

Questions for Estate Planning and Will Drafting

1. What are your overall estate planning goals?
2. To whom do you want your estate or assets to pass on your death?
3. If your spouse and all your children are already deceased at the time of your death, to whom would you want your assets to go? Your relatives, charity, friends?
4. If you have minor children, who will act as guardian and care for them? Generally, we need to name a primary person and an alternate.
5. If your spouse and you both die, should your assets go directly to your children or should the assets be held in a trust for their benefit?
6. On your death, who will handle all of your affairs and act as the Personal Representative (executor) of your estate? Generally, we need to name a primary person and an alternate.
7. How is your health and the health of your family?
8. Will any of your children need special care?
9. What kind of assets do you own (property, stocks, bonds, art, pension benefits, insurance, inheritance, etc.)?
10. How is ownership or title held for those assets (separately or jointly with right of survivorship)?
11. What is the estimated net fair market value of your estate (assets less liabilities)? Include business interests, life insurance, retirement accounts, etc.
12. Do you want to make specific gifts of property during your life or after your death to family, friends, or charity?
13. Are you involved in a business? Will there be an orderly transition on your retirement or death? How much is your ownership interest in the business worth?
14. Do you have life insurance? Do you have enough life insurance? Who are the beneficiaries of the policies?
15. Other questions?

ESTATE PLANNING CONSIDERATIONS

The primary purpose of estate planning is to arrange an individual's affairs to provide an orderly transfer of his or her estate and to maximize the amount distributed to the intended beneficiaries. This is generally accomplished through wills, trusts and lifetime transfers.

Estate planning involves careful planning with four different types of federal taxes:

Income Tax is imposed on all income. This is the most familiar of all taxes.

Gift Tax is imposed on transfers made during life for less than full or adequate consideration. The tax is paid by the person making the gift and is based on the fair market value of the asset on the date of the gift. The current gift tax rates range from 18% to 50%, but will decrease to 35% in 2010. The gift tax is not repealed.

Estate Tax is imposed on the fair market value of all assets a person owns or controls at the time of death. It is paid by the estate of the decedent from his assets. The tax rates will decrease to 45% in 2007, and is repealed for one year starting in 2010. Every person is entitled to an Applicable Estate Tax Credit.

Generation-Skipping Tax is imposed on all transfers of assets to a second generation, e.g., transfers to grandchildren. The tax is a flat 50% and is repealed for one year starting in 2010. Every person is entitled to an exemption of \$1,100,000 against this tax.

THE UNLIMITED MARITAL DEDUCTION: Since 1981, everything a person gives or leaves to a surviving spouse who is a U.S. citizen is both estate and gift tax free. Federal estate and gift taxes apply only when there is a transfer to a person other than a spouse, e.g., to children. If a person's existing will was made before 1981, it may need to be revised to take advantage of the unlimited marital deduction. If you or your spouse are not U.S. citizens, different rules apply.

THE FEDERAL ESTATE TAX: All assets that are owned or controlled by a person on his death are subject to federal estate tax until 2010; the estate tax is repealed in 2010 and is reinstated in 2011. Assets subject to tax include all assets, jointly owned property, life insurance, retirement accounts, etc. If assets pass to a surviving spouse (U.S. citizen), they are not subject to tax on the death of the first spouse; if assets pass to a non-spouse, they are subject to estate tax.

In addition to the UNLIMITED MARITAL DEDUCTION, each person can exclude from his or her taxable estate a specific dollar amount. The exclusion amount will increase until the year 2010 when the estate tax is repealed for one year; in 2011 the exemption amount returns to \$1,000,000. The following table shows the increasing estate tax exclusion amounts:

<u>Year</u>	<u>Applicable Estate Tax Credit Amount</u>	<u>Applicable Estate Tax Credit Equivalent Amount</u>
2004-2005	\$ 555,800	\$ 1,500,000
2006-2008	\$ 900,000	\$ 2,000,000
2009	\$ 1,575,000	\$ 3,500,000
2010	--- Estate tax repealed ----	
2011	\$ 345,800	\$1,000,000

If a person's individual (or combined) net taxable estate (assets minus liabilities) is close to or exceeds the Applicable Estate Tax Credit Equivalent Amount, estate tax planning needs to be done to maximize the use of the credit amount and minimize the payment of federal estate taxes.

THE GENERATION SKIPPING TRANSFER (GST) TAX: The GST tax is imposed on transfers to persons who are two or more generations (37.5 years) away from the transferor. Thus, if a grandparent gives assets to a grandchild, a GST tax will be imposed unless an exception or exemption applies. The current exemption amount is \$1,500,000; after 2004, it will increase in the same amount as the applicable estate tax credit equivalent amount. The GST tax is repealed starting in 2010 and reinstated in 2011.

Depending on life expectancies, making generation skipping transfers can be a good tax planning tool. Many older parents find that their adult children are financially successful in their own right, and transfer their wealth directly to grandchildren either in trust or outright.

ANNUAL GIFTS: Annual gifts are made primarily to reduce one's gross estate by currently transferring property to those who would ultimately receive the assets on that person's death, e.g., gifts to children. By making the transfer now, the asset is excluded from a person's taxable estate, and is not subject to federal estate taxes. Gifting assets can be a good planning tool because any future appreciation of the gifted asset will not be part of transferor's gross estate.

The gift tax does not apply to gifts of a present interest that do not exceed \$11,000 per donee, per year; this is called the "annual gift tax exclusion amount." Gifts in excess of the \$11,000 annual gift tax exclusion amount are subject to federal gift taxes. The gift tax and GST do not apply to payments made directly to a college or medical facility. Therefore, a grandparent can pay for the entire college education of a grandchild free of gift and generation skipping tax provided that payments are made directly to the educational institution.

COMMUNITY PROPERTY: The Alaska "Community Property Act" (AS 34.77) provides that spouses can now classify assets as community property. "Community property" in Alaska is elective.

Alaska community property has significant estate planning benefits. First, a spouse can elect to treat property as community property and fund their credit shelter trust more easily without having to hold completely separate interests in the assets. Second, although each spouse is deemed to own a 50% interest in the designated community property, both halves receive

a full (100%) adjustment in basis to fair market value on the death of the first spouse (until 2010). Compare this to owning the asset under the common law rule as tenants by the entirety and receiving only a 50% adjustment in basis on those assets.

Spouses may want to designate specific assets as community property to obtain a favorable step-up in basis for highly appreciated assets. This planning technique is best suited for business interests, real estate, brokerage accounts, and other assets that have a low basis and high appreciation. Community property is not recommended for an asset that has a fair market value that is less than its adjusted basis.

TRUSTS: There are many different types of trusts, and each is used for different reasons. Trusts are either revocable or irrevocable.

Revocable Trusts: A revocable trust (also known as a "living trust") is created during life and can be changed or revoked at anytime by the settlor (the person who created it) up to the time of death or incapacity. The revocable trust is most frequently promoted as a method of avoiding probate.¹ A revocable trust does not eliminate the need to have a separate will. Like a will, a revocable trust can be structured to reduce applicable estate taxes; however, it does **not** eliminate or minimize income taxes or protect assets from creditors.

Irrevocable Trusts: Irrevocable trusts are created either during life or through a will at the time of death. They are used primarily to minimize the payment of federal estate taxes. Once created, the trust cannot be altered, amended or revoked. There are numerous different types of irrevocable trusts: Bypass/Credit Shelter trusts, Qualified Terminable Interest Property trusts (QTIP Trusts), Generation-Skipping trusts, Life Insurance trusts (ILITs) and Education trusts, to name a few. In addition, the qualified "Alaska Trust" is a unique method of protecting assets from creditors and in some cases may be used to reduce your taxable estate.

Powers of Attorney: A power of attorney is used during life to grant authority to another to act on behalf of that person. Powers of Attorney can either be very broad or limited to a specific purpose. Most Powers of Attorney terminate when the grantor becomes incompetent and is most needed. A properly drawn "Durable Power of Attorney" will continue to be valid even during the incompetency of the person. A power of attorney is not valid after death.

Living Will: A Living Will is a document that is authorized by Alaska Statute in which a person gives permission to his doctors and family to withhold basic life support when that person is terminally ill. There is no charge for this document.

¹ Probate is not something that always needs to be avoided in Alaska because Alaska has adopted the Uniform Probate Code. In most cases, probate of an estate in Alaska is very simple. Often the expense of drafting and transferring all of one's property into a living trust exceeds the expense of a normal probate.

FEES: A frequently asked question is "How much will this all cost?" That is a very difficult question to answer without first having the opportunity to meet with you. The primary factor in the cost of estate planning depends on your goals and needs. After we meet, we will try to provide you an estimate of what different estate planning alternatives might cost.

Please remember that it is very important that you consult an attorney who 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), 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 chairmans 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®).

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