

# Beyond Death and Taxes: Planning for the Future

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# Executive Summary

- ▶ Why does estate planning matter to me
- ▶ Why do I need a will and what is a revocable living trust?
- ▶ Why is everyone talking about the 2010 federal estate tax
- ▶ Legal ways to avoid probate
- ▶ The problem with holding title in joint tenancy
- ▶ Health care directives and powers of attorney
- ▶ Rules for non-U.S. citizen spouses

# What is an Estate?

- ▶ all real estate
- ▶ bank accounts, stocks and bonds
- ▶ life insurance policies
- ▶ retirement plans
- ▶ a business
- ▶ cars, jewelry, furniture, art, computers etc.

# Why does estate planning matter to me?

- ▶ If you have assets over \$100,000, you want to avoid probate (cost of probate is  $\approx$  4-7% of one's gross assets, which includes debt)
- ▶ Minimize federal estate tax (55% in 2011)
- ▶ Nominate guardians to protect your children under 18 years of age
- ▶ Minimize family conflict

# Why do I need a will?

- ▶ Without a will, you have no control of who receives your assets and cares for your children.
- ▶ However, a will still needs to go through probate (fees are  $\approx$  4-7% of an estate).
- ▶ If your assets  $>$  \$1M, a will cannot utilize tax planning opportunities.
- ▶ Probate is a public process. Anyone can see your inventory of assets and debt.

# What is a revocable living trust?

- ▶ The most important feature is avoiding probate court. Probate is very costly ( $\approx$  4-7% of one's gross assets).
- ▶ Your money will be distributed in weeks as compared to years in probate court.
- ▶ A trust maintains your privacy and control of your assets.
- ▶ You do not need a separate taxpayer ID number for the trust. You do not need to maintain separate trust tax records.

# Why is everyone talking about the 2010 federal estate tax?

- ▶ In 2009, 99.7% of the estates did not owe estate tax. Each person had a \$3.5M exemption.
- ▶ In 2010, no estate taxes are owed regardless of the size of the estate.
- ▶ In 2011, any amount over \$1M is taxed at 55%.

# Federal Estate Tax Rates

<u>Year</u>	<u>Exemption</u>	<u>Rate</u>
2001	\$675,000	55%
2002	\$1 million	50%
2003	\$1 million	49%
2004	\$1.5 million	48%
2005	\$1.5 million	47%
2006	\$2 million	46%
2007	\$2 million	45%
2008	\$2 million	45%
2009	\$3.5 million	45%
2010	no tax	0%
2011	\$1 million	55%

# Legal ways to avoid Probate – but What is Probate?

- ▶ Probate is a court-supervised proceeding to determine the validity of a will, clear title and distribute assets.
- ▶ A person with only a will is still subject to costly probate fees and delays within a court system.
- ▶ Your family may need to wait about 2 years to receive the assets from your estate (after deducting  $\approx$  4-7% of your estate).

# Legal Ways to Avoid Probate

- ▶ Co-ownership of assets – joint tenancy
- ▶ Creating Revocable and Irrevocable trusts
- ▶ Life insurance, pensions and annuities – designate your beneficiaries
- ▶ “Payable on death” accounts to a designated person for stocks, bonds and bank accounts

# Problems with Joint Tenancy

- ▶ For married couples, loss of a full step-up in basis upon the death of the first spouse.
- ▶ Possible exposure to creditors and lawsuits of the other tenant. This is extremely dangerous because a tenant can transfer the asset to someone else without permission from the other joint tenant.
- ▶ Loss of Control. If the relationship sours, cannot remove tenant's name from title without their consent.
- ▶ No backup beneficiary if joint tenant is not alive as well.
- ▶ Joint Tenancy disinherits all other heirs, except the other tenant.
- ▶ Possible gift tax consequences (gift tax is 35%).

# Advanced Health Care Directive

- ▶ 4 out of every 5 Americans pass away in a hospital or a nursing home.
- ▶ With an Advance Health Care Directive, you can state how much (or how little) medical care you wish to receive.
- ▶ You nominate a person whom you trust to make medical decisions on your behalf.
- ▶ You can only create this directive while you are competent.

# Power of Attorney for Finances

- ▶ Legal document in which you name a person you trust to manage your finances.
- ▶ This document allows your agent to speak with the bank, manage investment and retirement accounts, make changes to your estate plan, plan for Medi-Cal etc.
- ▶ Without it, your family needs to go to court and appoint a conservator which is expensive, uncertain and time-consuming.

# U.S. versus non-U.S. citizen spouses

- ▶ U.S. citizen spouses are entitled to gift an unlimited assets to a surviving spouse.
- ▶ Non-U.S. citizens are only permitted a \$134,000 exemption (2010).
- ▶ Congress wanted to prevent non-U.S. citizen spouses from inheriting large amounts of money and then leaving the U.S. with no estate and gift tax ever collected.

# Qualified Domestic Trust (QDOT)

- ▶ Could create a Qualified Domestic Trust ("QDOT").
- ▶ Allows a non-U.S. citizen to receive assets from a decedent without estate and gift tax until the surviving spouse also passes away ("deferral of tax").
- ▶ Appropriate only if a decedent has a taxable estate (eg. > \$1M in 2011).

# Worldwide Estate Tax Examples

- ▶ United States: Estate and Gift tax
- ▶ England: Inheritance tax
- ▶ Canada: Capital Gains tax
- ▶ India: discontinued in 1985
- ▶ Hong Kong: abolished in 2006
- ▶ Singapore: abolished in 2008
- ▶ China: not yet levied

# U.S. citizen with foreign property

- ▶ All worldwide assets are subject to U.S. estate and gift tax.
- ▶ All worldwide income is subject to U.S. income tax.
- ▶ Foreign Bank Account Report ("FBAR"): need to report to IRS all foreign bank accounts > \$10,000.

# Non-U.S. citizens with foreign property

- ▶ Tax treatment depends on whether the person is a “resident” or “nonresident” alien.
- ▶ Resident Alien: all worldwide assets are subject to estate and gift tax.
- ▶ Nonresident Alien: taxation limited to U.S. source assets.

# When should you plan?

- ▶ When you are healthy, before it is too late.
- ▶ Update the plan when circumstances change, such as upon marriage, children, divorce or death.
- ▶ Check your plan every 2-3 years for any life changes. Check your beneficiary designations on retirement accounts and insurance policies.
- ▶ Important to consider these issues to protect your hard-earned assets to your loved ones.

# Thank You for Attending

Questions are welcome.