THE TEXAS ESTATE PLANNING PRIMER

A Layperson’s Guide
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# TABLE OF CONTENTS

Purpose and Dedication........................................................................................................... ii
About the Author .................................................................................................................... ii

I. Introduction
   A. Definition of Estate Planning ...................................................................................... 1
   B. Necessity of Planning ................................................................................................. 1

II. Getting Started
   A. Information Gathering ............................................................................................... 2
   B. Do It Yourself At Your Own Risk ............................................................................... 2
   C. Selection of Professionals .......................................................................................... 2
   D. Scope and Nature of Representation ......................................................................... 3
   E. Cost .............................................................................................................................. 3

III. The Estate Planning Environment
   A. Community Property ............................................................................................... 4
      1. Marital Property Agreements ................................................................................. 4
      2. Transmutation .......................................................................................................... 4
      3. Moving To and From Texas ................................................................................. 5
   B. Descent and Distribution .......................................................................................... 5
   C. Texas Probate Process .............................................................................................. 6
   D. Non-Probate Assets ................................................................................................. 6
   E. Estate and Inheritance Taxes .................................................................................... 7

IV. The Estate Planners Basic Tools
   A. Will ........................................................................................................................... 7
   B. Durable Power of Attorney ....................................................................................... 8
   C. Medical Power of Attorney ....................................................................................... 8
   D. Directive to Physicians ............................................................................................. 8
   E. Coordinating Non Probate Assets ............................................................................. 8
      1. Life Insurance .......................................................................................................... 8
      2. Employee Benefits ................................................................................................. 9
      3. Joint Bank Accounts ............................................................................................. 9
   F. Selection of Fiduciaries .............................................................................................. 9
      1. Basic Factors .......................................................................................................... 9
      2. Corporate Trustee ................................................................................................... 9
   G. Designation of Guardian ............................................................................................ 10
   H. HIPAA Release .......................................................................................................... 10

V. Wills versus Revocable Living Trusts
   A. Uses and Abuses of Living Trusts ........................................................................... 10
   B. Be Careful ................................................................................................................. 11
   C. The Uses of Trusts in Estate Planning ..................................................................... 11

VI. Estate and Gift Tax Planning
   A. When to Consider Tax Planning ............................................................................. 11
   B. The Basic Tax Plan .................................................................................................... 11
   C. Generation Skipping Transfer Tax .......................................................................... 12
   D. Annual Exclusion Gifts ........................................................................................... 12
   E. Planning for Education ............................................................................................. 12
   F. Life Insurance and the Irrevocable Life Insurance Trust ........................................ 13
   G. Employee Benefits .................................................................................................. 13
   H. Advanced Planning Techniques .............................................................................. 13

VIII. Conclusion ..................................................................................................................... 13
Purpose and Dedication

I started this booklet as a hand out to help educate my clients about basic estate planning issues. I had discovered over the years that many of my clients lacked a basic knowledge of estate planning and the estate planning process. In addition to lack of knowledge, I continue to be amazed at the amount of misinformation that circulates about estate planning, probate, and the practice of trusts and estate law. My goal is that this booklet, while not designed to be comprehensive or complex, will at least help those who read it gain a basic understanding of the process and remove some of the mystery. As a trusts and estates lawyer, I have had the rare privilege of becoming not only a close advisor to my clients, but also to have maintained many long term and rewarding personal and professional relationships. I therefore dedicate this booklet to the many clients who have made my practice so rewarding, both professionally and personally.

Erwin Davenport
Wichita Falls, Texas
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About the Author

Erwin Davenport practices law as a partner in the Wichita Falls, Texas firm of Gibson, Hotchkiss, Roach & Davenport, where he specializes in trusts and estates law, including estate and business succession planning, estate and trust administration and trust and estate litigation. He received his Bachelors degree from Midwestern State University and his Doctor of Jurisprudence from Texas Tech University, where he was named Articles Editor of the Law Review and was elected to Order of the Coif. Mr. Davenport is Board Certified in Estate Planning and Probate Law by the Texas Board of Legal Specialization and is a Fellow of the American College of Trust and Estate Counsel. He is a frequent speaker and author for the State Bar of Texas, Texas Society of CPA’s, charitable organizations and community groups. He was the Course Director for the 2003 Advanced Drafting: Estate Planning and Probate Course in Dallas, Texas, sponsored by the State Bar of Texas. He is serving or has served as: President of the Wichita County Bar Association; President of the North Texas Estate and Financial Planning Council; Chairman of Deacons, First Baptist Church, Wichita Falls; Board of Directors, Hospice of Wichita Falls; Board of Directors, Wichita Falls Faith Mission; Chairman of the Professional Advisory Group, United Regional Health Care Foundation; Board of Governors, Wichita Falls Country Club; and Board of Directors, Legend Bank, N.A. Erwin and his wife Elaine have three sons, Brent, Todd and Kyle and four grandchildren.
I. Introduction

This booklet presents an overview of estate planning in Texas. It is not intended to cover the technical aspects of estate planning. However, as individuals begin the process of planning their estates, it is useful to have general knowledge of estate planning issues. Becoming well informed is the first step to effective estate planning and it is my hope that this outline will assist in the process. This booklet is not intended as legal advice and cannot be relied upon as such. The circumstances of each individual are unique and should be reviewed by qualified professionals.

A. Definition of Estate Planning

An estate plan is a written expression of how you want your assets to be owned, managed and preserved during your lifetime and how you want them disposed of upon your death. The obvious and primary purpose of estate planning is to distribute your assets according to your wishes. Successful estate planning transfers your assets to your beneficiaries in an efficient and prudent manner and with minimal tax consequences.

B. Necessity of Planning

Estate planning is for everyone; not just for the wealthy. The orderly distribution of your assets at death is an important endeavor whether your estate is large enough to incur taxes. Each individual, couple, and family is unique. Everyone has an estate plan. However, it is important that your estate plan be the one that you desire and not one that is imposed upon you by state law in the absence of proper planning. If you are married, have children, own a home or other valuable assets, have employee benefits, insurance and items of real or personal property, then it is imperative that you plan in order to minimize the expense in the event of your death or disability. In addition, if you own a business, an estate plan directs who will inherit the business and who will run it. Everyone should remember that most estate problems are “people problems” and not “tax problems.” Estate planning is therefore important regardless of the your net worth. The time and money you spend planning is a worth while investment in your family’s future. For the small estate, estate planning may be as uncomplicated as having a simple will, power of attorney, medical power and living will prepared for the husband and wife, together with a review of account ownership and beneficiary designations. For those with large estates, the planning is often less complicated than first thought. All planning decisions are ultimately up to the client. Your plan should be prepared by a qualified attorney.
II. Getting Started

A. Information Gathering

Prior to scheduling a meeting with your attorney, you should expedite the process by gathering appropriate information. Most estate planning attorneys will provide you with a fact sheet to be completed either before or during your initial consultation. It is important that you provide full and complete information to the estate planning attorney. In the case of estate planning, knowledge is truly power and the more knowledge and information that is known to the planner, the better the plan and potentially the more cost and expense saved in the long run. Information that will be useful for the estate planning attorney includes the following: copies of your current wills, trusts, powers of attorney, living wills and medical powers of attorney; a financial statement or summary, such as a copy of your most recent loan application; copies of current bank and investment account statements or printout from a computerized finance program; copies of the deeds to your house or other real property; copies of all retirement benefits, including 401(k)s, IRAs and other retirement benefits and the beneficiary designations, and including any employee booklet or summary of benefits that you might have; information regarding your life insurance, including the amount, cash value, beneficiaries and current ownership of these policies. If you own stock in a closely held corporation, such as a family business, copies of your share certificates, and financial information with respect to the company, including any buy-sell agreement will be needed. If you are a beneficiary of a trust, information with respect to your distributions and ownership interest in the trust is important. Finally, an outline of your family tree showing all of your family, particularly your children and grandchildren.

B. Do it yourself at your own risk

People are tempted to prepare their own estate planning documents from forms supplied by book sellers or over the internet. Although these programs are sometimes “legal” in many instances they do not carry out the true intentions of the parties. Issues of state law and tax law require the input of professionals. Many times professionals are called in after the fact to “fix” a homemade estate plan with considerable added expense and time involved.

C. Selection of Professionals

You should select an estate planning attorney with whom you are comfortable and with whom you believe your family will have a long lasting relationship. Such an attorney should be well versed and experienced in estate planning, trust and estate issues, as well as have a good working
relationship with your accountant and other professionals. Many people decide that it is beneficial to choose an attorney that is board certified in estate planning and probate. Board certification is simply an indication that the attorney has experience in estate planning issues and has passed certain requirements and minimum continuing legal education courses with respect to estate planning matters. Another good resource for finding an attorney is the American College of Trust and Estate Counsel. There are certainly many attorneys who are not board certified or who are not fellows of the American College of Trust and Estate Counsel who are qualified estate planners, but board certification and/or ACTEC membership are factors to consider in choosing an attorney. Be wary of persons selling packaged estate plans or other financial or estate planning services who are unlicensed. Be particularly wary of estate planning services where you have no personal contact with the attorney who draws the documents. You are much better off choosing a professional of long standing who will be available to assist your loved ones than to purchase a packaged product from someone who may or may not be available when assistance is necessary. The selection of other members of the estate planning team is also important. Your CPA, financial planner, and insurance agent are also important members of the team.

D. Scope and Nature of Representation

Your attorney is bound by the code of professional conduct with respect to representation in estate planning matters. Information regarding your estate planning discussed with your attorney is privileged. Of course, you will usually authorize your attorney to discuss your estate planning with your other advisors in order to gather information. Certain ethical problems arise when an estate planning attorney is representing a husband and wife jointly with respect to estate planning. The basis of representation should be established early on. In the normal case, the attorney will be representing the couple jointly in an “open” attorney/client relationship. This means that there is no privilege as between the husband and wife, and that all matters discussed by either party can be revealed to the other. In any event, the scope of the representation should be clearly set forth and established in writing.

E. Cost

The cost of planning your estate will vary depending upon the nature of your estate and the complexity of the plan. The cost of estate planning for a couple with a modest estate is very affordable. As the nature and complexity of the assets or family situation increases, the cost will increase accordingly. The important thing is to understand the cost and expense up front and to know what you will receive in exchange for the fees charged. Most attorneys will give an estimate of charges, or in some instances, even quote a flat fee
for document preparation. Consultation with respect to planning matters is often done on an hourly basis. A written fee agreement is recommended to avoid any questions with respect to the cost involved. Many times the fees are set in increments based upon the amount of services rendered. For example, a basic fee will be given for wills, powers of attorney, medical powers of attorney, and directives to physicians. If further tax planning or documentation is needed, then fees for the additional planning will be quoted based upon what the client chooses.

III. The Estate Planning Environment

A. Community Property

Texas is a community property state. In Texas, all property acquired by a couple during the marriage is presumed to be community property. All property is community property unless it is acquired by gift, inheritance, or is owned by the spouse at the beginning of the marriage or unless the couple formally agrees otherwise. There are three classifications of community property: the husband’s sole management community property, the wife’s sole management community property, and the joint community property. The determination of the classification of community property can be important with respect to creditor’s claims and management of the property. Generally speaking, a spouse is allowed to dispose by will his or her one-half of the community property and all of his or her separate property. If a spouse’s separate property is not kept separate, and a spouse is unable to trace the separate property ownership of property, then the presumption of community property will control. The titling and ownership of assets for estate planning purposes can be extremely important. This is a complex area that should be thoroughly reviewed as a part of the estate plan.

1. Marital Property Agreement

Couples may agree either before or during marriage to partition community property into separate property and to designate which property is their separate property going into a marriage. The general rule that income from separate property is community property can also be modified by agreement. Many individuals entering into a marriage having significant separate property will sign a prenuptial agreement to ensure that the separate property remains separate in the event of a subsequent termination of the marriage by divorce. Each person should be represented by independent counsel with respect to the marital property agreement.
2. Transmutation

Texas allows spouses to agree to convert separate property into community property. This can be very beneficial for estate planning purposes in certain instances. Under current federal tax law, both halves of the community property receive a new basis at the death of either spouse. In addition, conversion from separate to community can be useful to take advantage of the applicable exclusions of both spouses in appropriate circumstances. The disadvantage of conversion is that the spouse having separate property is giving up the separate property nature of the converted asset, thus losing control of its complete disposition, and possibly exposing the asset to claims of creditors of the other spouse.

3. Moving To and From Texas

There are many community property and separate property issues involved when couples either move into Texas or move out of state from Texas. Any time you leave the state for another jurisdiction or if you own assets in another jurisdiction, this should be thoroughly discussed with your estate planning counsel.

B. Descent and Distribution

In Texas, property is inherited as follows in the absence of a will:

Married persons:

(1) If you are married and if all of your children are also the children of your current spouse, then your spouse will inherit all of your community property. Your children will inherit a 2/3rds interest in every item of your separate property. The remaining 1/3rd of each item of separate property will go to your spouse, but if the item is real estate, it returns to your children upon the death of your spouse.

(2) If you have children from a previous marriage, your children will inherit all of your 1/2 of the community property. Your spouse will keep his or her 1/2 of the community property. Your separate property will be distributed the same way as in the previous paragraph.

(3) If you have no children, your spouse will inherit all of your community property. Separate property that is not real estate will also go to your spouse. Separate real estate will go half to your spouse, 1/4th to your mother, and 1/4th to your father. If either parent is deceased, that parent’s share will be inherited by your siblings if they survive you. If none of your parents or your siblings or their descendants survive you, your spouse will inherit all of your separate real estate.
Unmarried Persons:

(1) If you are not married (this includes being widowed or divorced): Your children will inherit all of your property equally. If any child has died before you, his share will go to his children. If he has no children, it will go to your surviving children. If a child of a deceased child is also deceased, but has left a child of his own (your great grandchildren) that great grandchild will get his share of your estate, and so on.

(2) If you have no children, your father will inherit 1/2 of your property and your mother will inherit the other 1/2. If either parent is deceased, your siblings will inherit that parent’s share. If a sibling is deceased, but has left a child (your niece or nephew) that child will inherit its parent’s share, and so on. If a sibling is deceased, and has left no children, the surviving siblings will take the sibling’s share. If neither of your parents nor any of their descendants survive you, your grandparents will inherit your estate equally. If either grandparent has died before you, your aunts, uncles and cousins will inherit your estate.

In many instances, the Texas laws of descent and distribution do not accurately reflect a person’s desires and intentions with respect to the distribution of his or her estate. This is one of the important factors as to why each individual should have a will.

C. Texas Probate Process

“Probate” is the process by which a person’s expenses and debts are paid and legal title to his or her estate is distributed to the persons entitled to it. To “probate” a will means that a court has legally recognized the will as a Decedent’s last will and testament. If a person has a properly drawn will, the probate process in Texas is very efficient and can be accomplished in a matter of a few weeks in the simplest of estates. In larger estates, there will be tax returns and other items which need to be completed whether or not the estate goes through probate. A will that appoints an “independent” executor allows the executor in Texas to act free of court supervision for almost all purposes. If a person dies without a will, and all of the heirs agree to the appointment of an independent executor, the estate process can be completed expeditiously even in the absence of a will. However, if there is no will and no agreement among the heirs with respect to the appointment of an executor, a “dependent” administration may result in a long and expensive probate process. In very simple estates where there is no disagreement, many times affidavits of heirship, small estates affidavits and other procedures can be used to save the family time and expense. It goes without saying that proper planning will save much time and expense for the surviving spouse, children or other heirs of an estate.
D. Non-Probate Assets

Non-probate assets are those assets which are not disposed of by will or descent and distribution. The transfer of such assets at death is controlled either by an account contract or beneficiary designation. Examples of such assets are joint accounts with right of survivorship, life insurance policies and employee benefits. The non-probate assets should always be considered an important part of the estate planning process and their disposition should be coordinated with your estate plan.

E. Estate, Gift and Inheritance Taxes

In 2006, the Federal estate tax applicable exclusion is $2,000,000.00. Therefore, if a person’s gross estate (that means all assets of every kind transferred by the Decedent at the time of death, including lifetime adjusted taxable gifts) is less than $2,000,000.00, then no estate tax return has to be filed. If all assets are located in Texas there is no separate inheritance tax. The exclusion increases so that the applicable exclusion is raised to $3,500,000.00 in 2009. The estate tax is repealed in 2010, but unless the law is changed before then, it is reinstated in 2011 as it existed in 2001, the effect of which is a reversion to a $1,000,000.00 applicable exclusion. The new estate tax law also gradually reduces the estate tax rate and changes rules regarding the income tax basis of property received from a decedent. Most likely, Congress will take some action to change the existing rules before 2011, but in the meantime the planning process for high net worth individuals and families has become more complex. Deductions from the estate tax include administration expenses, qualifying gifts to a surviving spouse (the marital deduction) and gifts to charity. The exclusion for lifetime gifts has been frozen at $1,000,000.00.

IV. The Estate Planner’s Basic Tools

A. Will

The will is the cornerstone of every estate plan. A well-drafted will identifies the Testator’s (will maker) family and makes clear the desires and intentions of the Testator with respect to the distribution of the estate. The will may provide appropriate tax planning, if necessary, and will usually provide trusts for young children to avoid guardianship and name personal guardians for minor children. In Texas, a properly drafted will will always provide for an independent executor to serve without bond so the only appearance at the courthouse that will be necessary is the probate hearing and subsequent filing of an inventory. A well-drafted will also makes provision for the payment of debts, expenses and taxes, and authorizes the personal representative (executor) of the estate the authority to sell assets as appropriate to pay debts and to partition and distribute the estate.
in accordance with the terms of the will. The will may or may not provide for fees for the personal representative.

B. **Durable Power of Attorney**

Durable Power of Attorney names an agent to manage your business affairs. The durable power of attorney is a very important document because it survives your disability, which avoids the necessity of a court supervised guardianship. The document should give appropriate authority to the agent to manage business affairs. It can also give authority for the agent to do estate planning, such as making annual exclusion gifts or doing other necessary things to reduce taxes. Guardianships will terminate the authority of the agent under a durable power of attorney. To avoid problems, the execution of a guardianship designation may be recommended. As with any relationship, the power granted to an agent under a Durable Power of Attorney can be abused. Care should be taken in naming the agent to insure that the Durable Power of Attorney will only be used for the proper purposes.

C. **Medical Power of Attorney**

This important document allows the appointed agent to make medical decisions in the event the person creating the medical power of attorney is unable to do so. The medical power of attorney will allow the agent to make decisions with respect to care and treatment in coordination with the individual’s attending physician and other family members.

D. **Directive to Physicians**

The “living will” is a document which expresses the individual’s desires and intentions with respect to end of life medical treatment. This form was amended recently and should be carefully reviewed prior to signing.

E. **Coordinating Non Probate Assets**

1. **Life Insurance**

   Even in non-taxable estates, the beneficiary designation of life insurance is critical. Usually, an individual will name his or her spouse as the primary beneficiary of life insurance. If there are minor children, naming the children as a contingent beneficiary may result in guardianship. The life insurance contingent beneficiary designations should name a trustee for the minor children named in the last will and testament as the beneficiary of the life insurance.

2. **Employee Benefits**

   The beneficiary designations on employee benefits and IRAs are of
importance in determining the future distribution of the plan proceeds. In most instances, the surviving spouse must be named as the beneficiary of a qualified plan. If qualified plan benefits have been rolled to an IRA, then beneficiaries other than the surviving spouse can be named without the surviving spouse’s consent, subject to potential claims of the spouse regarding his or her community property interest in the IRA. However, the surviving spouse is usually the best beneficiary of these plans because he or she is the only beneficiary that has the ability to roll the plan proceeds over into an IRA of his or her own. You should consult with your estate planning professionals with respect to the beneficiary designations on employee benefits.

3. Joint Bank Accounts

Joint bank accounts should also be coordinated with the estate plan. In smaller estates where the husband or wife is the sole beneficiary, joint accounts with right of survivorship are very convenient. However, in estates where estate planning is being done, your estate planner will generally recommend that bank accounts and other investment accounts not be held with right of survivorship.

F. Selection of Fiduciaries

1. Basic Factors

The person that you name as executor or trustee in your will, or as your agent under a power of attorney should be of high character and integrity and have the basic ability to listen to good advice, make good decisions and to exercise sound judgment with respect to your estate and its administration. Most couples will desire to name the surviving spouse as executor of the estate. If minor children are involved, a couple will have to decide who will serve as trustee for the minor children and in addition, who will serve as alternate executor of the estate. Factors such as location, experience and ability, knowledge of family history and other issues are involved in the selection of fiduciaries.

2. Corporate Trustee

In some instances, a bank or trust company is an appropriate choice of fiduciary. This is true in situations where family members are not appropriate choices or where there are no family members to serve, or when the nature or size of the estate indicates the need for professional management.

G. Designation of Guardian

A couple should always name guardians for their minor children either in their wills or by separate designation.
H. HIPAA Release

The Health Insurance Portability and Accountability Act (HIPAA) protects health related information and may make it more difficult for an agent under a Medical Power of Attorney to obtain health care information. The HIPAA Release has become another important estate planning document. This document will allow the person named as an agent under a medical power of attorney to access medical records of the Principal in order to assist in making health care decisions in the event of incapacity.

V. Wills Versus Revocable Living Trusts

A. Uses and Abuses of Living Trusts

A living trust is a trust agreement signed during life that creates the trust. This trust document usually names you or you and your spouse as trustee and beneficiaries. During your joint lifetimes, you are authorized to make distributions from the trust property to yourself and to revoke the trust at anytime. When you die, either all of the trust assets or your portion of the trust assets are distributed in accordance with the terms of the trust. The promoters of living trusts state that they are beneficial to avoid probate. Probate is avoided only if all of your assets are transferred to the trust and administered in the trust format. A will is still required even if you have a living trust to cover any assets which were not transferred to the trust. In Texas, the goal of avoiding probate is not necessarily a valid reason to use a living trust. Living trusts are very beneficial documents in the correct circumstances. Individuals should obtain competent counsel to determine whether a living trust is the appropriate document in their particular situation. The purchase of an expensive document that does not correctly carry out your desires and intentions based upon the scare tactics of unscrupulous salesmen is certainly not a valid reason to enter into a living trust. You should remember that living trusts do not save taxes in themselves. Any tax benefits that can be obtained in a living trust can also be obtained in a will. However, there are some valid reasons for creating living trusts in certain circumstances such as the following: (i) disability planning; (ii) out of state assets; (iii) will contest avoidance; (iv) privacy; (v) you want to avoid probate for reasons other than cost savings and you own assets that need to be probated. Remember, generally speaking, assets such as life insurance, IRAs and employee benefits, survivorship bank accounts and other potential assets, are not subject to probate.

B. Be Careful

The point with revocable living trusts is to make sure that you are doing this sort of planning for the right reasons. If someone is preparing documents
handling the distributions of your important financial and property assets, this should be a person who is a licensed professional and who will be there and available when the time comes to assist your family in the implementation of your plan. Overall, the cost and expense in time and inconvenience to your family will be minimized.

C. The Uses of Trusts in Estate Planning

There are many uses for trusts in estate planning. The “testamentary trust” created in a person’s will is the basic vehicle in tax planning in a will based estate plan. In addition, trusts are wonderful vehicles used to protect children, to potentially avoid the claims of creditors of the non-grantor beneficiary of the trust, to provide funds for education for children and grandchildren, for lifetime tax planning, and for many other beneficial uses.

VI. Estate and Gift Tax Planning

A. When to Consider Tax Planning

In 2006, if the combined assets of a couple including all of their separate and community property, life insurance, employee benefits and other assets exceeds $2,000,000.00, then it will be appropriate to consider planning to avoid estate taxes. In 2006, a couple with proper planning can shelter $4,000,000.00 from estate taxes. In 2009 the amount will be increased to $7,000,000.00. The estate tax is scheduled to phase out altogether in 2010 and then come back again in 2011. For individuals with large estates, planning is now more important than ever. With proper planning, the vast majority of Americans pay no estate and inheritance taxes. Without proper planning, however, many people inadvertently pay taxes who would otherwise not have to do so.

B. The Basic Tax Plan

For most couples, the basic tax plan includes wills which shelter the applicable exclusion amount by the creation of a “by-pass” trust and distribute any property in excess of the exclusion amount either outright to the surviving trust, or into a marital trust. In this manner, the entire exclusion of each spouse is utilized and payment of estate taxes can be either completely avoided or at the very worst, delayed until the death of the surviving spouse.

C. Generation Skipping Transfer Tax

Individuals with larger estates should be aware of and plan to deal with the Generation Skipping Transfer Tax. This tax is separate from and in addition to the estate tax. Generally speaking, transfers to “skip persons”
i.e. grandchildren are subject to the tax. Each individual has an exemption from the tax of $2,000,000.00 ($1,000,000.00) for lifetime gifts. Efficient use of the exemption can result in minimizing estate tax in successive generations. If a transfer becomes subject to the GST Tax the transfer is taxed at the maximum estate tax rate.

D. Annual Exclusion Gifts

Each person may transfer free of estate and gift tax the sum of $12,000.00 per donee in each calendar year. For a couple, each would be able to distribute $12,000.00 to the same person for a total of $24,000.00 per person. This can be to children, grandchildren, or to any other individual selected by the person making the gift. Gifts can be made outright, or if properly structured, can also be made in trust, or even given to education plans created by federal law. The proper use of annual exclusion gifts over many years can transfer hundreds of thousands of dollars to the next generation free of tax and remove this property from the tax base. The applicable exclusion amount for gifts, $1,000,000.00, can be utilized by making gifts during your lifetime. Under current law, the gift tax exclusion stays at $1,000,000.00 even though the exclusion for estate tax will be increasing over the next few years as outlined above. Gifts in excess of the annual exclusion amount will absorb a portion of the lifetime applicable exclusion amount based upon the fair market value of the gift at the time of the gift. Any appreciation of the property after the gift will escape estate taxation. The applicable gift tax exclusion is often utilized during lifetime in an effort to leverage the amount of the applicable exclusion and to save taxes. These techniques can be discussed with your estate planner if you are in a situation where you will pay or potentially pay estate taxes.

E. Planning for Education

The annual exclusion gift can be used to plan for children’s and grandchildren’s education. In addition, there are a number of programs which can be used for the future education of children and grandchildren including gifts to minors custodial accounts, education trusts, state sponsored plans, and other planning techniques.

F. Life Insurance and the Irrevocable Life Insurance Trust

For most individuals, life insurance is owned personally and the spouse and children are the beneficiaries of the life insurance. However, for persons facing estate tax liability, ownership of life insurance simply adds to the estate tax base. Individuals facing estate tax should consider transferring ownership of life insurance or initially buying life insurance in an irrevocable life insurance trust. If the Decedent has no incidents of
ownership in a life policy, the policy proceeds will not be included in his or her estate. The proceeds of the life insurance can then be used to replace funds that are used to pay estate taxes or to purchase assets from or loan money to the Decedent’s estate for the payment of estate taxes, while the life insurance proceeds will not be included in the estate tax base.

G. Employee Benefits

For many individuals, employee benefits and IRAs are the largest single asset in their estate. Proper planning for and designation of beneficiaries of employee benefits is of utmost importance in the estate planning process. For most individuals, it makes the most sense to name the spouse as the primary beneficiary of employee benefits. In some instances, the by-pass trust or other trust can be named either as a primary or secondary beneficiary. Many people provide in the beneficiary designation that if the spouse disclaims a portion of the interest in the employee benefit or IRA that it will be distributed to the by-pass trust. Most experts in this area will advise to defer the distribution from the qualified plans as long as possible to continue to receive the internal build up of the plan tax free. This is a very complicated area which must be looked at for each individual very carefully.

H. Advanced Planning Techniques

There are a number of advanced planning techniques which are used to take advantage of potential appreciation of assets in excess of rates allowed by the Federal government and to manage and control family assets while at the same time obtaining tax benefits. Examples include grantor retained annuity trusts, family limited partnerships, charitable lead and remainder trusts and generation-skipping planning.

VII. Conclusion

I hope this outline has been a useful introduction to Texas Estate Planning. It is intended as a guide and starting point for the individual client in the estate planning process. Proper planning involves more than signing a set of documents. Careful consideration must be given to all aspects of each client’s unique situation. The involvement of a qualified estate planning attorney in the planning process cannot be overemphasized.