

ESTATE PLANNING QUESTIONNAIRE

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QUESTIONS FREQUENTLY ASKED ABOUT ESTATE PLANNING

One way of introducing estate planning is to answer some questions clients frequently ask us. We believe that these questions and answers are important enough to include here, and we hope you find them informative.

1. Q. What happens if I die without a will?

A. If you fail to plan your estate and die without a will, the law will create an estate plan for you. The entire system of "intestate" succession or "descent and distribution" is set forth by statute and is too complex for a detailed discussion here.

Briefly stated, however, adverse results can occur if you die without a will. The law prescribes both the persons to whom your property will pass and the division of your estate among those persons. The distributions provided by law are inflexible and may not satisfy your desires as to distribution of your estate. Under Massachusetts law, the intestate share of a decedent's surviving spouse is:

- (1) the entire intestate estate if:
 - (i) no descendant or parent of the decedent survives the decedent; or
 - (ii) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;
- (2) The first 200,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;
- (3) The first 100,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;
- (4) The first 100,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

If you die without a spouse, children, or kindred, your entire estate passes to the Commonwealth.

2. Q. What is a personal representative?

A. Your personal representative is the person who will serve as the primary representative of your estate. You may be more familiar with the

terms "executor" or "administrator" for such an individual.

3. Q. What is "administration" of my estate?

A. Administration of an estate involves the collection of assets, payment of liabilities, and distribution of properties to the beneficiaries or heirs. Administration of an estate is conducted under some degree of court authority and supervision, but different procedures are available. The basic types of procedures available are called "Voluntary Administration," "Formal Probate," "Informal Probate" and Supervised Administration. The Informal Probate of a will are administrative (rather than judicial) in nature. An informal proceeding may administer the estate without court involvement and will mature into a final settlement of the estate after the passage of a specific length of time. "Formal" proceedings are initiated by a petition to a court, and a formal proceeding becomes effective only after notice to interested persons, a hearing, and an order of court. "Supervised" administration is a single continuous proceeding requiring formal procedures and frequent court involvement.

Some of the factors that we will consider in determining which procedures or devices to use are: (1) the value of your estate subject to administration; (2) the applicable statute of limitations; (3) the degree of trust, co-operation, and agreement among the beneficiaries and creditors of your estate; (4) your express wishes regarding administration, as stated in your will; (5) the complexities of the administration; (6) the degree of protection from liability needed by the successors or by the personal representative or both; and (7) proof of title to property requirements.

Wherever possible and appropriate, we try to use informal administration that to a large extent operates independently of court supervision. Informal administration is less cumbersome and time consuming, and therefore is less expensive.

4. Q. What is a trustee?

A. A trustee is one to whom property is transferred for the benefit of someone else (the beneficiary).

We find that our new estate planning clients frequently misunderstand trusts. Many of our clients have heard a horror story about a trust, and the story often involves an impoverished widow beneficiary who cannot extract enough money from the well-funded trust to maintain herself.

Under present law, a trust that contains well-drafted trustee powers and which uses a professional trustee can solve most problems, and it can

assist in creating a suitable estate plan. A trust can be designed to produce almost any result desired by the client if the client gives the trustee sufficient funds with which to work. We usually recommend that trustees be given very broad and adaptable powers to provide flexibility for future events. The trustee should be empowered to do what is best for the beneficiary, without being curbed by inappropriate restrictions.

If a trust appears suitable for your estate plan, you will need to exercise care in the selection of a trustee. The family member who comes to mind as a logical first choice may prefer not to deal with the management of your properties. If a corporate trustee appears appropriate, we will suggest that you have a conference with the representative of your bank's trust department. Further, you should consider giving someone, such as your spouse or your professional advisors, the power to change trustees.

5. Q. Is a handwritten will legally effective?

A. A handwritten will may be a valid holographic will if the signature and material provisions are in the handwriting of the testator. Such a will need not be witnessed or comply with the requirements for an attested will. The holographic will may be adequate, but such wills are a fruitful source of litigation, often because they have been composed by someone with no legal training.

6. Q. Why should my will be more than one page long?

A. Your will could be drafted to be no longer than one page. Indeed, any lawyer could produce an abbreviated will for a relatively small fee. The problem, however, is that such a will may not accomplish your objectives for your beneficiaries. We prefer to draft wills to cover all the various factual and legal situations that reasonably may be expected to arise.

Accordingly, the will that we draft for you may be a lengthy document. The burden to you of reviewing and approving a long will may be a blessing to your family when they later find that you have anticipated and resolved what might have been cumbersome problems.

7. Q. How will my estate be taxed at my death?

A. Your estate may be subject to at least two taxes: the federal estate tax and (in almost all states) a state death tax.

The federal estate tax is based on the fair market value of your "gross estate" at the time of your death. At the option of your executor, an alternate valuation date of six months from the date of your death can be used.

Your gross estate will include the value of all the property in which you own an interest at the time of your death. Additionally, your gross estate may include property that you do not own, but over which you have retained or received certain rights or powers.

The estate tax scheme provides you with a "marital deduction" for bequests of property to your surviving spouse. The marital deduction in effect allows interspousal transfers to pass tax free because they are deducted from the value of the gross estate. In order to qualify for the unlimited marital deduction, property must be transferred to the surviving spouse in a fashion that satisfies the technical requirements of the statute.

The federal estate tax and the federal gift tax are combined ("unified") and one progressive set of rates applies. The rates increase as the cumulative total of taxable transfers increases. A unified credit or "applicable credit amount" against the gift or estate tax permits the tax-free transfer of a prescribed amount of property known as the "applicable exclusion amount." The credit and exclusion amounts increase over time as follows:

<u>Year</u>	<u>Applicable Exclusion Amount</u>
2002	\$ 1,000,000
2003	\$ 1,000,000
2004	\$ 1,500,000
2005	\$ 1,500,000
2006	\$ 2,000,000
2007	\$ 2,000,000
2008	\$ 2,000,000
2009	\$ 3,500,000
2010	estate tax is eliminated
2011	\$ 5,000,000
2012	\$ 5,120,000
2013	\$1,000,000

**The 2013 amount automatically becomes effective absent Congressional action.

As you can see, the operation of the unified credit may shelter a sizable portion of your estate from the estate tax. For example, for decedents dying in 2012, the credit protects \$5,000,000 of the taxable estate from tax liability (assuming no prior taxable gifts). Thus, decedents dying in 2012 and having taxable estates of \$5,000,000 or less incur no tax liability.

The availability of the unlimited marital deduction will allow many estates to pass tax-free to the decedent's surviving spouse. While this result seems desirable initially, in some instances there may be tax savings from

incurring some tax on the death of the first spouse. At our office conference, we will review in detail with you this issue.

Prior to January 1, 2003, exemptions from Federal and Massachusetts estate taxes were the same, and Massachusetts only received a portion of the Federal estate tax, the so-called "sponge tax." Effective January 1, 2003, Massachusetts has decoupled the Massachusetts estate tax from the Federal estate tax and now longer tracks the Federal estate tax exemption. Instead, the Massachusetts exemption will be based on Federal law as it was in effect on December 31, 2000. The Massachusetts filing threshold began at \$700,000 and increased to \$1 million in 2006; it remains at \$1 million notwithstanding the \$5 million federal estate tax exemption for 2011 and 2012. As a result, in 2011 an estate tax will be due and payable to Massachusetts if the decedent's taxable estate exceeds \$1 million even though no federal estate tax would be due unless the estate exceeds \$5 million.

8. Q. Who will raise my minor children after my death?

A. If you die leaving unmarried minor children, the other parent ordinarily will raise and support them. If the other parent is not living, however, your minor children will require a "guardian." A guardian is an individual who is appointed primarily to care for the person of a minor; the guardian's power over the minor's property is very restricted. You may appoint a guardian for your children in your will. If you fail to do so, the court will make the selection of a guardian. We recommend that you assume the responsibility for this important decision, rather than leaving it to a judge unfamiliar with your family situation.

Clients frequently tell us that they have chosen one of their parents as the guardian in the event of both clients' deaths, but in many situations we believe that such a selection is unwise. For example, assume that the youngest child of the client is three years old and the client's parent is fifty-eight. When that child is fifteen (a time when child-adult communication can be difficult under the best of conditions), the grandparent will be seventy. Under these circumstances, another choice may be better for your child. You should look first to your contemporaries in your families (such as brothers, sisters, or cousins). If such family contemporaries are not appropriate, then consider friends with children in the same age range as yours.

If both parents die, your minor children may be left with substantial property interests that need management and protection. Because the guardian has only limited power over the minor's property, protective proceedings may be initiated in which the court will appoint a conservator

to administer the children's property and affairs. In some instances, the conservator may fulfill the duties of the guardian as well. A court appointed conservatorship can be a cumbersome and expensive manner of dealing with the property of the minors, however, and it should be avoided. The conservatorship can be avoided by proper planning for the use of trusts or custodianships for minors.

If you have planned your estate properly, the guardian should not experience financial strain in raising your children. We usually suggest that upon the death of you and your spouse, a trust be established for your minor children. The trustee should be encouraged to make generous distributions to assist the guardian, and the trustee can be authorized to provide funds to pay for any necessary expansion of the guardian's home.

9. Q. How frequently should I review my estate plan?

A. As a general rule, we suggest that you contact us every four or five years for a conference to review your estate plan and to update the information in your permanent file. We also recommend that you contact us in the event of a dramatic change in your finances or in your family situation. For example, a substantial increase in your estate (through increased life insurance, inheritance, gifts, or successful investments) may create opportunities for tax savings, as well as necessitate further family financial planning. A divorce, of course, will re-open completely the matter of planning your estate. Likewise, do not hesitate to contact us any time you have a question as to whether or not changes in tax or other substantive laws may affect your estate plan.

DATA SHEET FOR ESTATE PLAN

NOTE: PLEASE USE NAMES AS USUALLY DONE FOR BUSINESS AND AS YOU WANT THEM TO APPEAR IN YOUR WILLS

Husband: _____ DOB: _____ SS#: _____

Wife: _____ DOB: _____ SS#: _____

State & county of residence: _____

Citizenship husband: U.S.A. _____ Other: _____

Citizenship wife: U.S.A. _____ Other: _____

Address: _____

Home Phone: _____ E-mail Address: _____

Business: _____ Phone: _____

Fax number: _____ Cell Phone: _____

Children of this marriage: (First name, middle initial and last name)

Name	DOB	Name of Spouse (if married)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Are there any deceased children?

Yes _____ (please list on a separate sheet)

No _____

Prior marriage of either husband or wife?

Yes _____ (please list details a separate sheet)

No _____

If divorced, please provide copies of the decree and any related agreement.

Any marriage agreements settling property rights from a prior marriage?

Yes _____ No _____ (If yes, list the details on a separate sheet)

Are there children of either you or your spouse from a prior marriage?

Yes _____(Please show on a separate sheet) No _____

Have any children been adopted?

Yes _____ (please designate) No _____

Do you have a premarital/prenuptial agreement with regard to property rights?

Yes _____(Please furnish copy of agreement) No _____

Grandchildren:

Name of Grandchild	Name of Parent
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Proposed Personal Representative (Executor):

For husband: 1st choice: _____

2nd choice: _____

For wife: 1st choice: _____

2nd choice: _____

Proposed Trustee:

For husband: 1st choice: _____

2nd choice: _____

For wife: 1st choice: _____

2nd choice: _____

Proposed Guardian of Minor Children:

1st choice: _____

2nd choice: _____

Attorney in Fact: (An Attorney in Fact acts as your agent if you are unable to act on your own behalf)

Durable Financial Powers of Attorney:

1st choice: _____

2nd choice: _____

Durable Health Care Powers of Attorney: (Health Care Proxy)

1st choice: _____

2nd choice: _____

If a trust for children is desired, what age do you want funds distributed?:
Age: 18 / 21 /25 /30 /35 other _____

Do you prefer distribution all at once or in staggered amounts?

Living Parents:

Husband's

Wife's

Do you have a safe-deposit box: (if so where?)

Who has access to safe-deposit box?

Do you or your spouse expect to inherit something from parents or others?

Yes: _____ No: _____ If Yes, what type and value of property?

Special instructions when both husband and wife are deceased:

Do you wish to leave a legacy of money to any one? If so provide the name and address of the person and how much you are giving him/her:

Do you wish to leave a legacy of money to charities, churches or other non-profit organizations? If so provide the name, address and sum you will be leaving:

Do any of your children have special educational, medical or financial needs?

Do you contemplate making future gifts? Yes _____ No _____

Furnish details as to gift you will make: _____

If none of your children are living at the time of your spouse's death, where do you want your estate to go?

Do you wish to donate your organs or body parts?

Yes _____ No _____

If so, please specify:

Who are your Advisors?: Name Address Telephone #

Accountant: _____

Trust officer: _____

Stock broker or financial advisor: _____

Life insurance agent: _____

Clergy: _____

Physicians: _____

Other attorney: _____

ESTIMATED PERSONAL BALANCE SHEET

Directions: Complete this form by supplying your estimate of the fair market value of the categories of assets and liabilities listed below. If you have a recent personal financial statement, you may include that with the checklist and complete only those two items below marked with an asterisk.

With respect to real property, attach a copy of the deed by which you took title, if it is convenient.

ASSETS

	You	Spouse	Joint Tenancy
Residence	_____	_____	_____
Other real property	_____	_____	_____
Bank Account and Certificates of Deposit	_____	_____	_____
Subchapter S and Other Closely-Held Stock and Partnership Interests	_____	_____	_____
Accounts Receivable, Mortgages Receivable, and Other Notes	_____	_____	_____

*Retirement Benefits,
including IRA's
(Please attach a copy
of your summary, if
available)

Stocks, Bonds, and
Mutual Funds

Other Assets:
(a) Automobiles

(b) Art, Stamp, or
Other Collections

(c) Estimated Cash
Value of Life Ins.

(d) Miscellaneous
Household Property

(e) Other
(Antiques, etc.)

TOTAL ASSETS
(Other than Insurance)

\$_____ \$_____ \$_____

INSURANCE

Face Amount and Type	Company	Insured	Beneficiary	Owner
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

LIABILITIES

Real Estate Mortgages _____

Loans and Other
Liabilities _____

TOTAL LIABILITES _____

NET WORTH _____

ADJUSTED TAXABLE GIFTS:

(Any gifts more than \$13,000 to a person in any one year. Attach copies of all gift tax returns filed.)

List any such gifts not reported

Property

Donee

Year