

RIVKIN & RIVKIN, LLC
ESTATE PLANNING ATTORNEYS



Estate Planning Guide

For Married Couples

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We look forward to meeting you both and discussing your estate planning goals. To help make our meeting as helpful to you as possible, we want to introduce you to some of the issues we will be covering and some of the important decisions that you will need to make.

GOALS OF PLANNING

As a starting point, the estate planning process is intended to help you accomplish the following:

- (i) Provide for your spouse;
- (ii) Arrange for the care of your minor or disabled children;
- (iii) Ensure that your assets pass at death to your intended recipients;
- (iv) Defer and minimize taxes;
- (v) Facilitate your wishes regarding end-of-life care and other medical decisions;
- (vi) Structure thoughtful inheritances for your children and other beneficiaries;
- (vii) Preserve family harmony;
- (viii) Protect your hard-earned assets from third parties; and
- (ix) Simplify transitions at death or incapacity.

We will discuss these goals and others that you identify when we meet.

PROBATE AND LIVING TRUSTS

Many people have heard of probate but do not know exactly what it is. Simply, probate is a procedure that each state has to govern the disposition of assets located in that state when someone dies. It is intended to create an orderly legal process at death that protects third parties, such as a hospital, that might have a claim on the decedent's assets. Although probate often is not as burdensome as many people fear, it is time-consuming (in Illinois, for example, the process takes at least 6 months), and it does result in legal fees and court fees.

The time and cost of probate often can be avoided with careful attention to how assets are structured. Jointly-owned assets, assets with a designated beneficiary, and assets owned by a living trust all can pass outside of probate at death. As a result, probate can be avoided in some cases simply by using a combination of joint ownership and beneficiary designations. (However, joint ownership can have unintended consequences and should only be pursued with careful guidance.) In other cases, you can avoid probate by titling those assets that do not have a joint owner or beneficiary in the name of a living trust. A living trust is a trust that you control and that can hold assets during your life and after your death.

When we meet we can discuss whether a living trust would be desirable for you.

SELECTING REPRESENTATIVES TO MANAGE YOUR AFFAIRS IN THE EVENT OF YOUR INCAPACITY OR DEATH

Perhaps your paramount concern is whom you will choose as guardians, executors, trustees, and agents for your financial and medical affairs. We can discuss the duties associated with these specific roles in more detail when we meet. To help you begin identifying your choices for these roles, below are lines on which you can note possible choices.

Guardians (the person or persons who will care for your minor or disabled children if you both become deceased or incapacitated)

First Choice: _____

Second Choice: _____

Third Choice: _____

Executors, Trustees, and Property Agents (the person, bank or trust company, or combination of the two that will handle your financial affairs in the event of your death or incapacity)

Although you are permitted to have different financial decision-makers, it is often advantageous for a husband and wife to coordinate those choices:

Husband's First Choice: _____ Spouse?

Wife's First Choice: _____ Spouse?

Husband's Second Choice: _____

Wife's Second Choice: _____

Husband's Third Choice: _____

Wife's Third Choice: _____

Health Care Agent (the person who will make health care decisions for you in the event of your incapacity)

Husband's First Choice: _____ Spouse?

Wife's First Choice: _____ Spouse?

Husband's Second Choice: _____

Wife's Second Choice: _____

Husband's Third Choice: _____

Wife's Third Choice: _____

DISTRIBUTIONS AT THE DEATH OF THE FIRST OF YOU TO DIE

In addition to determining who will manage your affairs in the event of your death or incapacity, you will, of course, need to determine how you want your assets to be distributed after one or both of you die. Your distributions might consist of one or more of the following choices:

_____ Specific gifts off the top of cash or other assets to individuals or charities as follows:

_____ Remainder or all to spouse

_____ Remainder or all to children in equal shares

_____ Other distribution as follows:

DISTRIBUTIONS AT THE DEATH OF THE SURVIVOR OF YOUR SPOUSE AND YOU

Next, you will need to address the manner in which your property will be distributed after you are both deceased. The following are some choices to help you get started considering this decision:

_____ Specific gifts off the top of cash or other assets to individuals or charities as follows:

_____ Remainder or all to children in equal shares

_____ Other distribution as follows:

Age or ages at which I would like my children to gain control of their inheritance (see explanation under “The Use of Ongoing Trusts” on page 5):

CONTINGENT BENEFICIARIES

Even though it might be intended that your property ultimately will pass to your spouse or descendants, you should determine whom you wish to name as contingent beneficiaries. Contingent beneficiaries are those individuals or charities that will receive any remaining trust property if at some point in the future, neither the two of you nor any of your descendants is living.

_____ 50% to my family, 50% to my spouse’s family, to be further distributed (e.g., among parents, siblings, nieces, and nephews) as follows:

_____ Other contingent beneficiaries:

ESTATE, GIFT, AND GST TAXES

Basic Transfer Tax Structure

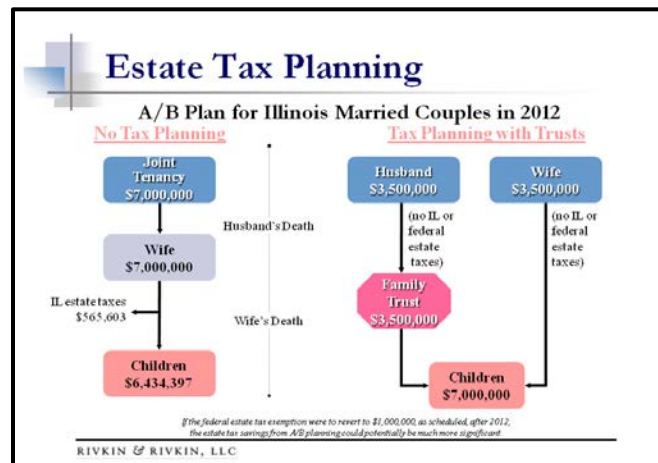
For many years, there have been federal gift taxes on transfers during life, estate taxes on transfers at death (including on the value of life insurance proceeds), and generation-skipping transfer (“GST”) taxes on transfers that cross generations. In addition, Illinois and many other states have imposed a separate inheritance tax on transfers at death. As a result of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the “2010 Tax Act”), the federal gift, estate, and GST tax rate is 35% through December 31, 2012. Currently, the top Illinois estate tax rate is 16%.

The good news is that there are a variety of tax deductions and exclusions that can be used before paying any transfer tax. During life, anyone can give up to \$13,000 per year to anyone they want and can pay tuition or medical expenses for anyone (directly to the provider) without a dollar limitation. In addition, during life or at death, each person can give unlimited amounts to his or her spouse (if a U.S. citizen) or to charity. Finally, for 2012, in addition to the other federal deductions and exclusions, each person has a \$5,120,000 federal exemption for transfers during life or at death, as well as a \$5,120,000 federal exemption for GST transfers. Illinois has no gift tax and provides a state estate tax exemption of \$3,500,000 for deaths in 2012, and \$4,000,000 for deaths after 2012. Although many commentators anticipate that Congress will revisit the laws implemented by the 2010 Tax Act before 2013, if Congress does not act, the federal gift, estate, and GST tax exemptions will return to \$1,000,000 (subject, in the case of the GST tax exemption, to an inflation adjustment) in 2013, as shown on the following chart:

Year	Federal Exemption Amount
2012	\$5,120,000
2013	\$1,000,000 (subject, in the case of the GST tax exemption, to an inflation adjustment)

A/B Plan for Illinois Married Couples

If your combined assets (including life insurance) exceed \$3,500,000, you might benefit from a technique known as an A/B Plan. Under an A/B Plan, at the death of the first of you to die, the lesser of any federal and Illinois exemption amounts would be allocated to a “Family Trust” (also known as a “Credit Shelter Trust”), and the balance of the first-to-die’s property would be allocated to or in trust for the surviving spouse. In this way, no federal or state estate tax would be due at the first death, and any federal and state estate tax due at the second death would be reduced.



For 2012, any unused federal exemption of the first spouse to die may be transferred to and used by the surviving spouse at death, a concept known as “portability.” Although at first blush, portability might seem to be a reason to forego A/B planning and leave all assets directly to the surviving spouse, portability might increase estate administration costs, while an A/B Plan

will likely: (i) result in less state estate tax at the surviving spouse's death (because there is currently no portability for Illinois estate tax purposes), (ii) provide creditor protection for the surviving spouse, (iii) exempt from estate tax appreciation on a portion of the predeceased spouse's assets, and (iv) preserve the estate plan intended by the first spouse to die. In addition, although the 2010 Tax Act created a higher federal estate tax exemption amount than we otherwise would have had for 2012, that exemption might only be temporary, as the law is set to expire on December 31, 2012. Therefore, A/B planning will still be a viable and compelling technique for many Illinois married couples.

THE USE OF ONGOING TRUSTS

Trusts for your spouse, children, or other beneficiaries can provide a number of benefits. They can allow proper management of assets by a trusted family member, friend, or institution for the benefit of children or other beneficiaries that are not equipped to manage assets. In addition, they often can shelter assets from estate or generation-skipping transfer taxes, protect assets from third-party creditors such as a spouse of a family member in a divorce, and incorporate your values regarding the use of funds. We can discuss these benefits when we meet.

If you have young children, you should certainly consider leaving assets in trust for them until they reach an appropriate age or ages. Before that time, the trustee can be empowered to make distributions to them for their health, education, or other needs. At that age or those ages, they can be given the right either to withdraw trust assets or become their own trustee.

IRREVOCABLE INSURANCE TRUSTS AND SOPHISTICATED TAX REDUCTION TECHNIQUES

Life insurance proceeds generally are included in a decedent's gross estate unless the insurance was initially obtained by an irrevocable life insurance trust or the insurance was transferred to such a trust at least three years before death. If either of you currently has significant life insurance or plans to obtain such insurance, you might want to consider using an irrevocable insurance trust to own that insurance.

There are a number of additional sophisticated planning techniques (for example, charitable remainder trusts and family limited partnerships) designed to substantially reduce tax exposure and obtain other advantages. If one or more of them makes sense for your particular situation, we can speak about them when we meet.

IMPLEMENTATION OF YOUR ESTATE PLAN

In order to obtain the maximum benefits of an estate plan from a tax, creditor-protection, and probate-avoidance standpoint, it likely will be advisable for you to change title to certain assets and modify certain beneficiary designations once you have signed your estate planning documents. We will make recommendations for you at that time.

It would be our pleasure to work with you to identify and accomplish your estate planning goals.