

ESTATE PLANNING

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INTRODUCTION

This booklet is designed to give you information on the estate planning process. It will also give us, as your attorneys, a picture of your financial and family status that will help us recommend an estate plan to accomplish your family objectives and to minimize the tax burden on your estate.

CLIENT SERVICE

We provide individualized attention to each client. While people often have similar objectives, each family situation is unique and the estate plan must be tailored to the psychological, family, and financial objectives of each individual. As we work with you to formulate a plan that is right for you we will:

- **Listen.** There are no quick answers or standard solutions. We need to ask you questions, and we need to hear your answers.
- **Understand Your Objectives.** A good estate plan is one that implements the proper tools to achieve your objectives. Many of the questions in this booklet are designed to help you define your own objectives and to assist us in understanding them.
- **Develop Solutions.** Achieving your objectives may involve very simple or very complex solutions, depending on your particular situation. There may be gifts to family or charities, use of trusts, use of the marital deduction, charitable gifts or bequests, educational funds for children or grandchildren, powers of attorney, and other planning instruments. Our understanding your estate and your objectives will help us make recommendations that are right for you.
- **Satisfy your needs.** Our goal is to give you an estate plan that meets your objective. Most importantly, a good estate plan gives you peace of mind and a sense of comfort and security that your affairs are in order.

JOINT REPRESENTATION

The legal profession is appropriately concerned about joint legal representation of clients. A husband and wife may have different interests and objectives in estate planning. If we are to act as attorneys for both of you, we will try to explain the consequences of the decisions you make and balance all of the factors. We cannot, therefore, be an advocate for either of you against the other. This process could favor one of you to the detriment of the other.

The attorney-client relationship is one of absolute confidentiality: we cannot reveal any information to others without your express consent. In the planning process, we will necessarily obtain confidential information from each of you. When we represent both of you, we cannot keep that information confidential from either of you. That is, information revealed by one spouse cannot be kept confidential from the other spouse.

We will probably make recommendations that affect your property interests after your deaths. Our recommendations may be more beneficial for one of you than for the other. The possibility of a divorce must also be recognized. Consequently, our recommendations could affect the income, property and support provisions in any such divorce or after your deaths.

You are each, of course, entitled to have your own separate counsel for any part or all of the matters to be discussed. If you do wish us to proceed with estate planning assistance to you, please sign below:

I have read the statement above and I understand that conflicts of interest may exist or arise between my spouse and me in the matters about which we are consulting you. If I wish to have separate counsel or desire that you not be involved in any aspect of estate planning on my behalf, I shall notify you in writing. I consent to have your firm represent both of us in our estate planning until you are notified otherwise in writing. I understand that where you are representing both of us on the same matters, as among my spouse, you, and me no confidential communications are possible.

Date: _____

FREQUENTLY ASKED QUESTIONS ABOUT ESTATE PLANNING

One way to introduce estate planning is to answer some questions clients frequently ask us. We believe that these questions and answers are important enough to include here. We hope you find them informative.

1. **What is an estate?**

An estate is the total real and personal property that a person owns or has an interest in. For estate planning purposes, there are two kinds of estates: probate and taxable.

Probate is a court procedure that decides if a will is valid, and oversees the administration of a will. Generally, the **probate estate** consists of property that you own solely in your name at the time of your death. A joint bank account with right of survivorship, for example, would not be part of your probate estate.

The **taxable estate** includes the probate estate, but also includes any other property in which you have an ownership interest. In the example above, your half of the joint bank account would be part of your taxable estate at your death.

2. **What if I die without a will?**

This is known as dying "intestate". In this case, state law will create an estate plan for you. The rules are too complex for detailed discussion here, but generally speaking your estate will be divided among your spouse and your blood relatives. This may not be what you want to happen, particularly if your children are minors at the time of your death, since the state will probably impose a guardianship of the children.

If your spouse and children survive you, half of your probate assets will pass to your surviving spouse and the remaining half to your children. If your spouse survives you alone, part of your estate can pass to your parents or siblings. If only your children survive you, leaving no surviving spouse, your entire estate will pass to your children. If they are minors, a guardianship will be necessary to manage their property.

3. **What is an Executor or an Administrator?**

An Executor or Administrator is the appointed by the probate court to be the primary representative of your estate. The court appoints an Executor if you have a will. This will be the person named in your will unless that person is unable to serve or there is a successful challenge to the will. The court appoints an Administrator if you do not have a will.

4. **What is "administration" of my estate?**

Administration of an estate involves the collection of assets, payment of liabilities, and distribution of property to the beneficiaries or heirs. Administration of an estate is conducted under some degree of probate court authority and supervision, but different procedures are available. If you own more than \$15,000 in probate property the process is formal and extensive, and can take a year or more to complete.

5. **What is a trust?**

A trust is a legal entity that owns property for the benefit of someone else (the beneficiary). A properly drafted trust is one of many estate planning tools, and is not an end in itself. Each trust should be designed to produce a specific result.

If a trust appears suitable for your estate plan, you will need to exercise care in the selection of a trustee – the person or organization who administers the trust - and give a great deal of thought to the powers you give to the trustee.

A **living trust** is a trust that you create during your lifetime. A **testamentary trust** is one that is created by your will.

6. **What is a durable power of attorney?**

A power of attorney is a written instrument by which you designate someone as your agent ("attorney in fact") to perform certain acts on your behalf. The power you grant to the agent may be very specific, such as signing documents for the sale of real estate, or very broad, authorizing the attorney in fact to do anything necessary to manage your finances. The powers you give your attorney in fact will be in effect when the document is signed.

Not all powers of attorney are durable. Normally a power of attorney terminates on your death or disability. A Massachusetts law allows you to designate a power of attorney as "durable", which means that it will not be affected if you become disabled or incapacitated. This provision in the law allows you to designate someone to act if you are disabled and unable to do so yourself. The power can be drafted so that it becomes effective only on your disability. Given the scope of authority conferred by a general durable power of attorney, the attorney in fact must be someone in whom you have complete trust and confidence.

7. **I just want a simple will. Why should it be more than one page long?**

Your will could be drafted to be no longer than one page, but it may not accomplish your objectives. A will should cover all the various factual and legal situations that might arise. The will that we draft for you may end up being a lengthy document. While it may seem difficult to review and approve a long will, it may be a blessing to your family when they find that you have anticipated and resolved potential problems.

8. **What is community property?**

Massachusetts is not a community property state. Community property means that property owned by a married couple is deemed to be owned one-half by each spouse, regardless of the legal title to the property. In common law jurisdictions, legal title generally controls the ownership interests. Massachusetts is a common law jurisdiction. Louisiana, Texas, New Mexico, Arizona, California, Nevada, Washington, Idaho and Wisconsin are community property states.

9. **How will my estate be taxed at my death?**

Your estate may be subject to the federal estate tax and the Massachusetts estate tax. In addition, if you own real estate or tangible personal property in another jurisdiction there may be an additional estate tax due in that jurisdiction. The federal estate tax is based on the fair market value of your taxable estate at the time of your death. It will include the value of all the property in which you had an interest at the time of your death, or over which you have retained or received certain rights or powers.

The estate tax scheme provides you with a marital deduction for bequests of property to your surviving spouse. This allows your estate to go to your spouse free of estate tax (although there are some technical requirements). The tax rules also allow you to deduct up to \$700,000 of property you give to another person or entity (this will rise progressively to \$1,000,000 in 2006).

The availability of the unlimited marital deduction allows many estates to pass free of federal

estate tax to the surviving spouse. It is not entirely tax-free: the tax is **deferred** until the second spouse dies. (Note that special rules apply when the surviving spouse is not a U.S. citizen.) While this result seems desirable initially, in some instances there may be some advantage to structuring the estate plan to take advantage of the individual deduction for each spouse.

10. **What is the Generation–Skipping Tax?**

The generation-skipping tax is a federal transfer tax that is separate from the gift and estate taxes. Generally it applies to a transfer of property to a grandchild (the transfer skips the child's generation). There is a \$1 million exemption for each person from this tax

11. **What property will not pass under my will?**

Proceeds from life insurance policies and retirement benefits will pass automatically to the designated beneficiaries. Property held jointly with a right of survivorship, such as joint bank or brokerage accounts, or the marital home, will pass to the surviving joint account holder.

12. **Who will raise my minor children after my death?**

If you die leaving minor children, the other parent ordinarily will raise and support them. If the other parent is not living, however, your minor children will require a guardian. You may appoint a guardian for your children in your will. If you do not, the probate court will appoint one. A guardian has only limited power over the minor's property, so it is usually wise to establish a trust to administer the property of minor children.

13. **What is a Health Care Proxy?**

A health care proxy is a document in which you may designate an individual to make decisions concerning your health care when you are unable to do so. A health care proxy is similar to a durable power of attorney, but deals specifically and exclusively with health care decisions.

14. **What is a Living Will?**

A living will is an expression of your desires for end-of-life care. It sets forth your wishes about such things as whether you want to be kept alive on a respirator, ventilator, feeding tube or other artificial means. Although a living will may be useful for your health care agent as well as your medical providers, it does not have independent legal force in Massachusetts.

15. **How often should I review my estate plan?**

As a general rule, we suggest that review your plan every few years. You will also want to review it in the event of any significant change in your finances or in your family situation. A substantial increase in your estate (through inheritance, gifts, or successful investments) may create opportunities for tax savings, as well as necessitate further family financial planning. A substantial decrease in your net worth may also necessitate a revision in your estate plan. A divorce, marriage, or second marriage, will re-open completely the matter of planning your estate.

ESTATE PLANNING OBJECTIVES

A successful estate plan should accomplish your objectives. To assist you in defining your objectives we have created a checklist that cites many of the objectives sought by other clients. Please check the ones that express your views regarding the following beneficiaries. Do not hesitate to make additions and comments.

Objectives For Husband Wife

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Provide a home for spouse |
| <input type="checkbox"/> | <input type="checkbox"/> | Provide security of income for spouse |
| <input type="checkbox"/> | <input type="checkbox"/> | Provide business management of spouse's property |
| <input type="checkbox"/> | <input type="checkbox"/> | Enable spouse to provide for our children |
| <input type="checkbox"/> | <input type="checkbox"/> | Protect spouse against improvidence |
| <input type="checkbox"/> | <input type="checkbox"/> | Give spouse freedom to manage own affairs |
| <input type="checkbox"/> | <input type="checkbox"/> | Enable spouse to enter into business or to continue my business |
| <input type="checkbox"/> | <input type="checkbox"/> | Protect spouse against the incapacity through old age and illness |
| <input type="checkbox"/> | <input type="checkbox"/> | Provide for my parents or siblings |
| <input type="checkbox"/> | <input type="checkbox"/> | Give the maximum amount of my estate to our children |
| <input type="checkbox"/> | <input type="checkbox"/> | Ensure that certain persons get specific property |
| <input type="checkbox"/> | <input type="checkbox"/> | Ensure that certain persons to not get any of my property |

Children

- | | |
|--------------------------|--|
| <input type="checkbox"/> | Provide for their education |
| <input type="checkbox"/> | Provide for special needs or protection |
| <input type="checkbox"/> | Enable them to make their own career |
| <input type="checkbox"/> | Protect them against a designing or incompetent spouse |
| <input type="checkbox"/> | Enable them to enter business or to continue my business |
| <input type="checkbox"/> | Prevent them from disposing of my wealth |
| <input type="checkbox"/> | Provide business management for their property. |
| <input type="checkbox"/> | Enable them to provide for their families |

Grandchildren

- | | |
|--------------------------|---|
| <input type="checkbox"/> | Provide for their education |
| <input type="checkbox"/> | Provide for special needs or protection |

Parents

- | | |
|--------------------------|--|
| <input type="checkbox"/> | Provide for their care and protection in old age |
| <input type="checkbox"/> | Give specific property |

Siblings

- | | |
|--------------------------|---------------------------|
| <input type="checkbox"/> | Provide for special needs |
| <input type="checkbox"/> | Give specific property |

Charity

- | | |
|--------------------------|--|
| <input type="checkbox"/> | |
|--------------------------|--|

Other

- | | |
|--------------------------|--|
| <input type="checkbox"/> | |
| <input type="checkbox"/> | |

FAMILY INFORMATION

	Husband	Wife	
Full name			
Residence address			
Business address			
Home phone			
Work Phone			
Fax			
Email			
Date of birth			
Social Security No.			
Previously married?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, did marriage end in	<input type="checkbox"/> Death <input type="checkbox"/> Divorce	<input type="checkbox"/> Death <input type="checkbox"/> Divorce	
Children	Name	Date of Birth	His Hers Ours
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

If a previous marriage ended in divorce, what arrangements were made as to child custody and support?

Did you and your spouse sign a prenuptial or postnuptial agreement? If so, please provide us with a copy, including asset schedules and any amendments.

Are any children or issue adopted, divorced or separated, physically or mentally handicapped or do any of them require special consideration?

Parents and other Family Members. In preparing your estate plan, it is important for us to know if you might inherit property from your parents or other family members, and whether you are supporting any family members.

Husband		Wife		
Father	Mother	Father	Mother	
				Are your parents living?
				What are their ages?
				Describe their health (good, fair, poor).
				In what state do they live?
				Marital status (single, married, divorced, widowed).
				Do they have wills?
				Approximate amount of inheritance you might receive?
				Do you now support them or is it likely you will support them in the future?
				Is it likely that they will need financial support in the future?

Husband		Wife		
Yes	No	Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Is there any other information about either of your families that would be relevant to your estate plan? (attach extra pages)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Do you, your spouse, or your children expect a substantial inheritance from anyone other than your parents? If yes, please explain and state approximate amount of such inheritance.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Were you in the armed forces? If yes: Branch _____ Serial# _____ Date Entered _____ Date Disch. _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Do you have a will? (if yes, please attach copy)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Have you ever established a trust? (If yes, please attach a copy)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are you or any of the members of your family beneficiaries of any estates or trusts?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are you or any of the members of your immediate family now a trustee of a personal trust or likely to be a trustee of a personal trust in the future?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Do you presently have a financial durable power of attorney?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Do you have a living will and/or health care proxy? If yes, please attach a copy.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Do you have a safe deposit box?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Does anyone other than you have access to it? If yes, who?

BENEFICIARIES AND REPRESENTATIVES

	Husband	Wife
Primary Executor <i>name and address</i>		
Alternate Executor <i>name and address</i>		
Primary Guardian <i>name and address</i>		
Alternate Guardian <i>name and address</i>		
Primary Health Care Agent <i>Name and address</i>		
Alternate Health Care Agent <i>Name and address</i>		
Durable power of attorney to <i>Name and address</i>		
Specific bequests		
Disposition of tangible personal property		
Disposition of Real Estate		
Disposition of Remainder		
Disposition if none of named beneficiaries survive		
Does executor need special expertise?		
Is there a bequest to a trust?		
Is the executor a beneficiary?		

FINANCIAL INFORMATION

The sources of your income and the nature of your assets will have significant impact on our recommendations. The following questions are intended to determine the precise nature of these items. Your assets may raise special problems of transfer at your death, and the assets may suggest a number of options with regard to income, estate, and gift tax planning. The nature of your assets also may influence the selection of the person or institution that should serve as an executor or trustee of your estate.

Employment. If you or your spouse is employed other than in your own business, please complete this paragraph. If either of you is a sole proprietor, a partner, or a shareholder in a closely held corporation, you will need to complete questions posed later.

	Husband	Wife
Name of employer		
Position or title		
Contact person for benefit information		
Contact person telephone number		

Husband		Wife		Employee Benefits in which you participate
Yes	No	Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Profit Sharing
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Group Life
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pension
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	401(k) or 403(b)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Group hospitalization
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Salary continuation
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Group disability insurance
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Stock options
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Employment contract
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other benefit plan

Prior Gifts. Gifts are taxed in accordance with a unified rate schedule that cumulates all lifetime gifts. You and your spouse are entitled to transfer certain limited amounts without the payment of any gift tax. If the motive of a lifetime gift is to save income tax or estate taxes, the gift must be planned carefully. This section inquires into prior gifts.

Yes No Have you ever filed a gift tax return? If yes, please furnish us a copy of the latest return.

Yes No Have you ever made a gift to a minor under the Uniform Gifts to Minors Act or under the Uniform Transfers to Minors Act? If yes, who is the custodian?

Annual Income. Please set forth below your estimate of this year's income:

	Husband	Wife
Earnings from employment		
Dividends and interest		
Capital gains		
Other		

Assets and Liabilities. Please list your assets and liabilities below or attach a personal balance sheet.

Assets	Husband	Wife	Joint
Real Estate			
Personal Property			
Stocks and bonds			
Cash (bank and savings accounts)			
Retirement fund (IRA, 401(k), etc.)			
Other			
Liabilities			
Mortgages			
Credit Cards			
Personal Loans			
Other			

INSURANCE

Insurance is an important estate planning tool. Life insurance can provide significant financial security if an individual dies while building his or her estate. Later in life, after a substantial estate has been accumulated, life insurance can assure the availability of cash to satisfy any estate tax liability. The co-ordination of your life insurance beneficiary designations is an essential part of your estate plan.

	Husband	Wife
Amount of whole life insurance		
Cash value		
Owner		
Beneficiary		
Amount of term life insurance		
Owner		
Beneficiary		

BUSINESS INTERESTS

If you are a sole proprietor, a partner in a partnership, or a stockholder in a closely held corporation, significant tax considerations are raised. One of the most important of these is how your interest in such a business is to be valued at your death. The information sought in this section will aid us in recommending to you steps you might take during your lifetime to reduce the likelihood of such a controversy. In addition, it will determine whether or not you have made any arrangements with your business partners or fellow shareholders as to the disposition of your interest or their interests upon death or disability. For example, you may not want a widow or widower of one of your colleagues to be a shareholder or partner with you. Instead, you may want to provide for a buy out of the interest of a deceased business colleague at a fixed price or at a price to be determined according to a formula.

If you own a business as sole proprietor, have an interest in a partnership, or own an interest in a closely held corporation, please complete this portion of the questionnaire. We will ask for further details at our planning conference.

Name of business	
Type of business	
Estimated book value	
This year's earnings	
Last year's earnings	

- | | | |
|--------------------------|--------------------------|---|
| Yes | No | |
| <input type="checkbox"/> | <input type="checkbox"/> | Do you want to keep the business in the family? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is there an agreement requiring the sale of the business at your death? |
| <input type="checkbox"/> | <input type="checkbox"/> | If yes, who would become active following your withdrawal? |
| <input type="checkbox"/> | <input type="checkbox"/> | Are there any employees capable of continuing the business after your withdrawal? |