

---

---

## ESTATE PLANNING: IS IT REALLY WORTH IT?

“\$5,000 for an estate plan!! You have to be kidding. Is it *really* worth it?” Although the costs will vary for each person, this is a question that we hear frequently. And the answer depends upon the individual needs of you and your family.

Let's make some assumptions:

1. You are 57 and your spouse is 55. Neither of you have any significant health concerns. Statistically, you can each expect to live another 22 and 24 years, respectively. You have two young adult children.
2. You and your spouse are fortunate and have above average assets. You have a house, bank accounts, investment/savings accounts, other investments, retirement accounts (IRA, 401K, SEPs), life insurance, etc. The total value of your combined gross estates is about \$2,009,000.
3. It is recommended that your new estate plan consist of a joint revocable trust, two wills, two durable general powers of attorney and living wills. The joint revocable trust provides that on the death of the first spouse, a portion of the assets are to be held in trust for the benefit of the surviving spouse. Discretionary distributions of income and principal are to be made for the benefit of the surviving spouse during life, and then for the benefit of the children until each attains the age of 40.
4. You die unexpectedly at the age of 67, and your spouse passes away at the age of 79.
5. On the death of the first spouse, the combined gross estate has grown to \$3,272,000 (assumes annual growth of 5% for 10 years).
6. On the death of the surviving spouse, the combined gross estate is estimated to be \$4,518,000 ---- this assumes annual growth of 5%, and after tax distributions to the surviving spouse of \$75,000 per year for 14 years.

So far there has been no discussion of the benefits of estate planning --- we have just been setting the stage. Naturally, some of the benefits of an estate plan are hard to quantify. For example:

1. The benefit of having everything pre-planned and well organized. This will help your surviving spouse, and later your children, in dealing with your affairs. Granted a lot can change between now and then and you will probably want to review things from time to time to keep everything organized.
2. There is a lot of comfort in knowing that the money that is in trust for the surviving spouse is protected somewhat from future creditors and second marriages and will pass to your children.
3. There is also the benefit of having the money in trust for children instead of having it distributed outright to them at the age of 18 should you and your spouse pass away earlier than expected. The trust for their benefit provides a lot of flexibility over distributions. So although the money is “locked up in trust,” the trustee can make discretionary distributions to the children as the trustee determines to be necessary or appropriate for their benefit.
4. There are many other benefits which may be unique to your situation, like dealing with business interests, special needs, unique assets, etc.

A good estate plan can also save significant taxes. Although tax savings may not benefit either of you during your lives, it will benefit your children — after all, would you prefer your money go to the IRS or to your family? Here is a summary of the tax benefits:

1. There will be less income tax paid on those assets sold by your surviving spouse because the assets held by the joint revocable trust receive an adjustment in basis equal to the asset's fair market value on the death of the first spouse. This is the benefit of owning assets under the Alaska community property law.
2. Assume that you do no estate planning to minimize estate taxes. On the death of the first spouse all assets will pass outright to the surviving spouse free of estate taxes (assuming the surviving spouse is a U.S. citizen). On the death of the surviving spouse, the federal estate

- tax is approximately \$1,433,000, leaving approximately \$3,085,000 for distribution to your children.
  3. In the alternative, assume that you followed the recommendations for a new estate plan. On the death of the first spouse, the maximum amount that can pass estate tax free (\$1,500,000) is placed into a credit shelter trust, with the balance (\$1,772,000) passing outright to the surviving spouse. On the death of the surviving spouse, the federal estate tax is approximately \$243,000. This leaves \$4,765,000 to be distributed to your children.
  4. Therefore, a properly prepared estate plan might **save \$1,680,000**, which represents a *27% compounded annual rate of return* on the \$5,000 investment. (Warren Buffett would be proud of you!)
  5. But let's take this one step further. Let's say your son dies after the two of you but before the age of 40 and he leaves two surviving children (your grandchildren). Your son's share of his inheritance (\$2,380,000) continues to be held in trust until those two grandchildren attain the age of 25 (in another 16 years). By that time, your son's share of the inheritance has grown to \$6,342,000 (assumes an annual growth of 8% for 16 years and distributions of \$60,000 per year).
  6. This \$6,342,000 passes transfer tax free (not income tax free) to your two grandchildren. Because the money is held in a trust, it is not subject to estate taxes on your son's death, which results in an additional estate tax savings to your son's estate. Further, the money that is distributed to the two grandchildren is not subject to generation skipping taxes (assuming the trust is exempt from GST), thus saving additional transfer taxes.
- As you can see, there are numerous benefits of having a well organized and properly structured estate plan. Saving \$1,680,000 in the above example is just one benefit. So is paying \$5,000 for an estate plan worth it? The choice is yours.

It has been said that the estate tax is a voluntary tax. To some extent, that is true. Congress has provided us with laws that allow each of us to pay less estate tax than is required. But you have to plan for it and take the action now.

Justice Learned Hand, one of the most famous of all U.S. judges, once said:

“. . . Anyone may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes.”

=====

The above material provides only an example of the possible estate tax savings that might be achieved with a properly planned estate using the 2005 rates and the assumed rates of return. This information is given for illustrative purposes only and the actual results will differ depending on your specific facts, family needs, assets, investments, overall goals and current federal and state laws in the year of death.

It is very important that you consult a qualified attorney that emphasizes estate planning in his or her practice. Too frequently the attorney is consulted after a transfer has been made, a life insurance policy has been applied for and purchased, or a spouse has already passed away. This often results in additional taxes and/or fees incurred to correct the problems created.

**MANLEY & BRAUTIGAM, P.C.** brings together the expertise of two attorneys with almost 50-years of combined experience in the areas of business, estate and tax planning, serving the legal needs of the people and businesses from Barrow to Ketchikan.

The firm practices in the areas of business, estate and transactional income and estate tax planning, probate and trust administration, preparing buy-sell agreements, non-qualified deferred compensation planning, probate and trust litigation and the formation and structuring of corporations, limited liability companies and other entities. The goal of MANLEY & BRAUTIGAM, P.C. is to continue to provide the highest level of professional legal services to our clients.

Both **Bob Manley** and **Peter Brautigam** were born and raised in Anchorage. Both have a Master of Laws (LL.M.) in Taxation, and are members of the AMERICAN COLLEGE OF TRUST & ESTATE COUNSEL ([www.actec.org](http://www.actec.org)), a select group of attorneys who are nationally recognized in the practice of estate planning, probate and trust law. Peter is the current ACTEC state chair and Bob is the past state chair. Both are also current members and past chairmen of the Alaska Bar Association's Tax Law and the Probate & Estate Planning Law sections and have assisted in revising Alaska's Uniform Probate Code (AS 13.12) and the drafting and passage of Alaska's Limited Liability Company statute (AS 10.50). Both have served as expert witnesses in trust and tax matters, and lecture on tax related topics for the ALASKA BAR ASSOCIATION, the ALASKA SOCIETY OF CPA'S, the ANCHORAGE ESTATE PLANNING COUNCIL and the AMERICAN LAW INSTITUTE OF THE AMERICAN BAR ASSOCIATION (ALI-ABA).

The firm is recognized as one of Alaska's leading tax planning and transactional law firms. Both Mr. Manley and Mr. Brautigam have earned the "av" rating (excellent/superior) by fellow lawyers in Alaska (Martindale Hubbell®).

(rev. September 17, 2004)



ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

## ESTATE PLANNING: IS IT REALLY WORTH IT?

845 K STREET  
ANCHORAGE, ALASKA 99501  
PHONE: 907-334-5600  
FAX: 907-334-9958  
[www.mb-lawyers.com](http://www.mb-lawyers.com)