

How to Control Your Wealth after Death (if you want to)

*A Seminar Presentation on
Trusts and Estate Planning*



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WHAT IS ESTATE PLANNING?

- WHAT YOU OWN
- GOES TO WHO YOU WANT
- WHEN YOU WANT
- HOW YOU WANT



Custom Drafted Trusts

- **Delayed Distributions Based on Age or Educational Achievement**
- **Drug, Alcohol or Impaired Child**
- **Educational Trusts for Grandchildren**
- **Planning for Second Marriages**
- **Creditor Protection**
- **Disabled Child**
 - **“Special Needs Trust” to Prevent Disqualification of Governmental Benefits**

Will \$\$\$ Help or Hurt ?

- My Wealth should not be a Disincentive for my Children to become Productive Members of Society.



- I want my Children to Have enough to Do Something, not Enough to Do Nothing!!!

Educational Trusts & Gifts

- Establish during **lifetime**
 - \$14,000 @ beneficiary each year
 - Additional Amounts
(capped at \$5.43M gift tax exclusion)
- Establish at **death**
 - % of living trust assets (i.e., 25%)
- Unlimited exclusion for gifts directly to school or medical provider
- UTMA Accounts
- College 529 Plans



Basic Estate Planning Documents

- **LIVING TRUST**

- **WILL**



- **PROPERTY POWER OF ATTORNEY**

- **HEALTH CARE POWER OF ATTORNEY**

- **IRA BENEFICIARY DESIGNATIONS**

Common Estate Planning Mistakes

- Assets Passing Outside Will or Trust
- Improper Use of Joint Tenancy
- Improper Beneficiary Designations
- Wrong Executor or Trustee
- Procrastination



IF I HAVE NO CHILDREN WHERE DOES MY MONEY GO?

- Charity?
- Siblings, nieces or nephews?
- Friends?
- Above gifts With or Without “Strings”?



Common

Asset Protection Techniques

- **Buy “Umbrella” Insurance Coverage**
- **Transfer Assets to Spouse**
- **Hold Residence in Tenancy by the Entireties**
- **LLCs to hold Business & “Risky” Assets**
- **Dynasty Trusts**
 - **Protection against Divorce/Creditors of Child**

Dynasty Trusts

Children Inheriting Assets in a Protective Trust

- Much Harder for Creditors to Crack
- Not Counted in Child's Estate for Estate Tax Purposes
- Distributions for Health, Education & Support
- At pre-determined Age (i.e., at 30), Child can be Trustee and have effective control over Trust
- Unless Child "opts out," upon death of Child the Trust continues for Grandchildren under same terms (and possibly for all successive generations)...



PROBATE: *The legal process of proving and administering a will*

- Expensive
- Time consuming
- Delays distributions to be
- Court supervised
- A matter of public record



Probate can be avoided!



What Assets Avoid Probate?

- **Assets held in a living trust**
- **Assets payable under contract to a named beneficiary**
 - IRAs
 - Life insurance policies
 - Pension assets
 - Annuities
- **Jointly-held property (upon 1st to die)**

IRA Distribution Rules Before Death

- First IRA Distribution: April 1st Year after Age 70 1/2
- “Liberalized” IRS Distribution Table:

Age 70 – 3.65%	Age 76 – 4.55%	Age 85 – 6.76%
Age 72 – 3.91%	Age 78 – 4.93%	Age 90 – 8.77%
Age 74 – 4.2%	Age 80 – 5.35%	Age 95 – 11.63%

- Distributions based on Prior Year (12/31) Account Balance
- If Spouse is 10 Years Younger, even Longer Payouts

IRA Distribution Rules After Death

A. “CONTROL” PLANNING

- **Specially Drafted Trusts** (to avoid “5 Year” Rule)
- “Conduit” or “Accumulation” Trusts
- Merrill Lynch “Trusted IRA”

B. “NON-CONTROL” PLANNING

Individuals as IRA Beneficiaries

- **Spouse** (IRA Rollover to defer until Age 70 ½)
- **Children** (“Stretch IRA” Benefits)

IRA Beneficiary Designations

<u>Status</u>	<u>Factors</u>	<u>Primary</u>	<u>Secondary</u>
Married	<ul style="list-style-type: none">• Harmonious Marriage• IRA not needed to fund Estate Tax Trust & Children are Responsible	Spouse	Children
Married	<ul style="list-style-type: none">• 2nd Marriage, or• Want Trust “Control” or Asset Protection Benefits	-Trust; or -Trusteed IRA	N/A
Single	<ul style="list-style-type: none">• Responsible Children• Irresponsible/Young Children and/or Asset Protection Benefits	-Children -Trust; or -Trusteed IRA	N/A

ESTATE TAXES – A COSTLY BUT UNCOMMON OCCURENCE

- **FEDERAL:**

- \$5.43 million exclusion amount
(Inflation adjusted)

- FLAT 40% rate

- Full step-up in basis

- Portability of estate exemption



- **ILLINOIS:**

- \$4 million exclusion amount

- TAX PLANNING NEEDED IF ASSETS EXCEED \$4M

Combined Federal & IL Estate Taxes

<u>Tentative Taxable Estate</u>	2015 Federal Exclusion = \$5.43M Illinois Exclusion = \$4M	
	IL Marginal Rates <u>Over \$4M</u>	Fed & IL Marginal Rates <u>Over \$5.43M</u>
\$4,000,000	N/A	
\$5,430,000	10%	
\$6,000,000		88%
\$7,000,000		62%
\$8,000,000		56%
\$9,000,000		53%
\$10,000,000		52%
\$20,000,000		49%

DEALING WITH THE ESTATE TAX

- **CREDIT SHELTER TRUSTS**

- Funded Living Trusts for each Spouse
- 1st to Die's Trust continues after Death



- **ESTATE TAX PORTABILITY**

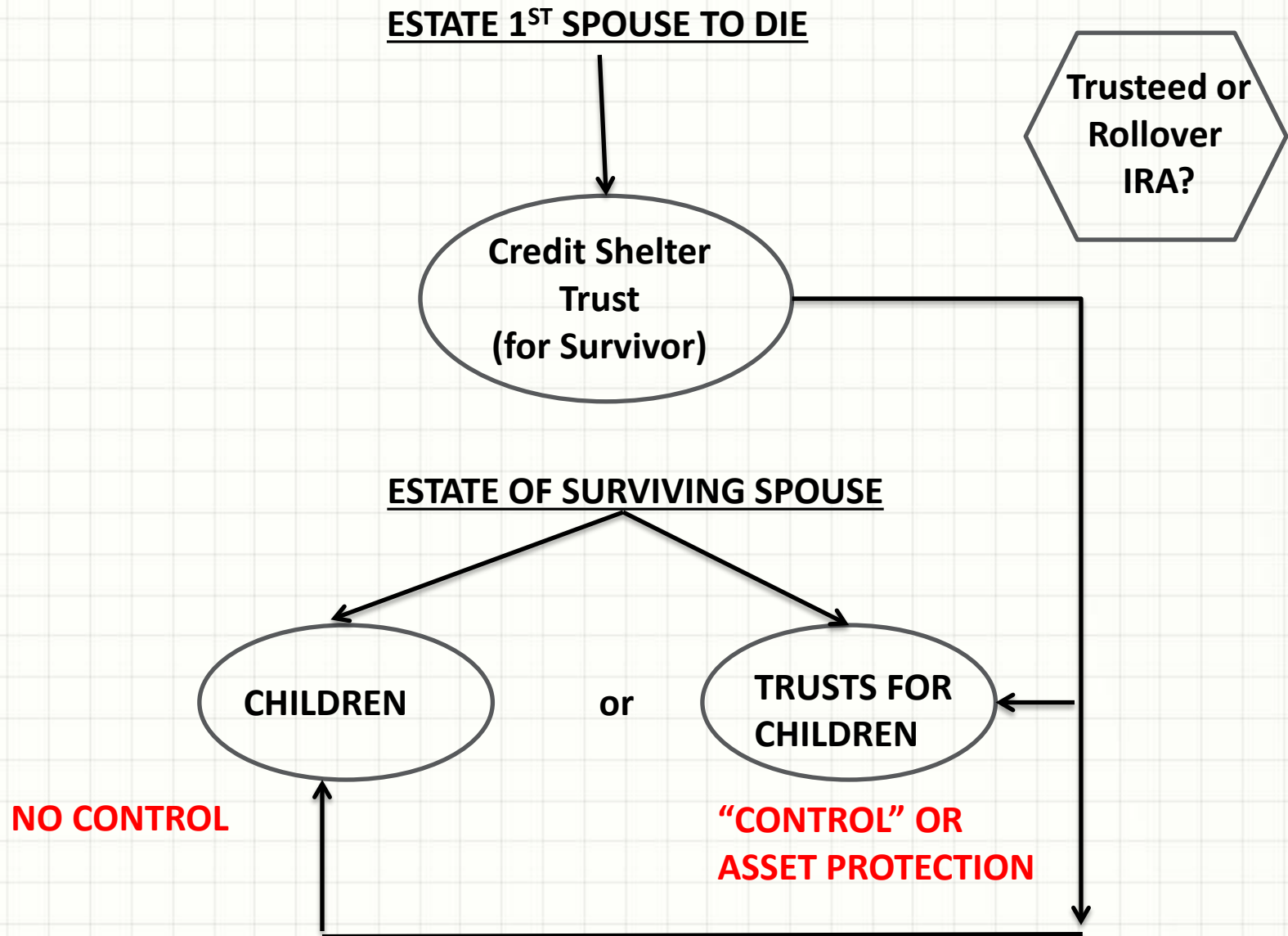
- Election on estate tax return (Form 706) due 9 months after death to “save” Decedent’s unused estate tax credit
- Not applicable for IL estate taxes
- Planning often combines Credit Shelter Trust and Estate Tax Portability

Portability & 2nd Marriages



- Typical Facts: “Rich” spouse marries “Poor” spouse;
 - “Poor” spouse dies 1st, with \$4M unused estate tax exclusion;
 - “Rich” spouse wants to use Portability to claim unused \$4M exclusion.
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- What if “Poor” Spouse’s Executor Refuses to Make Portability Election?
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- **NEGOTIATE THIS ISSUE BEFOREHAND!!!**
 - Trust/Will Provisions directing Trustee/Executor to Elect Portability
 - Have Surviving Spouse benefitting from Election:
 - Pay 706 filing costs;
 - Possibly bequeath poorer spouse some property, such as an interest in a “QTIP” Marital Trust as the *quid pro quo*

TYPICAL ESTATE TAX PLANNING





When To Check Your Estate Plan

- Births and deaths
- Moves between states
- Marriages
- Changes in your assets
- Divorces
- Business changes
- Inheritance
- Tax law changes



Keep Money In The Family

- **“There are two systems of taxation in our country; one for the informed and one for the uninformed.”**

(Judge Honorable Learned Hand - Appeals Court Justice)