 0 -
Annuities	$ 300,000	Investment Gold/Silver	$ - 0 -
Diamonds	$ - 0 -	Other Investments	$ - 0 -
Life Insurance	$ 250,000	Single Premium Life	$ - 0 -

Total Liquid Assets
$1,362,500

TOTAL GROSS ESTATE
$1,842,500

Chapter 4 cont.

FEDERAL ESTATE TAX CALCULATION WITH A SIMPLE WILL

$ 1,842,500	GROSS ESTATE	
$ 212,125	PROBATE/DEBTS	ESTATE TAXES
$ 1,630,375	NET TAX ESTATE	$ 614,469
$ 1,000,000	UNIFIED CREDIT	$ 345,800
$ 630,375	NET ESTATE	$ 268,669
$ 268,669	**TOTAL ESTATE TAX DUE**	

Chapter 4 cont.

FEDERAL
ESTATE TAX
CALCULATION
WITH AN A-B LIVING TRUST

A		B
$ 921,250	GROSS ESTATE	$ 921,250
$ 110,000	PROBATE/DEBTS	$ 10,000
$ 811,250	NET TAX ESTATE	$ 911,250
$ 1,000,000	UNIFIED CREDIT	$ 1,000,000
$ - 0 -	NET ESTATE	$ - 0 -
$ - 0 -	**TOTAL ESTATE TAX DUE**	

Chapter 4 cont.

CAPITAL GAIN CALCULATION

ORIGINAL COST OF PROPERTY	$ 150,000
CURRENT MARKET VALUE (C.M.V.)	$ 250,000
APPRECIATION	$ 100,000

	JT TEN.#1	JT TEN.#2	L. T.
½ ORIG. COST	$ 75,000	$ 75,000	
½ APPREC.	$ 50,000	$ 50,000	
EACH TEN.	$ 125,000	$ 125,000	
COST BASIS AT 1ST DEATH		$ 200,000	$ 250,000
GAIN IF SOLD AT C. M. V.		$ 50,000	$ - 0 -
CAPITAL GAIN @ 20% FED/ST.		**$ 10,000**	**$ - 0 -**

Chapter 4 cont.

ESTATE COMPARISON

	WITHOUT LIVING TRUST	WITH A-B LIVING TRUST
GROSS ESTATE	$ 1,842,500	$ 1,842,500
DEBTS	$ 120,000	$ 120,000
PROBATE @ 5%	$ 92,125	$ - 0 -
ESTATE TAXES	$ 268,669	$ - 0 -
CAPITAL GAINS	$ 10,000	$ - 0 -
TOTAL COST	$ 490,794	$ 120,000
NET ESTATE	$ 1,351,706	$ 1,722,500
$$ SAVED WITH LIVING TRUST		$ 370,794
% OF ESTATE SAVED		20.1%

Chapter 4 cont.

Scenario 2

ESTATE ANALYSIS

FIXED ASSETS:

Home	$ 150,000	Other Real Property	$ 40,000
Personal Property	$ 50,000	Vehicles	$ 10,000
Rec. Vehicles	$ 5,000	Business	$ - 0 -
Stock in Closed C	$ - 0 -	Separate Property	$ - 0 -
Mortgages Payable	$ 20,000	Property Earning No $$	$ - 0 -
Professional Part.	$ - 0 -	Promissory Notes	$ - 0 -
Stock in "S" Corp	$ - 0 -	Accounts Receivable	$ - 0 -
Rents Due	$ - 0 -	First/Second Trust Deeds	$ - 0 -
Inheritance	$ - 0 -		

Total Fixed Assets
$ 235,000

LIQUID ASSETS:

Checking	$ 2,500	Savings	$ 5,000
Credit Union	$ 10,000	T-Bills	$ - 0 -
C.D.'s	$ 30,000	Money Market	$ - 0 -
Stocks/Bonds	$ - 0 -	T.S.A.'s	$ - 0 -
Mutual Funds	$ - 0 -	I.R.A./S.E.P	$ - 0 -
Pensions	$ 50,000	401-K	$ - 0 -
E.S.O.P.	$ - 0 -	Deferred Compensation	$ - 0 -
Annuities	$ 20,000	Investment Gold/Silver	$ - 0 -
Diamonds	$ - 0 -	Other Investments	$ - 0 -
Life Insurance	$ 150,000	Single Premium Life	$ - 0 -

Total Liquid Assets
$ 267,500

TOTAL GROSS ESTATE
$ 502,500

Chapter 4 cont.

FEDERAL
ESTATE TAX
CALCULATION
WITH A SIMPLE WILL

$ 502,500	GROSS ESTATE	
$ 65,125	PROBATE/DEBTS	ESTATE TAXES
$ 437,375	NET TAX ESTATE	$ 134,508
$ 1,000,000	UNIFIED CREDIT	$ 345,800
$ - 0 -	NET ESTATE	$ - 0 -
$ - 0 -	**TOTAL ESTATE TAX DUE**	

Chapter 4 cont.

FEDERAL
ESTATE TAX
CALCULATION
WITH A LIVING TRUST

A

$ 502,500	GROSS ESTATE
$ 40,000	PROBATE/DEBTS
$ 462,500	NET TAX ESTATE
$ 1,000,000	UNIFIED CREDIT
$ - 0 -	NET ESTATE
$ - 0 -	**TOTAL ESTATE TAX DUE**

Chapter 4 cont.

CAPITAL GAIN CALCULATION

ORIGINAL COST OF PROPERTY	$ 100,000
CURRENT MARKET VALUE (C.M.V.)	$ 150,000
APPRECIATION	$ 50,000

	JT TEN.#1	JT TEN.#2	L. T.
½ ORIG. COST	$ 50,000	$ 50,000	
½ APPREC.	$ 25,000	$ 25,000	
EACH TEN.	$ 75,000	$ 75,000	
COST BASIS AT 1ST DEATH		$ 125,000	$ 150,000
GAIN IF SOLD AT C. M. V.		$ 25,000	$ - 0 -
CAPITAL GAIN @ 20% FED/ST.		**$ 5,000**	**$ - 0 -**

Chapter 4 cont.

ESTATE COMPARISON

	WITHOUT LIVING TRUST	WITH LIVING TRUST
GROSS ESTATE	$ 502,500	$ 502,500
DEBTS	$ 40,000	$ 40,000
PROBATE @ 5%	$ 25,125	$ - 0 -
ESTATE TAXES	$ - 0 -	$ - 0 -
CAPITAL GAINS	$ 5,000	$ - 0 -
TOTAL COST	$ 70,125	$ 40,000
NET ESTATE	$ 432,375	$ 462,500
$$ SAVED WITH LIVING TRUST		$ 30,125
% OF ESTATE SAVED		6.0%

Chapter 5 – Appendix

Comparisons At a Glance

Before you review the following comparisons, you should realize that probate doesn't happen only when someone dies. It can take control while you are still alive---if you become physically or mentally incapable to handle your own affairs or those of your minor children.

The following comparisons briefly describe the advantages and flexibility a *Living Trust* offers.

	With No Will	With A Will	With a Living Trust
Privacy	***None:*** Probate proceedings are public record. Exposes family to unscrupulous	***None:*** Same as with no will.	***Total:*** Privacy preserved. No probate probate. Living Trusts are not public record.
Flexibility & Control	***None:*** Your property is Controlled and distributed by probate court according to state law. Very easy for anyone to contest.	***Limited:*** You can change your will any time, but it can easily be contested. Family has no control over Probate and cost or delays.	***Total:*** You can change your trust at any time, even revoke it. Your property remains under total control of your trust, even if you are disabled.
At Disability	***Probate:*** Court appoints Conservator/guardian who oversees your care, must keep detailed records and reports to the court. Court controls all your finances and assets, approves all expenses.	***Probate:*** Same as with no will.	***No Probate:*** Your successor trustee manages your financial affairs according to your instructions for as long as necessary. (In some states, conservator/guardian may be required for health care decisions.).
At Death	***Probate:*** Court orders your debts paid and possessions distributed according to state law, you may not like it.	***Probate:*** After verifying your will, court orders your debts paid and possessions distributed according to your will.	***No Probate:*** Debts are paid and possessions immediately distributed to beneficiaries by successor trustee according to your written instructions.
Court Costs .	Your estate pays all court costs and legal fees (often Estimated at 5 – 10% of the gross value of your estate, higher if your will is contested).	Same as with no will.	***None:***
Time	The current average is 18 months before heirs can inherit.	Same as with no will.	Usually 4 -6 weeks for smaller estates, a little longer for larger ones.
Minor Children	Probate court controls inheritance, appoints a guardian. All decisions and financial transactions require court approval. Child receives full Inheritance (after legal fees are paid) at legal age.	Same as with no will. A will must be probated first and it offers limited protection for a child's trust. If you become physically or mentally incapacitated a will cannot go into effect.	***No Probate:*** Your appointed trustee manages inheritance and provided funds for expenses until child reaches age(s) you specify. Court approves guardian, but cannot overrule your choice of trustee and has no control over inheritance.
Cost	All court costs and attorney fees are paid from child's inheritance.	Same as with no will.	***None:***

Chapter 5 – Cont.

Glossary

A/B Trust: An attorney's phrase for a "marital life estate trust". The terms Trust A and B are used to differentiate between the decedent's share of the assets (B) and survivor's share (A).

ABATEMENT: Cutting back gifts under a Will when it is necessary to create a fund to meet expenses, pay taxes, satisfy debts or take care of bequests which are given a priority under law or under the Will.

ACCUMULATION TRUST: Where Trust income is retained and not paid out to beneficiaries until certain conditions occur.

ACKNOWLEDGMENT: A statement that a document bearing your signature was actually signed by you. This has to be acknowledged in front of a notary public or a person who is qualified to administer oaths.

ADEMPTION: The failure of a specific bequest of property to take effect because the property is no longer owned by the person who made the Will at the time of his death.

ADMINISTRATION OF ESTATE: The court-supervised distribution of the probate estate of a deceased person. If there is a Will, the person who handles the distribution is called the executor. This person is called the administrator if there is no Will. This person is called personal representative in some states in either instance.

ADMINISTRATOR: Person named by the court to represent the estate when there is no will or the will did not name an executor; also called a personal representative. Where there is a will, the person handling the probate is called the executor. Where there is a trust, the person handling the estate is trustee but there are no court proceedings.

BASIS OF PROPERTY: The value used to determine gain or loss for income tax purposes. The basis usually is the cost, although it may be a different amount depending on the law governing the transaction.

BENEFICIARY: The person of persons entitled to receive money or property under the terms of a trust or will. Under a revocable living trust, the person creating the trust (the trustor) is generally also the beneficiary during his or her lifetime. The trust will name who the beneficiary will be after the trustor dies.

BACK-UP-TRUSTEE: Also called successor trustee; person or institution named in the trust agreement who can take over should the first trustee, resign or become unable to act.

Chapter 5 – Cont.

CODICIL: An addition to a will that may add to or change its provisions. A codicil must be signed with the same formalities as a will.

COMMUNITY PROPERTY: A form of property ownership between husband and wife, each spouse owning equal shares. Unlike property owned in joint tenancy, left to persons other that the spouse by will or trust. If one spouse dies without leaving a will or trust, the other spouse will inherit the community property.

CONDITIONAL GIFT: One which passes only under certain specified condition or upon the occurrence of a specific event.

CONSERVATORSHIP/GUARDIAN: A proceeding in which the Superior Court assumes control of an individual's assets because that individual is not able to deal with his or her own assets. Usually, the family must prove at a court hearing that the individual is incompetent. If appointed by a court, the conservator/guardian is under the court's supervision. A court appointed manager must post a bond. A revocable living trust can avoid a conservatorship by providing for the management of assets in the event of incapacity.

CONTINGENT BENEFICIARY: Person entitled to profit from a contract or estate only upon the occurrence of a specified event, usually on who receives assets upon the death of the primary or lifetime beneficiary.

CORPORATE TRUSTEE: An institution (such as a bank or trust company) which specializes in the management of trusts.

CORPUS: Principal assets which could earn assets.

COST BASIS: What you paid for the property. The value is used to determine gain or loss for income tax purposes. Property is given a ***STEPPED-UP*** basis when transferred by inheritance (through a will or trust) and is re-valued as of the date of the owner's death.

CUSTODIAN: A person named to care for a minor and their property under the Uniform Gifts to Minor Act. This can also happen to adults who become incapacitated.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE: A document that gives someone else the legal authority to make health care decisions for you in the event you are unable to make them for yourself.

EQUIVALENT EXEMPTION: The amount of property which will pass tax free upon death. For 2011, the amount is $1,000,000.

ESCHEAT: Property that goes to a state government because there are no legal inheritors to claim the property.

Chapter 5 – Cont.

EXECUTOR: The person named in your Will to manage your estate, collect your assets, distribute them as you have specified and deal with the probate court. Also called a personal representative, the executor chooses the probate attorney.

FAILURE OF ISSUE: To die without descendents who are of direct blood line.

FEDERAL ESTATE TAXES: The taxes imposed on the transfer of assets upon death. Federal estate taxes are determined by the size of the estate.

FIDUCIARY: A person charged with the duty of trustee on behalf of a beneficiary; implies great confidence and trust, and a high degree of good faith. Executors and trustees are fiduciaries.

GAIN: The difference between what you receive for property when it is sold and what you paid for it; used to determine the amount of taxes due.

GENERATION SKIPPING TRANSFER (GST) TAX: A steep tax (55%) levied on the assets that skip a generation and are left directly to grandchildren and younger generations; (everyone has a $1 million exemption from this tax).

GIFT TAX ANNUAL EXEMPTION: Tax-free gifts may be made to any number of recipients each year. Each tax-free gift made by a single person may not exceed $13,000 per donee. Each tax-free gift made by a husband and wife may not exceed $26,000 per donee.

GRANTOR: The person who sets up or creates the trust; also called the creator, settler, or trustor.

GROSS ESTATE: The value of an estate before the debts are paid; (probate fees are usually calculated on the gross value of the estate). For example: if a home is worth $100,000 but has an $80,000 mortgage, the gross value is $100,000 and the probate fees will be based on the $100,000.

HEIR: The person who would inherit property under state and federal law.

HOLOGRAPHIC WILL: A handwritten will.

INCAPACITATED/INCOMPETANT: One who is unable to manage his/her own affairs, either temporarily or permanently; lack of legal power.

INHERITANCE TAXES: The death taxes imposed by the state. In 1982, California abolished inheritance taxes, but many states still have them.

IRREVOCABLE TRUST: A type of trust where the trustor gives up the right to change the terms of the trust and gives up control of the assets in the trust. Once you set it up, you cannot revoke it, amend it, or change it in any way. Opposite of a revocable living trust.

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INTESTATE SUCCESSION: The law that determines who receives an estate when an individual dies without a will or trust. Under the direction of both the courts and a probate attorney.

ISSUE: Lineal (direct line of descend) descendants, i.e., children, grandchildren, etc.

JOINT TENANCY: A form of property ownership by two or more persons. Joint tenancy has what is called the "right of survivorship," meaning the surviving joint tenant gets the property upon the death of a joint tenant regardless of what a will or trust might provide.

LETTERS TESTAMENTARY: Document issued by a probate court authorizing the executor to discharge his/her responsibilities.

LIVING TRUST: A written legal document into which you place all of your property, with instructions for it's management and distribution upon your disability or death.

LIVING WILL: Document where you formally provide that you do not want life prolonged artificially by technical means, but choose a natural death.

MARITAL DEDUCTION: This deduction for a surviving spouse allows anyone, even a millionaire, to pass his/her estate to a surviving spouse without any tax at all. This might be a good idea if the surviving spouse is relatively young and in good health. It is suggested not to do this if the spouse is likely to die in the near future because tax problems could be made worse by relying on the marital exemption; for when the second dies he/she will not benefit from marital deduction so will be taxed at a fairly high rate. Many older couples with adequate assets do not leave large amounts of property to each other, but rather, leave it directly to their children so that each can qualify for a separate tax exemption. (A-B trust, two $1,000,000 exemptions combined to equal $2,000,000)

MARITAL LIFE ESTATE: A trust to save on eventual estate taxes by giving a surviving spouse (or member of an unmarried couple) the income from the property of the first spouse to die (not the property itself). This can also be called a "spouse bypass trust", an "A-B trust" or an "exemption trust".

MINOR CHILD: A child under the legal age for an adult; varies by state (usually under 18 or 21).

MULTIPLE PROBATE: If an individual dies who owned real property in more than one state, ordinarily there must be a separate probate proceeding in each state where the real property is located. If title to the property is held in a revocable living trust, multiple probates are avoided.

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NET VALUE: The value of an estate after debts are paid. Federal estate taxes are based on the net value.

PER CAPITA: A way of distributing your estate so that your surviving descendants will share equally, regardless of generation.

PERPETUATES (RULES AGAINST): A complicated rule, the purpose of which is to keep property from being frozen in a trust beyond a certain period of time. The PERPETUATES clause in a trust causes the trust to terminate automatically at the required time. This protects the legality of the trust.

PERSONAL PROPERTY: Movable property as contrasted with real property (land, home, etc). Personal property includes furniture, automobiles, equipment, cash, jewelry, stock, etc.

PERSONAL REPRESENTATIVE: Another name for an executor or administrator.

POUR-OVER WILL: A will accompanying a trust, which provides that any assets intentionally or unintentionally left outside of a trust shall be transferred into the trust upon death. Different states may required different maximums of estates that can be left outside of a trust without requiring the pour-over will to be probated. A pour-over will, will revoke all previous Wills and Codicils. The pour-over will allows you to pick an executor and guardian for minor children.

POWER OF ATTORNEY/DURABLE POWER OF ATTORNEY: A legal document giving another person full legal authority to sign your name on your behalf in your absence; ends at disability or death; some state permit a durable power of attorney which is valid through disability and ends at death. Some states also require that a durable power of attorney be recorded at the county clerk's office to be in effect, be sure to check if your state requires it to recorded. These are general powers of attorney.

PROBATE: A legal procedure in which the Superior Court assumes jurisdiction over the assets of someone who has died. The Superior Court supervises the payment of debts, taxes, and probate fees, and the distribution of the remainder to the persons named in a will, or to the heirs if there is no will.

With a Will. The legal process of filing a will with the probate court; the court determines if the will is valid; hears all claims, orders creators paid and property distributed according to the terms of the will.

Wthout a Will, The legal process of the probate court receiving all claims, ordering creators paid and property distributed according to the laws of that state. (the state's will)

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PROBATE FEES: Substantial fees charged by an attorney to handle the lengthy formalities of distributing the assets of an estate to the heirs. Who get paid? Attorney fees, court fees, accountants fee, appraiser fees, executor fees, etc.

PROBATE GUARDIANSHIP: A court controlled program to manage the affairs of minor children.

QUALIFIED TERMINABLE INTEREST PROPERTY (QTIP) TRUST: This special type of trust is used most frequently by married couples whose estate exceeds $1,000,000 and who wants to restrict the surviving spouse's use of the trust estate after the death of the first spouse. The Q-TIP Trust allows the surviving spouse to enjoy the income of the trust, but preserves assets for the predeceased trustor's family or other heirs. A married couple can create a Q-TIP Trust.

REAL PROPERTY: Land, and property which is "permanently" attached to land (such as a building or house)

REVOCABLE TRUST: A special type of trust used as an alternative to a will. The trust remains under the complete control of the trustor. The trustor has the power to use all the assets of the trust during his or her lifetime. The trustor also retains the power to amend or revoke the trust, and to change who the ultimate beneficiaries will be. The trust where a contingent interest is given to another and where the settler retains a present interest, ownership and control.

RIGHT OF REPRESENTATION: The principal by which the descendants of a predeceased beneficiary receive that beneficiary's share.

SEPARATE PROPERTY: In states that have community property, it is property that was acquired before marriage by one spouse or property gifted or inherited by one spouse after marriage.

SETTLOR: One who establishes a Trust; also called "Grantor". "Trustor", or "Creator"

SPECIAL GIFTS: A separate listing of special property.

SPECIFIC MONETARY GIFTS: Specific money given to individuals, charities, repay personal loans, etc.

SPOUSE: Husband or Wife

STATUTORY WILL: A will on a preprinted form approved by the State. A statutory will must go through the probate process.

STEPPED-UP BASIS: When property is inherited, the person who inherits that property receives a new basis in the property (see cost basis). The new basis is the value of the property at the date of the owner's death.

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TENANCY-IN-COMMON: A form of joint ownership in which two or more persons own the same property; at death of a tenant in common, ownership transfers to that person's heirs, not to the other owners. Shares need not be equal.

TESTAMENTARY TRUST: A trust set up in a will that only takes effect after death.

TESTATE: One who dies with a will.

TRUST: A method of holding title to property. The trustor transfers title to assets to the trustee with instructions to hold the assets for the benefit of a beneficiary. In the case of a revocable living trust, which is generally used as an alternative to a will, the trustor, the trustee and the beneficiary are usually the same person during the trustor's lifetime. Successor trustees and successor beneficiaries are named in the trust instrument. Holding title in this manner gives the successor trustee the power to transfer title to the assets after the trustor's death so that title to the trust assets can be transferred to the successor beneficiaries after the trustor's death without going through a probate proceeding.

TRUSTEE: A person or institution who manages and controls the assets in a trust. Often the trustor and trustee of a revocable living trust are the same person or persons.

TRUSTOR: The person who creates a trust.

UNLIMITED MARITAL DEDUCTION: Any amount can be left to a spouse tax free so long as it is outright to the spouse or in a Q-TIP Trust.

WILL: Legal document where a person states various binding intentions about the distribution of their estate upon their death. It can be a formal will witnessed by at least two persons, or it can be a holographic will which is unwitnessed. A holographic will must be all in the handwriting of the person making it and must be dated and signed. All wills must go through probate.

