The Gift, Estate, And Generation-Skipping Transfer Tax System

- Annual gift tax exclusion in 2013 is $14,000 per donor, per recipient.
- American Taxpayer Relief Act of 2012 changed the transfer tax system:
  - Lifetime gift tax exemption is $5,000,000 per transferor, adjusted for inflation ($5,250,000 in 2013.)
  - Estate tax exemption is $5,000,000 per transferor, adjusted for inflation ($5,250,000 in 2013.)
  - Generation-skipping transfer tax exemption is $5,000,000 per transferor, adjusted for inflation ($5,250,000 in 2013.)
  - Transfers that exceed the exemption amounts (whether made during lifetime or upon death) are subject to a flat 40% transfer tax.
  - Portability of deceased spouse’s unused estate tax exemption to surviving spouse is preserved.
- Wisconsin does not currently impose an estate tax.
Most Estates Will Escape The Estate Tax

Only a small portion of decedents will be affected by the estate tax in view of the $5 million indexed exemption (Congressional Research Service Report R42959):

- The estate tax will affect less than 0.2% of decedents over the next decade.
- The estate tax is concentrated among high income taxpayers: 96% is paid by the top quintile, 93% by the top 5%; 72% by the top 1%; and 42% by the top 0.1%.
- About 0.2% of estates with half or more of their assets in businesses will be subject to the estate tax.
- About 65 farm estates (or approximately one per state) are projected to be subject to the estate tax.
- About 94 estates (about two per state) with half their assets in small business with owners who expect their heirs to continue in the business are projected to be subject to the estate tax.
Typical Goals Absent Estate Tax Concerns

- Avoid guardianship in case of incapacity
- Avoid probate in case of death
- Put your chosen representatives in charge
- Defer income taxes on IRAs and other retirement plans
- Plan for the possibility of having to pay for long-term care expenses
- Protect children’s and grandchildren’s inheritances from the claims of their creditors, including property division claims in the event of divorce
Planning Steps (And Documents) To Accomplish The Goals
Durable Power of Attorney for Financial Matters

- Name agent to exercise powers upon incapacity
- Delegate broad or specific powers to agent
Power of Attorney for Health Care

- State-approved form with options
- Name agent to make health care decisions upon incapacity
- Incapacity is defined: requires two physicians or a physician and a psychologist to conclude based on personal examination that person is unable to receive and evaluate information effectively or to communicate decisions about health care
Marital Property Agreement

- Classify ownership of assets as marital property (50-50) or either person’s individual property
- Give surviving spouse new basis in appreciated assets
- Provide for non-probate transfers of assets to fund a revocable trust
Will

- Nominate guardian of minor children
- Nominate personal representative
- Provide for probate transfers of specific assets to named beneficiaries and possibly to fund a revocable trust
Revocable Trust To Hold And Dispose Of Assets

- Trust may exist for one person or for a married couple
- Settlor may transfer assets to trust during lifetime
- Agent may transfer assets to trust upon settlor’s incapacity
- Other assets are transferred to trust upon settlor’s death
- Settlor may serve as initial trustee
- Settlor names successor to assume duties upon resignation, incapacity, or death
- Use independent trustee or co-trustee upon settlor’s death if creditor protection is desired
During settlor’s lifetime, assets are administered for settlor.

At settlor’s death, assets are distributed outright or to continuing trusts for beneficiaries.

Special subtrust may be beneficiary of IRAs and other retirement plans.

- Allows for post-death distributions to be paid over a beneficiary’s life expectancy while maintaining the benefits of a trust for asset management and creditor protection purposes.

- Trustee of subtrust will either:
  - Pay minimum required distributions to the beneficiary annually, or
  - Accumulate the minimum required distributions and pay out only those amounts necessary to achieve specified objectives.
Single Person Revocable Trust

Lifetime Transfers

Beneficiary Designations

Probate Under Will

Non-Probate Transfer Under Marital Property Agreement (for married persons only)

→ Pay debts, expenses, and taxes

→ Satisfy specific gifts

Distribute Balance Outright Or To Trusts For Beneficiaries
Married Couple Revocable Trust

- **Lifetime Transfers**
- **Beneficiary Designations**
- **Probate Under Will**
- **Non-Probate Transfers Under Marital Property Agreement**

Joint Revocable Trust

- **Husband’s Share**
- **Wife’s Share**
Have We Accomplished The Goals?

- Guardianship avoided upon incapacity with durable power of attorney and health care power of attorney.
- Probate avoided with funded revocable trust (and marital property agreement for married persons).
- Chosen representatives are in charge.
- Income taxes on IRAs and retirement plans deferred by stretching payments over beneficiaries’ life expectancies.
- Orderly distribution of other assets through revocable trust.
- Creditor protection for beneficiaries (if desired).
Beyond The Basics

- Trusts for special needs child
- Trusts or LLCs to hold vacation property for long-term use and enjoyment of family members
- Asset protection planning
- Long-term care insurance
- Medical assistance eligibility planning
Cases From My Practice
My Mother
(“Your education is your inheritance.”)

- Her goals
- Her documents
  - Durable Power of Attorney
  - Health Care Power of Attorney
  - Marital Property Agreement to avoid probate
  - Revocable Trust
  - Will
  - HIPAA Authorization
  - Cottage LLC
Larry and Judy
(“We want to protect everything for our children.”)

- Their goals
- Their documents
  - Durable Powers of Attorney
  - Health Care Powers of Attorney
  - Marital Property Agreement to avoid probate on first and second spouse’s death
  - Medical Assistance Eligibility Trust
  - Leases
  - Wills
Bill and Lynn
(“We want to be in control of everything.”)

- Their goals
- Their documents
  - Durable Powers of Attorney
  - Health Care Powers of Attorney
  - Marital Property Agreement to classify assets immediately before first spouse’s death
  - Wills that create protected trust for surviving spouse upon first spouse’s death
Christie
(“I want to protect the family business for the family.”)

- Her goals
- Her documents
  - Durable Power of Attorney
  - Health Care Power of Attorney
  - LLC governed under South Dakota law
  - Asset Protection Trust governed under South Dakota law
  - Will
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