

# **ESTATE PLANNING**

**SPRING SEMESTER**

**2019**

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# **INTRO TO ESTATE PLANNING COURSE**

**Estate Planning course subject matter  
includes:**

- 1) Tax – federal estate, gift & generation skipping tax & federal income tax;**
- 2) State property/trust/estate laws**
- 3) Conflict of laws**
- 4) Insurance, annuities, IRAs, JTWRORS**
- 5) The advisor's ethical considerations.**

# **Choices in Structuring an Estate Planning Course**

- 1) Fundamental (a) property/trust & (b) tax (& business) law considerations/structuring analysis.**
  - 2) Psychological elements/intra-family welfare/family wealth transfer counseling.**
  - 3) Document preparation (e.g., wills, trusts, etc.), i.e., mechanics.**
- Cf., probate administration course.**

# **Current Status of the Fed. Estate/Gift Tax Laws**

**Pre 2001 – lower estate tax exclusion amounts & then 2001 Bush tax cuts.**

**2009 - \$3.5 million estate tax exclusion**

**2010 – estate tax and GST expired – but then retroactive enactment (late 2010) (\$5 million exclusion); possible to opt out of estate tax.**

**2011 & 2012 – \$5 million exclusion (indexed?) amount for estates and for gifts.**

**2013 – to return to \$1 million exclusion & high rate structure (pre-Bush tax cuts); but \_\_\_\_.**

***continued***

# Current Status of the Estate/Gift Tax Laws

But (2013): PERMANENT (?) FIX – American Taxpayer Relief Act of 2012 (ATRA) – 40% rate and \$5 mil. exclusion (indexed).

2018 – was scheduled to be indexed to \$5.6 million exclusion (\$11.2 mil. for couple)

But, TCJA § 11061, doubling exclusion to \$11 million; or, as indexed (2019) - \$11.4 mil.; \$22.8 million for a couple.

Exclusion to revert to \$5 million as of 1-1-2026.

# **STRUCTURE OF ESTATE PLANNING MATERIALS**

**See Table of Contents for the Estate Planning Materials. Segments include:**

- 1) The basics in property transfer structures.**
- 2) Gifts – sharing wealth before death; shifting appreciation potential and management to younger generation(s).**
- 3) Death-time wealth transfers – planning.**
- 4) Other property transfer techniques – alternatives to probate and gift transfers.**

# Chapter One – Focus on Estate Planning Basics

What is the focus of “Estate Planning”?

What skills are necessary for an “estate planner” to be successful?

Who does estate planning? Attorneys?

Others? See p. 12 in materials.

What are the ethical and professional responsibilities of the advisor? Estate planning attorneys are governed by State Bar rules.

# Finding the Essential Factual Information p.11

- 1) Family information.
- 2) Financial information - information concerning assets & liabilities, i.e., net worth.
- 3) Information concerning the client's objectives for disposing of assets and expectations – i.e., client's asset disposition strategies.

# **Estate Probate p.13**

## **Administration Mechanics**

**Locate the Last Will.**

**File the Last Will in the Probate Court.**

**File inventory - What is an “Independent Administration”?**

**Satisfy estate liabilities owing to creditors.**

**Satisfy transfer tax and income tax obligations.**

**Distribute the assets to the beneficiaries.**

**Final accounting in the Probate Court.**

**Mechanics are subject to provisions of the Texas Estates Code (effective 2014)**

# **Non-probate Properties**

**Properties which are transferred beyond the jurisdiction of the local probate court:**

- 1) Revocable trust assets**
- 2) JTWRORS assets**
- 3) Life insurance proceeds – beneficiary designations**
- 4) Retirement plan distributions – beneficiary designations**
- 5) Payment on death (POD) accounts, including transfer on death (TOD) deed.**

# **Professional Responsibilities of the Estate Planner**

**Rules of Professional Conduct: p.14-15**

- Competence**
- Diligence**
- Communication**
- Confidentiality**
- Avoid conflicts of interest (including between spouses) – How deal with these conflicts?  
Waiver? Agreement? (& next slide)**

# Possible Situations of Conflicts of Interest

Possible conflicts of interest:

- 1) Spousal – possible disputes – community vs. separate property.
- 2) Children from a prior marriage.
- 3) Representing the failing parent of the client.
- 4) Representing (a) the estate or (b) the trust & (c) trustee vs. the estate/trust beneficiaries.
- 5) Representing the family business (i.e., multiple family member partners).

# **Asset Management for the Client?**

## **P.21**

**What should the advisor do to help the client concerning the client's financial affairs?**

**Investment management?**

**Life insurance and casualty insurance review?**

**Social security/retirement benefits analysis?**

**Medicare/medicaid benefits assistance & extended (long term) care insurance arrangements?**

**Reporting financial exploitation – p. 22.**

# **Estate Planner's Fee & Deductibility** **p.23**

How determine the amount of the fee for estate planning services? Reasonable? P.24

Who pays this fee? (Employee's employer?)

What availability of a federal income tax deduction for the cost of estate planning?

Code §212 (but consider TCJA - 2017)

Note the Merians case. P.26

Why be concerned about the availability of this federal income tax deduction?

# Limits on Tax Deduction

## p.29

§67 – miscellaneous itemized deduction?

The 2% “haircut”? Applicable to trusts –  
Rudkin decision (Sup. Ct.)

TCJA – miscellaneous deductions

eliminated - §67(c)(2)(A) –until 2026

Impact of TCJA? Relevance to trusts  
& estates?