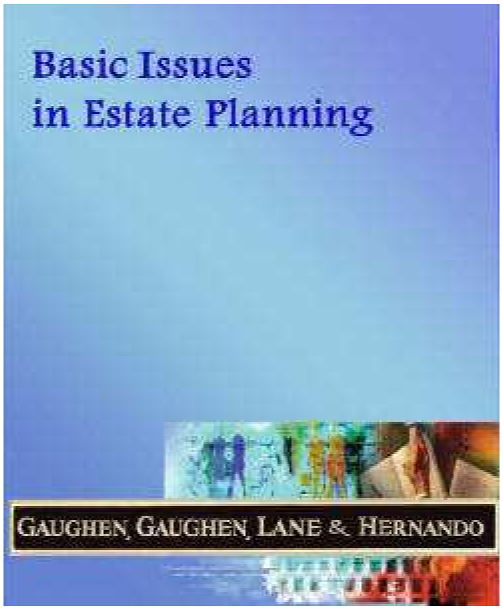

FORWARD

Estate planning is important, no matter what your assets are. While you're still alive you can insure that your property will go where you want, to whom you want, in the way you want, and when you want it transferred. It allows you to minimize taxes, court costs and attorneys' fees.

You can provide your loved ones the comfort to mourn your loss without unnecessary red tape and financial confusion. All estate plans should include, at a bare minimum, a durable power of attorney and a will. The first is to help manage your property, in case you can't. The second is to help manage and distribute your property after death.

Numerous other documents and devices are available to assist you with your planning. Gaughen, Gaughen, Lane & Hernando utilize a wide range of estate planning techniques. We advise our clients to gain the maximum benefit of all laws, while, at the same time, carrying out their wishes.

Who needs an Estate Plan?

- When you're young & have children absorbing your time.. You do
- If you're too busy living life to worry about death ... You do
- When you're faced with medical problems ... You do

Without good Estate Planning the assets that you've worked hard to acquire and the security of your spouse and children can be put in jeopardy. Unless you act to create an Estate Plan, State Law will determine who receives your money, how they receive it and when they receive it. State Law determines who will manage your Estate and, in most cases, failure to plan will cost your survivors additional Estate Taxes and administrative expenses. Unless you plan for your Estate you cannot nominate a Guardian to take care of your child. You can't provide for the succession of your business or the liquidation of assets to continue your family's lifestyle after your death.

What Planning Needs to Be Done?

Generally, an Estate Plan will start out with certain basic documents. Every one needs a Health Care Proxy in the event that a catastrophic illness or injury occurs.

A **Power of Attorney** is very important in order to allow your family to continue peacefully if you're confined to a hospital or nursing home for any period of time.

A **Guardian** should be nominated to care for your children in case you pass away before they're grown. A **Will** is additionally used to direct the distribution of assets that are not otherwise dealt with. Many different types of Wills exist from the very simplest, a Husband and Wife Reciprocal Will through Family Trust Wills, up to Federal Tax Documents designed to work with other vehicles to minimize Estate Taxes on death.

Estate Planning can also include the creation of Trusts or other vehicles which hold property. The person creating them can direct who will manage their property, direct how it will be disposed of after death and can effectuate a reduction in the taxes due upon death.

A Properly Drawn and Created Estate Plan

- can minimize the cost of administrating an Estate,
- can minimize the time needed to administer an Estate
- can insure that your wishes are carried out properly after your death

The persons developing your Estate Plan must deal with the administrative aspects of your Estate, post death, as well as the tax aspects of your Estate. The Tax Relief Act of 2001 did provide some substantial Estate Tax Relief, but that relief still requires your assets to be structured and your Estate planned properly. The Tax Relief Act of 2001 repeals the Federal Estate Tax for the year 2010. After that however the "Repeals" ends. The Federal Estate Tax reverts to its pre-2001 status. Between 2001 and 2010 the Estate Tax is gradually fazed out in annual steps. A properly drawn Estate Plan will review the taxable status of an Estate, both
Federally and for the Commonwealth of Massachusetts to determine the method by which the lowest amount of tax can be paid. Estate Planning can also be used to control the distribution of assets to children, to lower income tax consequences and to provide for the management of assets if the grantor is confined to a nursing home. Taxes are discussed at greater length at the end of this guide.

"In a complex field you need to find a competent attorney to assist you and fully discuss all issues with your attorney"

Powers of Attorney and Health Care Proxy.

Powers of Attorney are very simple documents that are very powerful. They authorize the person you nominate to do everything that you could do, if you were there in person. This means while you're confined to bed with a broken leg, the holder of your Power of Attorney (POA) can go to the bank and deposit your checks, transfer monies from different accounts, invest in stocks or sell stocks and withdraw cash. By the same token, the holder of your Power of Attorney can do serious financial damage to you if they misuse the power. You should have perfect confidence and trust in your Power of Attorney. Generally it is recommended, unless there is a marital problem, that the holder of your Power of Attorney be your spouse.

The Health Care Proxy generally recommended, authorizes another person to make decisions about what health care you will receive if you are not able to communicate yourself. If you are in a coma, have been injured and not able to respond to medical personnel yourself, the holder of your Health Care Proxy will answer questions for doctors and make decisions about what care should be provided to you.
We recommend that you go further in your Health Care Proxy. We recommend that you specifically state your desires as to what should be done with your body in the event that you are unable to communicate and are not expected to recover from your condition. You should discuss this specifically with both your attorney and the person you wish to appoint as your HC Proxy. It is a very important aspect of your planning. The decision to withhold treatment in the event of brain death, for example, should be made by YOU in advance. It should not be left to your loved ones who will be struggling to deal emotionally with your injuries.

What are the Goals of your Estate Plan?

Minimize the problems caused to your family upon death;
Save money;
Save time;

What is a Will?

Very simply stated a Will contains your instructions to a person called your Executor or Personal

Representative as to how you want your property distributed upon your death. This Will must be proved to be yours in the Probate Court. The person you nominate as the Executor will be appointed by that Court, unless he or she is deemed to be unfit by the Court. The Probate of the Will and the execution of your wishes, by law, will take place over the next year if not longer.
An Estate cannot officially be closed prior to one year from the date of death. If you die without a Will, state law, called Intestacy, determines where your property will go and who will receive that property at your death. Generally, property is divided with a portion going to the surviving spouse, if any, and the majority being delivered to the children of the decedent, if any. If there are no children, assets may be distributed to next of kin. Every one needs a Will as insurance that
they did not omit any assets when creating a Trust or other 'Non-Probate' distribution of property. For most people a Will is the basic planning document that they will need.

A Will is also the primary method to appoint a Guardian for your children, in case both you and your spouse die. Picking a Guardian is a very serious and weighty decision. Generally, the Guardian should be the person who will be best suited to raise your children in your absence.
In order to ensure that the Guardian carries out his or her duties and also makes wise decisions about the money spent for your children, his or her actions are reviewed by the Court. A second person is usually recommended to assist with the financial handling of your children's money and to see that none goes astray. In the event that you establish a Trust, a Co-Trustee can be appointed to watch over the finances of the family after your death.

A Will is the basic document upon which an Estate Plan is created. In nearly all cases a Will will be needed as part of the Estate planning process. Your Will provides authority for your Executor to carry out your wishes without involving a Court in the decision each time an asset needs to be dealt with. Further economies are accomplished through the use of Non-Probate dispositions of property, such as Trusts.

Your Personal Representative

Many people have different opinions as to what makes a good personal representative. The personal representative is your Executor, or your Trustee. The person who holds your Power of Attorney or your Health Care Proxy is also your personal representative. A different personal representative maybe used for each of these capacities. Indeed, it is often essential to provide a different person for some offices. While a spouse is generally the preferred person to hold your Power of Attorney, the spouse is not generally a good Trustee of a long term Estate Planning Trust. In some Tax Planning Trusts you and your spouse may not be the Trustees or you must have a supplemental Trustee to take your place at your death in order to fully pass assets to your family.

You should discuss with your attorney who would be the best person in your family to fill each of these positions.

What is a Trust?

Trusts are used to hold, grow and administer assets over a long period of time. Trusts are used to create complex distributions of property and to avoid unnecessary court actions seeking authority to deal with assets. Trusts are also used to provide flexible responses to the changing needs of a family after your death. The Executor of your Estate is bound by the strict instructions of your Will. The Trustee of a Trust can carry out your expressed wishes in ways and situations that you never thought would occur.

Trusts are the least expensive and therefore the first vehicle used in planning an estate. Other vehicles, such as Limited Liability Companies and various 'family' vehicles, are used in more complicated situations. Your attorney will help you determine which of these is right for you.

While every Estate Plan needs a Will, the goal of the Plan should be to avoid needing to use that Will. Probate and the expense and time delay of referring matters to the Judicial System should be avoided with good planning. Certain legal periodicals indicate that the average length of time involved between a persons death and the time that all of the paper work and probate proceedings are completed is approximately 16 months. Much of this time is spent in the Probate process. There are numerous ways to *avoid Probate.*

Probate Avoidance.

Probate Avoidance Techniques.

- Transfer property into joint name.
- Create survivors for all assets where is possible to do so.
- Establish ‘pay on death’ / ‘survivorship’ accounts.
- Create ‘living’ Trusts.
- Create more sophisticated entities, LLC(s), LLP(s), FLP(s),

Probate avoidance, simply put, is making sure that your assets will pass to the person you want them to without going through the Probate Court. Some simple techniques exist to accomplish this goal. Most people’s largest asset is their house. By simply putting that asset into joint name, upon the death of the first, the house will pass to the survivor without the need of Probate. Upon the death of the surviving joint tenant however, there will be need to Probate his or her Estate unless other techniques are used. For a simple Estate this is often a very good solution.

Life Insurance or annuities with named beneficiaries, and ‘pay on death’ bank accounts often are used to pass assets. Most Life Insurance Policies, annuities or other insurance underwritten assets allow you to appoint a survivor, a beneficiary or ‘pay on death’ taker. Property may be placed in a trust of LLC for division sometime after death. If assets remain in the decedents name at death, then Probate will not be fully avoided. Therefore, it is very important to make sure that each of your assets have been dealt with properly. This should be checked with your bank or your insurance company and your lawyer. Money market accounts with brokerage houses are also able to have a named beneficiary or pay on death clause and the same should be utilized. A discussion with your attorney will easily resolve these questions and issues.

These three methods work well for small estates where the tax burden is expected to be light, or where there are no children. In the event that both joint owners die in a common accident, or when the surviving joint owner, dies there is no protection from the time and expense of Probate. When one has just lost a spouse the last thing that is generally on your mind is how to protect your property and how to care for your children if something happens to you in the near future.
Statistics show, however, that a substantial portion of surviving spouses do not live more than 6 months after the death of their long term companion.

Trusts and ‘Family’ Planning

A second level of planning for joint losses and more complicated estates involves the placing of assets into an entity that you create and own.

Living Trust.

An intervivos (living) trust, whether revocable or irrevocable, is an essential tool in avoiding Probate and in properly structuring and planning an Estate. A Trust is created to hold property whether real, personal or mixed and requires nothing further to be effective. There is no need to go to Court and ask a Judge’s permission to establish one nor do you need to publish notices in the newspaper, nor do you have to ask other people such as your children’s’ permission to establish a Trust. No one needs to know who the owner of the Trust is, nor who the beneficiaries are unless you wish them to. There are no requirements of notice to creditors, there are no requirements or waiting periods before the Trustee can act. Your Trust can be a separate free standing taxable entity or be part of your personal tax return, depending on whether there are tax benefits to you one way or the other. A Trust sets out who will own the assets upon your death and upon the death of that person and upon the death of their survivors and so on for a maximum period of “a life in being plus 21 years”. What does this mean? This means that you can place assets in Trust until your youngest child or grandchild has been dead for 21 years. For most of us that will be a long time.

Management of assets in a Trust is not terribly complicated. Instead of signing John Doe, you'll simply sign documents, John Doe, Trustee of the Doe Trust.

Tax benefits of LLC; LLP & 'Family' entities.

Easy fractionalization of value = less tax
Restrictions of transfer (Del. & Nev) = less tax
Retained control without losing tax benefit
Easier gifting resulting in less taxes

Trustees "own" the assets and deal with them in whatever fashion you wish without problem. All banks, brokerage houses and insurance companies recognize the need for Trusts and deal with them on a daily basis. For the most part you will probably be the initial Trustee of the Trust. Trustee selection again is something, which should be discussed with your attorney, and the proper naming of Trustees and succession of the same should be worked out directly with him or her. The Trust owns the property that is placed in it. That property will never pass through Probate as a Trust cannot die. The provisions that you create will still be effective to manage and provide for the management of the Trust assets for many years in the future. A Trustee can be given discretion to distribute and invest assets that is unsurpassed by any other vehicle. Trusts can be used to provide different gifts to different family members. If certain children are handicapped, provisions can be made to provide for their support and maintenance in ways that will not affect the receipt of State benefits. If certain children are not capable of handling and using money properly. assistance can be provided for them to ensure that their legacy from you is not squandered. Additionally, Trusts can be used to insulate money against any failing marriages of your children. Trusts are used to preserve assets where low risk is anticipated. In situations where there is larger risk present or where additional tax advantages are required a limited liability company or other vehicle is recommended.

Modern statutes have created numerous investment vehicles called respectively Limited Liability Companies, Limited Liability Partnerships, Family Limited Partnerships or the traditional Corporation. These vehicles are used where a higher possibility of risk exists, where certain very specific tax advantages are required or where control is at issue. Your attorney will be able to see whether such an entity is needed and will discuss the same with you. These entities are generally used for larger or more complicated holdings due to the annual cost of maintaining the entity with the State in which it is created.

LLC, LLP, FLP, or Corporation.

Limited liability companies (LLC), limited liability partnerships (LLP), family limited partnerships (FLP) and corporations are all entities created originally to facilitate businesses.
These entities insulate the real owners from exposing their other assets to any risks created by the business being run. This insulation and the laws which have grown up around these entities have made them ideal to assist in the planning of complicated estates. The LLC combines the characteristics of a corporation and a partnership. The owners of an LLC are at risk only for their investment and are not personally liable for debts and obligations of the LLC. The LLC is more like a partnership for income tax purposes because the income of the LLC can be taxed directly to the members and not to the LLC. A standard corporation's income on the other hand, is generally taxed to the corporation when earned and again when the income is distributed to the shareholders as dividends. It is the combination of limited liability for owners and 'pass through' of income tax consequences to owners that makes an LLC a desirable entity in which to operate a business.

Property and business owners must also face the issue of how their property will be run during life and pass at death. These are the same considerations you face when planning your estate and the continuation of any business you own. The personal and economic issues of this process are complicated by the imposition of gift tax on life transfers and estate tax on death transfers. Gift and estate taxes are based on the value of the asset. If the value is reduced, for tax purposes (without harming the asset's underlying economic value), then the tax is lowered.

Fragmenting ownership of family assets is one method of reducing an asset's value. This is based on the principal that the sum of the parts do not necessarily equal the whole. If only pieces of a family business or real estate are given or sold during life or transferred at death, the value of the piece transferred is typically less than a pro rata share of the whole asset. This is true even though the family still owns and controls all of the pieces and, as a unit, could act together to realize the value of the whole asset.

In 1993 a parent divided his ownership of a corporation among his 5 children. The entire corporation was transferred to the children and the family still controlled it. The IRS ruled that the value of each one fifth share for gift tax purposes, was less than 20% of the corporation's value. The IRS's acknowledgment of this longstanding economic principal lead the way for many more estate tax planning devices.

A buyer of a closely-held business, will take into account the control he will have over the business. This will affect the price he or she is willing to pay for the same. It also makes finding a seller harder. In other words, discounts for lack of control and lack of marketability would be applied when valuing a partial interest in a closely-held business.

Estate Tax Table

YR	FEDERAL CREDIT	Tax Rate Over Fed Cred AMOUNT	MAX TAX OVER THIS AMOUNT
2004	$1,500,000	48%	$ 850,000
2005	$1,500,000	47%	$ 950,000
2006	$2,000,000	46%	$1,000,000
2007	$2,000,000	45%	$1,000,000
2008	$2,000,000	45%	$1,000,000
2009	$3,500,000	45%	$1,000,000
2010	Fed Tax Repealed - one yr. only		$1,000,000
2011	$1,000,000	50% + 5%	$1,000,000

Using an LLC for Estate Planning

An LLC owning real estate or marketable securities, is an ideal entity to take advantage of the discount valuation principles for estate and gift taxation An LLC can be operated by one or more members who are designated as "managers". The IRS has determined that an LLC which has fractionalized ownership is entitled to valuation reductions. They have also determined that LLCs established in certain states that allow the members, by contract, to determine when they will divide assets and do not give any rights for minority members to force distribution are entitled to further discounts on valuation. Indeed up to 40 percent or more has been allowed.

The IRS has every incentive to challenge the valuation of the member interests transferred when every dollar of adjustment means more tax. Thorough analysis of the assets involved and development of valid comparables by an appraiser with good qualifications and substantial experience are needed to discourage an IRS valuation challenge. A detailed and well thought out plan strategy is necessary to ensure that no steps are overlooked which would allow the IRS to challenge the plan. You should consult your attorney to ensure you are properly protected.

Tax Considerations

Whenever an individual dies the State and Federal Government attempt to levy a tax on the assets that person passes to his or her heirs. The Commonwealth of Massachusetts taxes the assets of a person which are in excess of $850,000.00. This includes the value of all properties whether jointly held, whether held with a pay on death, or beneficiary clause or owned by that person in Trust. It is very difficult to shield property from tax. The Federal Estate Tax is a much more complicated scheme currently the Estate Tax begins at 48% on all amounts over 1.5 million dollars. In succeeding years minimum tax levels will be increased to 2 million dollars and finally in 2009, 3.5 million.

In 2010 the Federal Estate Tax and Generation Skipping Tax will not exist for one year. In 2011 the tax reverts to all amounts over 1 million dollars and the tax rate begins at 55%.
While 1.5 million dollars seems like a great deal of money, when you are dealing with a tax rate close to 50%, substantial taxes can be incurred. A simple house can be valued at more than 1.5 million dollars. By planning an Estate properly two times the minimum can be transferred to children without incurring any Federal Tax whatsoever. The lower State Tax however is not as easily avoided. With additional planning sums above 3 million dollars can be sheltered from the Federal Estate Tax. An Estate valued at 5 million dollars would pay slightly over $1,400,000.00 in tax without planning. The exact same Estate, properly planned, would pay no Federal Estate Tax.

One method of reducing Estate Tax is by making gifts over a lifetime to family members or others. Current Federal Gift Tax Law permits an individual to give up to $11,000.00 per person per year or $22,000.00 per couple per year to a single person with no tax. This annual exclusion of $11,000.00 will increase annually based upon the inflationary index. No gift tax returns are required to be paid upon gifts so long as the annual exclusion amount is not exceeded. To the extent that the annual exclusionary amount is exceeded a gift tax return must be filed but no taxes paid until a total gifting of 1 million dollars excluding annual is exceeded.
Unfortunately, when reducing the Estate and Gift Taxes a prudent planner needs to keep in mind that there could be income tax consequences. One of the benefits of receiving inherited property is that the basis in that property is increased.

EXAMPLE; John bought property in 1980 for $10,000.00. It is now worth $375,000.00. The the property, he will need to pay tax on the $365,000.00 capital gain (appx. $54,750.00). If the same property passes to the son after the death of his father, he receives it with the basis equal to the fair market value at the date of death. With proper planning no Estate tax will be due. If the child then sold the property he would pay no capital gains tax either. If this property is commercial or is used as rental property the child will be able to depreciate the property after inheriting it, using the $375,000.00 basis as a starting point.

If assets have been fully deprecated by the parent, sale of the same will trigger a very large capital gains tax consequence. It is often beneficial to mortgage those properties and allow the same to pass to the children through the parents' Estate while receiving some value from the mortgages thereon. This is an area in which consultation with your attorney is essential.

Updating your Estate Plan.

Changes have been happening so quickly in society that it is no longer safe to rely on an Estate Planning visit 20 years ago. Changes in Medicaid planning have swept away most prior plans, shifts in both Federal and State Estate Taxes have invalidated much prior planning. The general discussion of matters in this brochure is also subject to change, it is not legal advice and not a substitute for consultation with your personal attorney. Consult your attorney for expert assistance with YOUR planning..