WHEN WORK AND PERSONAL LIFE COLLIDE

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I. Property

The character of property (community vs. separate) has a profound effect at death on the design of the estate plan, the effectiveness of the estate plan, and how you implement the estate plan. During life, the character of property effects business and asset protection planning.

A. Community Property

Generally, the community property concept is one of marriage as a partnership. The Texas system of property ownership is derived from Spanish civil law. Article 16 section 15 of the Texas Constitution provides that all marital property, other than property received by gift or inheritance, is community property. Conversely, separate property consists of property acquired before marriage, property acquired while living outside a community property jurisdiction, and property acquired after marriage by gift or inheritance.

B. Separate

In determining whether property is separate or community, Texas law looks to both the acquisition date and the source of funds used to acquire property. Some of the more common are:

a. Under the Texas "inception of title" doctrine, the underlying character of property, as being separate or community, is determined at the time legal title is acquired;

b. If community funds are used to make payments on a separate property debt (such as a mortgage), or to make improvements on separate property, the community does not acquire an interest in the property. However, the community is often entitled to reimbursement for any such payments.

c. If separate property is sold, assets acquired with the sale proceeds generally remain separate property. For this purpose, it is essential that the source of funds can be specifically traced to a separate property origin.

d. In order to solve title problems when accounting information is unavailable, Texas law includes a presumption that all property owned by husband or wife is community. This presumption can be overcome by "tracing" the property acquisition to a separate property source. For example, if a check was written on a checking account that was separate property for the purpose of buying a piece of real estate, then that real estate will remain the separate property of the spouse on whose account the check was drawn. If community assets become so commingled that they are impossible to trace accurately, then the presumption operates to make the assets community property. Hence, the separate property character of assets can be lost due to a lack of accurate accounting information. Most often, in heated property battles, we must hire the dreaded forensic accountant as an expert to trace what is inevitably a commingled set of assets.

C. Income v. Capital Appreciation

The rules regarding income and capital appreciation are as follows:

a. If a separate property asset increases in value, this enhancement remains separate property. For example, if one spouse owns real estate before marriage, the entire property remains separate even if there is a substantial increase in value after the marriage. The community is entitled only to reimbursement for mortgage payments or the cost of improvements made with community funds; and

b. The income derived from separate property assets is generally community property (absent a contrary written agreement between the spouses). Accordingly, community property would include such items as cash dividends from separate property stock, rent from separate property land, and interest from separate property accounts. Current Texas law allows the income derived from separate property to remain separate if the parties have so agreed in a formal written document.

II. Planning for Death

A. Non-Probate Disposition of Assets

Several methods exist to pass property upon one's death other than through a Will.

1. Beneficiary Designations.

A person may fill out a "*Beneficiary Designation Card*" at their bank or other financial institution. This card simply states that upon the account holder's death, the account proceeds shall transfer to a specific person(s). Common assets with beneficiary designations are retirement plans (IRAs, 401(k)s, 403(b)s,), annuities, and of course, life insurance.

The advantage of this disposition method is that the transfer is very simple; however, the disadvantage is that it is too simple. Many people are simply not aware that beneficiary designations control over the provisions of an estate plan. So the practitioner must be very careful to coordinate beneficiary designated assets with the estate planning.

Example: Father dies with a Will that directs the Executor to divide all property equally between the surviving children. Father's beneficiary designation leaves the specified account only to one child. The named child will receive everything in that beneficiary designated account. The named child will also receive one-half of the remaining estate under the terms of the Will. The net result is that the child is receiving more than one-half of the estate which is usually not the Father's intention. Thus, beneficiary designations can inadvertently damage an otherwise effective estate plan.

2. Joint Tenants With Rights of Survivorship.

Real estate, and certain bank and brokerage accounts, may be held by two people as "*Joint Tenants with Rights of Survivorship*" ("JTWROS"). This designation means that at the moment of one of the owner's deaths, the other owner becomes the sole owner of the asset. Most often JTWROS accounts are checking accounts.

While this sometimes works well with bank accounts, it is not advisable for real property. In an effort to avoid probate, some persons have placed their children on their real estate as joint tenants with rights of survivorship. Unfortunately, if that child is later sued, their creditors may come and foreclose on that child's one-half of the real estate. The bottom line is that the parents may lose their real estate because of the mistakes of their children. In addition, holding real property as joint tenants with rights of survivorship in Texas is often inadvisable given Texas's community property history. See Johanson's commentary to Estates Code §112.051.

3. Trusts.

Property owned in a trust at death ***is not*** part of a decedent's probate estate. Whether it is a revocable trust or an irrevocable trust the result is the same, the trust owns the property, not the decedent. Trusts are more difficult to contest, consolidate management of assets and most irrevocable trusts provide asset protection during life and at death. Revocable trusts ***do not*** provide asset protection. Tex. Prop. Code §112.035.

4. Conclusion.

Using beneficiary designations and JTWROS accounts to dispose of property are fraught with perils and generally are an ineffective and inefficient way to try to deal with one's estate. Wills, Testamentary Trusts, and Revocable Living Trusts are preferred methods for disposing of these items.

B. The Probate Process

In its most basic element, probate is simply the legal process you go through in order to transfer non-beneficiary-designated, titled property from the name of someone that has passed away to someone who is alive. The probate process, although complicated and confusing to many, can be reduced to the following:

a. understand the will;
b. ascertain heirs;
c. locate and value all property;
d. pay the agent and attorneys;
e. ascertain and pay creditors of the estate;
f. resolve controversies between the parties;
g. file all tax returns; and
h. distribute the property.

Understanding the will is usually not difficult. However, handwritten wills, homemade wills produced online, wills made with software, and poorly drafted wills can spell trouble. They often result in will contests that generate a great deal of time and dollar expenditure.

1. <u>Independent Administration</u>.

One of the important benefits of a will is the ability to select an executor -- the person or institution that is to administer the estate and carry out the terms of the will. Our Texas system allows the executor to function independently of the court. However, the will must specifically state that the executor is to function independently (hence the common term "independent executor"). Where a will names an independent executor, the probate process is extremely simple. First, the will is filed at the courthouse following the decedent's death. Then, after a statutory waiting period of ten (10) days, a short probate hearing is held. The court then admits the will to probate and officially confirms the appointment of the executor. Assuming that the will designates an independent executor, this short hearing will be the only court proceeding. Later, the executor will be required to file an inventory of assets in the court's records, but this is an informal filing which does not require a hearing.

When the court appoints the independent executor, that person or institution is then in charge of the probate estate. The probate estate consists of the non-beneficiary-designated assets which pass under the decedent's will. Some of the more common include: real property, bank accounts, securities, and household goods. Other assets pass outside the will, directly to the named beneficiaries. These "non-probate" assets often include life insurance proceeds, pension or other employee benefits, and survivorship bank accounts.

The executor has a number of responsibilities in connection with the administration of the estate, including:

a. Management of the estate during administration. Management could include operation of the decedent's business, management of real estate, sale of properties, and investment of estate property. As the executor is responsible to the estate beneficiaries for his actions, these responsibilities can impose significant risk of liability for an executor;

b. Payment of estate obligations, including any federal estate taxes and state inheritance taxes. Accordingly, the executor must make an accurate inventory of the estate assets and liabilities, and see that the required returns are prepared;

c. An estate is a separate entity for income tax purposes. The executor is responsible for filing an income tax return (Form 1041) reporting the income derived from the assets of the estate; and

d. Upon discharging the above duties, the executor has a duty to distribute estate assets in accordance with the terms of the will.

Another important function of a will is the designation of a guardian for any minor children. The guardian is a person who will have parental responsibility (although not necessarily financial responsibility) for such children.

2. Dependent Administration.

Dependent Administration is the very opposite of Independent Administration. The Court will oversee all of the activity of the Executor. The Executor has very strict deadlines for communicating with beneficiaries and the court regarding gathering assets and distributing them. It is a very costly probate procedure to be avoided if at all possible.

Every now and again, the estate plan is so poorly drafted (usually with a self-created plan) or the beneficiaries are at odds with one another. In such instances a dependent administration is typically not avoidable.

C. Intestate Succession

1. Property Distribution Without a Will.

When a person dies without a will, he or she is said to have died "intestate". The attached **Exhibit A** illustrates how Texas law directs that property be distributed when there is no will. As illustrated by **Exhibit A**, a person dying without a will forfeits a valuable property right -- the ability to control the disposition of his or her assets. As set forth below, dying intestate can also be very costly to the decedent's family.

Example: Husband and Wife have been married 30 years. They had one child together, and Husband had one estranged child from an earlier marriage. They recently retired and used their savings to purchase a vacation home. All of their assets were community property. Husband then passes away without a Will! The intestate laws in Texas transfer Husband's ½ community property interest in the vacation home to his children. Wife keeps her ½ community property interest in the vacation home. This result is a disaster to the Wife. It is a pretty good result for the estranged child, though.

2. Probate Without a Will.

The estate of an intestate person may be subject to a court-supervised administration in Texas. Some attorneys call this type of probate a "dependent administration." It is both costly and cumbersome for many reasons, including:

a. The court-appointed administrator will be entitled to a fee which can be as much as 5% of the value of the estate.

b. The administrator is very restricted in managing the estate. He or she must obtain court approval for payment of debts, and sales and distributions of assets.

c. The administrator will have to post a bond which is paid for by the estate.

d. Attorneys fees will be substantial because of the numerous papers which must be prepared, such as applications for authority to perform various acts, orders, and annual and final accounts.

e. It may be necessary to go through an expensive procedure known as "Determination of Heirship" to ascertain the persons legally entitled to share the decedent's estate and the proportion to which each is entitled.

f. Another expensive procedure known as "partition and distribution" may be necessary in order to divide up the estate among the various heirs. This step would depend on the nature of the assets and the ability or inability of the administrator and the heirs to reach an agreement among themselves.

g. Moderate-size estates may be handled through less expensive family settlement agreements ("FSA") independent of the court if all heirs agree. Case law regularly provides that Texas law favors the FSA to dispose of property. Try telling that to the custodian of a decedent's assets. I have personally not yet discovered a fact situation where an FSA works well for anything other than the heirs agreeing to modify the distribution provisions or some sticking point over who serves as Executor or Trustee.

h. The estate of an intestate person may pass in whole or in part to a minor, which means that a guardian will have to be appointed to hold such share and administer it until the minor becomes eighteen (18) years of age. A guardianship is another expensive court-supervised proceeding.

D. Wills

A will is a set of written instructions drawn under legal formalities that directs how a person's property will be disposed of upon death. "Last Will and Testament" is the legal label for a "will". It is an old phrase meaning "I dispose of my personal property and real estate".

Every well drafted Will should answer 3 main questions, which are:

(1) Who;
(2) Gets What Property; and,
(3) How the Property transfers.

1. Who Is In Charge.

The person who is responsible for winding up the affairs of the estate is referred to as the "*executor*" if it is a male and as "*executrix*" if it is a female. If the decedent dies intestate (without a will), the court will appoint an administrator (a male agent named by the court) or an administratrix (a female agent named by the court) to wind up the affairs of the estate.

2. What Property.

The Will should transfer all non-beneficiary designated assets. The most common clause designed to transfer everything that the decedent owns is the "residue" clause. Various other clauses certainly exist, but a well drafted Will should have a residue clause somewhere in order to ensure all property transfers.

I personally hesitate to be overly specific when transferring assets. A few specific bequests are normal, though. I do not recommend a detailed list of every asset in the Will (which I have seen). Invariably, the client has closed that one account or bought a new piece real property, and the overly specific Will can fail to transfer those after-acquired assets.

3. How the Property Transfers.

You basically can transfer property outright or in a trust. Depending on the client's goals and usually net worth, one method will typically stand out.

E. Basic Principles Regarding Trusts

1. Non-Tax Benefits of a Trust.

One of the most important estate planning tools is to use a trust. However, trusts also have valuable non-estate planning attributes that I think of as protection and control, which means:

a. Property that is placed in trust is often beyond the reach of creditors of the trust beneficiaries;

b. If a professional fiduciary is appointed, the trust assets will be subject to professional management;

c. Property that remains in trust is not subject to division on a beneficiary's divorce; and

d. The Grantor or creator of the trust can control how trust property is used for many generations so called "control from the grave."

2. What is a Trust?

A trust is a collection of words on paper that together explain the relationship between a Trustee and Beneficiary. The words guide the Trustee in management of Trust property and provide further guidance with respect to distributions of trust property to the Benefiicary.

Technically, a trust is a legal document that creates a relationship of confidence or trust in which a person or institution assumes an obligation to hold and manage property for the benefit of one or more persons (the "beneficiaries"). A trust is created by a trust maker. Attorneys call this person the settlor, trustor, maker, creator, or grantor (I use Grantor through this paper).

3. Who Controls the Trust?

The person responsible for following the Grantor's instructions is called the trustee. Trustees can be individuals or licensed institutions. The Grantor can also be his or her own trustee. The trustee (co-trustees) of a trust has similar management responsibilities to the executor of an estate. These include investing and managing trust assets, making distributions to beneficiaries and making required tax reports. As with selection of an executor, careful consideration needs to be given to the choice of a trustee. Although in Texas the trustee is not required to render any formal accounts to any court, the trustee must render periodic accounts to the beneficiaries. A trust can have multiple trustees and beneficiaries.

4. Use of Trust Property.

The people for whose benefit a trust is created are called the beneficiaries. A trust can accomplish just about any objective of the Grantor as long as it is not illegal or against public policy.

The beneficiaries who have first rights to the trust property are called primary beneficiaries. If the primary beneficiaries die or become disqualified then, due to the instructions given to the trustee by the Grantor, the property will go to other named beneficiaries called remainder beneficiaries.

5. Trusts and Probate.

Property placed in a trust during a person's lifetime is not subject to and does not pass through the probate process upon death.

6. Trusts and Taxes.

Like an estate, a trust is a separate entity for income tax purposes.

a. A trust will pay tax on the income earned each year, to the extent that such income is not distributed to the beneficiaries

b. If income is distributed, it is deducted by the trust and reported by the beneficiaries to whom it is distributed.

c. A "simple" trust is one which requires annual distribution of all its income, so that the trust never retains income and pays tax.

d A "complex" trust is one where income distributions are discretionary, so that there is flexibility as to the timing and amount of distributions.

e. If a trust is revocable, it has no separate income tax status. Instead, all income is automatically taxed to the trust creator who has retained the revocation power.

7. Types of Trusts.

a. A trust can be created by a will (referred to as a "testamentary" trust). A testamentary trust does not come into existence until the death of the testator. Generally, these trusts are utilized to provide estate tax savings, protect property, keep property in the family, and, where needed, management assistance.

b. Life insurance trusts are frequently used as an estate planning vehicle. Generally, life insurance proceeds are subject to estate taxation if the insured owns or controls the policy. A typical insurance trust arrangement provides for an insurance policy to be owned by an irrevocable trust for the benefit of the insured's family so that the insured has no control over the policy. The insurance proceeds are not subject to estate tax because the insured has irrevocably severed his ties to the policy. Typically, the trust provisions are coordinated with the trust planning in the insured's will. Further, the insurance trust assets are indirectly available (by loan or purchase of assets) to pay estate taxes.

c. Gift trusts are designed to receive assets which are being transferred irrevocably to one or more beneficiaries. Although such trusts may be used in conjunction with estate-planning, they need not necessarily be tax motivated. The gift trust provides a management vehicle when the donor does not wish to transfer assets directly to the beneficiaries.

d. Custodial accounts are simple arrangements that are similar to a trust, which may be established at a bank or brokerage firm. These accounts hold money or securities for the benefit of a minor, but in the name and subject to the control of an adult "custodian". As with trusts, income from these funds are taxed to the minor (at the parents' tax rate if the minor is under fourteen years of age at year-end). One of the primary disadvantages of this type of trust is that it must terminate, and ownership of the property transfers to the minor when he or she reaches age eighteen (18).

e. Living Trust. Various types of inter vivos trusts are commonly used in estate-planning. If used correctly they avoid probate and provide management assistance. Every Living Trust requires two phases (unlike a will, which requires only one phase). First, you must create it. Second, you must fund it, which is the act of transferring property to it.

The Revocable Living Trust is the most common method of transferring assets to a trust during a person's lifetime and, thus, avoiding probate on that person's death. Typically, a Revocable Living Trust provides that the Grantor and the beneficiary are the same person. Remember, the person who transfers his or her assets to a trust is referred to as the "*Grantor*." The person for whose benefit the assets are held is referred to as the "*Beneficiary*." Basically, a Grantor transfers assets to the trust to be managed for his or her own benefit. When a person transfers all of their assets to a Revocable Living Trust, they technically do not own any assets upon their death, therefore, probate is not necessary. The assets which are "owned" by the trust will pass in accordance with the terms of the trust. However, since Texas has such an easy probate procedure, my office does not prepare more Living Trusts than Wills. When meeting with clients, there is often no significant advantage of a Living Trust over a Will.

(a) <u>Candidates for a Revocable Living Trust</u>:

(1) <u>Persons who own property in multiple states</u>.

If a person owns property in several states, the use of a Revocable Living Trust can avoid "ancillary probate" in other states. Because other state's probate systems are often not as simple as the Texas probate, the savings may be significant.

Example: Husband and Wife own their Texas homestead and a vacation home in Colorado. Husband and Wife can create a Revocable Living Trust to own their property and avoid probate in two states.

(2) Persons with complex business ownership.

Persons who own their own businesses and have a relatively complex business life often find that passing ownership and control of assets through a trust provides for a smoother transition than a Will.

Example: Owner's business affairs are such that if he dies or becomes disabled, he needs someone to immediately be in charge of the business in order to maintain it. A Revocable Living Trust works well.

(3) Persons who desire to keep the affairs of their estate private.

In the probate process, a list of all assets of the estate is filed with the court. Any person who wishes to see this list may simply go to the courthouse to view it. With a Revocable Living Trust, a list of the Grantor's assets are not made public. However, it should be noted that relatives, creditors, and other "interested parties" may demand and receive a copy of the trust instrument and a list of assets of the trust estate. In other words, a Revocable Living Trust certainly does not guarantee one's privacy, it only prevents the automatic publication of a list of the estate's assets.

Example: We utilize Revocable Living Trusts to claim lottery winnings. The Revocable Living Trust maintains the privacy of the claimant.

(4) Persons who desire to centralize management and control of assets.

Often it is the case that the Grantor desires to have one controlling legal document naming a Trustee to manage and control assets. By using a Living Trust, the Grantor can appoint a Trustee to manage assets. Often, elderly clients favor this approach. Another set of clients that utilize this planning are ex-patriots.

Example: Chuck is an ageing client with multiple parcels of real property and various bank accounts. He is starting to have difficulty keeping up with all payments and income. A Revocable Living Trust will consolidate the management of those assets so he can have a Co-Trustee, perhaps to help him with the management.

(b) Funding.

One of the biggest downfalls of a Living Trust is failure to fund it. Funding the Living Trust requires focus of both the attorney and the Grantor. The attorney must prepare Deeds to transfer real property, assignments for closely held business interests, assist the Grantor with proper beneficiary designations, and work with the Grantor's other professionals such as financial planners to properly title the Grantor's personal property accounts. The Grantor must go to his or her banks and brokerage firms to change the name of his or her accounts to the Living Trust. The Grantor may have CDs, boats, vehicles, trailers, and other titled property that are necessary for the Grantor to retitle.

Many Grantors think of funding as a considerable hassle. They lose momentum shortly after implementing the Living Trust. As a result, many assets are not retitled to the

Living Trust. Furthermore, after implementing the Living Trust, the Grantor often acquires new titled property by purchasing a new home, a vacation home, starting a new business, or simply opening a new bank or brokerage account.

Effectively, properly creating a Living Trust is much the same as probating one's Will while one is still alive. The deed to all real estate owned by the Grantor is transferred to the trust, all brokerage and bank accounts are transferred to the trust, and all other assets which a person owns are transferred to the trust with the aid and guidance of an attorney. Then you must coordinate the non-probate assets with the planning in the Living Trust.

Naturally, the attorney bills the client for the services rendered in transferring the assets to the trust. This is very similar to the probate process, except that in the case of a Living Trust it is done before death, thus eliminating the need to do it after death.

CAUTION: Remember, if the Living Trust is not funded properly, we failed in our purpose of avoiding probate. All Revocable Living Trusts come with a Will which designates the Revocable Living Trust as beneficiary of any assets not owned by the trust at the time of Grantor's death. If the Grantor dies owning any assets, then his or her Will must be probated to get these assets into the trust. Thus, the aim of avoiding probate falls short.

(c) Advantages of Living Trusts.

(1) If completely and properly funded, a living trust can avoid the need for probate;

(2) A living trust can provide for the management and control of the Grantor's property during incapacity or disability;

(3) If the Grantor owns real property in several different states, a living trust can avoid the necessity of probating the Grantor's Will in each state in which he owns real property; and

(4) A living trust is never made public record, and therefore a living trust offers the privacy protection that a Will does not.

(d) Disadvantages of Living Trusts.

(1) A living trust generally costs more than a Will, and in a state like Texas, which has a very simple and inexpensive probate system, the cost savings involved are often not significant;

(2) For a living trust to be an effective tool to avoid probate, all of the Grantor's property must be placed into the trust. If all of the Grantor's property is not transferred into the trust, the Grantor's estate must still be probated. Therefore, the living trust is not a document that can be drafted and set aside without further effort. Rather, the living trust must be kept up with throughout the Grantor's life to insure that all property is placed into the trust.

(3) Contrary to popular belief, a living trust has no tax advantages over a properly drafted estate planning Will. Both may take advantage of the tax laws and provide for the use of the $5,340,000.00 exemption upon the Grantor's death.

(4) In addition, according to Section 112.035 of the Texas Property Code, a revocable living trust does not provide asset protection

While there are many circumstances in which a living trust is an option worth considering, it is the author's opinion that this tool has been over-used, over-publicized, and over-sold to the general public. Each person considering a living trust should consider the advantages and disadvantages listed above to decide whether they really need a living trust to accomplish their goals.

III. ESTATE AND GIFT TAXATION

A. Estate Tax

1. Basics.

In 2014, the estate tax credit exemption amount increased from $5,250,000.00 to 5,340,000.00. Accordingly, a decedent's estate must pay estate tax to the extent that the taxable estate exceeds $5,340,000.00. Basically, each person has a tax credit which can be used to offset estate taxes on the first $5,340,000.00 of assets. This credit will shelter transfers up to $5,340,000.00 of property at the time of death.

2. Marital Deduction.

Fundamental changes were made in estate tax laws in 1982. Perhaps the most important was the "unlimited marital deduction". This change in the law allows property to pass between spouses without estate or gift tax. Consequently, under the present tax laws, a spouse can leave his or her entire estate to the surviving spouse outright without taxation. However, this increases the estate of the surviving spouse so as to possibly subject all property to estate tax.

3. Marital Trust.

The marital deduction trust is frequently used in conjunction with the family trust to minimize estate taxes and to ensure that the funds in the trust will ultimately pass to the decedent's children. The marital deduction trust is also referred to as a qualified terminable interest property trust, or QTIP trust for short.

In contrast to the family trust, the surviving spouse must be the only beneficiary of the marital deduction trust during her lifetime. Also, in order to qualify for the marital deduction when the first spouse dies, the trust must include the following provisions:

a. The surviving spouse must receive all the income annually. Hence, all trust income will be paid to the surviving spouse and therefore income tax flexibility is lost. Also, the surviving spouse must have the power to require that trust assets be made income-productive;

b. Principal distributions are not required. However, in the typical situation, the surviving spouse is given access to the principal for her health, support and maintenance;

c. Upon the surviving spouse's death, the trust assets are taxed as if they are part of the surviving spouse's estate. The deceased spouse's estate must elect this treatment in writing when he or she dies. The taxes are paid by the trust when the surviving spouse dies, based upon the value of the trust at the time of such spouse's death; and

d. Usually, the will of the first spouse to die specifies the distribution of after-tax assets upon the other spouse's death.

4. Family Trust.

As previously discussed, a trust is a separate taxable entity. By transferring property to a trust, it can be excluded from the taxable estate upon the death of the second spouse. **Exhibit B** illustrates the use of the family trust and marital deduction trust.

5. Portability.

The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 introduced "portability" between spouses of the estate tax applicable exclusion amount for decedents dying in 2011 and 2012. The American Taxpayer Relief Act of 2012 made portability permanent. Portability allows surviving spouses to elect to use the unused portion of the estate tax applicable exclusion amount of their predeceased spouses. This provides the surviving spouse with a larger exclusion amount. In order to take advantage of such portability, the surviving spouse must file an estate tax return, which is often costly and time consuming. The surviving spouse also does not obtain the non-tax benefits of the family and marital trusts. It is this author's opinion that the standard family/martial planning is still the preferred method of foundational estate tax planning.

Example: Brooks passes away leaving his wife, Mia, as beneficiary of his simple Will that did not create a family trust. Total assets equaled $6.0M of which $3.0M was Brooks's community property interest. Estate taxes are not due at Brooks's death because he transferred his entire estate to his wife; however, Mia is in a dilemma because her net worth is $6.0M, which exceeds the $5.34M estate tax exemption amount. The solution is to utilize portability. Mia can prepare an estate tax return to carry over (port) Brooks's unused estate tax exemption. His unused estate tax exemption is $5.34M - $3.0M = $2.34M. The result is that she has her $5.34M at hear death plus her husband's unused estate tax exemption of $2.34M to provide her with a total of $7.68M ($5.34M + $2.34M). Now Mia's children need not be overly concerned about estate taxes when Mia passes away (although Mia really needs to do a bit more planning).

6. <u>Second Generation Planning</u>.

In the case of very large estates, when property is passed to the children on the death of the second spouse, that property becomes part of the children's estate for purposes of computing the estate tax. In the case of large estates, this results in the imposition of estate tax on each of the children's estates. This can be avoided in large part by use of a lifetime trust arrangement in the parents' will as opposed to an outright distribution to the children.

The Tax Reform Act of 1986 provides for a "generation-skipping tax" on transfers from grandparents to children, whether directly or through a second-generation trust. However, each grandparent has an exemption from the tax of $5.34 million for 2014. Thus, a married couple can pass $10.68 million to their grandchildren in 2014 tax-free while still allowing their children lifetime benefits through a trust. As with most irrevocable trusts, the trust property cannot be reached by claims of creditors or jurisdiction of a divorce court. Also, professional management assistance can be provided for the child through designation of a corporate trustee.

Exhibit B illustrates the use of a lifetime trust for children.

B. Gift Tax

Most people are unaware that you have two exclusions for gifts before any gift tax actually applies. The first is the annual exclusion, and the second is the lifetime exclusion.

1. <u>Annual Exclusion</u>.

Any person may gift annually up to $14,000.00 to any recipient. So, a married couple can give $28,000.00 per year to an unlimited number of recipients. This $14,000.00 exclusion is referred to as the "annual exclusion".

2. <u>Lifetime Exclusion</u>.

During life, any person may gift in excess of $14,000 to a recipient. Doing so utilizes the lifetime gift exclusion. The present lifetime exclusion is $5,340,000.00. If you gift property in excess of the annual exclusion, the value of the gift reduces the lifetime exclusion. It also reduces the estate tax exemption! Any lifetime gifts in excess of $5,340,000.00 are subject to the actual gift tax, and the rate is the same as the estate tax.

Example: Lillian wants to gift her grandson $100,000 as a reward for making it to age 40. She didn't think he would get there. The gift uses $14,000 of Lillian's annual exclusion, then $86,000 of Lillian's lifetime exclusion. Her new lifetime exclusion is $5,254,000. Her new estate tax exemption is also $5,254,000.

C. Historical Estate and Gift Tax Chart

The estate and gift tax has changed many times since the turn of the century. The following schedule shows the historical estate and gift tax rates and the unified credit exemption amounts:

Calendar Year	Estate and GST Tax Exemption	Highest Estate and Gift Tax Rate
2002	$1.0 million	50%
2003	$1.0 million	49%
2004	$1.5 million	48%
2005	$1.5 million	47%
2006	$2.0 million	46%
2007	$2.0 million	45%
2008	$2.0 million	45%
2009	$3.5 million	45%
2010	$5.0 million or $0	35% or 0%
2011	$5.0 million	35%
2012	$5.12 million	35%
2013	$5.25 million	40%
2014	$5.34 million	40%

IV. Planning For Incapacity

A. Durable Power of Attorney

A General Power of Attorney allows a person to act on behalf of another. It allows an Agent to do anything that the Principal could do for himself or herself. It is an extraordinarily powerful document because the Agent is given the power to do anything which the Principal could do for himself or herself. Once the Principal gives the Agent such power, the Principal cannot complain to third parties that the Agent wrongfully exercised the powers given by the Principal. Accordingly, one must use great care in selecting an Agent.

A General Power of Attorney may be "durable." This means that the ability of the Agent to act will continue even after the Principal's disability. Most powers of attorney used in estate planning are durable because the purpose of a power of attorney is to allow the Agent to act for the Principal when the Principal cannot act for himself or herself. Because the Durable General Power of Attorney is such a broad and sweeping document, the Principal must exercise great care to select an Agent who is trustworthy and capable of making good decisions. Note that the new Estates Codes revised the Durable Power Attorney for Texas. A copy of the first two pages of such power of attorney is attached hereto as **Exhibit C.**

B. Medical Power of Attorney

A Medical Power of Attorney Designation of Health Care Agent gives a person the power to act for another with regards to medical decisions. The person granting the powers is referred to as the "Principal," and the person to whom the powers are granted to act for the Principal is called the "Agent." In the absence of a Medical Power of Attorney Designation of Health Care Agent, medical providers are often left to deal with a "committee" of family members, all of whom have different ideas about the best course for medical treatment. Execution of a Medical Power of Attorney Designation of Health Care Agent allows a person to designate an individual to make medical decisions on their behalf. In addition, since April 14, 2003, the Health Insurance Portability and Accountability Act ("HIPPA") must be included in medical powers of attorney to allow the agent access to medical records. Thus, it is advisable to re-execute older documents that lack such specific language. A copy of the first couple of pages of the medical power of attorney is attached hereto as **Exhibit D.**

C. Directive To Physicians

A Directive to Physicians (sometimes erroneously called a "Living Will") is a document which simply states whether a person wishes to have their life prolonged by medical procedures if their death is otherwise eminent. The document directs one's physician to withhold life support or "heroic measures" which will prolong one's life. The document avoids pain and suffering of the terminally ill patient, and reduces medical bills. More importantly, it greatly reduces the emotional distress of the terminally ill patient's loved ones by reducing or eliminating protracted suffering.

D. Trusts

We regularly use trusts to centralize management and control of assets and name a Trustee to manage the assets when we know a property owner's ability to manage his or her own property is beginning to diminish.

V. Business Planning

A. Organization

Texas has an alphabet soup of business entities: Corporations, Limited Liability Companies, Partnerships, Sole Proprietorships, Specialized entities: PA, PLLC, etc. Choosing the proper entity is fact dependent, but it is always helpful to look at two things: Protection and Taxation.

1. <u>Protection.</u>

Most business entities (corporation, LP, LLP, LLC, etc.) shield an owner from liabilities arising from the entity (whether contract or tort). A well formed entity also protects its assets from claims against its owners. Corporate stock (Inc.) is an asset subject to seizure, just like real estate, money in bank, machinery, equipment, etc. while LLC membership interest and LP partnership interests are not. A creditor of an LLC or LP can only receive a charging order. Many business owners formed C-Corporations in the 80's and 90's when corporate tax rates were much lower than individual rates. As corporate rates are now at or above individual rates and because of the above mentioned asset protection issue, it is often best to convert many of those older C-Corps into LLCs, LPs or something with better asset protection.

2. <u>Taxation.</u>

(a) <u>Income Tax</u>.

See **Exhibit E** for entity income taxation summary. The income taxation of different entities has become much more simplified than it was before 1997 due to the IRS "Check the Box" Regulations. The Regulations effectively permit the owners of an entity to utilize IRS Form 8832 to select the type of tax method to apply no matter the choice of entity.

(b) <u>Franchise Tax</u>.

Texas imposes a Franchise Tax on each taxable entity doing business, chartered, or organized in Texas. The Franchise Tax does not apply to a "passive entity." Generally, an entity is passive only if it is a **<u>limited partnership</u>** whose federal gross income consists of 90% of dividends, interest, gains from the sale of commodities traded on a commodities exchange, gains from the sale of securities, royalties, real estate, bonuses, delay rental income from mineral properties income from other non-operating mineral interests, etc. Texas Tax Code § 171.003.

B. Asset Protection

One important aspect of estate planning often overlooked by estate planners is asset protection during life. It does not do much good to create a plan on how to dispose of a client's assets if a major lawsuit can wipe out that wealth tomorrow. Trusts (discussed above) are common estate planning tools. Entities on the other hand are also a great asset protection device.

An important aspect of asset protection is to be wary of violating the Fraudulent Transfer Act. If the client forms an entity solely for asset protection and to shelter property from creditor claims, a judgment creditor can use the Fraudulent Transfer Act to unwind or pierce entities created for asset protection.

C. Transferring the Business

Many small business owners desire or have considered the idea of passing their business to their children, grandchildren, or key employees. They spent a lifetime building their business and, as with all their other property, want to keep it in the family or know it will continue.

Before discussing ways to successfully transfer a business, please be aware that a minority of small business are successfully transferred to the next generation. Although a noble gesture, it oftentimes just does not work.

Assuming client has made the decision to transfer within the family or a key employee, the following are some key points to address before and during such transition and methods on how to transfer.

1. Practical Points.

(a) Does Anyone Even Want the Business?

It sounds obvious, but many small business owners fail to consider the fact that their family or key employee may not be as passionate about manufacturing widgets. Yes, it paid for their education, but they would rather pursue other avenues. Prior to transferring to the next generation or key employee, ensure a willing buyer/transferee on the other end.

(b) Is the Successor Qualified?

Client discovers one or more willing transferees, but is client absolutely sure that the selected person will be the right person to take over? Do they have the necessary skills and aptitude to make a success of the business once the client retires? For those not already working in the business it is important that timescales be agreed as to when they will join the business. The client will then need to train and support each successor in order to establish their individual strengths and weaknesses.

(c) Have a Plan…and Stick to It.

After the client finds a qualified, willing successor, develop a plan, *while client is still in the business*, to transition the take over. Too many business fail because client retires and just hands over the keys. Develop a written succession plan well in advance of the handover and ensure that this plan is part of the overall business plan. Define management responsibilities and the long-term objectives including family shareholdings. Of course nothing is written in stone but it is important that the targeted successor is committed to the continued successful development of the business. Ideally, before succession takes place each successor joining the business should have gained experience at a senior level and have developed an understanding as to how businesses should work. This will help bring experience, new ideas and skills to the company and provide them with greater creditability both inside and outside the family group.

2. <u>Methods of Transfer</u>.

The Client has a ready, willing and able successor ready to take over. Now what? How does the transfer actually occur? When does it occur? The Client has several options.

(a) <u>The Estate Plan</u>

One option is for client to simply add a specific bequest in his or her estate plan designating to whom the business transfers and in what shares. This is probably the most cost effective and simplest method of transfer. This method also allows the client to maintain control of the business for as long as he/she lives and, if the client desires to maintain control of those business post death, client can transfer the ownership interest in trust.

Some downsides exist. Some business owners think that their children will benefit from having an ownership stake in the business while they learn to manage it. Some owners worry that as they get older, they might no longer be competent to fully run the company's affairs. In addition, there may be very significant tax advantages to transferring all or part of the business during life.

Example: Husband and Wife run a successful funeral company. They have 3 children, but only 1 is active in the business. Husband and Wife plan to sell the business to the active child in a few years, but if they pass away before completing the transfer, they want to ensure that only the active child receives the business and he does not have to pay for it. No problem – direct the business to first transfer to the active child in the estate plan.

(b) <u>Give It Away Now</u>

Client can gift all or part of the business during his or her life. This may result in client having to deal with gift tax issues, but the lifetime gift exclusion is very large. Now is a good time to take advantage of it. To that end, gifting ownership interest during life ensures removal of future appreciation from client's estate and, if client gifts the ownership interest into a trust, client can still maintain control of the gifted ownership interest. One disadvantage is that, generally, the tax basis in the business will be the same as client's (whereas if children inherited their ownership interest through client's estate plan, they would get a "stepped-up" basis equal to the value as of the date of death).

Example: Husband and Wife want to phase out of the business. They create two classes of ownership in the business, then gift the non-voting equity ownership to the children who are active in the business. They must file a gift tax return to track the amount of the gift. The IRS is going to know about the gift regardless because the children will show up on the next business income tax return as an owner.

(c) <u>Sell</u>

Some clients want to transfer the ownership of a business while they are still alive, but they also want to continue receiving income from the business. The answer is usually to sell the business. Of course, the successor might not have enough assets of their own to buy the business for its fair market value. But that's okay; there are many alternatives. For instance, you could sell an interest in the business in return for a promissory note. The children would pay off the interest and principal over time using income from the business.

A variation on the promissory note is a "self-cancelling installment note," which is a type of promissory note that says that if you pass away before the note is paid off in full, any further obligations to you or to your estate are cancelled. This has different tax consequences from a standard promissory note, and it might be worth considering.

Example: Husband and Wife want to phase out of the business and transfer ownership to their children. They really do not need the money. They obtain a valuation, then enter into a Membership Purchase and Sale Agreement for the children to purchase the business with ten percent down and a ten year note of interest only (at a low rate) for the balance. Ten years from now, when the business is ideally more valuable, the children can pay the parents. The Husband and Wife transferred the property and also avoided estate tax and possible gift tax issues on the growth over the last 10 years.

(d) Transfer the Business to a Trust

You can also sell or give an interest in the business to a trust for your children's benefit. A big advantage of a trust is that it protects the children's interest from creditors and ex-spouses – so the business will be less at risk if the child gets sued or goes through a divorce. It is usually possible to create a trust with the child as a co-trustee who can make business decisions regarding the company, but a second trustee will control distributions of income to the child. Many business owners give or sell business interests to a "grantor trust," in which the owner continues to pay the income tax on the trust assets. Among the advantages of such a trust are that it can avoid capital gains tax on the sale of the trust assets, and it can avoid income tax on interest payments from the trust to the owner. This can be a very powerful method of transferring wealth.

Example: Let's return to the example above where Husband and Wife want to phase out of the business. They create two classes of ownership in the business, then gift the non-voting equity ownership to the children who are active in the business. They can gift the property to a trust for the children's benefit. Doing so enhances protection of the business ownership, protects the business from a possible divorce, helps minimize estate taxes when the children pass away, and keeps the business in the family due to the trust termination provisions requiring trust property to transfer to the grandchildren upon the child's death.

(e) Buy-Sell Agreements

Along the lines of selling the business to the successor, a buy-sell or shareholder's agreement is also an option for transferring the business. The Client must ensure that the targeted successors are owners in the company (either via gift or sale) and then all parties can agree that upon death, divorce, disability, dissolution, retirement, etc., the company or remaining owners can buy out the departing owner. The buy sell agreement allows client the flexibility of remaining with the company or retiring and dictating the terms of such sale/retirement.

Any time two or more owners enter into a business relationship, we are discussing Buy-Sell Agreements and what I refer to as the four "D's", which I describe to the client as:

Death
Divorce
Disability
Disposition

DISTRIBUTION OF PROPERTY WHERE NO WILL IS LEFT

I. MARRIED INDIVIDUAL WITH CHILD OR CHILDREN

A. Separate Property

Real Estate	Other Property
1/3 to Surviving Spouse for Life, Remainder to Children 2/3 Equally Divided Among Children	1/3 to Surviving Spouse 2/3 Equally Divided Among Children

B. Community Property If Deceased Has No Children From Previous Marriage

Real Estate	Other Property
All Passes to Surviving Spouse	All Passes to Surviving Spouse

B1. Community Property If Deceased Has Children From Previous Marriage

Real Estate	Other Property
Decedent's One-Half of Community Property To Children	Decedent's One-Half of Community Property to Children

II. MARRIED INDIVIDUAL SURVIVED ONLY BY WIFE, NO CHILDREN

A. Separate Property

Real Estate	Other Property
1/2 to Surviving Spouse 1/4 to Father of Deceased 1/4 to Mother of Deceased	All Passes to Surviving Spouse

B. Community Property

Real Estate	Other Property
All Passes to Surviving Spouse	All Passes to Surviving Spouse

III. UNMARRIED, OR WIDOWED INDIVIDUAL WITH CHILDREN

(All Property)

Real Estate	Other Property
All Passes to Children	All Passes to Children

IV. UNMARRIED, OR WIDOWED WITH NO CHILDREN
(All Property, with Mother *and* Father Surviving)

Real Estate	Other Property
1/2 to Mother of Deceased 1/2 to Father of Deceased	1/2 to Mother of Deceased 1/2 to Father of Deceased

(All Property, with Mother *or* Father *and* Brothers and Sisters Surviving)

Real Estate	Other Property
1/2 to Surviving Mother or Father 1/2 Equally Divided Among Siblings	1/2 to Surviving Mother or Father 1/2 Equally Divided Among Siblings

ESTATE PLAN OF JOHN AND JANE DOE
TAX PLANNED WILLS AND ILIT

HUSBAND'S WILL

- Disposes of Husband's Separate Property and One-Half Community Property in Probate

$4,500,000

Personal Property, i.e. household goods and other untitled property transfer to spouse and then children

WIFE'S WILL

- Disposes of Wife's Separate Property and One-Half Community Property in Probate

$4,500,000

LIFE INSURANCE TRUST
$2,000,000
Life insurance
2nd to die policy

Death of John Doe

Wife is Trustee and beneficiary of Marital and Family Trust

*FAMILY TRUST **

$4,500,000
(holds amount of Mr. Doe's property up to the exemption amount (2014 = $5,340,000))

*MARITAL TRUST **

$0
(holds amount of Mr. Doe's Property that exceeds $5,340,000)

Death of Jane Doe

To Children in Trust*, remainder to <u>their</u> descendants

*<u>BENEFITS OF THE TRUSTS INCLUDE:</u>

- <u>Protection from Creditors.</u> The trust assets are exempt from the claims of the beneficiaries' creditors
- <u>Protection from Future Spouses.</u> The trust assets are protected from the future spouses and ex-spouses of the beneficiary
- <u>Control From the Grave.</u> Upon the beneficiary's death, trust assets pass to the person designated by the original owner or to his or her descendants
- <u>Estate Taxes.</u> The trust assets will not be subject to estate tax in the beneficiaries' estates (Note: This does not apply to the Marital Trust).

<u>Estate Tax Planning Benefits:</u> (Utilizing 2013 $5,340,000 exemption)

- Value of Estate:	$11,000,000
- Estate Taxes before planning:	$2,264,000
- Estate Taxes after planning:	$0
- Estate Taxes Savings:	$2,264,000

- Total to Beneficiaries $11,000,000
Includes $2.0M of life insurance that children can use to pay estate taxes, if necessary.

Exhibit B

STATUTORY DURABLE POWER OF ATTORNEY

OF

INSERT CLIENT NAME

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, TEXAS ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

You should select someone you trust to serve as your agent (attorney in fact). Unless you specify otherwise, generally the agent's (attorney in fact's) authority will continue until:

(1) you die or revoke the power of attorney;
(2) your agent (attorney in fact) resigns or is unable to act for you; or
(3) a guardian is appointed for your estate.

I, (INSERT NAME), with an address of (INSERT ADDRESS), appoint my wife, (INSERT AGENT), with an address of (INSERT ADDRESS), as my agent to act for me in any lawful way with respect to all of the following powers that I have initialed below. If (INSERT AGENT) dies, becomes legally disabled, resigns, or ceases to act, I appoint, (INSERT ALTERNATE AGENT), with an address of (INSERT ADDRESS), as my agent.

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (M).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

____ (A) Real property transactions;
____ (B) Tangible personal property transactions;
____ (C) Stock and bond transactions;
____ (D) Commodity and option transactions;
____ (E) Banking and other financial institution transactions;
____ (F) Business operating transactions;
____ (G) Insurance and annuity transactions (provided that my agent shall specifically **not** have the power to designate or change the beneficiary of any annuity or contract of insurance on my life);
____ (H) Estate, trust and other beneficiary transactions;

_____ (I) Claims and litigation;
_____ (J) Personal and family maintenance;
_____ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
_____ (L) Retirement plan transactions (provided that my agent shall specifically **<u>not</u>** have the power to designate or change the beneficiary of any of my retirement plans or IRAs);
_____ (M) Tax matters;
_____ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

If I have initialed Line (N) above, then this document shall be construed and interpreted as a general power of attorney, and my agent (attorney in fact) shall have the power and authority to perform or undertake any action I could perform or undertake if I were personally present.

SPECIAL INSTRUCTIONS

GIFTS: My agent shall not have the power to make gifts of my property.

LIMITATIONS: Notwithstanding any provision herein to the contrary, any authority granted to my agent shall be limited so as to prevent this power of attorney from causing my agent to be taxed on my income (unless my agent is my spouse) and from causing my assets to be subject to a general power of appointment by my agent, as that term is defined in Section 2041 of the Internal Revenue Code of 1986, as amended.

ADDITIONAL POWERS: ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

In addition to the powers granted above, I grant to my agent all of the following power:

Power Regarding Representation in Tax Matters

The power to represent me, and to appoint an agent or agents to represent me, before the Internal Revenue Service or any State or other taxing authority by completing, signing, and submitting IRS Form 2848 or any other governmental form.

<u>This power of attorney is effective immediately and is not affected by my subsequent disability or incapacity.</u>

MEDICAL POWER OF ATTORNEY
AND HIPAA RELEASE AUTHORIZATION

I, ____________________, designate:

Name: ____________________________
Address: ____________________________
____
Phone: ________________

as my agent (hereinafter referred to as "agent") to make any and all health care decisions for me. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

DESIGNATION OF ALTERNATE AGENT

If ____________________ is unable or unwilling to make health care decisions for me, I designate the following person as my agent to make health care decisions for me as authorized by this document:

Name: ____________________________
Address: ____________________________
____
Phone: _______________

LIMITATIONS

Limitations on the decision-making authority of my agent are as follows:

I hereby require my agent to direct my physician to comply with any valid Directive to Physicians (or similar document) which I may have heretofore executed or which I may hereafter execute. My agent is not authorized to direct my physician in a manner which would contradict any such valid Directive to Physicians (or similar document).

HIPAA RELEASE AUTHORITY

I intend for my agent to be treated as I would be treated with respect to my rights regarding the use and disclosure of my individually identifiable health information and other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 USC 1320d and 45 CFR 160-164. This release authority is effective immediately.

Accordingly, I hereby authorize any doctor, physician, medical specialist, psychiatrist, chiropractor, health-care professional, dentist, optometrist, health plan, hospital, hospice, clinic, laboratory, pharmacy or pharmacy benefit manager, medical facility, pathologist, or other provider of medical or mental health care, as well as any insurance company and the Medical Information Bureau Inc. or other health-care clearinghouse that has paid for or is seeking payment from me for such services, to give, disclose and release to my agent who is named herein, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse. Additionally, my agent shall have the ability to ask questions and discuss my protected medical information with the person or entity who has possession of the protected medical information even if I am fully competent to ask questions and discuss this matter at the time. It is my intention to give a full authorization to any protected medical information to my agent. Such information may also be released to any person designated as a primary or successor agent or attorney-in-fact in a durable power of attorney which I have executed, whether or not such person is presently serving as such, and to any person presently serving as trustee or named as a successor trustee in any revocable or irrevocable trust created by me as grantor.

In determining whether I am incapacitated, all individually identifiable health information and medical records shall be released to the person who is nominated as my agent hereunder, including any written opinion relating to my incapacity that the person nominated as my agent may have requested. This release authority applies to any information governed by HIPAA and applies even if that person has not yet begun serving as my agent.

This authority given to my agent shall supersede any prior agreement that I may have made with my health-care providers to restrict access to or disclosure of my individually identifiable health information. The individually identifiable health information and other medical records given, disclosed, or released to my agent may be subject to redisclosure by my agent and may no longer be protected by HIPAA. The authority given to my agent herein has no expiration date and shall expire only in the event that I revoke this Medical Power of Attorney in writing and deliver it to my health-care provider. There are no exceptions to my right to revoke this Medical Power of Attorney.

ORIGINAL

The original of this document is kept at:

____

____

COPIES

The following individuals or institutions have copies of the signed originals:

Name: Knighton & Stone, PLLC
Address: 2202 Timberloch Place, Ste. 250
The Woodlands, Texas 77380

EXHIBIT E

- All owners participate in the business
- Franchise Taxes have all been paid
- Owner already received $113,700 Salary

- This example disregards the 3.8% surtax that applies to net investment income (interest, dividends, annuities, royalties and rents which are not derived in the ordinary course of trade or business) for taxpayers with an AGI over $200,000 who file individually or $250,000 for married couples filing jointly.

Item	**C-Corporation**	**Limited Liability Company (Taxed as S-Corp) (typically operating companies)**	**Limited Partner in Limited Partnership (typically passive investments)**
Entity Level			
Taxable Income of Entity	100.00	100.00	100.00
Fed. Income Tax (at 35%)	35.00	0	0
Income After Taxes	65.00	100.00	100.00
Owner Level			
Distribution & Share of Income	65.00	100.00	100.00
Self Employment Tax	0	0	0
Fed. Income Tax on [1]Dividends (at 15%)	9.75	0	0
Fed. Income on Tax Allocation (at 35%)	0	35.00	35.00
Amount Received after Taxes	55.25	65.00	65.00

[1] Qualifying dividends and capital gains will be taxed at a rate of 20% on income in excess of $450,000 for joint filers and $400,000 for single filers.