

Estate Planning with Judge Hugh C Harvey

Estate Issues & Business Succession

Presented by:
Hugh C. Harvey
Associate Circuit Judge
Probate Division Five
Power Point by Karlin Breshears, Probate Clerk

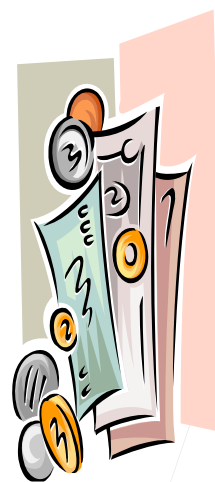
BASIS

Basis is the value of
property at the time
you bought or
received it.

APPRECIATION

Rise in value of an
asset from
receipt to disposition.

BASIS



Example: Buy
stock at \$1.00
a share and
sell 30 years
later at
\$100.00 a
share. The
basis is \$1.00
appreciation
and capital
gain on the
stock (taxable)
is \$99.00.

BASIS



Example: Buy a farm in 1960 for \$10,000.00. Sell the farm in 2011 for \$50,000.00. The basis in the farm is \$10,000.00 and capital gain (taxable) is \$40,000.00.

BASIS

- **Step-up in basis.** At death, on transfer of property, recipients of the property (beneficiaries) receive a step-up in basis.

BASIS

Example: Bought a farm in 1960 for \$10,000. I die in 2011. Farm valued at \$50,000 the day of my death. My children upon receipt of the farm will now have a basis of \$50,000.00 in the farm. Important to them when and if they sell.

No capital gains tax up to \$50,000.00.



Until December 15, 2010

	2009	2010	2011
Estate Tax Exemption	\$3.5 million	None, because no estate tax	\$1 million
Maximum Estate Tax Rate	45%	No estate tax	55%
Basis Adjustment at Death	For all assets owned at death	Limited to \$1.3 million, plus \$3 million for property passing to a surviving spouse	For all assets owned at death
GST Tax Exemption	\$3.5 million	None, because no tax issue	\$1 million (indexed for inflation)
Maximum GST Tax Rate	45%	No GST tax	55%
Lifetime Gift Tax Exemption	\$1 million	\$1 million	\$1 million
Maximum Gift tax Rate	45%	35%	55%
Deceased Spouse's Unused Exemption	No	No	No

Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010

	2009	2010	2011	2012
Estate Tax Exemption	\$3.5 million	Election between \$5 million or unlimited	\$5 million (w/ portability)	\$5 million, indexed (w/ portability)
Maximum Estate Tax Rate	45%	35%	35%	35%
Basis Adjustment at Death	For all assets owned at death	Election between unlimited (under 2011) or limited (under 2010)	For all assets owned at death	For all assets owned at death
GST Tax Exemption	\$3.5 million	\$5 million	\$5 million (without portability)	\$5 million, indexed (without portability)
Maximum GST Tax Rate	45%	35%	35%	35%
Lifetime Gift Tax Exemption	\$1 million	\$1 million	\$5 million (w/portability)	\$5 million, indexed (w/portability)
Maximum Gift Tax Rate	45%	35%	35%	35%
Deceased Spouse's Unused Exemption	No	No	Yes	Yes

2010 Decedent Estates Have Choices

A. Opt Out of Estate Tax

1. No estate Tax
2. Limited Step Up in Basis
3. Estates Greater Than \$5 Million May Consider This
4. Surviving Spouse Will Not Be Able To Use Deceased Spouse's Estate Tax Exemption for 2010
5. Capital Gains vs. Estate Tax (15% - 20%) vs. (35%)

2010 Decedent Estates Have Choices

B: Apply Estate Tax Code

1. \$5 million exemption
2. Step Up Basis
3. 35% Maximum Rate
4. Less Than \$5 million

2011 - 2012

1. \$5 million per individual
2. \$10 million for couples
3. **KEY!!!!** - Exemption doesn't die with the spouse. Non automatically carried over to surviving spouse.
4. Maximum 35%
5. \$5 million to be indexed for inflation after 2011

Lifetime gift Exemption & Death Exemption Are Now Unified

1. Pre – 2011
Lifetime \$1 million
Death \$3.5 million to Unlimited
2. Now both \$5 million
3. People who used \$1 million Lifetime Exemption Prior to 2011 Will Now Have an Additional \$4 million Available

Lifetime Gift-Tax Planning

- For the Year 2011 every person can give away up to \$5,000,000 tax-free in their life time or unlimited after death. (unified credit)
- No Unified Credit Upon Death

Gift-Tax Planning

- An exception: a spouse can pass an unlimited amount to the other spouse without estate taxes applying. (marital deduction)
- Anybody can make a gift to anyone or entity up to \$13,000 annually without a gift tax being incurred. (4 children, 4 gifts of \$13,000 annually, not a problem or husband and wife can each make \$13,000 gift to each of 4 children)
- Will not effect Unified Credit

Gift-Tax Planning

- Allowed to make unlimited gift deductions for educational needs (tuition paid directly to school) and medical care. (paid directly to health care provider)
- Charitable Gifts (churches fraternal organization, etc.).
- Will not effect Unified Credit

Utilizing the Spouse's Unused Exemption Amount

1. Pre – 2011 NO
2. 2011 & After YES
3. Applies only to the last deceased spouse of the surviving spouse. (no remarriage & second exemption)
4. Does not apply to GST exemption

Methods of Property Disposition

- Intestacy
- Wills
- Trusts
- Joint Ownership
- Non-Probate Transfers
- Limited Partnerships & Corporations

INTESTACY

Die with no will or other estate plan, the state provides for the disposition of property.



INTESTACY

- If spouse and children, wife receive $\frac{1}{2}$ and children receive $\frac{1}{2}$ of the estate.
- If no spouse, children receive the entire estate divided equally.

INTESTASY

- If no spouse and 2 living children and 1 deceased child, each living child receives 1/3 of the estate and the deceased child's children receive 1/3.
- If spouse only, receives entire estate.
- If no spouse and no children, goes to parent(s) of deceased, siblings and down, nephews and nieces.

INTESTACY

- What about stepchildren?
Husband has died and left estate to wife. Husband had a child by a previous marriage. Husband and wife have a child together. Wife dies, child of the marriage takes all, (direct blood line of wife), husband's child of previous marriage receives nothing.

INTESTACY

- Other problems:
Probate will occur, virtually anybody can step in as personal representative for the estate, no preference clearly expressed by will, trust or otherwise, potential for long drawn out proceeding, heirs may be unknown.

WILLS



Advantages of a Will

- Step up in basis of property.
- Orderly disposition of property
- Court supervision
- Flexibility in distribution of estate. (Dispose of property anyway you choose.)



Disadvantages of a Will

- Cost of probate.
- Time to probate.
- Subject to will contest. (Easily contested, more time, more cost.)



TRUSTS



Advantages of a Trust

- Excellent estate- tax planning.
- Control your estate after your death.
- Flexibility
- Avoid probate (avoid delay and possibly costs)
- Privacy
- Planning for special needs children

Disadvantages of a Trust

- Can be expensive
- Can be complicated
- Can be unfunded

Planning with Forms of Ownership

Joint Ownership

Joint Ownership

Advantages

- Avoids Probate
- Immediate transfer

Disadvantages

- No step-up in basis
- Gift Tax possible
- Creditors of people joined on title may come after property

Life Estate with Remainder

Beneficiary Deed TOD and POD



Non-Probate Transfer
Law
461 RSMo

Beneficiary Deed



- Mine and my spouse,
remainder to my children
in equal shares

Transfer on Death (TOD)



- Titled personal property,
cars, boats, mobile homes,
etc.

Pay on Death (POD)



- Bank Accounts, Mutual
Funds, CD's, Savings
Accounts

Beneficiary Deed, TOD and POD

ADVANTAGES:

- No probate
- Inexpensive
- Immediate transfer
- Step-up in basis
- No gift
- No ownership interest of named residual beneficiary till your death
- Difficult to contest

Beneficiary Deed TOD and POD

DISADVANTAGES:

- Not real flexible
- Not good with estate tax issues above unified credit
- Not a good plan for a special needs child

DISCLAIMER

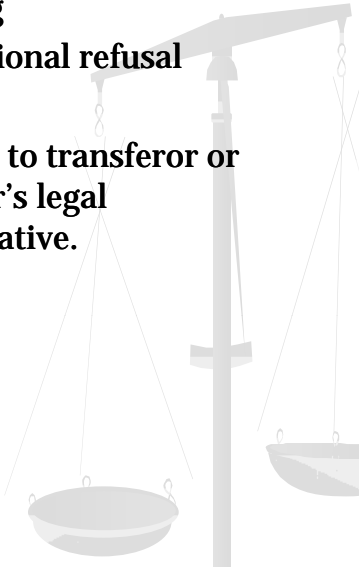
- When a person refuses to accept a transfer or portion there of

Why Disclaim?

- Don't want to add assets to your estate, (creating estate tax problems).
- Creditor Problems

HOW TO DISCLAIM?

- In writing
- Unconditional refusal
- Signed
- Delivered to transferor or transferor's legal representative.



WHEN?

- On or before 9 months after the transfer of property.



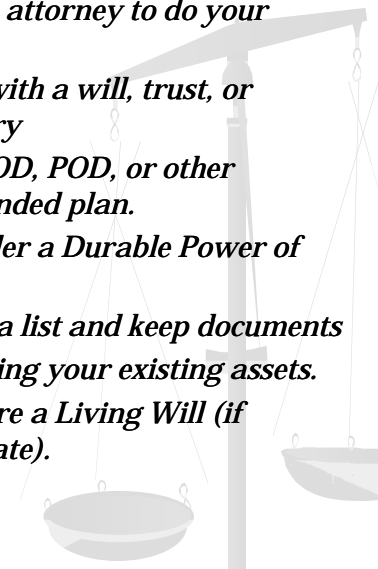
DO's & DON'Ts

The DO's & DON'Ts
of Estate Planning



DO's

- *Do see an attorney to do your planning.*
- *Do plan with a will, trust, or beneficiary deed, TOD, POD, or other recommended plan.*
- *Do consider a Durable Power of Attorney*
- *Do make a list and keep documents identifying your existing assets.*
- *Do prepare a Living Will (if appropriate).*



DO's

- ***DO TALK TO YOUR FAMILY ABOUT YOUR ESTATE PLAN AND WHY. IF YOU THINK THERE WILL BE PROBLEMS, IDENTIFY THEM AND TAKE STEPS TO PREVENT THE PROBLEMS AFTER YOUR DEATH.***

DON'Ts

- ***Don't let a non-attorney sell you an estate plan, (example: trust)***
- ***Don't leave your estate to intestacy.***
- ***Don't leave your personal and financial care to a Guardian/Conservator appointed by the court.***
- ***Don't leave questions of life sustaining matters to family or doctors without written direction.***

Business Estate Planning

An estimated 50% of family businesses do not succeed to a second generation.

ALTERNATIVES

Planning Objectives for Closely Held Corporations or Farms

- Succession planning: Who will run the farm or business after death, disability or retirement?
- Will the business or farm be sold? If so, to whom, how, what price, what circumstances
- How many children in business and relationships.
- Liquidity for retirement and estate taxes (if a problem)
- Problem marriages

DISADVANTAGES:

- Not good for dysfunctional families
- No step up in basis of property in the corporation or partnership
- Potential major tax consequence upon liquidation of Corporation or Partnership.

Family Limited Partnerships & Family Limited Liability Corporations

- Partnerships or Corporations designed to hold and manage assets normally held by family members.
- Generally parents manage the entity while gifting interests to children & grandchildren.

ADVANTAGES:

- Reduce your estate (for estate tax purposes) while controlling the business.
- Easier to gift an interest in an entity (partnership or corporation) rather than an individual asset (a farm, machinery, etc.).

ADANTAGES:

- Can offer limited protection against children with creditors or failed marriage (buy / sell triggers for corporations or partnership buy back on favorable terms).
- Provide management succession.
- Reduce Probate & Estate administration costs.
- Discounted valuation for gifting purposes.

Buy Out Provisions With a Fair Valuation Provision on Death or Incapacity

- Fair market value
- Book Value
- Earnings Approach
- Fixed price by agreement

Key Person Life Insurance Provision With the Business Sustaining the Insurance

(So cash is available for the buy out.)

- proceeds generally not deductible, but proceeds are tax exempt for business
- business owns the insurance on the named parties
- proceeds applied against purchase price

Do Not Pass Your Interest in a Business to an Uninterested Spouse.

- Not good for other owners of business.
- Not good for the spouse.

CAVEAT

- **This presentation is for informational purposes only. Please consult an attorney and or tax professional when preparing your estate plan.**

