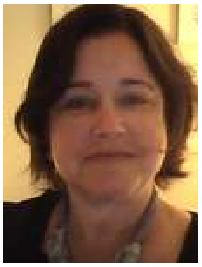
Estate Planning for Married Couples

With a Taxable Estate (federal and MA)



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Estate Tax Planning: For married couples with a taxable estate (over $1 million).

If you have a taxable estate for federal and/or MA estate tax purposes (including net equity in real estate, liquid/cash assets, stocks & bonds, investments, retirement plans, life insurance, business interests, etc.), the documents you should consider are:

1. 2 Wills/2 Revocable Trusts (summary below)

2. 2 Durable Powers of Attorney, 2 Health Care Proxies.

ESTATE TAX BASICS:

There is no federal estate tax in 2010, but unless the law changes, it comes back on 1/1/2011 with a $1 million credit (estates more than $1 million would be taxed up to 55% on the excess over $1 million).

> There is a separate MA estate tax with a $1 million threshold, meaning that estates more than $1 million would be taxed at 6-16% on the ENTIRE estate.
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> HOW TO REDUCE FEDERAL AND/OR MA ESTATE TAXES:
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> 2 Revocable Trusts - MAXIMIZING THE UNIFIED CREDIT AT DEATH: Both spouse's unified credits can be maximized, effectively doubling the federal estate tax credit (if there IS one), and/or reducing the MA taxable estate by $1 million. Because we don't know who will predecease the other, two identical trusts (one per spouse) are necessary to "preserve" the unified credit of the first to die.

Upon the first spouse's death, a certain amount would be held in this trust, but the surviving spouse would get broad powers to use the assets, and could also be sole trustee during his/her lifetime. The Trusts would provide for the surviving spouse to get (i) guaranteed income from the trust, (ii) discretionary principal for his or her "health, education, maintenance or support", and (iii) the right to a 5% of the principal on an annual basis.

Wills: Each spouse also needs a Will in addition to his or her Trust. The Will would "pour-over" all assets into this Trust, and then the Trust would be the document that spells out distribution provisions. The Will would also name Executors and Guardians for minor children (if necessary).

Irrevocable Life Insurance Trust ("ILIT"): If you have substantial life insurance, an ILIT would let you save more estate taxes (on top of the 2 Revocable Trusts) by excluding the entire value of your life insurance from your taxable estates at death.

OWNERSHIP OF ASSETS:

In order to make these trusts work to maximize the use of both unified credits, you must each own as close to $1 million, **individually** (not jointly). This is because property owned jointly passes automatically to the surviving co-owner or beneficiary and never goes into your Trust. As a result, you must "equalize your estates" (split your assets between the two of you). If you wish, you can continue to own your property "together", with each of your Trusts having a 50% interest in each asset.

Avoidance of Probate: The separate ownership of assets is necessary to get estate tax savings. However, it is preferable to split your assets between your 2 Revocable Trusts (rather than your individual names) to get the additional benefit of avoiding the 1-year probate process at both spouse's deaths. In addition to avoiding probate in your state, you would also avoid "ancillary probate" (probate in other states) for any property you own in other states. By having your Trusts own your assets, you lose no control - it is merely a paper transfer. You still manage the property as you would normally do and can add or remove property at any time. Furthermore, all income taxes continue to be reported on your individual returns, under your own social security numbers.

"Funding" Your Revocable Trusts:

1. *Liquid Assets*: You would transfer your liquid assets (bank accounts, investments, stocks, bonds) into your trusts by completing forms provided by each institution.

2. *Real Estate*: Your real estate would be transferred into your 2 Revocable Trusts by a new deed and 2 "Trustee Certificates".

Please note that with regard to your principal residence only, transferring your home into a Trust results in the loss of the creditor protection from owning the property as "tenants by the entirety" (jointly between spouses) as well as from the Declaration of Homestead. Therefore, if you have strong creditor concerns, you should think about this carefully. However, you can get some of the estate tax and/or probate benefits by transferring other real estate and non-real estate assets into your trusts, while leaving the principal residence in joint names.

Lastly, if you are currently receiving any real estate tax exemption from your town (i.e. annual residential exemption, veterans exemption, elderly exemption), you should let me know. This is because property must be transferred in such a way as to preserve those exemptions.

If you decide to transfer your real estate into trust, you should notify any insurance companies which insure your property that the property has been transferred into a trust, as well as mortgage companies.

Employment Benefits/IRA's: In order to avoid negative income tax consequences, you must name your spouse as beneficiary of any retirement plans or accounts (because the spouse is the only one who can further defer income taxes by rolling it over into his or her own account).

Life Insurance: Life insurance is included in your taxable estate. However, depending on the size of your estate, you have options as to ownership and beneficiary designation of life insurance in order to reduce the tax on the life insurance. The 2 most common options are: (i) an Irrevocable Insurance Trust as the owner **and** beneficiary of the life insurance - this excludes the insurance from both spouse's estates and passes to your heirs free of estate tax (without using up any of your federal estate tax credit), leaving the credits fully available for your other assets, and (ii) naming your Revocable "A/B" Trust as **1st** beneficiary of your life insurance.