

I.

WHY HAVE AN ESTATE PLAN?

The property you own at the time of your death will be transferred to someone.

An Estate Plan allows you to:

1. Designate beneficiaries.
2. Determine when title is passed.
3. Protect of assets for Children
4. Appoint Guardians and Conservators for Children
5. Minimize estate settlement costs.
6. Pay the lowest aggregate amount of death taxes.

II.

WHAT IS PROBATE?

Happens when a person owns property in their sole name at the time of death.

1. The main purpose of probate is to appoint a personal representative who is then authorized to TRANSFER THE LEGAL TITLE TO PROPERTY OWNED IN THE DECEDENT'S NAME ONLY EITHER ACCORDING TO TERMS OF THE DECEDENT'S WILL OR IF NO WILL, THEN ACCORDING TO THE STATE STATUTE.
2. This requires the County Court to appoint the Personal Representative.
3. Other things that are done in the Court proceedings:

If there is a will, to establish its validity.

Validate and pay debts that are owed at the time of death.

Determine and pay Nebraska Inheritance Tax.

Determine and pay Federal and Nebraska Estate Taxes.

File and pay the personal and estate income taxes owed by the deceased or the estate.

Collect, account for and distribute the assets and income of the estate to the beneficiaries.

III.

WHAT IS NON PROBATE?

At the time of death a person does not own property just in their own name and there is no need to appoint a personal representative to transfer title. TITLE IS TRANSFERRED BY OPERATION OF LAW. The following types of transfer do not require the appointment of a personal representative:

1. Joint Tenancy with Right of Survivorship.

Transfers title to surviving joint tenant by operation of law on death of joint tenant.

DOES NOT PASS BY THE TERMS OF A WILL.

Good for assets to which title should be transferred quickly – home, auto, regular bank account.

Joint tenancy between non spouses have gift and income tax consequences that should be considered before doing.

Tenancy in Common is different from joint tenancy in that each person owns an undivided share – such as husband and wife own real estate as tenants in common, each owns an undivided half interest. Deceased tenant's share does not automatically pass to the surviving tenant and would need the appointment of a personal representative to pass title.

Title to each tenant's share transfers by the terms of the decedent's will or if no will, by the terms of the State Statutes.

2. Contractual relationships.

Some of the types of contracts are

life insurance
annuities,
IRA's,
401K's,
other retirement accounts and
living trusts.

These types of contracts have designated beneficiaries. The proceeds or assets are distributed to the named beneficiaries in the amounts allocated.

If no designated beneficiary, proceeds or assets are distributed to the estate and will ultimately be transferred by terms of Will or by State Statute.

EVEN WITH NON PROBATE THERE IS A COURT PROCEEDING TO DETERMINE AND PAY NEBRASKA INHERITANCE TAX.

Other things that are done even though the estate is made up entirely of non probate property:

1. Validate and pay debts that the decedent owed at the time of death.
2. Determine and pay Nebraska Inheritance Tax.
3. Determine and pay Federal Estate Tax and Nebraska State Estate Tax.
4. File and pay the personal income tax for the Decedent.

IV.

WHAT PROPERTY IS SUBJECT TO FEDERAL ESTATE TAX?
(The following list is only a sample and is not inclusive)

It does not make any difference how the property is owned or how it is transferred.

1. Real estate
2. Stocks
3. Corporate bonds, Municipal bonds, and U.S. Savings Bonds
4. 401K Accounts, IRA Accounts, Pension Plans or other Retirement funds
5. Life Insurance proceeds
6. Cash, Checking Account and Savings Account balances
7. Certificates of Deposit, Payable on Death Accounts, and Time Certificates
8. Vehicles and machinery
9. Unpaid bonuses, final paychecks, vested stock options etc.
10. Household goods
11. Collectibles

V.

HOW MUCH IS THE FEDERAL ESTATE TAX
AND
HOW DO I PAY THE LOWEST AMOUNT

The Federal Estate is the largest death tax imposed and starts at 46% in 2006. This declines to 45% in 2007 on amounts over \$2,000,000.00.

Examples One and Two illustrate what planning will do to minimize the tax burden

Example One
No Tax Planning

For the first example we will make the following assumptions:

1. The total value of the assets held between husband and wife is approximately \$4,000,000.00;
2. Everything goes to the surviving spouse;
3. For purposes of the first chart the Husband dies first.
4. Death occurs in 2009.

HUSBAND'S ESTATE

Gross Estate	\$ 4,000,000.00
Marital Deduction	(\$ 4,000,000.00)
Gross Taxable Estate	\$ 0.00
Tentative Tax	\$ 0.00
Unified Credit	(\$ 1,455,800.00)
Federal Estate Tax	\$ 0.00

There is no Federal Estate Tax because everything that goes to the surviving spouse is exempt from tax as a Marital Deduction.

WIFE'S ESTATE

Gross Estate From Husband	\$ 4,000,000.00
Marital Deduction	(\$ 0.00)
Gross Taxable Estate	\$ 4,000,000.00
Tentative Tax	\$1,680,800.00
Unified Credit	(\$ 1,455,800.00)
Federal Estate Tax	\$ 225,000.00

SUMMARY OF FEDERAL ESTATE TAXES
WHEN NO PLANNING

Gross Estate	\$ 4,000,000.00
Federal Estate Tax on First Death	\$ 0.00
Federal Estate Tax on Second Death	<u>\$ 225,000.00</u>
 Total Federal Estate Tax Both Estates	 \$ 225,000.00

This tax consequence happens because there is no utilization of the unified credit in the first estate.

Example Two

Tax Planning

For the second example we will make the following assumptions:

1. The total value of the assets held is \$4,000,000.00;
2. The property has been divided so that on the death of the first spouse full unified credit of \$1,455,800.00 is utilized;
3. All property on the death of the first will be divided between the Marital Trust and a Family Trust which are for the benefit of the surviving spouse;
4. For purposes of the Chart the Husband dies first; and
5. Death occurs in 2009.

HUSBAND'S ESTATE

Gross Estate	\$ 2,000,000.00
Marital Deduction (Nothing Goes to Spouse Outright)	(\$ 0.00)
Gross Taxable Estate	\$ 2,000,000.00 (This goes into family trust for the benefit of the surviving spouse)
Tentative Tax	\$ 780,800.00
Unified Credit	(\$ 1,455,800.00)
Federal Estate Tax	\$ 0.00

WIFE'S ESTATE

Gross Estate	\$ 2,000,000.00
Marital Deduction (Estate from Husband)	(\$ 0.00)
Gross Taxable Estate	\$ 2,000,000.00
Tentative Tax	\$ 780,800.00
Unified Credit	(\$ 1,455,800.00)
Federal Estate Tax	\$ 0.00

SUMMARY OF FEDERAL ESTATE TAXES WHEN THERE IS PLANNING

Gross Estate	\$ 4,000,000.00
Federal Estate Tax on First Death	\$ 0.00
Federal Estate Tax on Second Death	<u>\$ 0.00</u>
Total Federal Estate Tax Both Estates	\$ 0.00

This tax consequence happens because there is utilization of the unified credit in the first estate.

Total Federal Estate Tax Saved between the two estates is \$225,000.00.

VI.

WHAT IS THE FUTURE OF FEDERAL ESTATE TAXES

There have been attempts to repeal the Federal Estate Tax, but those attempts have failed.

Current Bill passed by House of Representatives pegs the exemption per person at \$5,000,000.00. Senate has not acted on this bill.

Current law provides that exemption goes to \$3,500,000.00 in 2009, no limit in 2010 and then sunsets in 2011 with the exemption per person going back to \$1,000,000.00.

Problem with 2010 unlimited exemption is that you would not get the step up in basis on your assets to date of death value to the extent that you did prior to 2010.

This means that your beneficiaries would have a limited basis in the property and the beneficiaries would have a much larger capital gains tax issue when they sell.

VII.

Miscellaneous

1. Rollover of IRA by non spouse beneficiary.

Pension Protection Act now permits a non spouse beneficiary to rollover to an IRA any portion of a distribution from an "eligible retirement plan". Must be a direct rollover. Beneficiary can exercise investment control. Beneficiary must take distributions in accordance with the required minimum distribution over his or her life expectancy. Can not defer distributions until beneficiary reaches age 70 ½. This provides significant tax benefits that were not available before.

2. Nebraska State Estate Tax.

The Nebraska State Estate tax has been repealed.

3. Some other methods to save Federal Estate Tax.

Charitable Remainder Annuity Trust
Charitable Remainder Unitrust
Pooled Income Funds
Crummey Trusts
Generation Skipping Trusts
Qualified State Tuition Programs Section 529 Gifts