

**ESTATE PLANNING AND PROBATE BASICS:  
THE INITIAL PLANNING INTERVIEW**

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**EDUCATION**

B.A., Rice University  
J.D., University of Houston Law Center  
LL.M. (Tax), University of Houston Law Center

**PROFESSIONAL ACTIVITIES**

Board Certified in Estate Planning and Probate Law, Texas Board of Legal Specialization  
State Bar of Texas. Sections on: International Law; Litigation; Oil, Gas & Energy Resources Law;  
Real Estate Probate and Trust Law; Taxation Law.  
Houston Bar Association. Sections on: International Law; Litigation; Oil, Gas and Mineral; Probate,  
Trusts & Estate; Real Estate; Taxation.  
American Bar Association. General Practice, Solo and Small Firm Division; Section of International  
Law; Law Practice Management Section; Section of Real Property, Probate and Trust Law;  
Section of Taxation.  
Houston Business and Estate Planning Council  
Houston Estate and Financial Forum  
Houston Chapter—Society of Financial Service Professionals, Director, 2011–2013  
State Bar College

**PROFESSIONAL HISTORY**

Former staff attorney, Gulf Coast Legal Foundation, Housing & Consumer Unit  
Licensed to practice in Texas and before the U.S. District Court for the Southern District of Texas,  
Tax Court, the U.S. Court of Appeals for the Fifth Circuit, and the United States Supreme Court

**LAW RELATED PUBLICATIONS, ACADEMIC APPOINTMENTS AND HONORS**

Author/Speaker for the State Bar of Texas 2006 Building Blocks of Wills, Estates and Probate  
Course  
*I.R.C. § 103 and Exclusion of Interest on Texas Lottery Prize Installments*, presented September 26,  
2006 to the Wednesday Tax Forum, Houston, Texas  
Planning Committee for the State Bar of Texas 2007 Building Blocks of Wills, Estates and Probate  
Course  
Author/Speaker for the State Bar of Texas 2007 Building Blocks of Wills, Estates and Probate  
Course  
Author/Speaker for the State Bar of Texas 2007 Advanced Estate Planning and Probate Course  
Author/Speaker for the TSCPA CPE Foundation 2007 CPE Family Conference  
Author for the American Bar Association 2008 Midyear Meeting, Taxation Section  
Author/Speaker for the 2010 Galveston Co. Bar Foundation Electronic Filing, Evidence &  
Technology seminar  
Author/Speaker for the 2010 Houston Bar Association Family Law Institute  
Author/Speaker for Society of Financial Service Professionals April 21, 2010 estate planning brown  
bag  
Editorial board member of *The Advocate*, the journal of the State Bar of Texas Litigation Section,  
2007–2012

**LANGUAGES**

Spanish

**REPORTED CASES**

*Hardy v. 11702 Memorial, Ltd.*, 176 S.W.3d 266 (Tex. App.—Houston [1st Dist.] Jul. 15, 2004, no  
pet .)



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## ESTATE PLANNING & PROBATE BASICS: THE INITIAL PLANNING INTERVIEW

### I. PREFACE

The State Bar's 31<sup>st</sup> Annual Advanced Estate Planning and Probate Course included a panel discussion regarding the Board Certification exam. The accompanying paper is available at <http://www.rwhpc.com/eppexam>.

The response confirmed that there is as much interest in a basic tax education as there is in advanced techniques. Many professionals are interested in estate planning, want to learn more, but search in vain for appropriate material to educate themselves. Basic courses don't teach enough tax; advanced courses teach too much. This presentation takes an intermediate approach, and offers one example how to make the material accessible to clients.

### II. INTRODUCTION

Estate planning and probate is complicated, and even summaries make difficult reading. *See* Tax Rates, Tax Formulas, GST Tax. Apps. A–C. The best advisors are often unable to explain the tax and probate environment in plain English. Clients' time and patience is limited. The challenge is to share relevant principles accurately, clearly, but succinctly, without wearing out either the advisor or the client.

With organization, and practice, it is possible to effectively plan even the moderately wealthy client's estate in a single interview.

I use *FlexDraft's* Professional Edition for document drafting (<http://www.flexdraft.com>). My Checkplan organizes my office procedures around *FlexDraft*. Portions relevant to the initial interview are attached. App. D.

### III. TELL THEM WHAT YOU'RE GOING TO TELL THEM

When a prospective client contacts the firm regarding estate planning, they receive a questionnaire inviting disclosure of family and financial information, along with a summary of the estate planning process. Apps. E, F. Once they schedule an appointment, we begin to build a file. The Master Information List captures the basic information, keyed for reference by subsequent forms and letter. App. G.

### IV. TELL THEM (AND LISTEN)

At the initial interview, the client is provided with more detailed memos regarding tax planning and the uncertainty surrounding EGTRRA. App. H.

Probate and nontestamentary transfers are illustrated with a flowchart. App. I. The credit shelter trust is introduced with a second flowchart, which is also used when discussing second-generation planning. App. J. Households with a foreign national also get a QDOT introduction. App. K.

At this point the client's financial and family information is reviewed, in depth discussions are had regarding the client's circumstances and intentions, and the client's Getting Started responses, if any, are annotated with the lawyer's interview notes.

The client's estate tax exposure as exemption amounts change and assets appreciate is illustrated with NumberCruncher (<http://www.leimberg.com>). App. L, which makes projections based on one or two lives.

### V. TELL THEM WHAT YOU TOLD THEM (AND REPEAT WHAT THEY TOLD YOU)

The interview concludes with a conversation regarding drafting information for the Will (and/or pour-over Will and Living Trust) and ancillary documents. The client is left with a letter summarizing their decisions. Apps. M, N. An engagement agreement is explained. The level of tax planning to be implemented is often left open, with the client reserving that decision, as well as the decision whether to engage the firm, privately, after the interview has ended.

### VI. RESOURCES

If writing your own checklist, start with 1.1 Holly J. Gilman and Michael W. Johnson, *The Client Interview: Estate Planning, in Nuts and Bolts of Estate Planning and Probate* (St. B. of Texas 2009). For a generic common law overview, with specific federal tax insights, try Jeffrey N. Pennell & Alan Newman, *Estate and Trust Planning* (ABA 2005). For Texas resources, begin with the bibliography to the paper at <http://www.rwhpc.com/eppexam>, and update with the TexasBarCLE Online Library (<http://www.texasbarcle.com/CLE/OLSEARCH.ASP>).

### VII. CONCLUSION

If tax is a science, interviews are an art. Interviewing is a skill which improves with practice. Relentless organization makes the process more efficient and profitable, both for the advisor and the client.

Appendix A

NOTE: This chart is dated. The 2010 Tax Relief Act extended the 2009 scheme for two more years, but with higher exemption amounts. The 2012 American Taxpayer Relief Act (signed January 2, 2013), made permanent a unified transfer tax scheme with more generous rates and exemptions, at least for U.S. citizens. The information below remains relevant to estates where death occurred after December 31, 2000 and before January 1, 2010.

[FEDERAL] TRANSFER TAXES; Kathryn G. Henkel, *Estate Planning and Wealth Preservation* ¶ 1.04[3], Table 1-C (2003 & 2010 Supp. No. 2)

Year	ET Max Rate	GT Max Rate <sup>a</sup>	Flat Rate GSTT <sup>b</sup>	Max ET & GT Rates Begin When Cumulative Taxable Transfers Exceed	ET Exemptions <sup>c</sup>	GT Exemption	GSTT Exemption	ET Credit <sup>d</sup>	GT Credit <sup>d</sup>
2001	55% <sup>e</sup>	55% (35.48%) <sup>f</sup>	55% (35.48%)	\$3,000,000	\$675,000	\$675,000	\$1,060,000	\$220,550	\$220,550
2002	50%	50% (33.33%)	50% (33.33%)	\$2,500,000	\$1,000,000	\$1,000,000	\$1,100,000	\$345,800	\$345,800
2003	49%	49% (32.89%)	49% (32.89%)	\$2,000,000	\$1,000,000	\$1,000,000	\$1,120,000	\$345,800	\$345,800
2004	48%	48% (32.43%)	48% (32.43%)	\$2,000,000	\$1,500,000	\$1,000,000	\$1,500,000	\$555,800	\$345,800
2005	47%	47% (31.97%)	47% (31.97%)	\$2,000,000	\$1,500,000	\$1,000,000	\$1,500,000	\$555,800	\$345,800
2006	46%	46% (32.57%)	46% (32.57%)	\$2,000,000	\$2,000,000	\$1,000,000	\$2,000,000	\$780,800	\$345,800
2007	45%	45% (31.03%)	45% (31.03%)	\$1,500,000	\$2,000,000	\$1,000,000	\$2,000,000	\$780,800	\$345,800
2008	45%	45% (31.03%)	45% (31.03%)	\$1,500,000	\$2,000,000	\$1,000,000	\$2,000,000	\$780,800	\$345,800
2009	45%	45% (31.03%)	45% (31.03%)	\$1,500,000	\$3,500,000	\$1,000,000	\$3,500,000	\$1,455,800	\$345,800
2010	-0-	35%	35%	N/A	N/A	\$1,000,000	N/A	N/A	N/A
2011 and following	55%	55% (35.48%)	55% (35.48%)	\$3,000,000	\$1,000,000	\$1,000,000	\$1,200,000 indexed fm 2003	\$345,800	

ALIENS; RIA Checkpoint ¶ 5038

§ 2103 nonresident, non USC tax base limited to US situs	§ 2102 provides a \$60K exemption amt, subject to treaty
§ 2056 denies ET marital deduction absent QDOT etc.	§ 2523 limits GT marital exclusion to non USC to \$100,000, indexed
USC and resident alien tax base is worldwide	

TEXAS TRANSFER TAXES; RIA Checkpoint TBL-30212; 2720 Estate tax structure--Texas

ET equal to the current federal credit for state death taxes allowed under IRC §2011	Report-pay to Comptr. in 9 mos. after death.
GSTT equal to the current federal credit allowed under IRC §2604.	Report-pay to Comptr. by Fed. due date
GT not imposed	
Repeal of Texas estate tax. The federal state death tax credit is repealed for estates of decedents dying after December 31, 2004 (see below). Since the Texas estate tax is computed using the federal state death tax credit, the Texas estate tax will effectively also be repealed at that time.	
For individuals dying in 2002, the state death tax credit is reduced by 25% from the pre-2001 EGTRRA amount; for individuals dying in 2003, the credit is reduced by 50% from the pre-2001 EGTRRA amount; for individuals dying in 2004, the credit is reduced by 75% from the pre-2001 EGTRRA amount; and for individuals dying in 2005 and after, the state death tax credit will be repealed and replaced with a deduction.	

<sup>a</sup> Although gift tax rates are nominally the same as estate tax rates, gift tax rates are actually much less, since the estate tax is imposed on the transferred amount plus the tax, and the gift tax rate is imposed on the transferred amount only. Nominal rates are on the top. Rates computed on the same basis as the estate tax rate are in parenthesis.

<sup>b</sup> Simplistically—Rates not in parentheses apply to distributions from, and terminations in favor of, a grandchild-level beneficiary from a trust which includes an older-generation beneficiary. Rates in parenthesis apply to transfers directly to a grandchild-level beneficiary or a trust for a grandchild-level beneficiary.. “Grandchild-level” means the generation of a grandchild or more remote descendant.

<sup>c</sup> The estate tax exempt amount is the applicable number below, less taxable gifts made during the deceased person’s lifetime, and certain administrative expenses occurring at death. In 2002 and 2003, the ET and GT exemption amounts are equivalent to a \$345,800 unified credit.

<sup>d</sup> Derived from Henkel ¶ 1.04[1], Table 1-A.

<sup>e</sup> 60 percent for cumulative transfers between \$10,000,000 and \$17,184,000.

<sup>f</sup> 60 percent (37.5 percent) for cumulative transfers between \$10,000,000 and \$17,184,000.

**BASIS**

Effective 2010, subject to EGTTTRA sunseting, property includible in the estate will not receive a step up in basis, except-- \$1,300,000, plus

\$3,000,000 that passes outright (or in the form of a qualifying interest) to the surviving spouse.

\*Terminable interests will not qualify for a step up, except for QTIP property.

\*Allocation of basis increase subject to Executor's discretion

\*Property eligible for step up if "owned by decedent", i.e.--

\*\*owned outright

\*\*in certain joint ownership forms

\*\*in a revocable trust taxed to D under IRC 676, and

\*\*surviving spouse's share of certain community property

\*\*property subject to a POA not considered owned by D unless so treated for independent reasons.

\*Consider the formula gift, i.e., give my wife any property with basis \$3,000,000 or less than FMV; E's discretion could give a \$3,000,000 property with \$0 basis or a \$20,000,000 property with \$17,000,000 basis: fiduciary issues abound

**NONRESIDENT ALIENS (Treaties trump), excludes:**

FIT: i) lawful permanent resident, ii) objective substantial presence (NMT 121 days a year) (subjective safe harbor iff LT 183 days in US and closer connection to foreign tax home), iii) if present 31 days in year of election, and substantial presence the next.

ET/GT/GSTT: Foreign domicile (actual residence + intent)

	Tax Base		Unified Credit	Exclusions / Deductions	Transfers to spouse
	Included	Excluded			
Gift taxes	Real/tangible U.S property	Intangible U.S. property; any foreign property	None	Same \$11,000 annual and unlimited medical and tuition	Unlimited to USC, else \$100,000 annual exclusion (\$116K in 2005)
Estate taxes	U.S. situs	Foreign corporate stock; U.S. currency abroad; life insurance proceeds on life an NRA D; <u>U.S. deposits, certain debt and OID</u>	\$13K (\$60K exemption)	U.S. charity, and proportionate 2053 and 2054, if worldwide estate disclosed	
GSTT	Imposed only on transfers subject to GT or ET				

RESIDENT ALIENS: Decedent aliens are taxed like USCs (including the limitation on nonUSC spouses).



# 2013 TAX GUIDE



Courtesy of  
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## 2012

## Income Tax Rates

## 2013

If Taxable Income is: Over	2012		2013	
	But Not Over	The Tax Is	But Not Over	The Tax Is
<b>Married Filing Jointly and Surviving Spouse</b>				
\$0	\$17,400	\$0+10%	\$0	\$0
17,400	70,700	\$1,740+15%	17,400	17,400
70,700	142,700	\$9,735+25%	70,700	70,700
142,700	217,450	\$27,735+28%	142,700	142,700
217,450	338,350	\$48,665+33%	217,450	217,450
338,350		\$105,062+35%	338,350	338,350
<b>Single</b>				
\$0	\$8,700	\$0+10%	\$0	\$0
8,700	35,350	\$870+15%	8,700	8,700
35,350	85,650	\$4,868+25%	35,350	35,350
85,650	178,650	\$17,443+28%	85,650	85,650
178,650	388,350	\$43,843+33%	178,650	178,650
388,350		\$112,863+35%	388,350	388,350
<b>Married Filing Separately</b>				
\$0	\$8,700	\$0+10%	\$0	\$0
8,700	35,350	\$870+15%	8,700	8,700
35,350	71,350	\$4,868+25%	35,350	35,350
71,350	108,750	\$13,868+28%	71,350	71,350
108,750	194,175	\$24,333+33%	108,750	108,750
194,175		\$52,531+35%	194,175	194,175
<b>Head of Household</b>				
\$0	\$12,400	\$0+10%	\$0	\$0
12,400	47,350	\$1,240+15%	12,400	12,400
47,350	122,300	\$6,483+25%	47,350	47,350
122,300	198,050	\$25,220+28%	122,300	122,300
198,050	388,350	\$46,430+33%	198,050	198,050
388,350		\$109,229+35%	388,350	388,350
<b>Estates &amp; Trusts</b>				
\$0	\$2,400	\$0+15%	\$0	\$0
2,400	5,600	\$360+25%	2,400	2,400
5,600	8,500	\$1,160+28%	5,600	5,600
8,500	11,650	\$1,972+33%	8,500	8,500
11,650		\$3,012+35%	11,650	11,650

If Taxable Income is: Over	2012		2013	
	But Not Over	The Tax Is	But Not Over	The Tax Is
<b>Married Filing Jointly and Surviving Spouse</b>				
\$0	17,850	\$0+10%	\$0	\$0
17,850	72,500	\$1,785+15%	17,850	17,850
72,500	146,400	\$9,983+25%	72,500	72,500
146,400	223,050	\$28,458+28%	146,400	146,400
223,050	398,350	\$49,920+33%	223,050	223,050
398,350	450,000	\$107,768+35%	398,350	398,350
450,000		\$125,846+39.6%	450,000	450,000
<b>Single</b>				
\$0	8,925	\$0+10%	\$0	\$0
8,925	36,250	\$893+15%	8,925	8,925
36,250	87,850	\$4,991+25%	36,250	36,250
87,850	183,250	\$17,891+28%	87,850	87,850
183,250	398,350	\$44,603+33%	183,250	183,250
398,350	400,000	\$115,586+35%	398,350	398,350
400,000		\$116,164+39.6%	400,000	400,000
<b>Married Filing Separately</b>				
\$0	8,925	\$0+10%	\$0	\$0
8,925	36,250	\$893+15%	8,925	8,925
36,250	73,200	\$4,991+25%	36,250	36,250
73,200	111,525	\$14,229+28%	73,200	73,200
111,525	199,175	\$24,960+33%	111,525	111,525
199,175	225,000	\$53,884+35%	199,175	199,175
225,000		\$62,923+39.6%	225,000	225,000
<b>Head of Household</b>				
\$0	12,750	\$0+10%	\$0	\$0
12,750	48,600	\$1,275+15%	12,750	12,750
48,600	125,450	\$6,653+25%	48,600	48,600
125,450	203,150	\$25,865+28%	125,450	125,450
203,150	398,350	\$47,621+33%	203,150	203,150
398,350	425,000	\$112,037+35%	398,350	398,350
425,000		\$121,365+39.6%	425,000	425,000
<b>Estates &amp; Trusts</b>				
\$0	2,450	\$0+15%	\$0	\$0
2,450	5,700	\$368+25%	2,450	2,450
5,700	8,750	\$1,180+28%	5,700	5,700
8,750	11,950	\$2,034+33%	8,750	8,750
11,950		\$3,090+39.6%	11,950	11,950

Social Security (2012 & 2013)	2012	2013
<b>Maximum Comp. Subject to FICA:</b>		
Social Security maximum (OASDI)	\$110,100	113,700
Social Security employee rate	4.2%	6.2%
Medicare maximum (HI)	No Limit	No Limit
Medicare employee rate	1.45%	1.45%*
* Additional 0.9% on incomes in excess of the threshold amt't (\$250,000 married joint/ \$200,000 single) applies to wages of employees for a combined tax of 2.35%.		
<b>Base Amt't of Mod. AGI Causing Social Security Benefits to be Taxable:</b>	<b>50% Taxable</b>	<b>85% Taxable</b>
Married Filing Jointly	\$32,000	\$44,000
Single	\$25,000	\$34,000
<b>Maximum Earnings Before Social Security Benefits are Reduced:</b>	<b>2012</b>	<b>2013</b>
Under full retirement lose \$1 of \$2	\$14,640	\$15,120
Year of retirement lose \$1 of \$3	\$38,880	\$40,080
At full retirement age	No Limit	No limit

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Standard Deductions (2012 & 2013)	2012		2013	
	Age65/Blind	Age65/Blind	Age65/Blind	Age65/Blind
Filing Status				
Joint/Surviving Spouse	11,900	12,200	1,150/1,200	1,150/1,200
Head of Household	8,700	8,950	1,450/1,500	1,450/1,500
Single/Married File Separate	5,950	6,100	1,450/1,500	1,450/1,500
<b>Itemized Deduction &amp; Personal Exemption Phase-out (2013)</b>				
<b>AGI Phase-out Threshold Amt't</b>	<b>2012</b>	<b>2013</b>	<b>2012</b>	<b>2013</b>
Joint/Surviving Spouse	N/A	N/A	300,000	300,000
Head of Household	N/A	N/A	275,000	275,000
Single	N/A	N/A	250,000	250,000
Married Filing Separately	N/A	N/A	150,000	150,000
<b>Personal Exemptions (2012 &amp; 2013)</b>				
Year	<b>2012</b>	<b>2013</b>	<b>2012</b>	<b>2013</b>
Amount	3,800	3,900	3,800	3,900

Long-Term Capital Gains & Qualified Dividend Rates			
Taxpayers in:	2012	2013	
10% & 15% Brackets	0%	0%	
Other Brackets At or Below Threshold Am't of 450,000 married joint/ 400,000 single/425,000 head of household	15%	15%	
Other Brackets Above Threshold Am't	15%	20%*	

\* Additional 3.8% tax on net investment income applies to certain high income taxpayers to extent exceed (modified AGI \$250,000 married joint/\$200,000 single) increasing the rate to 23.8%

Corporations Income Tax (2012 & 2013)			
Taxable Income Over	Not Over	Tax Rate	
\$0	50,000	15%	
50,000	75,000	25%	
75,000	100,000	34%	
100,000	335,000	39%	
335,000	10,000,000	34%	
10,000,000	15,000,000	35%	
15,000,000	18,333,333	38%	
18,333,333		35%	

Estate & Gift Tax Rates (2013)			
Taxable Estate Is:			
Over	But Not Over	The Tax Is	Am't Over
\$0	\$10,000	\$0+18%	\$0
10,000	20,000	1,800+20%	10,000
20,000	40,000	3,800+22%	20,000
40,000	60,000	8,200+24%	40,000
60,000	80,000	13,000+26%	60,000
80,000	100,000	18,200+28%	80,000
100,000	150,000	23,800+30%	100,000
150,000	250,000	38,800+32%	150,000
250,000	500,000	70,800+34%	250,000
500,000	750,000	155,800+37%	500,000
750,000	1,000,000	248,300+39%	750,000
1,000,000		345,800+40%	1,000,000

Other Estate & Gift Items (2012 & 2013)			
	2012	2013	
Annual gift tax exclusion	\$13,000	\$14,000	
Annual gift exclusion for non-US spouse	139,000	143,000	
Generation skipping exclusion	5,120,000	5,250,000	
Estate tax exclusion	5,120,000	5,250,000	
Gift tax exclusion	5,120,000	5,250,000	
2% limit for section 6166	1,390,000	1,430,000	
Special use valuation	1,040,000	1,070,000	

AMT Exemption* (2012 & 2013)			
Filing Status	2012	2013	
Joint/Surviving Spouse	\$78,750	\$80,800	
Single	\$50,600	\$51,900	
Married Filing Separate	\$39,375	\$40,400	
Trusts & Estates	\$22,500	\$23,100	

AMT Exemption Phase-out Threshold* (2012 & 2013)			
Filing Status	2012	2013	
Joint/Surviving Spouse	\$150,000	153,900	
Single	112,500	115,400	
Married File Separate/Trusts & Estates	75,000	76,950	

\* AMT exemption and threshold for phase-out are indexed

Traditional IRA Deductibility Rules (2012 & 2013)				
Filing Status	Covered by Employer Plan?	Modified AGI		Deductibility
		2012	2013	
Single	No	Any amount	Any amount	Full deduction
	Yes	Less \$58,000	Less \$59,000	Full deduction
		58,000-67,999	59,000-68,999	Partial deduction
Married	Neither Spouse	Any amount	Any amount	Full deduction
	Both Spouse	Less 92,000	Less 95,000	Full deduction
		92,000-111,999	95,000-114,999	Partial deduction
Filing Joint	One Spouse Covered - For	Less 92,000	Less 95,000	Full deduction
	Cover Spouse	112,000 & more	115,000 & more	No deduction
		One Spouse Covered - For	Less 173,000	Less 178,000
Noncovered	173,000-182,999	178,000-187,999	Partial deduction	
	183,000 & more	188,000 & more	No deduction	

Qualified Retirement Account Limits (2012 & 2013)			
	2012	2013	
Contribution limits for traditional and Roth IRAs	\$5,000	\$5,500	
Catch-up limits for traditional and Roth IRAs	1,000	1,000	
Maximum elective deferral to retirement plans e.g. 401(k), 403(b)	17,000	17,500	
Maximum elective deferral for 457 plans of tax-exempt employer	17,000	17,500	
Catch-up limits for 401(k), 403(b), SARSEP and 457	5,500	5,500	
Maximum elective deferral SIMPLE IRA and SIMPLE 401(k) plan	11,500	12,000	
Catch-up limits for SIMPLE IRA and SIMPLE 401(k) plan	2,500	2,500	
Limit on annual additions to SEP IRA plans	50,000	51,000	
Annual compensation threshold requiring SEP IRA contribution	550	550	
Limit on annual additions to defined contribution plans	50,000	51,000	
Max. annual compensation taken into account for contributions	250,000	255,000	
Annual benefit limit under defined benefit plans	200,000	205,000	
Threshold amount for definition of highly compensated employee	115,000	115,000	
Threshold amount for definition of key employee in top-heavy	165,000	165,000	

AGI phase-out range for contributions:			
	2012	2013	
Married filing joint	\$173,000-183,000	178,000-188,000	
Single	\$110,000-125,000	112,000-127,000	

Uniform Lifetime Table		
Age	Distribution Period	
70	27.4	
71	26.5	
72	25.6	
73	24.7	
74	23.8	
75	22.9	
76	22.0	
77	21.2	
78	20.3	
79	19.5	
80	18.7	
81	17.9	
82	17.1	
83	16.3	
84	15.5	
85	14.8	
86	14.1	
87	13.4	
88	12.7	
89	12.0	
90	11.4	
91	10.8	
92	10.2	
93	9.6	
94	9.1	
95	8.6	
96	8.1	
97	7.6	
98	7.1	
99	6.7	
100	6.3	
101	5.9	

This is designed to provide general information in regard to the subject matter covered. It should be used with the understanding that we are not rendering legal, accounting or tax advice. Such services should be provided by your own advisors. Accordingly, any information in this document cannot be used by any taxpayer for purposes of avoiding penalties under the Internal Revenue Code.

## GIFT TAX

GT base (exclusive)	1) Present gift + 2) <u>Prior taxable gifts</u> = <u>GIFT TAX BASE</u> <sup>1</sup>
GT calculation	1) GT rate · GT base <sup>2</sup> – 2) <u>Current GT rate · Prior taxable gifts</u> * = 3) Tentative tax on present gift – 4) <u>Unused GT credit</u> = GIFT TAX DUE

## ESTATE TAX

GROSS ESTATE	O 2033	Property owned at death
	C 2034	Property in which SS has dower, curtesy, or elective share rights
	3 2035	Certain transfers within 3 years of death (2036-38, 2042; gift tax)
	L 2036	Transfers with a retained life estate or retained controls
	R 2037	Transfers with retained reversionary interests
	R 2038	Revocable transfers
	A 2039	Annuities and employee benefits (1982 & 1984 pension exclusions)
	S 2040	Property passing by right of survivorship
	P 2041	General powers of appointment
	L 2042	Life insurance
	G 2043	Transfers for partial consideration
	Q 2044	QTIP transfers for which a marital deduction was previously allowed
TAXABLE ESTATE		= Gross estate, less
	A 2053	Deduction for administration, funeral expenses, and debts
	C 2054	Deduction for casualty losses
	C 2055	Charitable deduction
	M 2056	Marital deduction
	Q 2056A	QDOT
	Q 2057	Deduction for certain family business interests
TENTATIVE ESTATE TAX BASE		Taxable estate, plus Taxable gifts after 1976
TENTATIVE ESTATE TAX		Tentative estate tax base, multiplied times 2001 estate tax rate schedule
FEDERAL ESTATE TAX		Tentative Estate Tax, less
		Gift tax payable on taxable gifts after 1976 at current tax rates
	C 2010	Unified estate tax credit
	S 2011	Credit for state death taxes
	P 2012	Credit for pre-1977 gift taxes on property included in gross estate
	T 2013	Credit for taxes on prior transfers
	F 2014	Credit for foreign death taxes

- <sup>1</sup> a) EXCLUDING--  
(1) §2503(b), (c) Annual Exclusion (present interests/gifts to minors)  
(2) §2503(e) Tuition Payments and Medical Expenses, and  
b) DEDUCTING (to extent of §2503 inclusion)  
(1) §2522 Gifts to Charity  
(2) §2523 Marital Deduction

<sup>2</sup> If any generation-skipping transfer tax was or is payable on gifts that were direct skips, include the amount of the generation-skipping transfer tax in the amounts of the gifts.

GSTT MNEMONICS

Method	First Transfer			Second Transfer			Gross Tax	% Tax	Tax Factor				
	Gross funds	GT	ET	GSTT	Net Transfer	Gross funds				GT	ET	GSTT	Net Transfer
[a] Gift to Child, Gift to GC	450	150			300	300	100			200	250	56%	1.25
[b] Gift to Child, Bequest to GC	600	200			400	400		200		200	400	67%	2.00
[c] Bequest to Child, Gift to GC	600		300		300	300	100			200	400	67%	2.00
[d] Bequest to child, Bequest to GC	800		400		400	400		200		200	600	75%	3.00 <sup>a</sup>
[e] Gift to Trust, Taxable Term or Distrib.	600	200			400	400			200	200	400	67%	2.00
[f] Bequest to Trust, Taxable Term or Distrib.	800		400		400	400			200	200	600	75%	3.00
[g] Direct Skip by Gift	450	150 <sup>b</sup>		100	200	200				200	250	56%	1.25
[h] Direct Skip Subject to Estate Tax	600		300	100	200	200				200	400	67%	2.00

Direct skips	E.g., taxable transfer by Mom to person in Grandchild's generation or below. Direct skip is always a transfer for GT or ET purposes, even though no tax due (either on account of annual exclusion or use of unified credit) *Transferor (or trustee) liable for GSTT on direct skip; executor if by reason of transferor's death. *GSTT apportioned to property included in the direct skip, unless transferor directs otherwise. *GSTT due April 15 year following, or, in case of estate, when ET due *GSTT added to amount of gift for GT purposes
Taxable Distributions & Taxable Terminations	TDs and TTs refer to distributions from trusts. E.g., Mom establishes a trust; TDs are distributions to Grandchild's generation. TTs are terminations of an interest of a beneficiary in Child's generation, if remainder beneficiaries are Grandchild's generation. Grandfathered: i) Trusts irrevocable on Sep 25 1985 or transferors mentally incompetent Oct 22 1986 *TDs and TTs are generally not taxable transfers for GT or ET purposes, the transfer tax having been paid already. *TD--recipient pays; due April 15 year following; payment by trustee deemed an additional distribution *TT--trustee pays; due April 15 year following
"Member of the family"	Determines certain generation assignments, and include-- Descendants of the transferor's grandparents Transferor's spouse Transferor's ex-spouse Descendants of the spouse's and ex-spouse's grandparents Spouses and ex-spouses of above persons
Skip person	Family member *Transferor's generation includes current and ex-spouses *Relatives' spouses and ex's assigned same generation *Family with MT 1 generation (e.g., adopted grandchild) assigned to youngest *Relationship includes blood, half-blood, adoption, marriage, former marriage"  Other persons 0 - 12.5 years younger than transferor = same gen. 12.5+ to 37.5 years younger than transferor = child's gen. so on, every 25 years

<sup>a</sup> If Child dies within 10 years of grandparent, a previously taxed property credit is available under Section 2013 for estate tax paid on grandparent's death

<sup>b</sup> GSTT added to gift before 50% gift tax applied.

## ESTATE PLANNING SYSTEM

### CHECKPLAN

(see [How To Use This System](#))  
[How to Use This System.doc]

HUSBAND'S FULL NAME \_\_\_\_\_  
 WIFE'S FULL NAME \_\_\_\_\_  
 INDIVIDUAL'S FULL NAME \_\_\_\_\_

LEGEND:      NA-NOT APPLICABLE      L-LAWYER      S-SUPPORT STAFF

## INITIAL CONTACT

**HOTLINKS** (for fast phone access)

Form - [Outlook contact – initial client contact](#) [Forms\Outlook contact - initial contact.oft]

Getting Started

[Getting Started Letter](#) [Letters/Getting started.doc]

[Getting Started Message](#) [Letters/Getting started message.oft]

Getting Started, with appointment

[Getting Started Letter \(appointment scheduled\)](#) [Letters\Getting started (appointment scheduled).doc]

[Getting Started Message \(with appointment\)](#) [Letters/Getting started message (interview scheduled).oft]

1. Upon **initial contact** with prospective estate planning client(s),
  - a. **While caller is on the phone**, introduce the Firm's estate planning practice (see SI 1 [Initial Client Contact](#) [Special Instructions/Initial Client Contact.doc]), discussing--
    - (1) No-obligation interview with the attorney; lasts about two hours; applicant's personal circumstances reviewed then, and different estate planning techniques discussed
    - (2) Our Getting Started Memo explains information the applicant should bring, including--
      - (a) Exhibit A Financial Statement, and
      - (b) Exhibit B Personal and Family Information
    - (3) The Getting Started Memo also discusses special circumstances that require additional information (business ownership, benefits under another's Will or trust, divorce decree, premarital agreement or other property contract)
    - (4) Fees are quoted at initial interview; applicants may decide then

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or later whether to proceed

- b. Ask whether the applicant needs to plan for a disabled dependent, e.g., a child or parent that *presently* is receiving government benefits such as Medicaid or Social Security Disability?

If so, we should probably refer the applicant to an elder law or disability attorney familiar with government benefits (e.g., Wright Abshire, P.C. (Bellaire), Pi-Yi Mayo (Baytown), or Christina Leshner (Houston)). Please refer the caller to an attorney for further discussion. If an attorney is not available, proceed to take the applicant’s information and to offer them a Getting Started package, but refer to an attorney before scheduling an interview.

If the applicant’s family includes a disabled relative that is someone else’s dependent, e.g. a niece or a cousin, then a referral elsewhere is less likely to be appropriate, because a special needs trust in a Will is probably adequate planning. When in doubt, refer to an attorney for further discussion with the applicant.

- c. While caller is on the phone, offer to mail or e-mail the Getting Started Memo. If caller accepts,

- (1) Open an Outlook contact ([example](#) [Forms\Outlook contact - initial contact.oft]), recording—

- (a) Name (set title, e.g., Dr., Mr., Prof., etc.)
- (b) Address
- (c) Phone number and e-mail
- (d) Referred by [Lname, Fname]
- (e) Spouse’s name (record “Single” if unmarried)

- (2) Set categories - ApplicantEP-<LnameFnameMI>, Newsletter

Note: when a married couple seeks information, use the name of the inquiring spouse to determine <LnameFnameMI>

- (3) If any special urgency (e.g., pending travel or surgery), note in body of applicant’s Outlook contact, e.g., “Applicant traveling to Iran January 22.” ([example](#) [Forms\Outlook contact - initial contact.oft])

- d. While caller is on the phone, offer to schedule an initial interview. If caller accepts, go to Item 2 of this Checkplan. Return to Item 1.d, below, when done.

- (1) After caller hangs up the phone, if caller accepted a Getting Started Memo,

- (a) but declined to schedule an interview, mail under cover of a Getting Started letter, or else e-mail a Getting Started message with attached Getting Started Memo and Exhibits, otherwise,

- (b) if caller scheduled an interview, mail under cover of Getting Started letter (with appointment), or else e-mail a Getting Started message (with appointment) with attached Getting Started Memo and Exhibits

- (2) Note particulars in body of applicant’s Outlook contact—


(a) Date applicant called or e-mailed

(b) Date and manner Getting Started Memo transmitted, and

(c) FIMILname of responding staff or attorney

e.g., “Applicant first called Jan 2, 2008; faxed Letter 1 and Getting Started Memo same day; interview scheduled – CASchuler”

e. Before hanging up, thank caller for their interest, offer your name, and invite them to ask for you personally if they need further assistance.


# SCHEDULE APPOINTMENT

**HOTLINKS** (for fast phone access)

Form - [Outlook calendar – initial interview](#) [Forms\Outlook calendar - Initial interview.oft]

MIL - [Master Information List](#) [Forms\Master Information List.doc]

2. If an applicant requests an initial interview:

a. Confirm applicant already received or was sent a Getting Started Memo and letter. If so, remind applicant their responses should be brought to the initial interview. If not, go to Item 1 of this Checkplan.

b. While caller is on the phone, post an appointment to the Outlook calendar. See [example](#) [Forms\Outlook calendar - Initial interview.oft] calendar item for illustrative subject, location, category, etc.

HOURS ARE AS FOLLOWS:

RUSSELL (1.5 HOURS)

8:30am

10:00am

1:30pm

3:00pm

When selecting an appointment date, allow sufficient time for applicant to prepare their Getting Started responses.

Morning appointments are not unwelcome, but afternoon appointments are preferred, to minimize rescheduling when morning court appearances are unexpectedly set.

c. While caller is on the phone, complete the following elements of a Master Information List (MIL). Refer to existing Outlook contact, if any, and confirm information with caller before recording to MIL.

**1.00 ADMINISTRATIVE**

1.01 File no. (client.matter nos.) (only prior clients will have)

1.05 Name & address (envelope style)

1.06 Salutation

**2.00 HUSBAND**

2.01 Title (Dr., Mr., Prof.)

2.02 Full name

2.03 Last name

**3.00 WIFE**

3.01 Title (Dr., Mrs., Ms., Prof.)

3.02 Full name

3.03 Last name

**4.00 SINGLE INDIVIDUAL** (only if unmarried)

4.01 Title (Dr., Mr., Mrs., Ms., Prof.)

4.02 Full name

4.03 Last name

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d. Before hanging up,

- (1) Confirm date and time of appointment with applicant
- (2) Explain most appointments last about two hours
- (3) Ask for 48 hours notice of any schedule changes
- (4) Ask the names of the people attending the initial interview, and note in the body of Outlook calendar entry. See [example](#) [Forms\Outlook calendar - Initial interview.oft] for illustrative note.
- (5) Remind the applicant to bring their Getting Started responses to the meeting.
- (6) Ask the applicant if they need directions (“Our office is in the Frost National Bank Building, at the northwest corner of Bellaire Blvd. and the West Loop. Free parking is available in the garage and on the lots facing the West Loop and Bellaire Blvd.”)
- (7) Thank applicant for calling, and invite them to call you personally if they need further assistance

e. After hanging up,

- (1) If more than two people will attend the initial interview, reserve a conference room, noting particulars on the Outlook calendar (Conference room, employee logging the reservation, date the reservation was made, e.g., “Large conference room (rsv'd 11/25 by Christina)”)
  - (2) Doublecheck the appointment appears in the Outlook calendar.
  - (3) Prepare a [Calendar Memorandum](#) [Forms\Calendar Memorandum, Initial Interview.doc] for the appointment ([example](#) [Forms\Calendar Memorandum, Initial Interview (example).doc])
  - (4) Save a copy of the Master Information List to directory \\server\data\My Documents\FILES\ApplicantEP\  
<LnameFnameMI>\ (e.g., . . . \ CharlesDonaldL\Master Information List.doc)

Note: when a married couple seeks information, use the name of the inquiring spouse to determine <LnameFnameMI>

Note: if you’re fast enough, you can save an MIL to this directory and complete while the applicant is on the phone; otherwise, complete a printed MIL while on the phone, and transcribe to the applicant’s directory after hanging up.

- (5) [Label](#) [Forms/File labels.doc] a manila folder—
 

ApplicantEP-<LNameFNameMI> (\*1.15 Initials)  
<Appointment time> <Appointment date>

E.g.,  
ApplicantEP-CharlesDonaldL (RWH)  
8:30am Jan 12 2004
- (6) Fasten the partially completed MIL in the applicant’s manila folder
- (7) File in the applicant’s manila folder a catalog (large) envelope with an addressed ["PERSONAL & CONFIDENTIAL" mailing](#)


[label](#) [Forms/Mailing label.doc], stuffed, in order, with the following—

- (a) The memo [An Estate Planning Toolbox](#) [Forms/Memo - Toolbox.pdf]
  - (b) The diagram [No Tax Planning](#) [Forms/Diagram - Simple estate.pdf]
  - (c) The diagram [Bypass & Marital Trusts](#) [Forms/Diagram - Bypass & marital trusts.pdf]
    - (i) If spouse not a USC, add diagram [Bypass & Marital \(+QDOT\) Trusts](#) [Forms/Diagram - Bypass & marital trusts (+QDOT).pdf]
  - (d) A fee agreement form (either [married couple](#) [Forms/Fee Agreement - married couple.pdf] or [individual](#)) [Forms\Fee Agreement - individual.pdf]
  - (e) [Fees for Common Estate Planning Services](#) [Forms/Fees.pdf]
  - (f) A letter Proceeding with Your Estate Plans (either [married](#) [Letters/Proceeding with your estate plans.doc] or [individual](#) [Letters/Proceeding with your estate plans (single individual).doc])
  - (g) A letter (small) addressed [stamped, return envelope](#) [S:\My Documents\FILES\0250\0018 Legal Forms\Estate planning\System\Forms\Return envelope.doc]
- (8) Deliver the folder to the Responsible Attorney, for filing in his or her desktop wire organizer


# INITIAL CONFERENCE

## HOTLINKS

Form - [Getting Started Memo](#) [Forms/Memo - Getting Started FAQs.pdf]

Letter - Proceeding with Your Estate Plans ([married](#) [Letters\Proceeding with your estate plans.doc] OR [individual](#) [Letters\Proceeding with your estate plans (single individual).doc])

Worksheet – [Tax Calculators](#) [Worksheets\Tax calculators.xls]

3. Attorney conducts **initial conference** with applicant(s)--
  - a. Outline interview for applicant—
    - (1) Discuss gift and estate taxes
    - (2) Discuss probate
    - (3) Compare diagrams of an unplanned and a planned estate
    - (4) Discuss Wills and Living Trusts
    - (5) Discuss Ancillary Documents
    - (6) Review applicant’s financial and family information
    - (7) Explain our fees
    - (8) Suggest plans
    - (9) Explain division of labor among client, legal assistant, and attorney
    - (10) Explain limits of fixed fee
    - (11) Revisit plans and fiduciaries
  - b. Invite applicants to ask questions throughout
  - c. Confirm and/or complete MIL items—
    - (1) 1.01 to 1.06
    - (2) 2.01 to 2.04
    - (3) 3.01 to 3.04
    - (4) 4.01 to 4.04
  - d. Confirm their beneficiaries
    - (1) Married – spouse, then children
    - (2) Single parents – children in equal shares
    - (3) Unmarried individuals – list persons (or charities) and percentages
  - e. Review names, addresses, and phone numbers of beneficiaries and others involved in applicant’s estate plans
    - (1) As fiduciaries
    - (2) As beneficiaries
  - f. Discuss gift and estate taxes
    - (1) Rates
    - (2) Tax returns
    - (3) Realities
      - (a) Annual gift tax exclusion
      - (b) Medical and education exclusions
      - (c) Unified credit

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- (i) Toolbox
  - (ii) EGTRRA
- (4) Taxable gifts are cheaper than taxable bequests
- g. Explain probate
  - (1) Appoint representative
  - (2) Collect assets
  - (3) File inventory
  - (4) Process claims
  - (5) Pay creditors
  - (6) Transfer property
- h. Diagram simple estate
  - (1) Community property
    - (a) Separate property
      - (i) Owned prior to marriage
      - (ii) Inheritance or gifts
    - (b) Presumption of community
  - (2) Title sieve
    - (a) JTWROS
      - (i) Real estate, vehicle title
      - (ii) Bank accounts – though often defective
      - (iii) Best limited to vehicle title and maybe one checking account
      - (iv) Beneficiary collects with death certificate
    - (b) Beneficiary designation
      - (i) Insurance, annuities, retirement, sometimes brokerage accounts
      - (ii) Beneficiary collects with death certificate
      - (iii) Presents wonderful opportunities if properly managed
      - (iv) “My estate” always a bad choice, due to creditor exposure
      - (v) “My spouse” or “my child” often bad, due to creditor exposure, commingling with community property, and income tax reasons (pre-tax assets, e.g., IRAs or retirement plans)
    - (c) Will (and codicils)
      - (i) House, vehicles, bank accounts, household furnishings, collections (e.g., art, guns, etc.)
      - (ii) Executor collects with probate or alternative
      - (iii) Exposed to creditors
    - (d) Intestacy
      - (i) Administrator collects with probate or alternative
      - (ii) Exposed to creditors
    - (e) Marital deduction on first death
    - (f) Taxes on survivor’s death
    - (g) Contingent trusts for young and disabled
    - (h) Even simplest plan defeated by inappropriate JTWROS or beneficiary designations
    - (i) Simplest to eliminate JTWROS and point beneficiary designations to the Will


i. Diagram taxable estate

- (1) Survivor’s separate property and 50% community (first “pocket”)
- (2) Marital trust (second “pocket”)
  - (a) Non-tax, not required
  - (b) Creditor protection
  - (c) Segregates separate property in event of remarriage
  - (d) Prevents survivor changing the disposition
  - (e) Allows for management by survivor or others
  - (f) Particulars
    - (i) Surviving spouse can be sole trustee
    - (ii) Distribute all income to surviving spouse annually
    - (iii) Distribute principal for surviving spouse’s health, education, maintenance and support
    - (iv) Surviving spouse can be given a limited power of appointment in favor of descendants, descendants’ spouses, and/or charities
- (3) Bypass trust (third “pocket”)
  - (a) Above benefits, plus captures the exemption amount
  - (b) Funded only if needed to minimize estate taxes
  - (c) Spend from it only after exhausting the other pockets
  - (d) Assets appreciate estate-tax free until passing to children
  - (e) Particulars
    - (i) Surviving spouse can be sole trustee
    - (ii) Distribute income and principal for surviving spouse’s health, education, maintenance and support
    - (iii) Distribute income and principal for descendants’ health, education, maintenance and support
    - (iv) Surviving spouse can be given a limited power of appointment in favor of descendants, descendants’ spouses, and/or charities
- (4) Second-generation trust (life-time trusts for children)
  - (a) Generation-Skipping Transfer Tax
  - (b) Exemption
  - (c) Keeps remainder out of estate tax system until children’s deaths (use if your children might have taxable estates)
  - (d) Assets continue to appreciate estate-tax free until passing to grandchildren
  - (e) Particulars
    - (i) Child can be sole trustee
    - (ii) Distribute income and principal for child’s health, education, maintenance and support
    - (iii) Distribute income and principal for health, education, maintenance and support of child’s descendants
    - (iv) Child can be given a limited power of appointment in favor of your descendants, descendants’ spouses, and/or charities

j. Living Trusts

- (1) Function like a Will, but are funded today
- (2) All assets must be transferred into trust today
- (3) Future assets must be titled in the trust


- (4) Offer immediate management
- (5) Not generally indicated for persons who are managing their own affairs, except for—
  - (a) Real estate in other jurisdictions
  - (b) Oil and gas interests producing significant royalties
  - (c) Imminent disability
  - (d) Living Trusts already funded, e.g., if client moved from another state
- (6) Bypass trusts and marital trusts will serve same role on death of first spouse
- k. Discuss Ancillary Documents
  - (1) Statutory Durable Power of Attorney
  - (2) Medical Power of Attorney
  - (3) Directive to Physicians and Family or Surrogates (“Living Wills”)
  - (4) Declaration of Guardian (for yourself)
  - (5) Declarations of Guardian (for your children), and
  - (6) Appointment of Agent to Control Disposition of Remains
- l. Review client’s financial information
  - (1) May we write on the applicant’s information?
    - (a) If not, make a copy
    - (b) If need be, print Getting Started Memo to annotate
  - (2) Complete missing items
  - (3) Confirm inconsistent items
  - (4) Emphasize that nonprobate items count too
  - (5) Ask about special circumstances and documents—
    - (a) Are you the beneficiary of any trusts? (trust instrument)
    - (b) Are you the beneficiary under someone else’s Will (Will)
    - (c) Do you own a business? (organization and owner agreements)
    - (d) Have you ever been divorced? (decree and property settlement agreement – look for asset requirements, e.g., life insurance or support obligations)
    - (e) Did you sign a premarital agreement or other marital property contract?
    - (f) Have you inherited any property?
    - (g) Have you ever filed gift tax returns?
  - (6) Did you record a durable power of attorney? [mandatory under Prob. Code § 488 from 1989–1993, thus compelling filing of a written revocation]
  - (7) Complete [Tax Calculators](#) [Worksheets\Tax calculators.xls], discuss with client, and save. See [SI 4 Document Management](#) [Special Instructions\Document Management.doc].
- m. Explain fee amount and due date
  - (1) You can now or later whether to proceed
  - (2) If you do retain us, the fee is fixed, and depends on plan and specialized provisions
  - (3) 50% is due up front


- (4) Balance due when we deliver first drafts
  - (5) 3 months after drafts delivered, fixed fee expires, and all work billed hourly
- n. The fee for married couples is for both Wills.
- (1) All Wills include Contingent Trusts for minor and incapacitated beneficiaries
  - (2) The fee also includes Ancillary Documents--
    - (a) Declaration of Guardianship for minor children, if applicable;
    - (b) Declaration of Guardianship for yourself;
    - (c) Financial Durable Power of Attorney;
    - (d) Medical Power of Attorney; and
    - (e) Directive to Physicians and Family or Surrogates.

These instruments may be obtained apart from the Wills at a cost of \$150 plus \$75 per document.
  - (3) Additionally, the fee includes instruction memos for
    - (a) Coordinating Beneficiary Designations with Your Estate Plan
    - (b) Titling Accounts, and
    - (c) preparing a Personal Effects Memorandum
- o. Review Fees for Common Estate Planning Services
- (1) Circle plans discussed
  - (2) Check the more appropriate plans for the applicant(s)
  - (3) Explain that the fees above are for “standard” services, and any unusual provisions or circumstances will require an addition to the standard fee for the service rendered. Examples of variations on the usual planning scheme which would require additions to standard documentation fees are:
    - (a) bequests to charity (other than simple, nominal pecuniary bequests);
    - (b) prior-marriage situation involving children from prior marriage(s) (with the attendant complications concerning the testamentary disposition of property and beneficiary designations); and
    - (c) planning for a disabled child or parent.

In most cases, the additional fee, if any, can be determined and agreed during the initial conference.
- p. Explain division of labor among client, legal assistant, and attorney
- (1) You’ve already done much of the work by gathering your family and financial information
  - (2) Together we’ve reviewed components of several different plans
  - (3) If you want to retain us, decide which particular plan you’d like, complete and sign the fee agreement, and return with a check for 50% of the total fixed fee. If you prefer, you may call my assistant with your MasterCard, Visa, or Discover Card.


- (4) Assistant will work with you until we have the information necessary to draft documents
    - (a) names, addresses, phone numbers of your fiduciaries
    - (b) names of your beneficiaries
    - (c) percentage share to your beneficiaries
  - (5) My assistant does the data entry, and I assemble the documents. We usually deliver drafts within a week after we have all your information.
  - (6) If you have no changes, we will schedule an in-office conference to sign and date your documents before a notary and two witnesses.
  - (7) At the signing conference you are welcome to bring your **change of beneficiary designation forms** for us to review together. At that time we will have a memorandum ready about Coordinating Beneficiary Designations with Your Estate Plan. We won't fill them out or communicate with your broker or agent except on an hourly basis. You should ask your broker and insurance agent for the forms now, if you want to discuss them at the signing conference.
  - (8) At the signing conference, we will also give you instructions regarding a **Personal Effects Memorandum**. You are welcome to send us any memorandum you write for archiving with your Will and Ancillary documents. We will not review the memorandum you write except on an hourly basis.
  - (9) We like to schedule signing conferences within 2 - 3 weeks of delivering initial drafts.
  - (10) Hourly rates apply to all work done 3 months after drafts are delivered. In other words, please work with us to complete your estate plans promptly. We remain available to help you after 3 months, but after the initial flat fee engagement expires, we will bill you by the hour.
- q. Explain engagement to client—
- (1) The fixed fee includes—
    - (a) our initial conference,
    - (b) preparation of first drafts of the estate planning documents indicated above in accordance with our discussions to date, and
    - (c) an in-office signing conference (up to one hour).
  - (2) The fixed fee also includes additional attorney time until the date three months after we deliver the initial drafts. The additional attorney time varies with the plan, and is set out on the form Fees for Common Estate Planning Services. The additional attorney time is for:
    - (a) any additional conferences and communications relating to your estate planning (in person, by phone, or by e-mail) with you or others on your behalf,
    - (b) any revisions to the initial drafts (e.g., where you change your mind or because information you have given us so far proves to be inaccurate or incomplete), and




<p>(c) any other legal services requested by you or related to the above (including research, interoffice conferences, extended signing conferences, etc.).</p> <p>(3) There will be additional fees for:</p> <p>(a) legal services listed above (in items 3.q(1)(a), (b), and (c)) that exceed the included additional hours;</p> <p>(b) all legal services (including those listed above in items 3.q(1) (a), (b), and (c)) that occur more than three months after we deliver the initial drafts; and</p> <p>(c) all drafting or reviewing actual beneficiary designations or personal effects memorandums (occurring at any time).</p> <p>(4) Unless we agree to a different amount, the additional fees will be based on our standard “Hourly Fee” provisions (copy attached).</p> <p>(5) Finally, our fixed fee includes standard expenses (basic photocopying, postage, etc.) but does not include additional expenses we may incur on your behalf (such as messenger delivery charges, staff overtime when you request rush service, filing and recording fees, long distance charges, extra photocopies, etc.), which we will bill to you.</p>				
<p>r. Complete drafting information for the applicants on the enclosure to their letter Proceeding with Your Estate Plans (married or individual)--</p> <p>(1) Beneficiaries, including names and addresses</p> <p>(2) Fiduciaries under the Will, including names and addresses</p> <p>(a) Executor</p> <p>(b) Trustees</p> <p>(3) Fiduciaries under Ancillary documents, including names, addresses <i>and</i> phone numbers</p> <p>(a) Statutory Durable Power of Attorney</p> <p>(b) Medical Power of Attorney</p> <p>(c) Declaration of Guardian for Self</p> <p>(d) Declaration of Guardian for Children</p> <p>(4) Custom drafting</p> <p>(a) Unusual disposition?</p> <p>(b) Children from multiple marriages?</p> <p>(c) Charitable bequest?</p> <p>(d) Planning for disabled relative?</p> <p>(5) Retain copy for file; enclose original in catalog envelope, highlight items for further thought</p> <p>(6) Save completed letter Proceeding with Your Estate Plans to server. See <a href="#">SI 4 Document Management</a> [Special Instructions\Document Management.doc].</p>				
<p>s. Complete engagement</p> <p>(1) Enter applicant’s name and the date</p> <p>(2) Complete scope of representation (striking items that do not apply and filling blanks, e.g., “Remains Agent - \$125” or</p>				

- “N/A”)
- (3) Sign and enclose in catalog envelope
  - (4) Enclose list in catalog envelope and give to applicant
- t. Confirm—
- (1) Applicant leaves with—
    - (a) Letter Proceeding with Your Estate Plans (married or individual)
    - (b) A fee agreement form (either married couple or individual)
    - (c) Fees for Common Estate Planning Services
    - (d) a letter (small) addressed business return envelope
    - (e) The memo An Estate Planning Toolbox
    - (f) The newsletter EGTRRA
    - (g) The diagram No Tax Planning
    - (h) The diagram Bypass & Marital Trusts
  - (2) Firm retains--
    - (a) Copy of applicant’s Getting Started responses
    - (b) Copy of letter Proceeding with Your Estate Plans
- u. Complete MIL 1.16 if significant tax advice provided (e.g., taxable estate, taxable estate going to charity, non-taxable estate but tax-planned anyway, e.g., GSTT planning) (If “Yes”, client will receive an invoice suggesting 80% of fee is deductible; if “No”, only 30% suggested).


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A PROFESSIONAL CORPORATION

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RUSSELL W. HALL  
BOARD CERTIFIED - ESTATE PLANNING AND PROBATE LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

Today's date

1.01

1.02

Re: Getting started with your estate planning

Dear 1.03:

Thank you for asking us about your estate plans.

The first step is to schedule an appointment to discuss your situation, so I can learn about you and your family, and your assets and goals.

There is no obligation for the initial interview, which lasts about two hours. If married, I ask that both spouses attend.

The enclosed memo explains information you should bring. On request, we can e-mail you Exhibits A (Financial Statement) and B (Family and Personal Information) in Excel format.

At the interview I will review your information and discuss different estate planning techniques that suit your needs. At the end of the interview I will make some specific recommendations and explain our fees. You can decide then or later how to proceed.

Please call us with any questions or to schedule an appointment.

Take care.

Sincerely,

Russell W. Hall

Enclosure

Getting Started with Your Estate Planning

FROST BANK BUILDING  
6750 WEST LOOP SO. STE. 500  
BELLAIRE, TEXAS 77401-4199

## RUSSELL W. HALL & ASSOCIATES

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### Getting Started with Your Estate Planning

***What is the first step in the estate planning process?***

The first step in the estate planning process is to schedule an appointment to discuss your particular situation. The initial estate planning conference provides me an opportunity to learn about you, your family, your assets, and your goals. It is a “no obligation” meeting that lasts about one hour. At the end of the meeting, I will recommend different estate planning techniques that suit your needs, and explain my fees. You can decide how you wish to proceed.

***What should I bring with me to the initial conference?***

You should bring a financial statement with you to your initial estate planning conference. It does not have to be professionally prepared. A list of your major assets and liabilities (debts), with approximate values, helps me assess whether any tax planning should be recommended for your situation. Also, be sure to indicate separately “pre-tax” assets (like IRAs and qualified retirement plans) versus “after-tax” assets (like regular investment accounts, money market accounts, etc.). Some people use a computer program or other form for creating a financial statement. Others simply sketch out their information on the form attached as Exhibit A. Bringing along your address book or completing the information on Exhibit B is also helpful (see below). Also, if available, you might bring copies of your current estate planning documents (although, if you know they need to be completely redone, I will probably not spend too much time reviewing them).

***Is there anything else that I should bring to my initial conference?***

Other documents that should be brought, if applicable, would be copies of documentation relating to any business you own, such as the articles of incorporation and bylaws for your corporation, the partnership agreement for your business partnership and any buy-sell agreement. If you are the beneficiary under someone else’s Will or trust, you should bring a copy of that document. In addition, if you have ever been divorced and you believe the divorce decree might impose certain requirements with respect to various assets that you own (such as life insurance), please bring a copy of the divorce decree or property settlement agreement. If you have signed a premarital agreement or other marital property contract, that document should be brought along as well. If these documents are not readily available, they can be provided after the initial conference.

***What should I think about before meeting with my estate planning attorney?***

The two most basic questions are (i) to whom do you want to leave your assets and (ii) who do you want to name in various positions of responsibility?

With respect to the bulk of your estate, the answer to the first question is often very standard. Most married couples wish to provide first for their spouse and then for their children. Single people with children usually leave the bulk of their estate to their children in equal shares. Unmarried individuals without children should make a list of persons (or charities) they wish to benefit and the percentage share to each.

The answer to the second question can sometimes be more difficult. Usually, spouses name each other first in all positions of responsibility (except as guardian for minor children, which is automatic in most cases). The executors, trustees, agents and guardians that you name in your estate planning documents should be trustworthy, responsible people (collectively called “fiduciaries”). In some cases, a professional (such as a bank having trust powers or a private trust company) can be named as a fiduciary. You do not need to know exactly who you will name in every position before meeting with me. I will help advise you in regard to these matters. Preparation of your documents, however, will be advanced if you at least bring with you to the meeting the names, addresses and phone numbers of all persons who *might* be involved in your estate plan (see Exhibit B and further discussion below).

***Is there anything else I should think about in preparation for the meeting?***

If you have any particular issues or concerns, such as disposition of your business in the event of your death, or providing for an adult disabled child who is receiving government benefits, you should make a list of those issues and concerns prior to meeting with me. You should also advise me whether you and your spouse are both U.S. citizens and how long you have lived in Texas during the period of your marriage. If you or your spouse have inherited any assets from someone, you should advise me of that fact and identify the inherited assets in your financial statement. Further, it is also helpful if you can determine the current beneficiaries that you have named for your life insurance policies, IRAs and qualified retirement plans. If you are thinking of making relatively large cash gifts or gifts of other assets (*excluding* items that come within the general phrase “household furnishings and personal effects”), you might begin making a list of those persons and the amount or items that you are considering leaving to them.

***Is there any other information that would be helpful to bring with me to the initial conference?***

It would be helpful if you were to bring a prepared list of family and personal information, including all of the basic information relating to you, your spouse, your children, and any other persons who might be involved in your estate plan. A form that can be used to compile this information is attached to this memorandum as Exhibit B.

**EXHIBIT A**  
**FINANCIAL STATEMENT**

<u>Assets</u>	<u>Designated Beneficiary (if any)</u>	<u>How Titled</u>	<u>Approximate Value</u>
Your home			
Other real estate <sup>1</sup>			
Oil, gas and other mineral interests <sup>1</sup>			
Stocks, bonds, mutual funds and other investments ("after-tax")			
Cash, CDs, money market accounts			
Automobiles and other vehicles			
Valuable collections/collectibles/heirlooms			
Other household furnishings and personal effects			
Retirement assets, such as 401(k) plans, profit sharing plans, pension plans, IRAs, etc. ("pre-tax")			
Life insurance (identify insured and show <u>both</u> death benefit <u>and</u> cash value, if any)			(Death benefit)
			(Cash value)
Closely held business interest (describe)			
Other miscellaneous assets (describe)			
<b>Total Assets<sup>2</sup></b>			

<u>Liabilities (Debts)</u>	<u>Current Balance</u>
Mortgage on home	
Other real estate mortgages	
Personal debt (credit cards, car notes, etc.)	
Accrued taxes	
Other debts	
<b>Total Liabilities</b>	

<b>Net worth</b> for estate planning purposes (Total Assets <sup>2</sup> minus Total Liabilities)	
---	--

<sup>1</sup> Provide state and county.

<sup>2</sup> Including life insurance death benefit, but excluding life insurance cash value.

**EXHIBIT B**  
**FAMILY AND PERSONAL INFORMATION**

**General Personal Information.**

	<u>Husband</u>	<u>Wife</u>
Full legal name:	_____	_____
Other names used:	_____	_____
Preferred signature name:	_____	_____
Home address:	Street: _____	_____
	City: _____	_____
	County: _____	_____
	State, ZIP: _____	_____
	Phone: _____	_____
	Fax: _____	_____
	E-mail: _____	_____
Birth date (and age):	_____	_____
Soc. Sec. No.:	_____	_____
Citizenship:	_____	_____
Date of marriage:	_____ at City of _____, State of _____	
Is your marriage:	[ ] Ceremonial or [ ] common-law? If common-law, did you file an affidavit of informal marriage? [ ] No [ ] Yes, in _____ County, State of _____	
How long have you lived in Texas?	_____	_____
Occupation:	_____	_____
Employer:	_____	_____
Bus. address:	_____	_____
	Phone: _____	Phone: _____
	Fax: _____	Fax: _____
	E-mail: _____	E-mail: _____

**Children, Grandchildren.**

Please list all children of either of you below. For each child, please indicate: (i) the child's name (if the child has a preferred name, please put it in parenthesis after the legal name) and occupation; (ii) gender (male or female); (iii) date of birth; (iv) whether the child is the husband's only (H), the wife's only (W), a child of both (B); and (v) the child's approximate net worth. If any child is adopted by either of you, please indicate. If any child is deceased, please include him or her and indicate the date of death. If any child was given up for adoption, please include him or her, and indicate whether the court's adoption order terminated the child's inheritance rights.

Name & occupation	M/F	Birth date	H/W/B	Net worth
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**\*Note:** For each child who does not live at home with you, please mark an "X" or make a check mark in front of that child's name and **list that child's name on the back of this page** (or on a separate page), **along with his or her complete address** (including street, city, county, state, and ZIP code if possible), and phone number.

Are additional children in the future (including adopted children) even *remotely* possible? \_\_\_\_\_ (Y/N)

**Other Family Members and Friends Involved in Your Estate Plan.**

If either of your parents is living *and if they might be involved in your estate plan*, please list them below. Additionally, please list any brothers, sisters, or other relatives or friends who might be involved in your estate plan (as executor or trustee, as guardian for your minor children, as a recipient of any specific gift, as a beneficiary of a trust, etc.). Be sure to include each person’s complete name, age and occupation. When listing addresses, include city, county, state, and ZIP code if possible.

<u>Name/Age/Occupation</u>	<u>Relationship*</u>	<u>Address and phone no.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

\*E.g., “H mother,” “W brother,” “W friend,” “Our friend,” etc.

**Other Advisors.**

If you have another attorney, or a CPA, insurance agent, financial planner, stock broker, or other professional advisor, *and if they might be involved in your estate plan, or if you think we may need to discuss aspects of your estate plan with them*, please list them below.

<u>Name/Company</u>	<u>Profession</u>	<u>Address and phone no.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Primary Physician**

Husband

Wife

Name:	_____	_____
Mailing address:	_____	_____
Phone:	_____	_____



**MASTER INFORMATION LIST (MIL)**(see [How To Use This System](#))**1.00 ADMINISTRATIVE**

1.01	<u>File no.</u>	ApplicantEP-LnameFnameInitial
1.02	<u>Name &amp; address (envelope style)</u>	Mr. Mrs./Ms.
1.03	<u>Salutation</u>	Dear Mr. and Mrs./Ms.
1.04	<u>Interview date</u>	
1.05	Referral's name & address	
1.06	Referral's salutation	
1.07	Plan no.	
1.08	Plan	
1.09	Date drafts delivered	
1.10	Documents (envelope style)	<b>[(Wills, Revocable Living Trust, Directives to Physicians and Family or Surrogates ("Living Wills"), Medical Powers of Attorney, Statutory Durable Powers of Attorney, General Durable Powers of Attorney, Declarations of Guardian (for yourselves), Declarations of Guardian (for your children), and HIPAA Authorizations)</b>
		<b>(Will, Revocable Living Trust, Directive to Physicians and Family or Surrogates ("Living Will"), Medical Power of Attorney, Statutory Durable Power of Attorney, General Durable Power of Attorney, Declaration of Guardian (for yourself), Declaration of Guardian (for your children), and HIPAA Authorization)]</b>
1.11	Fee	
1.12	50% of fee	
1.13	Sign date	
1.14	Responsible staff	<u>Christina A. Schuler</u>
1.15	Responsible attorney	<u>Russell W. Hall</u>
1.16	Tax-advised estate (Yes or No)	
1.17	Witness <sub>1</sub> name and address	Christina A. Schuler 6750 West Loop So. Ste. 920 Bellaire, Texas 77401-4117
1.18	Witness <sub>2</sub> name and address	

- 6750 West Loop So. Ste. 920  
Bellaire, Texas 77401-4117  
Russell W. Hall  
6750 West Loop So. Ste. 920  
Bellaire, Texas 77401-4117
- 1.19 Notary name and address
- 1.20 Date Applicant Reminder Letter sent
- 1.21 Date 3-month draft tickler sent
- 2.00 HUSBAND**
- 2.01 Title (Dr., Mr., Prof.)
- 2.02 Full name
- 2.03 Last name
- 2.04 First, or nickname
- 3.00 WIFE**
- 3.01 Title (Dr., Mrs., Ms., Prof.)
- 3.02 Full name
- 3.03 Last name
- 3.04 First, or nickname
- 4.00 SINGLE INDIVIDUAL**
- 4.01 Title (Dr., Mr., Mrs., Ms., Prof.)
- 4.02 Full name
- 4.03 Last name
- 4.04 First, or nickname

Underlined items are to be completed when the applicant schedules the initial interview. A File no. generally is not assigned yet. At that early stage, simply record “ApplicantEP- <LNameFNameMI>” at field 1.01. E.g. “ApplicantEP-CharlesDonaldL.”

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## AN ESTATE PLANNING TOOLBOX

*Estate planners have dozens of planning techniques available in their “toolbox.” Almost every client’s estate plan begins with some basic techniques. For some clients, these basics are only the first step in their plan; for other clients, no additional planning is necessary. This memo describes some of the basic techniques that form the core of a sound estate plan.*

### **Estate Planning 101—The Bypass Trust and The Marital Trust**

Estate tax planning for married couples with taxable estates usually involves preparing Wills which divide the estate of the first spouse to die into two shares. One share is the portion of a deceased person’s estate that is exempt from estate tax (\$5,000,000; indexed for inflation, \$5,250,000 in 2013). This amount is sometimes referred to as the “Tax Free Amount.” The balance of the estate, i.e., the amount that exceeds the exemption amount in the year of death, passes to the surviving spouse (or to a Marital Trust) to defer estate tax. This excess amount is referred to as the “Marital Deduction Amount.”

If the deceased person’s estate is less than the Tax Free Amount, the difference is known as the “Deceased Spouse Unused Exemption” (or DSUE) amount.

A Bypass Trust is a trust designed to hold the Tax Free Amount. Although the terms of the Bypass Trust must be spelled out by including them in your Will prior to death, the trust is not actually established or funded until after the death of one spouse. The surviving spouse or any other qualified person or entity may serve as trustee of a suitably drafted Bypass Trust. The Bypass Trust typically permits distributions to be made for the health, support and maintenance of the surviving spouse in accordance with his or her accustomed standard of living. Distributions can also be made to children and other descendants from the Bypass Trust, as “secondary” beneficiaries. The surviving spouse is sometimes given a testamentary “power of appointment” over the Bypass Trust, which empowers the spouse to name the recipients of the Bypass Trust assets remaining at his or her death. In summary, the Bypass Trust gives the surviving spouse the use of trust property during his or her lifetime, and perhaps control over the disposition of the property at death. Despite this access and control, the assets in the Bypass Trust will not be subject to estate tax at the second spouse’s death,

regardless of their value at that time. As a result the assets in the Bypass Trust are said to “bypass” the estate tax.

The portion of a spouse’s estate in excess of the Tax Free Amount (the “Marital Deduction Amount”) will be subject to estate tax at the first death unless it passes to the surviving spouse, or to a second qualifying trust. Property that passes to the surviving spouse or to a qualified Marital Trust is deducted from the taxable estate of the first spouse to die, effectively deferring estate tax on this property until the second spouse’s death. As with the Bypass Trust, the surviving spouse or any other qualified person or entity may serve as trustee of a suitably drafted Marital Trust. Under the terms of the Marital Trust, all income must be distributed to the surviving spouse. Distributions of principal can be made to the surviving spouse to provide for his or her health, support and maintenance in accordance with his or her accustomed standard of living. Again, the surviving spouse may be given a power of appointment over the property to determine who will receive any property remaining in the Marital Trust at the time of the surviving spouse’s death. When the surviving spouse passes away, the assets in the Marital Trust (on which tax was deferred), as well as the surviving spouse’s individual assets, will be taxed to the extent the total exceeds his or her Tax Free Amount.

With passage of the American Taxpayer Relief Act of 2012, married couples now enjoy an alternative to the Bypass Trust. The first spouse may leave everything outright to the surviving spouse, without a Bypass Trust. The Survivor can elect so-called “portability” of the DSUE amount by filing an estate tax return within 9 months of the first spouse’ death. The effect is to preserve the first spouse’ Tax Free Amount without the burdens of a Bypass Trust. Bypass Trusts remain attractive for second marriages or where second-generation planning or asset protection is desired.

### **Taking the Next Step: Second-Generation Planning**

Married couples with children are frequently concerned not only with providing for each other, but also with ensuring that property passes to the second generation (their children) in a way that will be of the most benefit to them. For couples with young children, using a trust as a recipient of the property enables management of the assets by a trusted family member, friend or professional trustee until the children reach an age when they are mature enough to manage their own financial affairs. While the property is held in trust, it is managed by the chosen trustee. The trustee is required to provide for the health, support, maintenance and education of the children and their descendants during their lifetimes. In addition, the trust property is exempt from attachment by the child's creditors (including a child's ex-spouse in a divorce). Parents looking for a way to maintain the protections afforded by a trust, even after the children are able to handle their own financial affairs, may include provisions in their Wills which create lifetime trusts for the benefit of the children and their descendants. Each child can be given the right to become a cotrustee or sole trustee of his or her trust at designated ages. Additionally, each child may be given a power of appointment to designate the recipient of the property in that child's trust upon his or her death. If the child does not exercise this power of appointment, any remaining trust property typically passes to the child's children, in further lifetime trusts for their benefit, on essentially the same terms as the child's lifetime trust. There are a number of advantages to using lifetime trusts for children and other descendants:

- The trust assets will not be subject to claims of a descendant's creditors, so that a large judgment in a lawsuit will not result in the descendant losing the benefits of these assets;
- The assets will remain clearly segregated as a descendant's separate property, which is generally beyond the reach of Texas divorce courts;
- Management assistance can be provided for each descendant who is under a specified age through a trustee or co-trustee;

- There may be potential income tax savings available through distributions directly to grandchildren, who may be in low tax brackets; and
- For 2013, up to \$10,500,000 per married couple, plus any growth on the property between the death of the parents and the death of the children, can pass free from estate tax at the child's death when property passes from the children's trusts to grandchildren or other descendants. This technique requires use of a Bypass Trust on the first spouse's death, because portability does not extend to the generation-skipping transfer (GST) tax exemption used to shield the grandchildren's inheritance.

### **Selecting Guardians**

For parents of young children, money management is often of secondary importance. They are frequently more concerned about deciding who will raise the children and undertake the parenting responsibility for the kids. The person who is charged with caring for minor children is referred to as a "Guardian." In Texas, children are treated as minors until they reach the age of 18. Guardians may be named in the Will, or in a separate instrument entitled "Declaration of Guardian for Minor Children." A guardian may be appointed for the "person" of the minor, for the "estate" of the minor, or both. A guardian of the person is responsible for making parental decisions regarding the minor's upbringing, education and welfare. A guardian of the estate manages funds that belong to the minor (but not funds that are placed into trust for the minor, which are managed by the trustee of the trust). The same person may be named to serve as both the guardian of the minor's person and estate. This person may, but need not, be the same person who serves as the trustee of any trust created for the minor's benefit. One or more alternate Guardians are usually named. Co-Guardians may be named as well, but if two persons are named as the Co-Guardians of the person of a minor, those persons must be married to each other.

### **Impaired Judgment Documents**

Wills are effective tools to manage and dispose of assets on a person's death, but are inef-

fective on “mere” disability. Fortunately, several tools are available to protect against disability.

**STATUTORY DURABLE POWERS OF ATTORNEY.** A Power of Attorney enables you to appoint someone to act on your behalf during your lifetime regarding financial matters. Many people appoint their spouse or another trusted family member to serve as their “agent.” Frequently, one or more alternate agents are named. These documents can be made effective immediately, or can be structured for use only in the event you become incapacitated. The Texas Legislature has created a form known as a Statutory Durable Power of Attorney. That instrument also allows you to grant the agent authority to undertake one or more specific financial tasks. It also allows you to empower your agent to make gifts on your behalf. An agent is a “fiduciary.” As a result, the agent must act with the utmost honesty in carrying out your wishes. While a Power of Attorney may appoint an agent to serve for a limited purpose or for limited period of time, most Powers of Attorney give broad authority to the agent. Third parties are entitled to rely upon information and instructions given to them on your behalf by your agent. For example, if your agent signs a check on your account, and the bank has received a copy of the Power of Attorney from you or from the agent, the bank is entitled to honor the check as though it were signed by you. As you can see, naming someone to serve as your agent vests that person with substantial power over your financial affairs. As a result, careful thought should be given to the person or persons that you select to serve as your agent.

**MEDICAL POWERS OF ATTORNEY.** AS its name implies, a Medical Power of Attorney enables someone to act on your behalf during your lifetime regarding medical treatment decisions. Again, many people appoint their spouse or another trusted family member to serve as their “agent.” One or more alternate agents are often named. The agent can make medical treatment decisions only if you are incapacitated and unable to make treatment decisions on your own behalf. Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. Texas law requires

that you read and sign an information statement attached to the Medical Power of Attorney.

**DIRECTIVES TO PHYSICIANS AND FAMILY OR SURROGATES.** A Directive to Physicians and Family or Surrogates (sometimes called a “Directive” or “Living Will”) evidences your intentions whether to withhold or continue life sustaining treatment in the event you have an “irreversible condition” or a “terminal condition.” However, if you want the agent named in your Medical Power of Attorney to control the decision to either withhold or continue life sustaining treatment, you do not need a Directive. This is because, whenever you do not have a Directive, Texas law gives this authority to the agent under your Medical Power of Attorney. If you do not want your Medical Power of Attorney agent to have the authority (and you want to specify your preferences in writing), you *do* need a Directive. The Directive applies only if you are otherwise unable to communicate your wishes. It may be revoked by you at any time. The statutorily required information statement attached to the Directive provides additional details as to its purpose and effect.

### **Irrevocable Life Insurance Trusts**

Life insurance death benefits are generally exempt from income tax. However, life insurance is subject to estate tax if the insured person owns or controls the life insurance contract. Therefore, estate planning for life insurance often involves having the insured part with all “incidents of ownership” in the policy. “Incidents of ownership” include all rights to benefit from or control the insurance policy. For example, they include the right to change the beneficiary; the right to borrow against the policy; the right to surrender the policy for its cash value; and the right to pledge the policy as collateral for a loan. If someone other than you buys the insurance policy and holds all incidents of ownership over the policy, the death benefits will be completely excluded from your gross estate for federal tax purposes. In other words, third-party ownership of life insurance makes the death benefits estate tax free. Some people select their adult children to serve as owners. Frequently, however, the third party selected to own the insurance is an “irrevocable life insurance trust” (“ILIT”). Using an ILIT to own the insurance offers some

significant advantages over ownership of the policy by the insured’s children. For example:

- If you intend for your spouse to benefit from the life insurance, an ILIT can be used to provide for the surviving spouse, with any balance remaining at the spouse’s death passing to the children.
- An ILIT can be structured to continue after your death as a vehicle to manage and preserve wealth for your children (and/or grandchildren). The ILIT would include second-generation trusts for your children, which would ensure that the insurance proceeds would be afforded the same benefits that those trusts provide in a Will (see page 1).
- With an ILIT, you can control the future beneficial ownership of the insurance (for example, you might provide for trusts that last for your children’s respective lives and then continue for their children); however, if your children own the insurance directly, they can sell and/or Will their interest in the policy to whomever they please.
- With an ILIT, you can provide a source of cash to the executor of your estate for the payment of estate taxes. (Generally, an ILIT will be coordinated with your Will to facilitate this.) However, if your children own the insurance directly, it may not be possible to force them all to apply their share of the benefits towards the payment of estate taxes.

If you transfer an existing life insurance policy to a third party, you must survive for at least three years after the transfer date in order for the insurance to be estate tax free; otherwise, the insurance will be treated as if you had never parted with it. On the other hand, if someone other than you is the initial purchaser of the insurance, the three-year rule does not apply. Therefore, if you are planning to purchase a new insurance policy on your life and you want that policy to be owned by an ILIT, you should establish the ILIT before you acquire the policy, and then let the ILIT actually purchase the insurance as the original owner. If an ILIT owns the policy, you will have to transfer cash to the ILIT each year so that it can pay the premium. Every transfer that you make to the ILIT will be treated as a gift, which is potentially subject to

gift tax. A properly drafted ILIT can usually avoid gift tax by taking advantage of the \$14,000 per year “present-interest exclusion.” Gifts to trusts usually do not qualify for the present interest exclusion; however, by giving each beneficiary the present right to withdraw the amount of any gifts made to the ILIT up to \$14,000 per year, (“withdrawal rights”), gifts to the ILIT will qualify for the exclusion, and will not be subject to gift tax.

**Estate Tax Repeal vs. Reform**

Congress has struggled whether to repeal or reform the estate tax. The 2001 Tax Relief Act (EGTRRA) scheduled the estate tax for repeal in 2010, but revival in 2011, in hopes the budget would eventually allow permanent repeal. The 2010 Tax Relief Act extended the 2009 scheme for two more years, but with a higher exemption amount. The 2012 American Taxpayer Relief Act gave us permanent relief. The different acts left taxpayers with a moving target:

YEAR	EXEMPT AMOUNT
2001	\$675,000
2002–2003	\$1,000,000
2004–2005	\$1,500,000
2006–2008	\$2,000,000
2009	\$3,500,000
2010	REPEALED
2011	\$5,000,000
2012	\$5,120,000
2013	\$5,250,000

This memo explains how to take advantage of the estate tax exemptions. Though the exempt amount likely will move again, this firm’s Wills are drafted so that our clients need not prepare new documents every time the law changes.

CONTACT INFORMATION

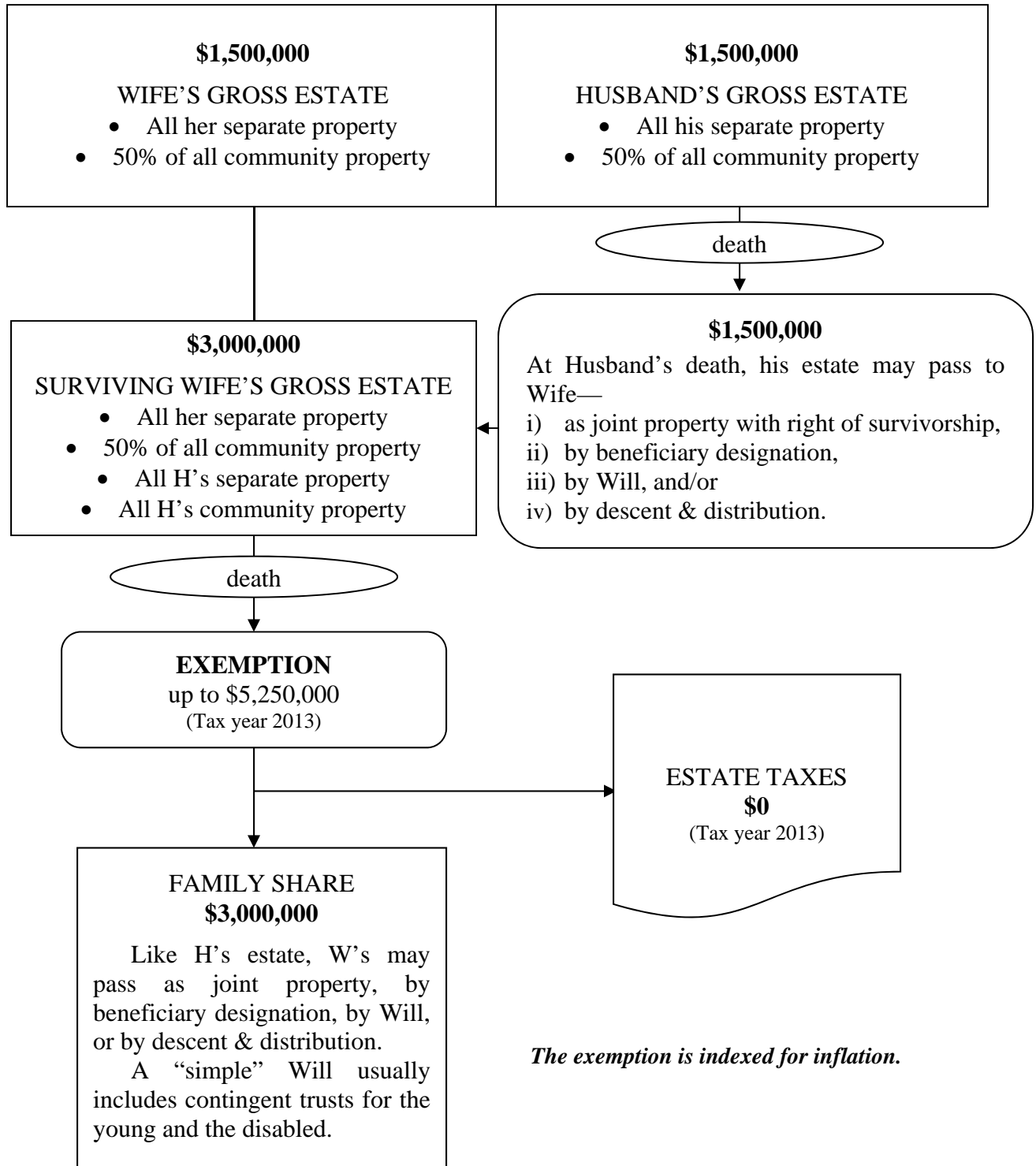
You may reach us at the address and phone number above. You may also e-mail us:

Russell W. Hall\*                      rwhall@rwhpc.com  
 Christina A. Schuler                caschuler@rwhpc.com

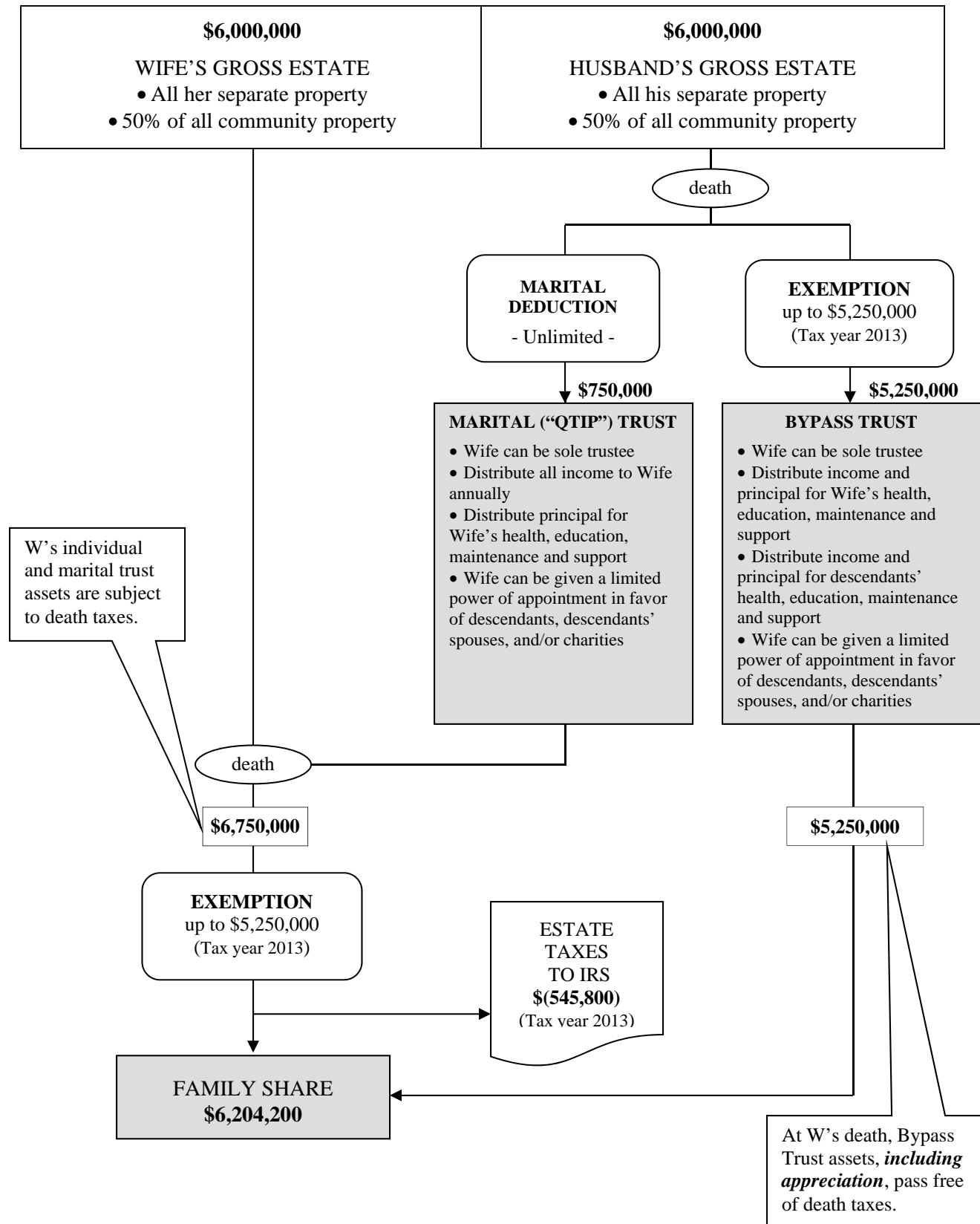
Our practice focuses on wills, trusts and estates, including planning for foreign nationals. For more information, please visit [www.rwhpc.com](http://www.rwhpc.com).

\*BOARD CERTIFIED - ESTATE PLANNING AND PROBATE LAW  
 TEXAS BOARD OF LEGAL SPECIALIZATION

## THE “SIMPLE” ESTATE



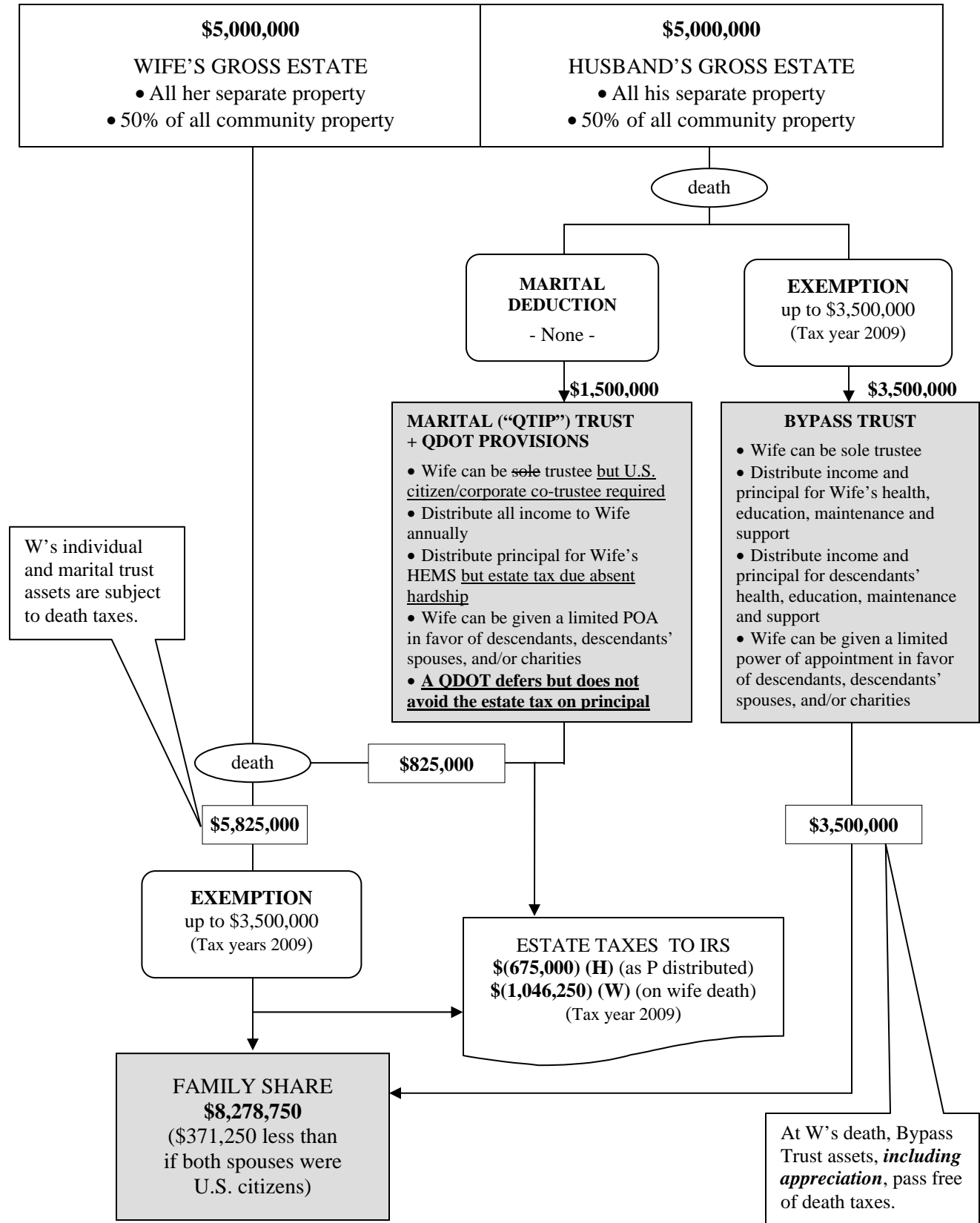
## BYPASS & MARITAL TRUSTS



*Note: Without tax planned Wills, similar estate tax savings can be accomplished if the surviving spouse timely files an estate tax return electing portability of the Deceased Spouse's Unused Exemption (DSUE) amount. Many families will prefer simple Wills. Others, especially in second marriages or with young or immature adult children, will prefer the certainty and the creditor protection of a Bypass Trust, which also preserves both spouses' Generation Skipping Transfer (GST) tax exemptions for the grandchildren.*



## BYPASS & MARITAL (+QDOT)

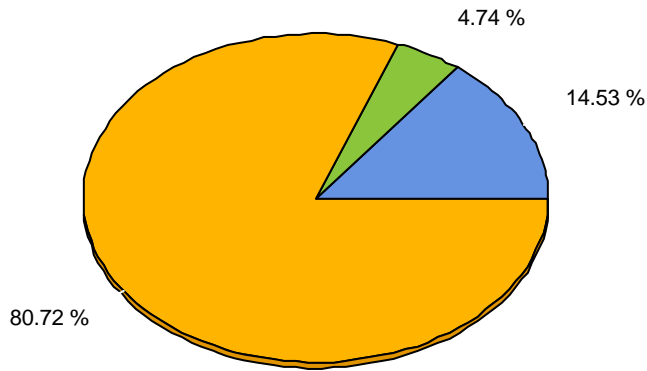


*Bequests to a non-citizen spouse are taxed on death, unless sheltered by the Exemption Amount or a Qualified Domestic Trust (QDOT). The principal in a QDOT will be taxed when distributed, absent hardship, unless the surviving spouse first becomes a U.S. citizen. A QDOT may be dissolved once the surviving spouse naturalizes.*

Current Year:	2010
Current Tentative Tax Base:	\$675,000
Growth Rate:	8.000%
Client's Age on 12/31/2010:	79
Spouse's Age on 12/31/2010 (0 if none):	77
Number of Years of Growth:	12.8
Life Expectancy Used:	Joint Life
Estate Tax Calculations:	2011 Sunset
State:	TX

Projected Value of Taxable Estate in 2022:	\$1,807,706
Federal Estate Tax in 2022:	\$262,713
Pickup Tax in 2022:	\$85,755
Total Death Tax in 2022:	<u>\$348,468</u>
Estate Remaining in 2022:	\$1,459,238

**Impact of Death Taxes in 2022**



<span style="color: blue;">■</span> Federal Estate Tax	14.53 %	<span style="color: green;">■</span> State Death Tax	4.74 %
<span style="color: orange;">■</span> Left for Heirs	80.72 %		

FROST BANK BUILDING  
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BELLAIRE, TEXAS 77401-4117

**RUSSELL W. HALL & ASSOCIATES**

ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION

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RUSSELL W. HALL  
BOARD CERTIFIED - ESTATE PLANNING AND PROBATE LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

\*1.04

\*1.01

\*1.02

Re: Proceeding with your estate plans

\*1.03:

Thank you for visiting with me today. General summaries of the topics we discussed are enclosed.

If and when you would like to proceed, please sign and return the enclosed agreement with a check for your retainer (50% of the total fixed fee). If you prefer, you may call us with a MasterCard, Visa, or Discover card.

If you retain us, my associate Christina A. Schuler will enter the information I need to begin drafting. Christina has a copy of the enclosed summary, and can add or change your fiduciaries and beneficiaries. Christina can forward your drafting changes or questions for my response. Her e-mail address is [caschuler@rwhpc.com](mailto:caschuler@rwhpc.com).

We usually send first drafts within a week of receiving your signed agreement and retainer. On receiving your final changes, Christina or I will contact you to schedule the signing conference. Please be aware that our fixed fee agreement expires three (3) months after we deliver drafts, and that all legal services after that date will be billed on an hourly basis, unless we agree otherwise.

Our fee agreement includes limited attorney time, which varies with the complexity of the plan selected. Questions and custom drafting tend to use that time quickly, and I recommend you work closely with Christina, reserving most of our time until you have reviewed draft documents.

I appreciate the opportunity to meet with you, and thank for considering our firm.

Sincerely,

Russell W. Hall

Enclosures

## DRAFTING INFORMATION

### HUSBAND

**FULL NAME**

Also known as

Formerly known as

**FIDUCIARIES**Executor Spouse then: then:Trustee Spouse then: then:Business power of attorney Spouse then: then:Medical power of attorney Spouse then: then:Health info (HIPAA) agents Spouse and: and:Guardian for self Spouse then: then:

Specifically disqualify:

Guardians for children &amp; then: &amp;

**BENEFICIARIES** Spouse then: children then: descendants then: heirs

Or else names &amp; percentages:

**CUSTOM DRAFTING** Business power of attorney effective now (Y, N)?  
Compensate agent (Y, N)?

### WIFE

**FULL NAME**

Also known as

Formerly known as

**FIDUCIARIES**Executor Spouse then: then:Trustee Spouse then: then:Business power of attorney Spouse then: then:Medical power of attorney Spouse then: then:Health info (HIPAA) agents Spouse and: and:Guardian for self Spouse then: then:

Specifically disqualify:

Guardians for children &amp; then: &amp;

**BENEFICIARIES** Spouse then: children then: descendants then: heirs

Or else names &amp; percentages:

**CUSTOM DRAFTING** Business power of attorney effective now (Y, N)?  
Compensate agent (Y, N)?

**FIDUCIARY AND BENEFICIARY INFORMATION**

**NAME AND RELATIONSHIP**

**MAILING ADDRESS AND PHONE NUMBER**

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**FIDUCIARY AND BENEFICIARY INFORMATION**

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