

A LAYPERSON'S GUIDE TO

# Estate Planning

4th Edition

By James A. List, Esquire

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**Notice:** The Information contained in this book is for guidance and general information, and should be used for that purpose. Because the law changes frequently with new legislation and court decisions, the reader should consult with their personal advisors when considering these issues.

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## 1. *Forward*

Iraq. Hurricane Katrina. Terry Schiavo. Sub-Prime Mortgage crisis. Immigration policy. Baby Boomers turning 60. Historic elections. All front page issues since the publication of the third edition of *a Layperson's Guide to Estate Planning*.

And like our society, the way we practice law reflects the events around us, particularly in the areas of estate planning and elder law. How many people signed Living Wills or Advance Directives after watching the Terry Schiavo story play out on national television? Unfortunately, it often takes a crisis to motivate people to act.

The amount of data available to the public continues to grow at an exponential rate. That is why I keep updating this book – to help cut through the morass of ‘data’ and present ‘information’ that is relevant to you and that removes the mystery from these topics.

But some things really DO remain the same. While changes to the law will always occur in response to economic and social changes, the need for good information and solid planning advice remains constant. No matter what Congress does, every person needs to meet with his or her team of advisors and take control of their affairs.

Much of the material from the 1<sup>st</sup> Edition remains relevant and has not changed. The **Forward** to the 1<sup>st</sup> Edition follows. A Chapter titled **Special Needs Trusts** was added to the 3<sup>rd</sup> edition.

In this edition, Chapter 6 has been updated with a section on State De-Coupling from Federal Estate Taxes. Chapter 7 includes a discussion about Charitable Gift Annuities. With the incredible appreciation of homes and real property followed by the sub-prime mess, a new chapter has been added titled **Strategies for Property Owners**. Of course, the sections dealing with Medicaid and Elder Law have been updated, thanks to Alisa Chernack, Esquire.

As before, this book did not appear out of thin air. Many people sacrificed long hours to pull this project together. Special thanks to Kim Spring, Larry Leitch, Cathy and Ron Teller, Dan Norris, Norman Townsend, Ed Kiser, Mike Stewart and Bill List.

This book is not intended to be the answer, but the start of the process. Please feel free to contact me by telephone or email. If I do not know the answer, I can usually find it.

*In loving memory of  
Carolee List*

## 2. *Forward to 1<sup>st</sup> Edition*

“Do you do simple wills?” A question I hear several times a week.

My reply is to ask questions - not unexpected from a lawyer. “Well, are you married? Do you have children? Step-children? Who’s going to raise them if both of you die? Who will manage the money for them? What happens if one of your children dies before you - does his/her share go to other siblings or to your grandchildren? Do any of your children or grandchildren have special needs?”

“Do you have business partners? Retirement plans? Do you expect any inheritances? What if you have a long-term (*expensive*) illness? Do you have disability insurance? Life insurance? Who are the beneficiaries of your 401(k) and IRA plans and life insurance policies?

After a few minutes of this, the typical response is, “I guess it’s not so simple.” Actually, it can be, but there is a process that addresses all of these issues and many more - powers of attorney, advanced directives, beneficiary designations, insurance, guardianships, trusts, living trusts, tax planning, gifting, etc.

There are no correct answers or documents or solutions - rather, there are informed choices one must make. The goal of estate planning is to determine and implement the solutions that meet the needs of the client.

Sometimes the best tax or administrative options create anxiety or uncertainty. That defeats the purpose - a good estate plan should provide comfort and relief to the individual completing the plan.

Remember, the law was generally written by lawyers and politicians, and it is interpreted by judges who were once attorneys. While it has gradually evolved into language that is somewhat comprehensible, the phrasing, the Latin and the lengthy sentences make the act of reading legal documents exhausting at times.

This book is a primer, and its purpose is take some of the mystery out of these topics. It is only the first step in the process. Armed with some basic information and perhaps some new questions, you can address these issues with your attorney, accountant, insurance professional and investment advisor.

And by all means, ask questions - lots of them. The decisions you are contemplating have long-term effects for you and your family.

A final thought: The cost of preventing problems is always cheaper than the cost of solving problems. Attorneys make their living doing both - the reality, however, is that it is much more lucrative to correct a bad situation than prevent one from happening. This is particularly true in estate planning - large tax bills and family feuds only benefit the lawyers. In almost all cases, these situations can be avoided or provided for.

### ***3. Introduction to Estate Planning***

#### *A. What is Estate Planning?*

Estate Planning is the *creation* and *preservation* of an estate and the *distribution* of this estate to your heirs.

#### *B. The Estate Planning Process*

1. Determine Your Current Financial Status. What do you own? What do you owe?
2. Predict the Future. Future earnings, investments, inheritances, medical needs.
3. What is your family status? Married/Single/Divorced/Widowed? Ages of children & step-children? How does everyone get along? Are there any children with special needs?
4. Establish Financial Objectives:
  - \* What kind of financial security do you want for retirement?
  - \* What type of assets do you prefer? Property, Businesses, Cash, Insurance?
  - \* How are the taxes going to be paid?
  - \* Who will eventually get the assets? At what age?

5. Establish Family Objectives:
  - \* Who raises the children if they are still minors?  
Who manages the money for the children?
  - \* What about Charities, your Church or Synagogue? Your alma matter?
  - \* Do you want to be buried or cremated? Do you want to be an organ donor?
6. Draft and Execute the Plan Documents
7. Update Beneficiary Designations and Titles
  - \* Land titles
  - \* Stockholder Agreements
  - \* Insurance Policies
  - \* Retirement Plans
8. Periodically Review and Update the Plan:
  - \* Family changes
  - \* Lifestyle changes
  - \* Financial changes
  - \* Tax and Estate Law changes

### *C. Taking Control*

Estate Planning includes managing aspects of your life that have little to do with money or taxes. Who makes decisions for you if you are sick? Who talks to the doctors? Do you want to stay alive on a respirator? Do you believe in hospice care?

These are not pleasant topics to think or talk about; however, if you avoid them, the emotional and financial stress can be huge. The tools listed below are inexpensive, and in my practice, are considered fundamental to any Estate Plan.

#### *Powers of Attorney*

A power of attorney is a directive or request to someone to act on your behalf. That's it.

It can be a General Power: *“I appoint Kim as my attorney to manage all of my affairs.”*

It can be a Limited Power, in scope or duration or both: *“I appoint Jennifer as my attorney to negotiate the land contract until 12:00 a.m., July 4, 2007.”*

It can be a “Springing” Power, which takes effect, or “springs” into action when certain conditions occur: *“I appoint Bill as my financial attorney if I become disabled.”*

Powers of Attorney must be carefully drafted to meet your needs – they do not replace a Will or a Revocable Trust (Chapter 5)

## *Advance Directives*

An Advance Directive combines two documents into one: a declaration about your medical intentions under certain circumstances (a Living Will Declaration) and an appointment of another person to make medical decisions on your behalf (a Health Care Power of Attorney).

Your intention about treatment or withholding of treatment from an imminent terminal condition or a persistent vegetative state must be clearly stated in the presence of witnesses. These Advance Directives can be broadly or narrowly drafted, depending on your specific wishes. Many hospitals and health care facilities have state-approved forms. I have reviewed a state-approved Rabbinical Health Care Directive, as well as a medical directive written in a easy to understand style called “The Five Wishes,” recognized by many states. I recommend that you review these documents with your advisors to ensure that the forms clearly state your intentions.

In all Advance Directives, certain legal and medical guidelines must be adhered to. For example, medically assisted suicide is not permitted, even if you direct your physician to perform such service. Many hospitals and hospices provide DNR or Do Not Resuscitate forms. These require strict compliance with the law.

In addition to discussing these issues with your family, you may also wish to consult with your spiritual advisors. Not all religions and faiths approve of this directive.

Powers of Attorney, Advance Directives, DNRs are all decisions about taking control over your care.

## *Guardianships*

A Legal Guardian can be appointed over a person or over a person's property. A guardian is most often appointed in matters involving minors and the elderly.

A guardian has general powers to make decisions about a person, their property or both. In the case of minors, the guardianship expires when the minor reaches the age of majority.

In Maryland and some other states, a Guardianship Proceeding is an adversarial proceeding. This means that you have to sue the person to obtain the guardianship, *even if they do not object!*

The Court routinely appoints an independent attorney for the person over whom the guardianship is sought. The person seeking the guardianship then pays that attorney, in addition to their own legal fees and court costs. When the paperwork is complete, a Court hearing takes place. If the Guardianship is granted, the Guardian must file periodic reports with the Court.

This adversarial system is designed to protect minors, disabled persons and our elderly from fraud and abuse. Since this process can be expensive and time consuming, we often designate a Guardian in a Power of Attorney document. This declaration streamlines the Guardianship process, saving time, money and in many cases, frustration. This is yet another example of an inexpensive planning tool that can avoid significant expense and frustration.

## 4. *How Property Transfers*

### A. *Probate*

Probate means “to prove.” Historically, it meant to prove the validity of a Will. In our system, Probate is *the administration of a person’s estate by a court pursuant to a Will or by Intestate Succession.*

The Probate Process accomplishes the following:

- \* It determines who the beneficiaries are;
- \* It determines what each beneficiary is entitled to;
- \* It limits the time that someone can challenge the Will or file claims under it;
- \* It ensures that creditors get paid; and
- \* It transfers legal title of property to the beneficiaries.

Probate has its problems, including:

- \* The cost, particularly if there are disputes. The costs can range from 3% to 10% of the value of the estate;
- \* The time to settle the matter, which is usually at least one year; and
- \* Probate files are open to the public.

**Intestate Succession** (intestacy) is state law which determines a person’s beneficiaries in the absence of a Will. Beneficiaries are placed in classifications based on their relationship to the deceased, with spouses and minor children given highest preference.

## B. Titling of Property

Joint ownership of property does not pass through your estate - it passes to the joint owner at your death by law.

Joint ownership with a spouse is called *tenancy by the entireties*. This is a common way that the family home is titled. “To Bill and Joann, as tenants by the entireties.” At the death of the first party, the second party owns the house outright, and it is not a part of the deceased first party’s estate.

The other common type of joint ownership is *joint tenancy* or *joint tenancy with the right of survivorship*. Often this is done with bank accounts - the survivor receives the entire account without probate.

Joint ownership should not be confused with property owned between people as tenants in common. At a tenant in common’s death, their property interest *does not* pass to the other owners, but instead passes to the deceased’s heirs.

There are several significant advantages to Joint Tenancy. You do not need an attorney to title your bank accounts - establishing a joint account is simple. At the first death, the property transfers to the other owner by operation of law. Creditor claims are generally not allowed against joint assets.

The best way to illustrate a common disadvantage of joint tenancy accounts is by example. Several times a year I receive a call that goes something like this:

“Mr. List, my mom died. There are 3 children, all adults. Two of us live out of state, but my brother lives in Maryland.

To keep things simple, my mom put my brother on all of her accounts so he could pay her bills. My mom's Will says to split everything 3 ways. Now my brother says that only applies to her estate, which is small, since most of her assets were in joint bank accounts. What do we do?"

My best advice in this situation is for the caller to try to "guilt" the brother into splitting the bank accounts with his siblings. Unless the siblings can somehow prove fraud or duress when the brother's name was placed on the accounts (which can be extremely difficult and expensive to do), the siblings most likely do not have a case. There is no estate – the brother receives the bank accounts as a matter of title and as a matter of law, no matter what mom's intent.

While the joint account passes outside of probate, a portion of the value is subject to estate taxation. The heirs have to pay these taxes from other estate assets, because these accounts are not available to the estate to satisfy the tax liability.

There are other pitfalls with joint accounts. Transferring an existing account into a joint account can have Gift Tax consequences. A joint owner can access, use and dispose of **all** of the asset - not just half. Finally, if both owners die simultaneously, the asset will be equally divided and probated through each of their estates.

### C. *Beneficiary Designations*

Most people are familiar with life insurance beneficiaries - that's who gets the death benefit when an insured dies. Life insurance benefits pass outside of your estate - they are not part of the Probate process.

There is a unique twist to life insurance, however. The value of life insurance benefits are reported on an Estate Tax Return - it does increase the value of the estate. This can have major consequences for Tax Planning, discussed later in the book.

People now are more financially sophisticated, and have 401(k) plans, annuities, mutual funds, money markets, IRAs, and other retirement and investment accounts. Many of these accounts permit beneficiary designations or payable-on-death (POD) or transfer-on-death (TOD) designations.

These dollars pass directly to the beneficiaries, and not through the estate. This is critical for the tax planning portion of the estate plan.

Therefore, *it is critical* that you review these designations regularly. Failure to have named beneficiaries when it is permitted can cause these assets to come into your estate, which can significantly increase the taxes paid by your heirs.

**HINT:** You can name trusts as beneficiaries, and also set forth terms under which minors receive a distribution as a beneficiary. A separate Beneficiary Designation document can also be drafted to supplement the forms provided by the financial institutions.

## D. *Gifts*

December is a busy month at many law firms. Many of the family business clients we represent make gifts of stock, membership interests or real estate to their children at the Holidays to coincide with year-end. While the spiritual side of me would like to believe it has to do with peace and good will, the attorney side of me understands that the primary motivation is taxes. Or more specifically, tax avoidance.

Other people make gifts of stock that has appreciated in value during December and January to their favorite charity, church or synagogue to coincide with the end or beginning of a year. Why?

The Department of the Treasury (IRS) permits anyone to gift \$12,000 per year to anyone, tax free. The person making the gift does not receive a deduction or credit unless the gift is to a qualified non-profit; the person receiving the gift does not declare the income. Why do this? Simple.

It transfers appreciated assets out of an estate, reducing the estate and estate taxes. For businesses, it begins the transfer of ownership and control to the next generation or to key employees. For charitable and religious organizations, it allows them to receive generous gifts tax free and the donor to avoid capital gains on the gift. Finally, it allows the donor who can afford it to assist their heirs while they are still around to enjoy it.

Gifts and gifting strategies (what assets to gift) are a key component of an estate plan, particularly where taxes are a major consideration. To be a valid gift, there can be no strings attached - you must give up total control of the asset or the IRS still considers it to be yours.

## *E. Trusts*

Property can be transferred through a Trust. Trusts are discussed in detail later, but the basics of any trust are as follows:

There are 3 Parties to a Trust:

- 1) Grantor - person making the gift
- 2) Trustee - person managing the gifted asset; and
- 3) Beneficiary - person receiving the benefit of the trust asset.

A Trust can be created when you are alive (*inter vivos*) or at your death (testamentary).

A Trust can be revocable (changed or terminated) or irrevocable (permanent until the trust ends by its terms).

A Trust can help create wealth, preserve wealth or distribute wealth.

A Trust can manage assets for children well past the age of majority.

There are more types and variations of trusts than you can imagine. For now, what is important to remember is that property can be transferred by a Trust.

## 5. *Wills & Living Trusts*

### A. *What is a Will?*

A Last Will and Testament is basically a letter to a Judge. “Dear Judge, I have died. Please take care of my affairs as follows...”

In a Will, you identify your heirs, provide for Guardians of minor children, state your funeral directives, make gifts, provide for the payment of taxes and debts, and distribute the balance of what you own to your loved ones.

Wills are governed by state law. In all states, there is a procedure set forth for probate (administering the estate) that includes the following:

- \* Appointment of Personal Representatives
- \* Notice to Heirs
- \* Notice to Creditors
- \* Valuations of property
- \* Accounting for the estate assets
- \* Payment of Taxes
- \* Final distribution of assets

State law also sets forth the rights of Widows/Widowers and minor children - one cannot totally disinherit their spouse and minor children - this is a public policy adopted by all states.

Probate also establishes the process for contesting a Will. There are two basic ways to contest a Will:

First, the deceased did not have the mental capacity to execute the Will - they were incompetent and did not have the ability to understand what they owned, who their heirs were, or how they wanted their estate divided. This issue can be extremely divisive and contentious, particularly when the testator/testatrix (person writing the will) was in the early stages of Alzheimer's disease or a similar condition when the Will was signed.

The second ground on which to contest a Will is Undue Influence. In this scenario, someone alleges that another person unfairly influenced the testator/testatrix to make gifts that they would not have made without the coercion or improper acts.

Will *challenges* are nasty, ugly and expensive, and all reasonable steps should be taken by the person making the Will and their advisors to avoid even the possibility of this type of lawsuit. Videotapes, audiotapes, the use of doctors as witnesses, all can provide insurance against these challenges. Unfortunately, even with perfect planning, lawsuits can occur...but advance planning can minimize the cost and impact of such a lawsuit.

### *B. Advantages/Disadvantages Of Wills*

Like any legal process or document, Wills have advantages and disadvantages. The client must weigh these factors in making choices about their estate.

Some of the *Advantages* to a Will were set forth on the preceding pages, but here is a brief list.

- 1) There is a legal process governing Wills, which provides rules, certainty, deadlines and (usually) fairness.
- 2) Wills are relatively inexpensive (compared to alternatives) to establish.
- 3) The final disposition of your assets becomes someone else's problem - it occurs after you have departed this earth.

The *Disadvantages* to a Will include:

- 1) Wills can be challenged in the Probate Court, as discussed above.
- 2) Probate can be expensive - attorneys, CPAs, appraisers all cost money. Probate can cost 3-10% of the value of the estate - if a Will is challenged, it can cost even more!
- 3) The individuals managing the estate may not be qualified.
- 4) Creditors receive priority under Probate.
- 5) Your Will is a public record available for anyone to look at.

### C. *Revocable (Living) Trusts*

A Revocable, or Living Trust is an *ALTERNATIVE* to a Will. It is another method to get your assets to your heirs, provide for the payment of taxes, provide for minor children and assure for an orderly transition after your death.

***Living Trusts do not avoid  
Estate Taxes!***

There is a lot of literature and marketing about Living Trusts now, and it seems that there are more seminars being offered than there are lawyers. Some of the advertisements are scary - “**Avoid Probate,**” or “**Don’t Let This Happen To Your Heirs!**” are two of the many ominous ads I have seen. And with any “hot” topic being heavily marketed, misconceptions, like the one about Estate Taxes above, are plentiful.

Let’s get beyond the marketing hype and explore what these Living Trusts are about. This estate planning tool has been around for *hundreds* of years - it is not the latest and greatest invention since sliced bread.

A Living Trust is a trust - 3 parties are involved, and it goes something like this:

“I Jim, as Grantor, give to Jim, as Trustee, all of my assets in Trust, for my Beneficiary, Jim, until I terminate this gift or trust.

Only lawyers could come up with something like this! It certainly sounds like legalese double talk or smoke and mirrors. And it is revocable - the person making the gift and creating the trust can change their mind and do something else.

Here’s the important part about a Revocable Trust:

“If I die or become disabled, I appoint my spouse as my Trustee, and my spouse and daughter shall jointly be my Beneficiaries until my daughter reaches the age of 40, when all of my assets shall go to my daughter, and this Trust shall then terminate.”

Now, it sounds like a Will. But a Trust is a separate legal entity. Since all of your assets are transferred to this Trust, you do not have any estate to probate! This avoids the disadvantages of a Will and the Probate process. Sounds good so far.

Nothing is quite so simple, however. This Living Trust or Revocable Trust *only works if you transfer all of your assets into it*. Your house deed. Your cars. All bank and brokerage accounts. All personal and real property. And guess what? When you read the advertisements for these seminars, the \$795 fee you may see advertised usually only applies to the cost of the Trust document, and not the cost of transferring all of your assets into the Trust.

If you do not transfer all of your assets into the Revocable Trust, you still have an estate, and therefore, you still have Probate. And after you transfer your assets, you have to manage them as a Trustee - every check needs to be signed Jane Doe, Trustee. Trust Tax Returns may need to be prepared. It is not quite as simple as the ads and seminars lead you to believe.

A Revocable or Living Trust is another “club in the bag” or “arrow in the quiver.” It is a valuable tool or option to be used when it fits the client’s needs and personality, but it is certainly not for everyone.

## *A Simple Comparison*

<i>Wills</i>		<i>Living Trusts</i>	
Delays of Probate		Avoids Delay - Trust Continues, No Probate	✓
Usually Less Time & Expense to Establish	✓	Usually More Time & Expense to Establish	
Less Time & Expense to Manage after Plan Established	✓	More Time & Expense to Manage after Trust Established	
Estate Taxes: Due & Owing		Estate Taxes: Due & Owing	
Still Control Assets	✓	Less Control over Assets	
No Oversight of Manager, Trustee, While Alive		Can Try-Out Trustees, Money Managers While Alive	
Will Contests		No Will to Contest	✓
Wills are Public Files		No Publicity; Trust is a private document	✓

## 6. *Estate Taxes*

### *A. Introduction*

Estate Taxes, in the author's opinion, have always been frightening. Your heirs would pay taxes on assets that have already been taxed at least one time. And the rates are ridiculous - not 1% or even the current 15% Federal Capital Gains rate, but they have historically started at **37%** and climbed to over **50%!**

I have always been a proponent of tax planning for my business and estate clients. The key word here is avoid, and not evade.

In 1997, Congress passed a Tax Reform Act, which allowed individuals and some small businesses to pass on more to their heirs without estate tax consequences. As soon as the attorneys and accountants figured out all of the nuances of the Tax Reform Act of 1997, along came the Economic Growth and Tax Relief Reconciliation Act of 2001. This Act radically changed the tax rates and exemption amounts; more importantly, it changed the entire structure of the estate tax system.

And the 2001 Act added another twist - the Act **expires** on 12/31/2010, and the estate taxes come back with a vengeance - unless Congress and the President act.

The 2001 Act has been a political football since it was passed. Some politicians want to make estate tax relief permanent; others want to roll back the rates and exemptions. Washington was close to a compromise in 2005, but talks stalled after Hurricane Katrina. Unfortunately, most practitioners do not see estate tax reform until sometime after the 2008 elections.

## B. *Tax Tail Wagging the Dog*

**“The avoidance of taxes is the only intellectual pursuit that carries any reward.”**

John Maynard Keynes

Many people, including estate planning attorneys, believe Keynes’ quote above. Because of historically high estate tax rates, accountants, financial professionals and estate planning attorneys spend a significant amount of time on tax planning. Sometimes, however, our clients are not comfortable with the *best tax strategies* - so the objective is to get the best overall plan that takes into account all of our client’s objectives. Let me give a brief example:

Today and for the next few years, Grandma will have an estate tax liability, and has liquid funds (savings accounts, CDs). She has three children and five grandchildren. She is permitted to gift \$12,000 per year to anyone, including her children and grandchildren, which would result in a \$96,000 reduction in her estate. At 45%, this reduces her estate tax liability by over \$43,000 each year. A no brainer, right? Not really.

Grandma’s bank accounts give her peace of mind and a sense of security. It also gives her the freedom to travel, make gifts to charity, and enjoy her life. Grandma is also afraid of outliving her assets, no matter how well her portfolio is doing. Finally, Grandma is terrified of the possible cost of a nursing home in the future.

The key is to find a strategy that addresses all of her needs. It will not be perfect from a tax perspective. Maybe it is a smaller gifting plan and the purchase of long-term care insurance. It could include liquidating some assets to make assisted living arrangements for the future. It could include some eldercare trusts discussed in the last chapter. It is not nor should it ever be just plugging numbers into the computer and generating the best estate tax documents.

### *C. The Tax Relief Act & the Unified Credit*

Under the old tax system, GIFT taxes and ESTATE taxes were related to each other. Here's how it worked:

In 2003, each person could pass \$1,000,000.00 to their heirs, without federal estate taxes. Each person could also make lifetime gifts up to \$1,000,000.00, without taxes. However, the lifetime gifts reduced the amount available to exclude from federal estate taxes. That's why we say the Tax Exemption (amount to pass on tax free) was a combination of Gift and Estate distributions; they were looked at together, hence, Unified.

**Annual \$12,000 gifts do not count  
against the Unified Credit!**

For married couples, each person had the \$1,000,000 exemption available to pass to their children and grandchildren through either gifting or through their estate. The Unified Credit directly impacted how people titled their assets and how they developed gifting and inheritance strategies.

One common example is the parent that owns a family business and gifts 1/2 of their stock to a child before death. The gift is appraised at \$350,000; the parent, in the year 2007, would have had \$650,000 left to pass tax-free through his estate or revocable trust; the spouse still had her \$1,000,000 Exemption.

Well, guess what? Under the 2001 Tax Relief Act, Estate taxes and Gift taxes are separate in 2004! They no longer live and work together in harmony.

What does this mean? It means that estate planners have developed new Wills, Trusts, and planning techniques to address these changes. And because the 2001 Tax Relief Act changes rates and exemptions, these new Wills, Trusts and financial products have to be **flexible**.

This is what I said in 1999:

*“When planning your estate, however, one must look at the amount available on the date of your plan - there is no guarantee that a future Tax Reform Act will change or freeze this amount. Whether these increases actually occur will depend on the state of the economy, the federal budget and the winds blowing through Congress.”*

This quote would almost qualify me as a prophet, if Congress was not so predictable. With the economic cycles that we lived through since the 1<sup>st</sup> Edition of this book, the only thing for certain is more change.

Listed below are the estate tax rates and exemption amounts as they are defined in the 2001 Act:

*Estate Tax Rates and  
Exemption Amounts*

Year	Exemption Amount	Top Estate Tax Rate
2008	\$ 2.0 million	45%
2009	\$ 3.5 million	45%
2010	repealed	N/A
2011	\$ 1 million	55%

#### *D. State Decoupling Under the 2001 Tax Relief Act*

Before the 2001 Act, the States would coordinate with and share in estate taxes collected by the Federal Government. This has changed – fewer estates are subject to estate taxes with the increase in the federal exemption amount. The result is less tax revenue for the States.

Some States have reacted by decoupling from this relationship with the Federal Government. State Legislatures have frozen the exemption amounts below those of the Federal rates and imposed State Estate Taxes where no Federal estate taxes are due. Here is an example:

In Maryland, an individual has an estate of \$2 million. No federal estate taxes are due; because of the \$2.5 million exemption. However, Maryland froze its exemption at \$1 million, and \$99,600 is due to Maryland in state estate taxes.

To make this situation more interesting, individuals with property in different states must settle (probate) their estates in multiple states. Ancillary probate is complex enough, but coupling it with multiple tax rates makes planning even more challenging .

Finally, some states de-coupled hastily because of short legislative sessions and budget pressures. There has been some backlash - Virginia has already re-coupled with the Federal Estate Tax system. Maryland now allows the state estate tax to be deferred until the second spouse dies. This issue continues to evolve, and needs to be addressed with your planning team.

## *E. Planning Under the 2001 Tax Relief Act*

### **By-Pass and Disclaimer Trusts**

In the 1<sup>st</sup> Edition of this Book, I spent several pages explaining how a By-Pass Trust works (sometimes called a Credit Shelter Trust). In the 2<sup>nd</sup> Edition, I contrasted this tool with some other planning vehicles in light of the 2001 Tax Relief Act. Listed below is a summary of these tools.

Here's how a By-Pass Trust works:

In a Will or Revocable Trust, a portion of a person's assets are placed in a Trust (a separate legal entity). The Trustee is directed to pay to the spouse income from the Trust during the spouse's life (or until remarriage). The Trustee is also given some discretion to pay the principal of the Trust to the spouse if the spouse needs it.

When the second spouse dies, the By-Pass Trust created from the first spouse's estate is not taxed. It by-passes taxation and goes to the first spouse's named beneficiaries (children, grandchildren). The second spouse will also pass an amount equal to his or her exemption amount to their heirs, so both tax exemptions are used.

For a By-Pass Trust to work, each spouse must have assets in their name alone. If every asset is titled jointly (see Chapter 4), then everything passes to the other spouse at the time of the first death. Even though it is a tax-free transfer, the first exemption is lost.

The issue with By-Pass Trusts under the 2001 Act is that the Exemption and the Tax Rate change every year, and then the rates revert if Congress fails to act. How do we know how to title assets between spouses? For some people, there is no certainty that such a trust will be necessary. Instead of requiring the formation of a By-Pass Trust after a death, we need to develop discretionary language about their creation dependent on certain events or tax consequences.

## **Disclaimer Trusts**

*Disclaimer Trusts* are another tool that can be created in a Will or a Revocable Trust. These start out as the old “I love you” Wills - “I give everything to my spouse, if he/she survives me.” But a spouse does not have to take everything. He or she can disclaim some of the assets - and then those assets can go to a by-pass trust or to the children or grandchildren. Generally, the spouse disclaims a portion up to the amount of the deceased spouse’s available tax exemption, and the surviving spouse takes the balance tax free (transfers to spouses are still tax free under the 2001 Act).

Disclaimer language allows the surviving spouse to “wait and see” on the amount to put into the trust.

There are several issues with Disclaimer Trusts, and it is an issue debated often among my colleagues. What if you have an unsophisticated spouse? What if the surviving spouse does not disclaim - he or she decides to take all of the assets? All of the tax benefits from the Trust or Will could then be lost. Disclaimer Trusts work wonderfully only if the surviving spouse actually disclaims some of the assets.

We must also be careful with Disclaimer Trusts where one or both spouses have children from a prior marriage. While a sensitive subject, the relationship between a step-parent and adult step-children must be discussed with the attorney to avoid misunderstandings and future problems in the “step” relationships.

The decision of how to title assets and whether to use a By-Pass Trust or Disclaimer Trust in a Will or Living Trust are not easy decisions. These decisions require considerable discussion and sensitivity.

The goal of all of these planning tools is flexibility. One result will become the increased need for professional assistance, particularly where trust elections or disclaimers can cost beneficiaries thousands of dollars.

Flexibility also creates discretion, and discretion can cause problems, including litigation. “Why didn’t the Trustee recommend a partial disclaimer?” “Why were the estate assets divided this way?” As I often say, litigation is costly, nasty and to be avoided at all costs. Unfortunately, when people do not receive what they expect, even if it occurs because of changes in the law, they often resort to the courts.

The 2001 Act was based on optimistic projections and a budget surplus, which were short-lived. The only way to plan for the uncertainty of tax changes and a fluctuating economy is with flexible and creative documents that will continue to evolve. The key for both the client and their counsel and other advisors is to review and update their plan on a regular basis.

## 7. *Other Estate Planning Tools*

### A. *Life Insurance Trusts*

Life Insurance is a unique asset - while it does not pass through your estate (probate), it counts towards the total dollars your estate is taxed on.

Life Insurance serves several purposes. First, it provides quick cash to your spouse and children for income replacement and credit protection. Life Insurance can provide immediate funding for mortgages and for the children's education.

Some families that I work with have finished paying for college educations, weddings and mortgages. Their debt is low and their incomes are high. Many of these clients may opt to let their life insurance coverage lapse. This may not be a good idea.

Many people are surprised when they discover that they may have an estate tax problem, even after completing their estate plan and even with the new exemption and tax rates under the 2001 Act. **And Federal Estate Taxes must be paid within nine (9) months of death in cash!** This sometimes results in fire sales of businesses or property that significantly reduce the value passing to one's heirs.

Life Insurance can provide the cash to pay Estate Taxes and preserve other assets. And the best way to do so is in a Life Insurance Trust, which keeps this cash out of the Estate. Here's how it works:

I Jim, give to Shawn, as Trustee of the JAL Irrevocable Trust, the sum of \$100. Please invest this for my heirs, and pay it to them as needed, and distribute it equally when my youngest

child reaches 30 years old. And by the way, if you want to buy an insurance policy with this gift, go ahead.

- A. The Trust must be irrevocable: It cannot be changed.
- B. The Grantor (person making gift) cannot take back the gift or receive any earnings from the Trust.
- C. The Trustee buys an insurance policy on the life of the Grantor - the Trust is the legal owner of the Policy.
- D. The Grantor makes an annual gift of the amount of the insurance premium to the Trustee - after certain formalities are completed, the Trustee pays the premium.
- E. At the Grantor's death, the Trustee collects the death benefit, pays any estate taxes, and either manages the balance in trust for the heirs or distributes the balance to the heirs, depending on the final disposition terms of the Trust.

### **Important Points about Life Insurance Trusts:**

- 1. The Insurance Death Benefit does not add to the value of the Grantor's taxable estate: the insurance policy is owned by a Trust, which is a separate legal entity.
- 2. The proceeds received after death provide liquidity for taxes. The balance (after estate taxes) can also provide financial support for the widow and children.

3. The Grantor can also gift other assets into this Trust besides Life Insurance (i.e. appreciated stock).
4. Existing insurance policies can be transferred into a Trust, but there is a risk. The IRS deems assets transferred within three (3) years of death to still be part of one's estate & Medicaid looks back five (5) years. Therefore, the death benefits on a policy the Grantor owned prior to its Transfer into the Trust would still be counted on the Grantor's estate tax return.

Second-To-Die or Survivorship Life Insurance policies can be extremely beneficial to married couples. These policies are issued on **both** spouse's lives, and do not pay the death benefit until the Second Spouse dies. This is good for several reasons.

First, the Estate Tax liability occurs when the second spouse dies if a plan has been properly established. The insurance cash is therefore available when it is needed. Second, this insurance is cheaper, since it does not pay off until two people die. Finally, this insurance can usually be obtained even when one of the spouses has had prior health problems.

### *B. Charitable Trusts*

There is a lot of talk and hype about Charitable Trusts. They are an effective Estate Planning Tool for persons with fairly large estates who are charitably inclined. They are not for everyone, as some of the advertisements would lead you to believe!

Basically, they work like this: During the Donor's lifetime or by Will, the Donor makes an irrevocable gift to a Trust. The Trust pays annual amounts to the Donor or his beneficiaries for a fixed period, such as 20 years, or for the donor's life expectancy. When the term expires, the Charity receives the balance. This is called a Charitable Remainder Trust.

A Charitable Lead Trust does the opposite - income from the gifted asset goes to the charity, and the balance of the trust assets goes back to the Donor's beneficiaries.

An *Annuity* trust pays the beneficiaries a fixed sum. A *Unitrust* pays a fixed percentage of the fair market value of the trust assets to the beneficiaries. Annuity or Unitrust payments can be used for the Remainder and Lead Trusts. There are many variations and options to consider.

The gift to the Charitable Trust reduces the Donor's taxable estate when gifted in the amount of the present value of the remainder interest of the gift going to the Trust. In English, this means that a gift projected to be worth \$100,000 to the Charity in the future provides the Donor or his/her estate with a \$100,000 deduction in a Remainder Trust; the deduction for Lead Trust is the projected income paid to the Trust over the term.

Sometimes we combine an Irrevocable Life Insurance Trust with a Charitable Remainder Trust. Some of the tax savings or annual beneficiary pay-outs are used to purchase a life insurance policy on the Donor. This Trust is outside of the Donor's estate and replaces the value of the gift made to the Charitable Trust for the Donor's heirs.

### *C. Charitable Gift Annuities*

A charitable gift annuity is a contract between a donor and a charity. In exchange for a charitable donation, the charity agrees to pay a fixed sum of money each year for a period measured by the donor's life (and not a fixed term of years). The person or couple who makes the gift receives fixed payments in return, calculated from standard charts based on life expectancy. A portion of the payments are taxable income and a portion is a non-taxable return of principal.

The donor receives a partial tax deduction for the charitable gift. It is the expected remainder amount from the gift that the charity will receive after the donor has died.

The contributed gift becomes a part of the charity's assets, and the payments to the donor are a general obligation of the charity. The annuity payments are guaranteed by the charity's assets.

Each state regulates charitable gift annuities as insurance contracts, and establish the annuity and deduction rates used. Most states require charities to obtain a permit to offer and issue charitable gift annuities.

Charitable Organizations depend on special treatment under Federal Tax Law. It is a policy decision to promote public and private charitable organizations. In the Tax Reform Act of 1997, Congress imposed some strict rules on the pay-out schedules to curb situations where the Charities were receiving smaller benefits than anticipated. But this planning tool, even with these new rules, remains an excellent option.

#### *D. Residence Trusts*

A Qualified Personal Residence Trust (QPRT) allows a person to put their home or vacation property into an irrevocable trust for a fixed number of years. During this fixed term, the person can continue to live in the home. At the end of the term, the property passes to the named beneficiaries of the trust.

Why do this? If the owner gifting the property lives until the end of the term, the property passes to the beneficiaries estate tax free.

Now, the gift of property to the trust uses up some of the Grantor's Gift Tax credit, but not the full amount of the fair market value of the property. The taxable gift is equal to the value of the property less the value of the use of the property during the fixed term. The "use" of the property value is determined by interest rates.

QPRTs work well for single clients with large estates who want to give a piece of property to a specific person. These are highly technical trusts, and great care must be exercised in preparing these instruments.

## 8. *Special Needs Trusts*

### A. *Introduction*

The persons with disabilities community is growing at a rapid pace. Medical advances have improved the duration and quality of life for many in the special needs population. For example, many individuals with Downs Syndrome have congenital heart problems. Now, these are “routinely” treated with less invasive procedures and drugs unheard of a generation ago, leading to full life expectancies.

Many persons with disabilities receive different types of state, federal and local benefits. With the longer life expectancies in significant segments of the special needs population, coupled with the overall aging of the population and rising health care costs, there is incredible pressure on the benefit providers. Social Security, Medicare and Medicaid are all trying to manage costs and benefits while the demand for benefits increases. State budgets are increasingly at risk in failing to provide basic services, since most states are required to balance their budget every year.

Parents often ask me how to provide for a child with disabilities while protecting that child’s benefits. Often, the question for parents is how to provide for a child with disabilities while also providing for children without disabilities. Special Needs Trusts can address that scenario (as well as several other scenarios).

## *B. What are Special Needs Trusts used for?*

I often call Special Needs Trusts “Supplemental Needs Trusts” or “Quality of Life Trusts.” The purpose of these trusts is to supplement the care and the benefits that are provided to a beneficiary, and not to replace these benefits.

For example, additional physical therapy or tutoring not provided for by state benefits. For special vehicle accommodations. Travel, particularly if trained medical personnel must accompany the beneficiary. Recreational activities that are not covered by any benefit plan.

## *C. Self-Settled Special Needs Trusts*

These are also called D(4)(a) Trusts, after the section in the Medicaid Statute. These Trusts are created from the Beneficiary’s Assets, and are generally the result of some type of personal injury or malpractice award.

For example, a child is harmed in an automobile accident and requires constant care and qualifies for disability benefits. The benefit provider will first look to the Beneficiary’s assets recovered from the lawsuit against the negligent driver. The parents or guardians place the award in a D(4)(a) Trust to supplement the benefits and lifestyle of the child. The types of supplemental benefits are stated in the statute and incorporated into the Trust document.

After the Beneficiary dies, any remaining funds in the trust must be paid back to the government agency or agencies providing benefits. These D(4)(a) Trusts are highly regulated, and in Maryland must be approved by the Attorney General’s Office.

#### *D. Third Party Special Needs Trusts*

These Special Needs Trusts are funded by the parents, grandparents or guardians of a person with disabilities. They can be created through a Will, a Living Trust, or they can be established by a Grantor during their lifetime.

The intent is the same – use the funds to enhance the quality of life of a person with disabilities, without impacting their benefits. An child with autism may respond well to horseback riding. If her grandfather directed her inheritance into her Special Needs Trust, the Trust could pay the horseback riding costs.

We have to be careful with these Trusts. Recent rulings do not allow parents to forego their parental responsibilities of supporting minor children by way of a Special Needs Trust. Trustees need to understand what items the Trust can pay for – if the Trust pays for benefits already provided for by a government agency, that agency will assert that the trust assets are available for the beneficiary’s support, and suspend benefit payments until the Trust is depleted. Remember, most federal and state benefit programs are under considerable financial strain.

Therefore, we advise a cautious and conservative approach for the trustees we advise. Protecting the benefits of our loved ones with disabilities can be just as important as improving the quality of their lives.

## 9. *Strategies for Property Owners*

### A. *Introduction*

Land values skyrocketed after the publication of the 3<sup>rd</sup> edition in 2004, and then the residential market stalled, and in some cases plummeted in 2007. Clients with farms and business real estate present even greater planning challenges – large taxable estates without the liquidity (cash) to pay the tax bill.

There are several strategies to address this issue, but they depend on the overall family objectives. Does the family want to preserve the real estate? If not, it is a matter of selling the property when the cash is needed. This may not be as easy as it sounds. Federal estate taxes are due within nine months of the date of death. That is not a lot of time to sell a large farm or commercial building, particularly if the real estate market is “soft” at the time of sale. The sale of business property before the owner’s death will result in a capital gains tax liability.

### B. *Property Strategy 1: Gift the Property Through a Family LLC*

Estate Planners work with commercial and real estate attorneys to create business entities called limited liability companies, or LLCs. These entities have evolved into an incredibly flexible and creative tool for transferring real estate to the next generation in a tax favorable way.

This is how it works: The business entity is created with the state. The land is transferred by the owner into the LLC in exchange for Membership Interests in the LLC. This transfer used to be tax-exempt in Maryland and some other states, but many states are now taxing this transfer as a property sale.

There can be different types of Membership Interests – voting and non-voting. The LLC is governed by an Operating (partnership) Agreement among the Members.

Members can then gift some of these interests to their children and grandchildren – typically the non-voting interests. This begins the transfer of the equity to the next generation. And the IRS allows these gifts to be discounted until a majority of the interests have been transferred. The result is that the value of the property and the future appreciation has been moved to the next generation.

This strategy has been under attack these past few years by the IRS and state taxing authorities. Some practitioners have been too aggressive with the discounting, and some level of management control has to be transferred to create an effective gift. It is critical to have good appraisals and management provisions to avoid the risk of the IRS challenging the value of the transfer.

*C. Property Strategy 2: Sell or Gift Property to a Land Conservation Program or Charity*

Most states and many counties have Land Conservation Programs designed to preserve farms, forests and wetlands. There are also charitable organizations whose purpose is to purchase real estate or its development rights to preserve the land in its present state. Gifts to charities can create income tax deductions, avoid capital gains taxes on appreciated assets, and create cash flow for the donor (refer to Chapter 7.B.)

These statutes, programs and charities all have very specific requirements, which need to be reviewed with your advisors. The key concept to all of these strategies is the following:

**The inability to develop a parcel of property significantly reduces its value for estate tax purposes.**

*D. Property Strategy 3: Sell part of the Property and place the balance in a Conservation Program*

The best way to explain this strategy is with an example: Farmer Jones had 300 acres, of which 250 are tillable. Farmer Jones sells 40 of the non-tillable acres to a developer, and keeps his homestead on 10 acres. He then either gifts or sells the tillable land to a conservation program or a charity.

The result is that Farmer Jones has raised some cash for living expenses and taxes, while reducing the value of the balance of the farm for estate tax purposes. He may also be entitled to a tax deduction for any charitable gift. The majority of the farm property is preserved as farm land.

## ***10. Long-Term Care***

### *A. What is it?*

Most people think that Long-Term Care is the same as nursing home care. Nursing home care is certainly a part of it, but it also includes home health care, assisted living facilities, rehabilitative or convalescent care and adult day care. Long-Term Care refers to the skilled or custodial assistance one requires as a result of injury or illness for a period of time beyond permitted hospital stays.

Aunt Sally breaks her hip, and she has surgery. Medicare and her doctors determine the length of her hospital stay - now what? Her mind is still sharp, and she can take her medicine, but she needs rehabilitation and assistance for a period of time. Aunt Sally needs a long-term care rehabilitation facility.

### *B. Why is it an Issue?*

Two reasons. Demographics and costs. Our society is aging: baby boomers are beginning to reach retirement age, and people in general are living longer because of medical advancements and better health habits. Simply put, the issue is more people needing long-term care.

The cost of medical advances and care continue to rise. People living longer require more care and medicine. This combination of rising costs and a growing population strain resources. Nursing home costs in the Baltimore/ Washington area average \$200-300 per day. The average stay in a nursing home is 2.5 years.

There are some other Long-Term Care facts that you should be aware of:

### **Long-Term Care Facts & Figures**

- \* 60-70% of the population will need *some type* of long-term care.
- \* 43% of people over age 65 will spend some time in a nursing home (*New England Journal of Medicine*)
- \* People are retiring earlier and living longer. People retiring in their 60's are expected to live into their 80's.
- \* Less than 5 percent of nursing home income comes from Medicare and Medicare Supplements, and approximately 15% of home health care is paid for by Medicare and Medicare Supplements (*Health Care Finance Administration*).

### C. Medicare Coverage

Medicare coverage for rehabilitation or nursing home care is limited to 20 days of skilled care after a hospital stay, and the excess amount above \$128 per day for *up to* 100 days. Each patient's progress is regularly monitored by Medicare's doctors to ensure Medicare benefits terminate once skilled care is no longer necessary. Medicare supplemental insurance policies will reimburse the \$99.00 per day of Medicare approved expenses *in a nursing home* for some or all of the 80 days. Medicare will reimburse for *some* home skilled care. Custodial care (bathing, feeding, dressing) is generally not reimbursed, and often is the type of care most needed and for an extended period of time!

### D. Medicaid Coverage

Medicaid (Medical Assistance) is a program that will pay for long-term care, including custodial care. While Medicaid is considered a federal program, each state has some flexibility in administering its own version of the program. No two states will have exactly the same regulations when it comes to determining eligibility for Medicaid.

To qualify for this program, an individual must meet both the medical criteria and financial criteria. These criteria are measured on the date a person applies for Medicaid benefits through the local Department of Social Services.

To meet the medical criteria for Medicaid, a person must require nursing facilities care. This is measured by judging a person's ability to perform in six activities of daily living: walking, bathing, toileting, eating and dressing. A doctor conducts the examination and submits a form to an independent foundation called "Delmarva" that reviews the form determining medical eligibility.

Determining a person's financial eligibility for Medicaid can be quite complex. In general, the applicant for Medicaid may not have more than \$2,500 in assets at the time of application. The calculation of assets could include retirement accounts, cash value of life insurance policies, and real estate.

The applicant's spouse is entitled to retain a personal residence without regard to its value. In addition, the spouse may retain the lesser of one-half the combined assets of the couple or \$104,400, whichever is less.

A special rule exists for a home owned by a single applicant. The value of the home may be excluded when computing the \$2,500 asset limit, but there may be an ultimate price to pay. After six months of receiving Medicaid benefits, the State of Maryland will place a lien against the single applicant's home to recoup any payments made to the nursing home.

Once under Medicaid coverage, the applicant's income is generally payable to the nursing home each month. Medicaid then supplements any shortfall in that monthly income by paying benefits directly to the nursing facility. An applicant may retain \$40 per month as an allowance for personal needs. In addition, an applicant may retain enough monthly income to continue to make the premium payments for any supplemental health insurance that is in place.

A spouse of an applicant may retain 100 percent of his or her own monthly income without any contribution to the cost of care at the nursing home. If that spouse's monthly income is below \$2,610, that spouse may be eligible for a spousal income allowance. A calculation is made to determine what share of the applicant's income should be payable to the spouse.

Many individuals who do not have long-term care insurance and do not feel they have sufficient assets to pay

for long-term care costs employ planning techniques that will accelerate Medicaid eligibility. The three common techniques are spending down assets, gifting assets, or using a single premium immediate annuity.

While spending down assets might imply that one is to exhaust funds at the nursing home, there are many other expenditures that may be more beneficial. Usually, it is the spouse of an applicant who would benefit from spending assets down. Such expenditures include prepaying for funeral arrangements, purchasing a new car, and doing home improvements.

Gifting assets is one of the most misunderstood concepts in elder law planning. Most people have the misconception that if any assets are given away to the applicant or spouse within three years of applying for Medicaid, those gifts will automatically disqualify them from eligibility. This notion stems from the fact that the Department of Social Services conducts a three-year “look-back” when an individual does apply for Medicaid benefits. One of the purposes of the audit is to identify any gifts that were made of the applicant’s assets and impose a waiting period based on the size of the gift.

The calculation applicable in Maryland is to impose a one-month period of ineligibility for each \$4,300 of assets gifted. For example, an individual making a \$43,000 gift twelve months prior to an application for benefits would be penalized for a ten-month waiting period. But since the gift was made twelve months prior to the date of application, gifts made before the three-year look-back would not need to be disclosed and could be in an unlimited amount. A five-year look-back period exists if a person transfers assets directly to a Trust.

The annuity option is available primarily for spouses. It enables a spouse to convert all excess assets into exempt income

by investing the excess in an annuity that would pay income. Because income payments are exempt to the spouse of an applicant, the annuity payments may be in an unlimited amount, without consequence. This enables the eligibility to occur almost immediately since the transfer to the annuity is not considered a gift.

Employing these techniques to accelerate Medicaid eligibility should only be done with the guidance of an elder law attorney. There are many other nuances to the application process which need to be evaluated for each particular family.

The federal and state governments expend billions of dollars on Medicaid programs. While the government officials may want to be helpful to families wanting to preserve their assets, they are not trained to counsel you on how to employ the techniques outlined above.

#### *E. Long-Term Care Insurance*

Traditionally, individuals and families have paid (self-insured) for home health care, rehabilitative care and nursing home care. With the average nursing home stay (2.5 years) now costing over \$225,000, and the exclusion of many types of care from Medicare/Medicaid, Long-Term Care Insurance often makes sense.

There are two basic types of Long-Term Care insurance. The first is a straight insurance policy, similar to an automobile policy: you only use the benefits when your need them.

The second type of policy is an annuity type of product. Essentially, the insured takes other assets and buys an annuity, which guarantees a monthly long-term care benefit. If the benefit is not used, the principal can be left to the insured's heirs.

There are new types of features and policies being developed to respond to the growing need. A few companies now guarantee their policyholders that the unused portion of the insurance premiums will be reimbursed if the policy is not used. The federal government and many state governments now offer their employees a limited type of “guarantee issue” coverage, which means that all employees can receive the coverage, even if they have significant health problems.

### ***Important Features of Long-Term Care Policies***

1. Daily Benefit - the policy should pay out between 50-80% of the prevailing nursing home daily rate, with inflation protection.
2. Benefit Period - it should provide for at least 36-48 months of benefits.
3. Home health care coverage should be included.
4. The Waiting Period (also called Elimination Period or Deductible) - how long does the insured pay before the benefits begin (0-90 days usually)
5. Clearly defined benefit *triggers* - what physical or medical conditions trigger the payment of care?
6. Coverages should include nursing home care for Alzheimer’s and Senile Dementia.
7. Policy should cover skilled, intermediate and custodial care.

Long-Term Care Policies are an excellent way to protect and preserve assets. Because of changing demographics and government initiatives, this insurance provides a sense of security and certainty.

## 10. *Wrap-Up*

### A. *Total Team Approach*

I often lecture (some would say *preach*) about Total Team Approach to Accountants, Financial Planners, Insurance Professionals and Stockbrokers. Total Team Approach is a process and phrase I came up with years ago for estate and business planning.

Our respective clients need the *collective benefit* of our expertise. No professional can understand **all** of the laws, regulations and products - the amount of information is staggering! And as we recently discovered, the pace of change with new laws and financial products has increased dramatically.

Together, however, your professional advisors (**team**) can cover all of the bases and present you with the best menu of options. As the client, you have the right to hold your advisors accountable to work together as a team with you to ensure that you are making informed choices.

From my perspective, it is also rewarding to work as part of a client's team. This is the positive part of the practice of law.

### B. *Final Thoughts*

The largest transfer of wealth in the history of civilization has commenced. Take control of your part of this transfer. Set forth your objectives, and establish a plan for you and your beneficiaries. Make informed choices - you, and not the government, know what is best for your family.

# *Notes*

# *Notes*