ESTATE PLANNING: BASIC INFORMATION

1. WHAT'S ESTATE PLANNING; ISN'T THIS ONLY FOR RICH PEOPLE ?

Estate planning is the preparation for the investment and distribution of one's assets during disability or at death. Also, estate planning may address our healthcare considerations.

When many people hear the term estate planning, they think only of rich people and the avoidance of taxes. Most of us do not consider ourselves rich. Most of us think that we do not need to be concerned with estate planning because only estates greater than the "credit amount exclusion" or the "applicable credit amount" (currently $5,430,000), need to be concerned with estate taxes.

However, many of us are rich (even if we don't have $5,430,000).

Let's add together:

The value of our home.
The value of our other real estate.
Proceeds that will be paid from life insurance policies.
IRA and Roth IRA accounts.
Pensions (401(a) plans, 401(k) plans, 403(b) plans, 457 plans, etc.).
Bank Accounts.
Certificates of Deposit.
Money Market Accounts.
Mutual Funds.
Stocks.
Bonds.
Annuities.
Interests in Businesses (Partnerships, LLCs, Corporations, Sole Proprietorships, etc).
Anticipated Inheritances (e.g., from our parents).
Automobiles.
Jewelry.
Home Furnishings.
Other assets.

All of these may be liquidated and passed on to our heirs. Many of us will be leaving hundreds of thousands of dollars (often well in excess of a million dollars) to our spouse, children, or others.

We all need to plan how and who will care for these assets in the case of our disability (especially if our spouse is deceased) and at the time of our death.

We need to determine who will receive our estate and, often in the case of our children (or others), when and how our estate will be received.

Also, we all have healthcare considerations.

Who makes healthcare decisions for us, if our condition is such that we are unable to do so.

Should we be allowed to die if medical intervention would only artificially prolong the dying process.

Estate Planning addresses all these issues.

2. WHY DO I NEED A WILL ?

Your Will passes property that you own (i) in your name alone or (ii) joint with another but titled as "tenants in common" (passing your percentage interest).

If you do not have a Will, this property passes according to the laws of Intestacy of the state in which you are a resident at the time of death. Under current law in Virginia, if you die without a Will, the following persons inherit your Probate Estate:

1. **Your surviving spouse, unless** you are also survived by children who are not children of your surviving spouse, then your surviving spouse and children [or a child's descendants if a child has predeceased you survived by descendants] split the Estate (one third to the surviving spouse and two thirds to the children [or their descendants]).

2. **Your children** (with the descendants of any child who has predeceased you taking that child's share), if your spouse has predeceased you

3. **Your parents**, if you are not survived by a spouse or any descendants.

4. **Your brothers and sisters** (or their children, if a sibling has predeceased you survived by children), if there are no heirs under 1, 2, and 3.

5. One half to the nearest relatives on your mother's side and one half to the nearest relatives on your father's side, if there are no heirs under 1, 2, 3, and 4.

Your Will does not pass property that is held as "Tenants by the Entireties" or as "Joint Tenants with Rights of Survivorship". Also, your Will does not pass property that is subject to a contract with a "beneficiary clause". See the section titled "How does my Estate pass to my survivors?".

Your Will appoints Guardians for your minor children (until the child is 18). This appointee is in essence their substitute parent(s). Your Will may appoint a Custodian or Trustee to manage, invest, and distribute the property of that child until age 18 or a later age that you specify (e.g., 21, 25, 30).

Your Will also appoints your Executor and, may appoint a Trustee of a Trust established by your Will. (See the section titled "Who Are My Fiduciaries (Executor, Guardian, Trustee).")

Your Will and other Estate Planning documents (e.g., a trust) determine, in addition to "who" receives your property, also "how" and "when" your heirs/beneficiaries receive your property. For example, your Will could distribute your Estate to a Trust for your heirs/beneficiaries to be managed, invested, and distributed in accordance with the terms of the Trust.

Your Will and other Estate Planning documents may increase the amount that your beneficiaries receive by minimizing the taxes to be paid on your Estate.

Your Will (or any other Estate Planning documents, unless you choose to make the document irrevocable) can be changed at any time. Even if you are married and you and your spouse have jointly determined all issues concerning your Estate Plan, either of you may change your documents or create additional documents at any time, even after the decease of one spouse.

3. WHAT IS A GENERAL POWER OF ATTORNEY (or a SPECIFIC POWER OF ATTORNEY) DURABLE POWER OF ATTORNEY FOR MEDICAL TREATMENT A DECLARATION under the Natural Death Act (a Living Will) ?

The **General Power of Attorney** grants a broad scope of powers (generally concerning financial matters) to your appointee to act on your behalf and is effective from the time you sign the document until revoked in writing (with proper notification to third parties). The decision to give another person Power of Attorney to deal with your property should be carefully considered. A Power of Attorney ends at the time of your disability, unless the document states that the powers continue after your disability. In all cases, a Power of Attorney ends at your death.

A Power of Attorney may state that your appointee can only exercise the powers, if you are disabled. However, if disability is not defined in the document, your appointee may sign a notarized statement that your disability has occurred to activate the powers. The signing of this notarized statement validates the powers, regardless of whether your disability has actually occurred.

Even if you have a valid Power of Attorney, please be aware that many individuals and institutions may not be willing to undertake any directions issued pursuant to the Power of Attorney. This reluctance is generally concerned with the validity of the Power of Attorney (e.g., a concern that the Power of Attorney may have been subsequently revoked by a later document).

A **Specific Power of Attorney** is a grant of limited powers (often only a single power). For example, if you establish a Revocable Trust, you may wish to give another the power to add your assets to the Trust during a period of incapacity.

The **Durable Power of Attorney for Medical Treatment** authorizes your appointee to determine the providing, withdrawing, or withholding of medical treatment if your condition is such that you are unable to make an informed decision concerning your medical treatment. This differs from the Declaration (Living Will) in that it addresses those situations where you are not in a terminal condition, but you are unable to make an informed decision concerning your medical treatment. The Durable Power of Attorney for Medical Treatment can also set forth persons who may obtain information from your healthcare providers. The ability to obtain healthcare information was limited by the Health Insurance Portability and Accountability Act (HIPAA) in response to privacy concerns.

The **Declaration (Living Will)** (pursuant to the Natural Death Act) sets forth your desire to be permitted to die naturally if you should have a "terminal condition" where the application of life-prolonging procedures would serve only to artificially prolong the dying process. You may name a designee in the Declaration to make the decision if the event occurs.

4. WHAT IS MY ESTATE ?

For our purposes, let's consider three types of Estates.

A. THE AVAILABLE ESTATE

When people speak of their Estate, often they are referring only to the property that they can use (or spend) during their lifetime (money, bank accounts, stocks, bonds, other investments). They often do not consider assets they cannot spend (life insurance policies, real estate) or do not plan to spend until a future date (pensions, IRAs).

B. THE PROBATE ESTATE

The Probate Estate is property that must pass through a State Court probate procedure to pass title of property from a person who is deceased to a person who is living. Generally, this is property that you own in your name alone or joint with another as “tenants in common”. This property passes by Will or according to State law in the absence of a Will.

However, many types of property pass to a living person from a deceased person without a probate procedure. For example,

1. Life insurance proceeds, retirement plans, and IRAs usually pass according to the beneficiary clause, not through probate (not by Will).
2. Bank accounts, brokerage accounts, mutual funds, etc. held as “joint tenants with rights of survivorship”, pass to the surviving joint tenant, not through probate (not by Will).
3. Real Estate held as “tenants by the entireties” or “joint tenants with rights of survivorship” pass to the surviving joint tenant, not through probate (not by Will).
4. Property held in a Trust passes to the Trust beneficiaries, not through probate (not by Will).

Look at the page entitled, "How does my Estate pass to my survivors", to learn more.

C. THE TAXABLE ESTATE (this is much more than your probate estate)

Generally, it is any property that you own or control at the time of your death. The property may pass through probate, by joint tenancy, or by beneficiary clause. For example,

Real estate (Residence, vacation home, office condo, rental properties, etc.)

Annuities

Bank accounts

Bonds (Corporate, Municipal, US Savings)

Business interests

Insurance policy proceeds (if you own or control the policy [e.g., can change the beneficiary])

IRAs

Mutual Funds

Partnership interests

Pension plans

Property over which you have a power of appointment

Stocks

Tangible personal property (clothing, jewelry, paintings, collections, autos, etc.)

Trust property (if the grantor of the Trust retained the right to amend or revoke the Trust, receive income, direct investments, etc.)

And More

5. HOW DOES MY ESTATE PASS TO MY SURVIVORS ?

A. By Probate ("Will" or "Intestacy [if you die without a Will]")

Your Will passes property that you own (i) in your name alone or (ii) joint with another but titled as "tenants in common" (passing your percentage interest). If you do not have a Will, this property passes according to the laws of Intestacy of the state in which you are a legal resident at the time of death.

Property that is held as "Tenants by the Entireties" or as "Joint Tenants with Rights of Survivorship" does not pass through probate (not by Will or Intestacy). Property that is part of a contract that sets forth a beneficiary in the contract (e.g., life insurance policies, retirement plans, IRAs, Trusts, etc.) does not pass through probate (not by Will or Intestacy), unless you name your Estate as the beneficiary.

B. By Type of Tenancy

Property held as "Tenants by the Entireties" (only available to spouses), or as "Joint Tenants with Rights of Survivorship" passes directly to the surviving joint tenant. This property does not pass by Probate (not by Will or Intestacy). There is a narrow exception regarding tenancy with rights of survivorship, but this is not usual.

This property (to the extent of your percentage interest therein) **is included in your Taxable Estate, although it is not part of your Probate Estate.**

C. By Contract (e.g., beneficiary clause, POD (Pay On Death) designations)

Property, subject to a contract that stipulates a beneficiary, passes directly to the beneficiary (e.g., life insurance policies, pension plans, IRAs, US Savings Bonds, Trusts). Generally, this property does not pass by Probate (not by Will or Intestacy), unless you name your Estate as the beneficiary. In Virginia (and perhaps other states) certain instruments (usually Bank accounts or CDs) may include a "POD" (Payable On Death) designation (in some states this is noted as "TOD" (Transfer On Death). If so, these pass to the designated beneficiary.

If you owned or controlled this type of property at your death, then it is included in your Taxable Estate, although it is not part of your Probate Estate.

6. WHO ARE MY HEIRS (BENEFICIARIES) & WHEN DO THEY RECEIVE MY ESTATE ?

Your **heirs** or **beneficiaries** are those persons who will receive any of your property at the time of your death. These persons could be your spouse, children, any descendants, parents, siblings, other family members, charities, educational institutions, or any other person or entity you wish to receive any of your property at your death. You may decide if adopted persons and illegitimate persons are to be included.

Property that is subject to probate passes to your heirs named in your Will or, if you die without a Will, subject to the State laws of descent in effect at the time of your death.

Property subject to a contract that stipulates a beneficiary, passes to the named beneficiary. This property does not pass through probate (not by Will or Intestacy). If you want this property to pass by Will, then you would name “my Estate” as the beneficiary under the contract. Examples of this type of property are life insurance policies, retirement plans, IRAs, Trusts, US Bonds, Bank accounts and certificates that have a POD provision naming a beneficiary, etc.

Property held as “Tenants by the Entireties” or “Joint Tenants with Rights of Survivorship” pass to the surviving joint tenant. This property does not pass through probate (not by Will or Intestacy). Examples of this type of property are bank accounts/certificates, brokerage accounts, mutual funds, real estate, etc.

Determining when my heirs receive the property is important.

Property that passes through probate (by Will or Intestacy) will be distributed to the heirs, usually within 6 - 24 months of your death. Partial distributions may be made by your Executor at any time.

Property that passes pursuant to a beneficiary clause is usually available within 1 - 2 months of your death.

Property held as “tenants by the entireties” or “joint tenants with rights of survivorship” passes to the surviving joint tenant at your death.

You can control when your heirs receive the property by appointing a Custodian under the Uniform Transfers to Minors Act (until age 21 when the property must be distributed) or any later age by use of a Trust. This is often desirable if your heirs are minor children or not familiar with handling amounts as large as the Estate that they will inherit. Many persons prefer that their Estate be held in Trust until their beneficiaries attain a certain age. While the property is being held in Trust, the Trustee can distribute income and principal from the Trust for the beneficiaries support, maintenance, health, or education with the amount that remains undistributed being paid to the beneficiary on a certain date (e.g., 1/3 at age 25, 1/3 at age 30, and the balance at age 35).

If you wish to delay outright distribution to your beneficiaries until a certain age, then you must set your Estate Plan so that all property (e.g., property passing by Will or beneficiary clause) passes to the Trust to be held, invested, and distributed by the Trustee directly to on behalf of the beneficiary until final distribution is to be made.

Remember that your beneficiaries may be receiving much more money than is available to you during your lifetime (e.g., insurance proceeds, retirement plans, IRAs, the equity in your residence and other real estate). Also, this money is often received in lump sum.

7. WHO ARE MY FIDUCIARIES (EXECUTOR, GUARDIAN, TRUSTEE) ?

Generally, a Fiduciary is a person standing in a position of trust. Your Executor, Guardian, and Trustee (who may be persons or institutions) **are referred to as your FIDUCIARIES**. The same person or institution can serve as your Executor, Guardian, or Trustee, if you desire. Often your Fiduciary must be an individual or qualifying corporation (e.g., a bank, or registered brokerage) resident in Virginia, unless a nonresident Fiduciary is a person premitted by statute, such as, (i) your spouse, (ii) the parent, brother, sister, child or other descendant of the decedent, (iii) spouse of your child, or (iv) anyone who is your sole beneficiary. Your Executor and Trustee under your Will usually should be a Virginia resident. The Trustee of an Inter Vivos Trust (a Trust established before your death) may be a nonresident. Your Guardian should be the person you believe best able to raise your children, regardless of residency.

EXECUTOR: generally responsible for (i) probating your Estate, (ii) identifying and collecting your assets, (iii) paying existing debts, funeral expenses, administration costs of your Estate, taxes, etc., (iv) filing tax returns, and (v) distributing your net Probate Estate to your beneficiaries (partial distributions may be made before probate is completed). The period of administration of your Estate generally lasts 6 - 24 months (usually, about 16 months).

GUARDIAN: generally responsible for raising your children under age 18 and may be responsible for (i) the investment and distribution of assets inherited by your children, or (ii) paying the expenses of your children from funds made available to the Guardian by your Executor or Trustee.

TRUSTEE: generally responsible for investment and distribution of all assets placed in Trust during your lifetime, under your Will, or from other sources (e.g., life insurance policies, retirement plans) for your beneficiaries (e.g., your spouse, children, or others). The Trustee may administer, invest, and distribute assets held in Trust for any length of time (e.g., one year, ten years, until the beneficiary attains a specified age, etc.).

SURETY:
State law may require that your appointed Fiduciaries give surety (i.e., purchase a surety policy from an insurance company) that the Fiduciary will faithfully perform his or her duties and in default of such performance (e.g., fraud) the insurance company will pay any loss to the beneficiaries. [Note: this is not a bond to cover losses from investments in the absence of fraud or gross negligence]. The surety bond is usually purchased from the assets of the Estate. You may waive surety and save the Estate the cost of the surety policy. However, if surety is waived, then the beneficiaries will have no protection against losses caused by the Fiduciary other than to bring suit against the Fiduciary and hope that the Fiduciary has sufficient assets to pay.

COMPENSATION OF FIDUCIARIES:
The Fiduciary is entitled to a reasonable fee for the performance of services necessary to administer the Estate or subsequent Trust. An Executor's fee as high as five percent of the Probate Estate or greater may be deemed to be reasonable dependent on the work entailed by the Estate. A corporate Executor or Trustee will generally charge a fee according to its published schedule of fees in effect at the time its services are performed.

8. WHAT IS A TRUST & DO I NEED ONE ? (p. 8 - 9)

A Trust is an entity that is created to hold, manage, and distribute assets for the benefit of the beneficiaries. The person who sets up the Trust is called the **Grantor, Settlor, or Trustor**. The person who administers the Trust is called the **Trustee**. The persons who are to receive distributions from the Trust are called the **Beneficiaries**.

A Trust may be revocable at any time. The Grantor may be the Trustee of his or her own Trust (or the Grantor and spouse could be Co-trustees). The Grantor may be the sole Beneficiary of his or her Trust, or may designate who the Beneficiaries will be. The Grantor may remain in full control of the assets transferred to the Trust (e.g., management, investment, and distribution), **however, the assets will be included in Grantor's Taxable Estate at the time of his or her death**.

The Grantor can designate a Trustee (such as his or her spouse) to manage the assets if Grantor should become incapacitated. Grantor can designate his or her spouse or a different Trustee to manage the assets after Grantor's death for the benefit of the surviving spouse, children, or other beneficiaries. Most types of Revocable Trusts do not require a separate income tax return during the Grantor's lifetime (all tax activity is reported on the Grantor's individual return). Also, if the Grantor is the Trustee during his or her lifetime, no Trustee fees are paid and no accountings are required.

The **Revocable Living Trust** is the Trust most frequently discussed in numerous articles that are written for the general public. This Trust is generally promoted for use to avoid probate, enable management of assets in the case of your disability, manage assets for children after your death, and to enable some tax planning for estates up to the "credit amount exclusion" ($5,430,000 in 2015; possibly $10,860,000 for a married couple).

Persons with very large estates, estates with particular types of assets, or estates with beneficiaries with particular types of needs, should consider other kinds of Trusts (e.g., Life Insurance Trusts, various types of Charitable Trusts, Generation Skipping Trusts, Trusts that freeze the value of appreciating assets, etc.).

A Trust may be established during your lifetime (called an inter vivos Trust) or in your Will (called a testamentary Trust). **Regardless of which type of Trust you use, it is important to determine which assets should be transferred to the Trust**. Assets may be transferred (i) immediately or anytime during your lifetime (inter vivos Trust only), (ii) by Will (both types of Trust), or (iii) by naming the Trust as a primary or secondary beneficiary under a life insurance policy, retirement plan, or POD provision (both types of Trust).

Some of the advantages of a Trust are:

1. Avoid Probate

The probate process in Virginia, although not necessarily expensive or onerous, is generally better to avoid. However, establishing a Trust for the sole purpose of avoiding probate should be carefully weighed against the cost of establishing and maintaining the Trust. **Many persons <u>incorrectly</u> believe that an asset that does not pass through probate escapes Estate Tax. Your Taxable Estate includes your Probate Estate and all assets that pass outside probate if you had any control over the asset at your death.**

2. Privacy

Unlike a Will, which becomes subject to public examination when admitted to probate, a Trust is not subject to public scrutiny. Also those assets listed on the probate inventory and accountings may be subject to public examination. A list of assets held by a Trust is not subject to public scrutiny. Privacy is an issue to consider when deciding whether to establish a Trust.

3. May Reduce Estate Taxes

Use of various types of Trusts may significantly reduce your Estate Taxes. Use of a Revocable Trust may provide for your surviving spouse and have the assets that remain in Trust at your surviving spouse's death excluded from your spouse's Taxable Estate. **However, the transfer of assets into a Revocable Trust or any other type of Trust where you have retained control (e.g., the right to change beneficiaries, determine or receive distributions, or determine investments) will not remove the assets from your Taxable Estate. Also, the proceeds from a life insurance policy you own or control at your death are included in your Taxable Estate** (when people say that proceeds from a life insurance policy are not taxable, they are referring to the fact that the proceeds are not subject to income tax).

4. Provide management of your assets during your incapacity

All persons should consider establishing a Revocable Trust for this purpose, especially elderly clients and clients with a family history of incapacity. Use of a Power of Attorney and joint accounts may be sufficient to provide for management of your assets during your incapacity. However, in many cases, third parties will not accept a Power of Attorney. Also, use of joint accounts (i) may subject your assets to the creditors of the joint tenant and (ii) may not provide for distribution according to your wishes at the time of your death.

5. Provide management of assets for beneficiaries

The Trust can remain under your complete control during your lifetime. At your death, the Trust can identify the subsequent beneficiaries and appoint qualified Trustees to make investment and asset management decisions for the beneficiaries. The Trust can protect the interest of the beneficiaries from themselves, from creditors, from other third parties.

6. Added assurance that some of the Estate will pass to your children

In the case of a married couple, a Trust can be used to allow for income to be available to the surviving spouse during his/her lifetime, with the principal passing to the children at the death of the surviving spouse. The Trust can also permit distributions of principal to the surviving spouse at the discretion of the Trustee or upon the demand of the surviving spouse (the spouse's right to demand principal must be limited if the Trust is also being used to avoid Estate Taxes).

7. Be used as a beneficiary to insure proper distribution of Life Insurance Policies, Retirement plans, and other assets that pass by beneficiary clause

Many assets that pass by beneficiary clause (e.g., life insurance policies and retirement plans), do not allow you to properly specify contingent beneficiaries. For example, let's assume your spouse has predeceased you and you have three children (all living) and each child has two children (your grandchildren). Your Will and Trust state that if one of your children dies before you, your grandchildren from that child will take this share subject to the continuation of the amount being held in Trust until the grandchild is age 25. The beneficiary clause of your life insurance policy states "To my children". The proceeds of your life insurance policy (i) may end up being split by your surviving children only (with nothing to your grandchildren from your deceased child) and (ii) even if paid to your grandchildren, may become their property with no supervision after age 18. Making your Trust the beneficiary, rather than your children, will ensure that your descendants take according to your wishes. **Caveat: Before you name the Trust beneficiary of a retirement plan/account, consult a tax professional regarding income tax consequences to the Trust beneficiaries at your death.**

HOWEVER, CERTAIN DISADVANTAGES TO A TRUST MAY EXIST, SUCH AS:

1. Cost relative to the advantages of the Trust

Costs include the cost to establish the Trust, transfer assets to the Trust, and maintain the Trust. Depending on the value of your Estate, the type of assets, and the age and financial knowledge of the beneficiaries, you may be able to accomplish your testamentary directions without a Trust.

2. Tax rates

Income tax rates for Trusts that are taxed as separate entities are higher than individual income tax rates. However, distribution of income to beneficiaries eliminates this problem. (Most Revocable Living Trusts are not taxed as a separate entity during the lifetime of the Grantor).

3. If the Trust cannot be changed (e.g., after Grantor's death)

A Trust that cannot be changed (e.g., an irrevocable Trust) or a Trust that becomes irrevocable after an event (e.g., Grantor's death) will only fulfill Grantor's wishes as existing at the time the Trust becomes irrevocable. This may be a problem. In the case of a Trust that is set up to provide for the surviving spouse, then to the children after the death of the surviving spouse, the advantage for the surviving spouse to control the income and principal or to be able to later designate the division of income or principal to the children must be considered. The Trustee, who is charged with protecting the interests of both the surviving spouse and the children, may refuse to exercise discretion to give principal (or sufficient principal in the surviving spouse's view) to the surviving spouse. Also, things may change in the children's lives that, if known at the time of X's death, would change the way the Trust would distribute to the children. (For example, a child predeceases spouse survived by a grandchild with special needs, or a divorce occurs, or a child becomes involved in an unwise activity [e.g., use of drugs or alcohol] that additional money would accelerate).

9. WILL MY ESTATE BE TAXED ? (p. 10 - 11)

There is a tax imposed at the time any individual transfers property to another during his/her lifetime or at his or her death. The Gift Tax is imposed on lifetime transfers (property transferred with donative intent without anything being given in return). The Estate Tax is imposed on transfers that take place at your death. The Gift Tax and the Estate Tax rates are unified.

There is an additional tax (called the “Generation Skipping Tax) if the transfer is to a “skip person” (generally, a person who is removed by two or more generations from the donor, e.g., a transfer from grandparent to grandchild or great-grandchild).

GIFT/ESTATE TAX

A. What is taxed

1. That's simple - everything that is not excluded.

2. Generally, everything you own or control at the time of your death that passes to another person. This is your Taxable Estate. Your Taxable Estate is not only those items that pass by Will (referred to as your Probate Estate), it is much, much more (See the page entitled, "What Is My Estate", paragraph C. titled “The Taxable Estate”).

B. What is exempt

1. **Spousal exclusion**. Any transfer from one spouse to another during their lifetime or at their death is exempt.

2. **Annual exclusion** (currently 14,000, but this amount may change). Any transfer of $14,000 (or property valued at $14,000) or less from any person during their lifetime to any other person is excluded from the Gift Tax. This is an annual exclusion (e.g., parent can give $14,000 to a child each year or an individual could give $14,000 to a friend each year). The number of recipients in any calendar year is unlimited (e.g., X could give each of his three children $14,000 in the same year and each of his friends $14,000 in the same year). This annual exclusion is per person (e.g., mother could give daughter $14,000 and father could give daughter $14,000 in the same year).

3. **Medical/Education exclusion**. Payments for medical expenses of another paid directly to the health care provider, or payments for the tuition costs of another paid directly to the institution are exempt.

4. **“Credit Amount Exclusion” (sometimes called the “applicable credit amount” or the “unified credit amount”)**. In addition to lifetime transfers set forth under subparagraphs 1, 2, and 3 immediately above, an additional amount (the “credit amount exclusion”), may be transferred from any person during his or her lifetime or at his or her death to all recipients.

C. The Credit Amount Exclusion

For tax year 2015, the Credit Amount Exclusion for each person is 5,430,000. For a married couple the surviving spouse’s Credit Amount Exclusion can be increased by the unused portion of their deceased spouse.

Because the Credit Amount Exclusion is so high, very few persons (less than 1% of the population) will be subject to the Estate/Gift Tax. Essentially, estate planning for the purpose of avoiding estate taxes has been eliminated for most people.

Generation Skipping Taxes

When enacting the Gift/Estate Tax, Congress intended the tax to be imposed at each generation level. Therefore, if a transfer is made that “skips” a generation, the Generation Skipping Tax (GST) is assessed in addition to the Estate Tax. The tax is imposed on a transfer made to a skip person (e.g., a person who is removed by two or more generations from the donor, such as a transfer from a grandparent to a grandchild). The tax is imposed when the transfer is made (during your lifetime or at your death).

Most persons do not need to concern themselves with the GST. However, persons who are very wealthy or whose children or other heirs are very wealthy should consider skip persons as beneficiaries under their Will (insurance policies, etc.) to take advantage of the GST exclusion.

Of course, your child may not like the fact that his children have become millionaires. And you may not want to bypass your own child in favor of your grandchildren. Again a Trust may be used. The Trust could name your child as lifetime income beneficiary, with your grandchildren to receive the balance only after the death of their parent (your child).

Some person’s utilize a “Skip Person Trust” not to save taxes, but for other reasons (e.g., their child has proven to be unable to manage money, the child’s marriage is headed toward a divorce, you wish to make sure that your Estate only passes to blood kin).

Questions / Comments to raise at the initial interview **(add additional sheets, if necessary)**

