

KURT D. PANOUSES, P.A.
ATTORNEY AND COUNSELOR AT LAW
140 Sixth Avenue, Suite B
Indialantic, FL 32903
(321) 729-9455
FAX: (321) 768-2655

Kurt D. Panouses is Board Certified by the Florida Bar as a Specialist in Wills, Trusts and Estates Law

ESTATE PLANNING BASICS FOR THE FLORIDA RESIDENT

INTRODUCTION

Effective estate planning can ensure that your intended beneficiaries are properly cared for, that legal costs of administering your wishes are minimized, and that your estate -- the property you have accumulated over your lifetime-- is not subject to unnecessary taxes and delays in distribution.

I. THE CORNERSTONE OF ANY ESTATE PLAN - YOUR WILL

A will is the cornerstone of any estate plan. It outlines who will receive your property at your death and also names a Personal Representative (executor) to administer your estate. Should you die without a valid will there is no guarantee that your wishes will be carried out. In such a situation the laws of Florida will determine how your estate is to be divided among your next of kin.

If you have minor children your will should name a guardian to care for them in the event you and your spouse both die untimely. If you have not named a guardian in your will the courts will appoint someone to care for your children. In the eyes of the law, there are two kinds of guardianships: a guardian who handles the children's day-to-day upbringing and a guardian who manages whatever money or property you have left to them. While it may seem easier to have one guardian handle both responsibilities this may not always be wise. For example, if a person is well-suited to raising your children but not particularly adept at managing finances you should consider naming a person with more financial know-how to oversee the children's assets, in cooperation with the other guardian.

II. MINIMIZING ESTATE TAXES

The estate tax, as of January 1, 2011 provides for a \$5 million exemption and a 35% tax rate. That exemption and tax will remain in effect through 2012. As of 2013, the exemption may be reduced to \$1 million with a 55% tax. Remember, life insurance you own and control is included in your taxable estate. One way to diminish the size of your estate is to give away assets. Uncle Sam allows each person to make a gift of up to \$13,000 per year (or \$26,000 a year for couples) to as many people as desired, without incurring transfer taxes. It is important to note the estate tax exemption amount has nothing to do with probate - it is a taxing threshold.

Another way to transfer assets out of your estate is through an irrevocable trust. However,

since you generally lose all control over the trust's assets, only those individuals who are certain they have sufficient funds to maintain a comfortable lifestyle should consider this type of trust. A gift tax return must be filed by the Grantor for the fair market value of the assets transferred to the trust.

Be aware that the estate tax marital deduction allows husbands and wives to leave all their assets to each other without triggering estate taxes (provided your spouse is a U.S. citizen). However, failing to use the full exemption amount at the first spouse's death means more taxes may be owed on the second estate (the surviving spouse's estate). Therefore, it is important to review how assets are owned to make sure each spouse makes maximum use of their exemption. Titling of the assets overrides your will/trust and may determine who gets the asset at your death.

Also be aware that transfers to grandchildren (or two generations below you) may subject the assets to the Generation Skipping Tax (GST). The GST Tax was a 45% tax in 2009. The rate for 2010 was 0%. For 2011 the exemption is now \$5 million with a 35% tax. Note, the GST tax is in addition to the estate tax.

III. SIZING UP YOUR ESTATE

Taxpayers should not automatically assume their estate is too small to need estate tax planning. It does not take long for assets to double in value if properly invested.

A. UNDERSTANDING "MARKET VALUE"

In determining the value of your property for estate tax purposes, you must consider the current fair market value of your assets. This means whether it is your home, stocks, or an antique brooch, you must estimate the amount a willing buyer would pay for the item today-- not what you paid.

Keep in mind that although using the fair market value may inflate the size of your estate, however, neither your estate nor your heirs will pay capital gains tax on any appreciation that occurred between the time you acquired the property and your death.

B. ESTIMATING THE VALUE OF YOUR ESTATE

Here is what to consider when assessing your estate's net worth:

Your home -- Start by determining the market value of your home and other real estate. If you are not sure how much your house is worth, consult a real estate broker or check the selling prices of similar homes in your neighborhood. If you own a vacation home or rental property, include its value in your estate as well. In either case, however, your estate is reduced by the amount of any mortgages.

Retirement Account Benefits -- Next consider the value of your retirement benefits, including pensions, and IRA and Keogh plans. For many families, retirement benefits are their second greatest asset after their home.

Insurance Policies -- Add the value or death benefit of all life insurance policies you own (some of which may include a double indemnity payment in the case of accidental death). Also, include those group insurance policies that you acquire as a fringe benefit through your employer.

Investments -- Next add amounts in savings, checking accounts and money market funds. Then include the current market values of any stocks, bonds, or mutual funds you own. You also may need to include the amounts of any assets held in trust or custodial accounts for which you are the trustee or custodian.

Business Interests -- If you own a business, or are a partner in one, the value of your share of the business must be included in your estate.

Personal Property -- The market value of any art, jewelry, antiques, cars and other collectibles you own also are tallied and included in your estate. If you are unsure of their value, contact an appraiser.

Future Holdings -- If you are certain you will be receiving a large inheritance or other assets in the near future, you may want to consider these when valuing your estate.

Liabilities -- Once you have calculated the asset side of your estate, the next step is to subtract your liabilities. These include your mortgage, other personal or business debts you owe, any charitable bequests made in your will, money allocated for funeral and burial expenses, and the estimated costs of administering your estate (legal and accounting expenses generally run 1-3% of your total estate). The resulting amount is the net value of your taxable estate.

IV. THE ROLE OF LIVING TRUSTS IN YOUR ESTATE PLAN

A Living Trust can be a powerful estate planning tool. In general terms, a trust is a separate legal entity into which a person transfers property for his or her benefit, or for the benefit of others, (the beneficiaries). In recent years, many people have started to utilize revocable living trusts. These types of trusts, which can be established and executed during your lifetime, and provide a means for you to distribute property to your beneficiaries after your death. Living trusts enable you to minimize (and sometimes avoid) probate (the process and costs associated with carrying out the terms of your will), but do not protect your assets from estate taxes or creditors. Establishing such trusts can ensure that your assets are managed effectively and in a private manner.

A. WHAT IS A TRUST?

A trust is a legal entity that is established to hold assets for your benefit, or for the benefit of others determined by you. A trust is managed by one or more Trustees who are legally responsible for ensuring the trust operates according to your wishes. You as the Grantor name the Trustee and the beneficiaries. You may name yourself, during your lifetime, as the initial Trustee.

One significant advantage of trusts is that beneficiaries are able to receive income from the trust, but you maintain control over how funds are distributed. For example, if you gave your 18 year old son a \$13,000 gift, he could spend the money immediately as he sees fit. However, if you established a trust instead, you could specify in the trust that the funds are to be released to your son over a set period of years or only for a specific purpose, such as college expenses.

B. TYPES OF LIVING TRUSTS

A living trust is established by living persons, as opposed to a trust that is established by your will, which is called a testamentary trust. Living trusts can be funded during your lifetime with securities, other property, or money available for investment.

There are two types of living trusts: a revocable trust and an irrevocable trust. With a revocable living trust, you remain in control of your assets while you are alive. "Revocable" means you can change beneficiaries, modify the terms of the trust, and even terminate or revoke the trust and get back your property. You have the option of naming yourself as a Trustee so that you can continue to manage your assets, or appointing someone else as the trust's administrator.

After you die, the property registered in the trust may be distributed directly to the beneficiaries without going through probate. As a result, estate settlement costs are likely to be reduced and your beneficiaries will have access to the trust's funds. Keep in mind, however, that revocable trusts offer no federal estate tax advantage. Because you retain control over the trust, the assets in the trust are included in your estate for federal estate tax purposes and also may be subject to state death taxes.

As the name implies, an irrevocable trust cannot be changed, modified or revoked, regardless of how your personal financial circumstances might change. Generally, you do not name yourself as the Trustee of an irrevocable trust. By giving up control, you get a tax benefit as funds put in this type of trust not only help reduce your current taxable income, but also generally are not subject to estate taxes because the irrevocable trust owns the assets (not you).

Another type of irrevocable trust -- an irrevocable life insurance trust -- often appeals to those who own a substantial amount of life insurance policies. The value of life insurance policies you own are normally included in your estate for tax purposes. They can be excluded by creating this type of trust. However, there is a trade-off. When you transfer your insurance policies to the trust, you give up all ownership rights, the right to assign the policy to anyone, and the right to borrow against the policy's cash value. When you die, the trust is the beneficiary of the policy and the policy's value may be excluded from your estate for tax purposes.

It is important to note there is no estate tax advantage of utilizing a revocable living trust over a will as a distribution vehicle. You can receive the same estate tax savings techniques with a will that you can in a revocable living trust. Note, it would not be a "simple" will.

V. YOURS, MINE, AND OURS: JOINT OWNERSHIP AND ESTATE PLANNING

Deciding how to hold title to your property is an important estate planning step. Joint ownership not only determines what happens to your property upon your death and its vulnerability to creditors, but also how you can use it during your lifetime.

A. JOINT TENANCY WITH RIGHTS OF SURVIVORSHIP.

The most common form of joint ownership is known as joint tenancy with rights of survivorship. This form of ownership is most often used between spouses, but is available to others as well. With this type of joint tenancy, two or more people own equal shares of property. It does not matter who owned the property originally, or how much each co-owner contributed to the acquisition of it. For estate planning purposes, when you own property as joint tenants with rights of survivorship, the property normally bypasses probate and passes to the surviving owner(s) at your death. This is so, regardless of what your will says.

This can have unintended ramifications. Suppose, for example, that an elderly widow opens a joint bank account with her son so he can help the widow manage her finances. If the widow dies and the joint account has “rights of survivorship” the son will automatically inherit all the jointly held funds, even if her will specified that the property be equally divided among her children. When a husband and wife own assets as joint tenants with rights of survivorship, only one-half of the value of the jointly held assets is included in the estate of the first to die. As long as both spouses are U.S. citizens, the entire property passes to the surviving spouse free of estate tax. Upon the survivor's death, however, the entire estate will be subject to tax, which may result in a large tax bill for the estate's heirs. For this reason, when large estates are involved, it can be beneficial for each spouse to own some property separately.

When property is owned jointly with anyone other than a spouse, different rules apply. In such cases, the entire value of the property is assumed to belong to the first to die, and is included in total in his or her gross estate for estate tax purposes, unless the survivor contributed part of the property.

B. TENANTS BY THE ENTIRETY

Some states recognize tenancy by the entirety, a form of ownership available only to married couples which is similar to joint tenancy with rights of survivorship, except that each partner must have the permission of the other spouse to sell his or her share of the property. Property owned this way provides protection against creditors because one spouse generally cannot be forced to sell tenancy by the entirety property to satisfy a debt that is the sole responsibility of the other.

C. TENANTS IN COMMON

Tenancy in common refers to the ownership arrangement among several parties (normally unrelated) and is typically applicable to business partners, siblings, and people in a second marriage who want to retain control for a stake in the property. Tenants in common may

involve any number of tenants, including a spouse, and any kind of property. Additionally, these tenants can own equal or unequal shares of the property and may sell their interest without consulting the others -- unless they have a previous agreement in writing that specifies otherwise.

There are no survivorship rights. When one of the tenants in common dies, his or her interest goes to that person's heir rather than passing automatically to the co-owners. For estate tax purposes, the deceased person's share is based upon the fair market value of his or her proportional interest at death.

D. COMMUNITY PROPERTY

In the nine community property states -- Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin -- everything a couple acquires during a marriage (with the exception of gifts and inheritances) becomes community property and is considered to be equally owned by both spouses. When one partner dies, the income tax basis of both spouses' interest in every piece of community property is increased or decreased to the fair market value at the time of death. This contrasts with non-community property states (such as Florida).

It is very important to consider how your property should be titled and how ownership will affect its disposition to co-owners and ultimately, your heirs.

VI. THE ESTATE TAX CHART

The chart below outlines the scheduled increases in the exemption amount and the minimum estate tax rate on the first dollar above the exemption amount.

NEW 2010 ACT			
CALENDAR YEAR	ESTATE TAX EXEMPTION / RATE	GIFT TAX EXEMPTION / RATE	GST EXEMPTION / RATE
2010	\$5 MILLION / 35%	\$1 MILLION / 35%	\$5 MILLION / 0%
2011	\$5 MILLION / 35%	\$5 MILLION / 35%	\$5 MILLION / 35%
2012	\$5 MILLION / 35% *indexed for inflation	\$5 MILLION / 35% *indexed for inflation	\$5 MILLION / 35% *indexed for inflation
2013	\$1 MILLION / 55%	\$1 MILLION / 55%	\$1 MILLION / 55%

NOTE: There is an option for decedents passing away in 2010 to use the \$5 million and full "step-up" in basis or elect no estate tax and a basis adjustment up to \$4.3 million (\$1.3 million as elected and \$3 million for a surviving spouse).