

**E S T A T E  
P L A N N I N G  
H A N D B O O K**



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# ESTATE PLANNING:

## A HANDBOOK FOR YOU AND YOUR FAMILY

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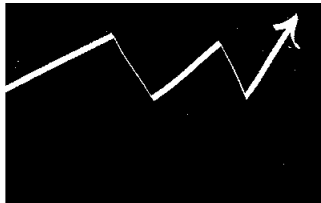
# ESTATE PLANNING: A DEFINITION

**DEFINITION:** Estate planning is nothing more than being prepared for the possibility of illness or death within one's family. Rather than leaving to chance the management of your assets accumulated over a lifetime of hard work, we recommend that you have a comprehensive plan:

## OBJECTIVES OF ESTATE PLANNING:

Most families have the following basic estate planning goals:

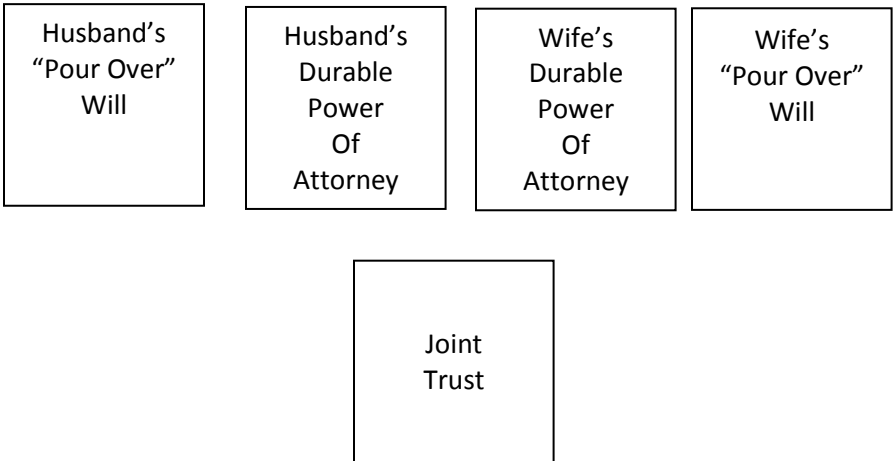
- ❖ Protection of you financial security
- ❖ Probate avoidance
- ❖ Estate tax reduction
- ❖ Second marriage planning
- ❖ Planning for high cost of nursing home care
- ❖ Distributing assets in desired manner to your children
- ❖ Planning for possible inheritances by your grandchildren
- ❖ Disability planning
- ❖ Health care planning (living wills, medical powers of attorney)
- ❖ Protection of assets accumulated over a lifetime
- ❖ Other goals unique to your family



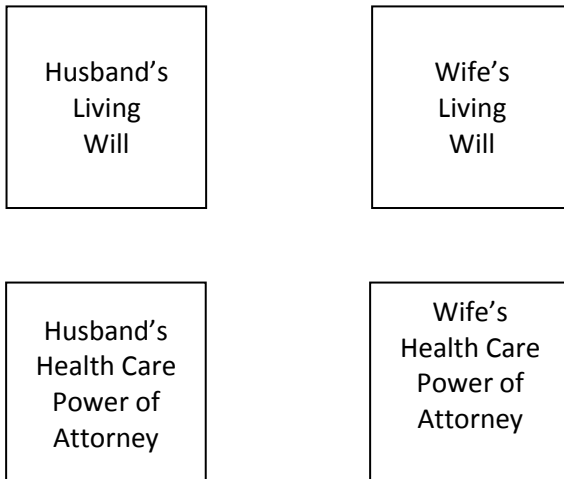
# OVERVIEW OF ESTATE PLANNING

## DOCUMENTS RECOMMENDED FOR COUPLES

### I. ASSET MANAGEMENT DOCUMENTS:



### II. HEALTH CARE DOCUMENTS:



# REVOCABLE LIVING TRUST

**THE REVOCABLE LIVING TRUST:** The Revocable Living Trust is clearly the preferred estate planning strategy for the 21<sup>st</sup> Century. Recent changes in IRS regulations have greatly simplified the use of the Revocable Living Trust. Many families have converted their estate plan from a “testamentary” plan (i.e., an estate plan controlled by a Will), to a “trust” plan (i.e., a plan controlled by a Revocable Living Trust).

## ADVANTAGES OF A REVOCABLE LIVING TRUST:

Most families have the following basic estate planning goals:

- ❖ Avoid Expense (up to 6%) and Delay of Probate (up to 2 years!)
- ❖ Disability Management
- ❖ Estate Tax Savings (taxes up to 35%)
- ❖ Second Marriage Planning
- ❖ Simplicity for Family Following Your Death
- ❖ Optional Protection for Your Adult Children’s Inheritance

Where:

- i. Child with creditor or marital problems;
- ii. Child with disability;
- iii. To insure that assets ultimately pass to grandchildren (and not in-laws).

## DISADVANTAGES OF A REVOCABLE LIVING TRUST:

- ❖ Required re-registration of major assets in trust name
- ❖ Attorney fees for drafting Trust are higher than for simple Wills
- ❖ Does not increase eligibility for government nursing home benefits

## YOUR CHOICE OF TRUSTEE:

Your Trustee can be any of the following:

- ❖ You (and/or your spouse)
- ❖ Your Children
- ❖ Bank Trust Department
- ❖ Other Corporate Trustee

# QUESTIONS OFTEN ASKED ABOUT REVOCABLE LIVING TRUSTS

## DO I LOSE CONTROL OF MY ASSETS?

The short answer is NO! A Revocable Living Trust is under your total control. Most of our clients initial name themselves as Trustee.

## DO MY WIFE AND I NEED A TRUST IF OUR ESTATE IS UNDER \$5,250,000?

While an estate under \$5,250,000 is no subject to federal estate taxes, a Living Trust still has the following benefits:

- ❖ Probate Avoidance
- ❖ Second Marriage Planning
- ❖ Management of assets in event of disability

## ARE THERE ANNUAL COSTS OR CHARGES ASSOCIATED WITH A REVOCABLE LIVING TRUST?

Usually not. If you are serving as your own Trustee, there are not Trustee's fees. Further, you should not have to consult with your attorney about your Trust any more frequently than every five or ten years (and then only to update your Trust, if there are changes in your family's circumstances, or major changes in your financial situation).

## WHAT ARE THE ATTORNEY'S FEES FOR PREPARATION OF A LIVING TRUST?

Our law firm published a schedule of fees that is available to you upon request. Our fees included all of the following services:

❖ Drafting of Trust	❖ Healthcare documents
❖ Pour-over Wills	❖ Assistance in funding Trust
❖ Durable Powers of Attorney	

## WHY DO I NEED A "POUR-OVER" WILL IF I HAVE A TRUST?

A "Pour-over" Will simply directs that any assets not placed in Trust during your lifetime be distributed to your Trust at your death. The "Pour-over" Will is a "safety net" that is usually never needed. However, if major assets are outside your Trust, the "Pour-over" Will insures that these assets are controlled by your Trust.

# SHOULD YOUR ADULT CHILDREN'S INHERITANCE CONTINUE IN TRUST?

## AN OVERVIEW:

Many of our clients have elected to have their Revocable Living Trust continue following their deaths, for the benefit of their adult children. Reasons for considering this have included.

- ❖ Protection of inheritance from claims by in-laws
- ❖ Children with creditor problems
- ❖ Children with marital problems
- ❖ Children with health problems
- ❖ Children too young or immature to receive a large inheritance

## ADVANTAGES:

- ❖ Protect inheritance against claims by child's creditors or spouse
- ❖ You can choose to spread receipt of an inheritance over as many years as you direct
- ❖ Alternatively, you can choose to provide your child with income for his or her lifetime, with the remainder passing on to your grandchildren.

## DISADVANTAGES:

- ❖ The Federal estate generation skipping tax makes it undesirable to place larger estates in ongoing Trusts (for amounts in excess of \$5,250,000).
- ❖ Some limitations on ability of child to invest in speculative investments

# LIVING WILLS AND MEDICAL POWERS OF ATTORNEY

## LIVING WILLS DEFINED:

A Living Will is a document directing that your physician not take extraordinary medical steps to prolong your life in the event you are suffering from a terminal illness or injury from which you have little possibility of recovering.

## A NEW ALTERNATIVE, THE MEDICAL POWER OF ATTORNEY:

If you feel strongly about avoiding prolonged and expensive medical care in hopeless situations, you may also wish to utilize a Medical Power of Attorney. A Medical Power of Attorney is a document by which you appoint another trusted person (usually a spouse or a child) to act on your behalf in the event you are unable to act for yourself, with regard to the hard decisions that must be made if you are terminally ill.

## DO “LIVING WILLS” AND “MEDICAL POWERS OF ATTORNEY” WORK?”

Arkansas law specifically recognizes the validity of Living Wills and Medical Powers of Attorney. Both documents serve to clearly communicate your wishes to both your physicians and your family. While there are no perfect solutions in resolving the delicate matter of continued medical care for the terminally ill, our law firm recommends that you utilize both Living Wills and Medical Powers of Attorney as the best means available to bring common sense to the health care decision making process.





# DURABLE POWERS OF ATTORNEY

## WHAT IS A “DURABLE POWER OF ATTORNEY”?

First, a Durable Power of Attorney has nothing to do with lawyers. A Durable Power of Attorney is simply a document by which you delegate to another person or institution the authority to act for you if you are disabled. You can customize your Durable Power of Attorney to provide for broad or limited powers.

## WHY DO I NEED A DURABLE POWER OF ATTORNEY?

All of us run the risk of becoming incapacitated by reason of stroke, accident, or advanced age. A Durable Power of Attorney delegates the responsibility for the management of your assets and your personal care to another person or institution. Our firm recommends that all of our clients execute a Durable Power of Attorney as a part of a comprehensive estate plan.

## WHY SHOULD A POWER OF ATTORNEY BE DESIGNED AS “DURABLE”?

This permits a Power of Attorney to remain effective despite your disability. However, it is necessary that your Power of Attorney express your intent that the Power of Attorney be “durable”.

## WHO CAN I DESIGNATE TO ACT FOR ME IN MY DURABLE POWER OF ATTORNEY, IF I AM DISABLED?

- ❖ Your Spouse  
(and/or)
- ❖ Your Children  
(and/or)
- ❖ Your Corporate Trustee

# Federal Estate Taxation (Updated January, 2013)

## What Estates Are Subject To Estate Taxation?

Only families with assets of \$5,250,000 or more (as of 2013) are subject to federal estate taxation. Further, to the extent that your assets pass outright to your spouse, your spouse can inherit your entire estate free of estate tax (no matter how large your estate!)

### NEW ESTATE TAX EXEMPTIONS

<u>Year</u>	<u>Amount</u>
2013	\$5,250,000*

\*This exemption amount is “inflation adjusted” and will increase each year.

### “THE A-B TRUST” TO REDUCE ESTATE TAXES:

If you are married, you and your spouse are eligible to take advantage of an “A-B Trust” (a form of a Revocable Living Trust) to achieve substantial tax savings for your heirs. This type of Trust potentially doubles your \$5,250,000 exemption. Possible tax savings to your children can be as much as \$1,837,000 in federal estate taxes.

Further, under the new “portability law” it’s possible to double your exemptions without the use of the “A-B” Trust; however, this has complex requirements, and is also subject to being taken away in the event the surviving spouse should remarry.

## OTHER MEANS OF REDUCING ESTATE TAXES:

Other methods of reducing estate taxes include:

- ❖ Gifts to Children
- ❖ Charitable Gifts
- ❖ Irrevocable Life Insurance Trust
- ❖ Qualified Personal Residence Trust
- ❖ Family Limited Partnerships
- ❖ Other Strategies

## WHAT ABOUT THE STATE OF ARKANSAS ESTATE TAXES?

The State of Arkansas no longer has an estate tax nor a gift tax of any kind. Therefore, the only estate tax you may be faced with is the federal estate tax



# SECOND MARRIAGE ESTATE PLANNING

## THE PROBLEM

Couples with children by prior marriages are the families that truly need comprehensive estate planning!

There is nothing more delicate than two sets of children of previous marriages (who don't necessarily know each other that well) trying to divide the assets of their respective mother and father. Further, a surviving spouse in a second marriage should have a comprehensive plan in order to insure that he or she remains on good terms with the family of the deceased spouse.

## SOLUTIONS:

There are several solutions available that both protect the financial security of the surviving spouse and at the same time insure that the children of both spouses receive a fair share of each other's estates. These solutions include (but are not limited to) the following:

- ❖ Real Estate Trusts that provide for the right of the surviving spouse to use of the family residence
- ❖ Limited Powers of Attorney clearly defining the authority of the husband or wife in the event of disability of the other spouse
- ❖ Trust providing for income to the surviving spouse, but returning the assets to your respective children upon the death of both spouses
- ❖ Marriage Contracts



# MARRIAGE CONTRACTS

## MARRIAGE CONTRACTS DEFINED:

A marriage contract (also known as an antenuptial agreement) is an agreement entered into by a couple prior to their marriage. Under Arkansas Law, marriage contracts must be entered into prior to marriage in order to be valid.

## BENEFITS OF MARRIAGE CONTRACTS:

For a couple in a second marriage with children by prior marriages, marriage contracts clearly define the understandings of the husband and wife about inheritance, management of property in the event of disability, and other agreements of the couple during the marriage. A marriage contract should be part of a comprehensive estate plan (including revised Wills, Powers of Attorney, Trusts) implemented by a couple anticipating entering into a second marriage.

## WHAT IF YOU REMARRY WITHOUT A MARRIAGE CONTRACT?

Arkansas law provides for certain vested rights in a surviving spouse (unless these are waived by a valid marriage contract). For example, a spouse is entitled to at least one-third of the assets of his or her deceased spouse, irrespective of provisions to the contrary in a Will.

## WHAT IF YOU HAVE PREVIOUSLY ENTERED INTO A SECOND MARRIAGE, AND DID NOT EXECUTE A MARRIAGE CONTRACT?

You can still achieve certain protection through the use of a Revocable Living Trust, that identify and segregate the respective assets of each spouse.



# JOINT TENANCY

## JOINT TENANCY DEFINED:

“Joint Tenancy” is the common name for the creation of survivorship rights in an asset such that upon the death of one co-owner, the other co-owner becomes the sole owner. Joint tenancy is also known as “tenancy by the entirety” when a husband and wife are joint tenants.

## BENEFITS OF JOINT TENANCY BETWEEN HUSBAND AND WIFE:

In many instances, it is desirable that a husband and wife own their assets as joint tenants. However, the exceptions to this general rule would include the following situations:

- ❖ Families with large estates
- ❖ Families with large capital gains in certain assets
- ❖ Families in second marriages

## JOINT TENANCY WITH CHILDREN:

While the creation of joint tenancy with your children can solve certain problems (for example, avoidance of Probate) keep in mind the following disadvantages:

- ❖ In establishing a joint tenancy with your children in real estate, you will be giving you son-in-law or daughter-in-law certain rights in the real estate
- ❖ Possible unintended and unequal division of estate among children
- ❖ Assets subject to potential claims of children’s creditors, even though parent is still alive

# GIFTS

## AN OVERVIEW:

Federal gift tax law permits every individual to make a give of \$14,000\* per year per done. For example, you and your spouse can make gifts of us to \$28,000 per year to as many persons as you choose.

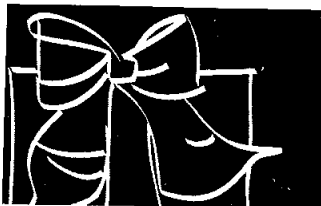
\*This exemption amount is “inflation adjusted” and will increase each year.

## CONSIDERATION IN MAKING GIFTS:

- ❖ As a general rule, make gifts of “high basis” property rather than “low basis” property (so as to maximize possible capital gains savings in your family)
- ❖ Only families with estates in excess of \$5,250,000 make gifts for the purpose of reducing Federal Estate Taxes
- ❖ Your Will or Trust should make adjustments for unequal gifts or loans to your children or grandchildren, so that no member of your family is penalized unintentionally
- ❖ Gifts to grandchildren (or persons under 21) can be made in a number of forms to protect their interest (including “529 Plans”, Uniform Transfer to Minors Act Accounts, Trusts, and other alternatives)

## GIFTS TO BENEFICIARIES UNDER AGE 21:

Most of our client find that the best method of making gifts to persons under age 21 is through a gift to a 529 College Savings Plan. These accounts do not require the involvement of an attorney, and your investment advisor or the internet can assist you in creating these accounts.



# PROBATE AVOIDANCE

**WHAT IS PROBATE?** Probate is a Court supervised process to “approve” your Will and distribute your separate assets in accordance with your Will.

**DOES MY WILL HAVE TO BE PROBATED WHEN I DIE?** The short answer is “yes”. However, the expensive part of probate is the distribution of estate assets. If you hold your assets in a Revocable Living Trust, then you can avoid almost all probate expense altogether.

**WHAT DOES PROBATE COST?** At your death, assets held in your separate ownership (i.e., not in joint tenancy, nor in trust ownership) are subject to probate. The cost runs between four and six percent of the value of such assets.

**HOW DO I AVOID PROBATE?** The best way to avoid probate is through the use of a Revocable Living Trust. All other alternatives (joint tenancy for example) are “second best”.

## TAX & ESTATE PLANNING FOR INDIVIDUAL RETIREMENT ACCOUNTS & LIFE INSURANCE

**AN OVERVIEW:** IRA’s and other pension plans have special and complex income and estate tax rules. It is not possible in this brochure to do more than summarize certain planning considerations.

### PLANNING GOALS FOR YOUR PENSION PLAN:

- ❖ Income Tax Deferral
- ❖ Estate Tax Avoidance
- ❖ Fair Allocation Among Your Family
- ❖ Reviewing the “Roth IRA” Options

**PLANNING GOALS FOR YOUR LIFE INSURANCE:** There is a common misconception that life insurance is not included in our estate for federal estate tax purposes. This is wrong. Therefore, if you have a taxable estate, you may wish to consider the following options with regard to your life insurance:

- ❖ Irrevocable Life Insurance Trust
- ❖ Gifts of Life Insurance to Children



# OVERVIEW OF ESTATE PLANNING

## DOCUMENTS RECOMMENDED FOR A SINGLE PERSON

### I. ASSET MANAGEMENT DOCUMENTS:

Durable  
Power of  
Attorney

"Pour Over"  
Will

Trust

### II. HEALTH CARE DOCUMENTS:

Living  
Will

Health Care  
Power of  
Attorney

# QUESTIONS ASKED ABOUT ESTATE PLANNING FOR THE SINGLE PERSON

IF I AM A SINGLE PERSON, DOES A REVOCABLE LIVING TRUST STILL MAKE SENSE FOR ME?

Yes, a Revocable Living Trust can provide for management of your assets in the event of your disability, probate avoidance at your death, and a “plan” for your family.

WHO SHOULD I NAME AS MY TRUSTEE IF I BECOME INCAPACITATED DUE TO ILLNESS OR ADVANCED AGE?

You can name one of the following:

- ❖ Your Children
- ❖ Bank Trust Department
- ❖ Other Corporate Trustee

DOES A TRUST AVOID ESTATE TAXES IF I AM A SINGLE PERSON?

No, a Revocable Living Trust cannot reduce federal estate taxes, if created following the death of the first spouse (this is only possible through an A-B Marital Trust which must be created while both spouses are alive). However, you can still reduce federal and state estate taxes through gifts and other strategies.

IF I MARRY AT A LATER DATE, WHAT RIGHTS DOES MY NEW SPOUSE HAVE IN MY TRUST?

One of the major benefits of a Revocable Living Trust is that of limiting the rights of a spouse, following remarriage. If you create a Revocable Living Trust while you are single, you can better protect your assets from the inheritance or divorce claims of a spouse following your remarriage.

However, we would still recommend that you enter into an antenuptial agreement prior to your remarriage.

# GOVERNMENT BENEFITS TO PAY FOR NURSING HOME

The best solution for the high cost of nursing home care is obtaining long-term care insurance (often referred to as Nursing Home Insurance). However, many families are uninsurable or find this insurance unaffordable.

If you are concerned about the high cost of nursing home care, our firm can assist.

Nursing home planning involves 2 situations as follows:

- ❖ Long-term Planning (no immediate need)
- ❖ Immediate Need Planning (a loved one faced with going to a nursing home in the near future or already in nursing home).

## SOLUTIONS FOR THE HIGH COST OF NURSING HOME CARE?

- ❖ Long term care insurance (also known as nursing home insurance) if available and not too expensive.
- ❖ In some families, the use of irrevocable income-only trusts.
- ❖ In some families facing immediate nursing home expense, implementing a plan to enhance eligibility for government benefits.

## THINGS TO REMEMBER ABOUT NURSING HOME EXPENSE

Most government benefits are subject to a five-year transfer rule such that if you gift the assets away this creates a period of ineligibility of up to five years or more.

- ❖ Many governmental programs have only limited funds, and/or subject to very technical rules of eligibility.

## OUR ATTORNEYS



**CLAY FARRAR** – A native of Hot Springs, Clay attended Rhodes College in Memphis, Tennessee, where he graduated with distinction. He obtained his law degree from Southern Methodist University in Dallas in 1975. Clay has been active in numerous civic affairs, including service as:

- Director, First National Bank
- Past Chairman, St. Joseph's Mercy Health Foundation
- Past President, Hot Springs National Park Rotary Club
- Past President, Greater Hot Springs Chamber of Commerce

Clay practices in the area of trusts and estate planning. He has been a frequent lecturer to the Arkansas Bar Association on the topic of trusts, estates planning, and estate administration.

Clay's practice is primarily focused on middle and upper-middle class estate planning matters. He does not handle Medicaid or nursing home applications.

**ADAM WILLIAMS** – Adam graduated with honors from the University of Arkansas at Fayetteville. He received his law degree from the University of Arkansas at Little Rock, School of Law in 1992, where he was an associate editor of the Law Review.



Adam's practice includes middle and upper-middle class estate planning; and also elder law. Adam has expertise in the area of obtaining government benefits for individuals faced with the high cost of nursing home expense. Adam also assists veterans with planning for aid and attendance pensions.

Adam's professional experience includes:

- Four years' experience in commercial banking and trust.
- Primary areas of practice are trusts, estate planning, Medicaid planning, and real estate.
- Lecturer to statewide lawyers group on nursing home planning.

**TIFFANY R. TUCKER** - Tiffany graduated from Ouachita Baptist University magna cum laude in 2009. She obtained her law degree from UALR William H. Bowen School of Law. Tiffany is a member of the Arkansas Bar Association and the Garland County Bar Association. Tiffany practices in all areas of trust and estate planning.

