

Estate Planning Considerations

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Definitions

- Estate Planning:
 - The collection of tasks designed to prepare and direct:
 - Management of assets in the event of incapacity;
 - Lifetime transfers for asset protection, tax, and beneficial enjoyment reasons; and
 - Transfers of assets at death.
- Estate Administration:
 - The collection of tasks associated with gathering assets, paying debts and taxes, and distributing remaining assets to beneficiaries or heirs.

Non-Probate Assets vs. Probate Assets

Non-Probate Assets	Probate Assets
• Retirement Plans (IRAs, 401(k)s)	• Everything that does not pass by beneficiary designation
• Life Insurance	• Cash
• Accounts titled as JTWROS, POD, or TOD	• Most bank accounts
• Many assets held in trust	• Vehicles owned in individual name

Texas Matrimonial Property

Separate Property	Community Property
• Property spouses agree is separate property by valid written marital agreement	• Anything that is not separate property, including:
• Property acquire by gift, bequest, or devise during marriage	• Income from separate property (e.g., dividends or rental income from property owned before marriage)
• Property acquired before marriage	• Wages, earnings, bonuses
• Proceeds from personal injury	

Property Classification

- Real property
 - Land
 - Bricks and mortar (aka improvements)
 - Most mineral interests (in Texas)
- Personal property
 - Everything that is not real property including:
 - Tangible personal property (e.g., furniture, personal effects, artwork)
 - Cash
 - Mortgage, stocks, bonds, brokerage accounts
 - Business interests, LP, LLC, Corporations

Consequences of Failing To Do Comprehensive Estate Planning

- Give up control over how assets pass at death
- Determination of heirship may be required
 - If decedent died without a will
 - If will fails to fully dispose of estate
 - If will is not probated within time prescribed by law
- Time drain
- Frequently more costly

Four Step Estate Planning Process

1. Understand personal situation
 - Family members
 - Special needs or circumstances
2. Understand financial situation
 - Nature, valuation and appreciation potential
 - Currently and in the future
3. Work with client to determine goals and objectives
 - Client driven
4. Identify and implement techniques to achieve goals on a tax-enhanced basis

Common Objectives

- Simplify estate administration
- Provide for and protect beneficiaries, especially minors and surviving spouse
- Retain flexibility and control
- Smooth transition of business ownership and management without interruption of operations
- Creditor protection
- Avoid disincentives
- Minimize transfer taxes
- Minimize IRS audit risk

Core Estate Plan

- Will only
- Pourover will + revocable trust
 - Privacy
 - Transfer real estate
 - Coordinate beneficiary designations
 - Clarify ownership and titling of assets
 - JTWROS
 - Joint tenants
 - Tenants in common
 - Community property vs. separate property
 - Marital property agreement

Ancillary Documents

- Durable power of attorney
 - General vs. limited
 - Springing vs. immediate
- Medical power of attorney
- Directive to Physicians / Living Will
- HIPAA consent
- Anatomical gift statement
- Declaration of Guardian

General Guidelines for Estate Planning Throughout the Ages

- 18-22
 - Ancillary documents, simple will, coordinate beneficiary designations
- 23-40
 - Update ancillary documents, declaration of guardian for minor children, more comprehensive wills with at least contingent trusts for children, update beneficiary designations
- 40+
 - Update ancillary documents, determine if more advanced foundational estate planning or lifetime transfer planning appropriate, update beneficiary designations

Common Reasons for Estate Planning Updates

- Changes in finances
 - Substantial increase or decrease in net-worth may warrant a change
 - Potential liquidity event
- Changes in family circumstances
 - Birth, death, divorce, illness or disability of family member
- Changes in law
 - Scheduled increase/decrease of estate tax exemption?
Scheduled repeal of estate tax? Move to a new state?
- Changes in preferences or goals
 - E.g., your college roommate is no longer the best choice for executor for your estate

Buy-Sell Agreements: Core Functions

- Controls who may own the business after an owner's death
- Creates a market and liquidity for an otherwise illiquid interest
- Establishes who buys: the entity, the surviving owners, or both
- Coordinates the purchase price, payment terms, and funding
- Helps equalize inheritances between active and inactive children

Types of Buy-Sell Agreements

Cross Purchase	Entity Redemption	Wait-and-See
Basis adjustment	Simplest funding	Owners have first option to purchase, company second option
Usually requires multiple life insurance policies to implement	<i>Connelly</i> exposure	Most flexible; most complex

Buy-Sell Agreements:

Will the Business Plan Work at Death

- What events trigger a purchase: death, disability, retirement, divorce, or termination?
- Is the purchase mandatory or optional; a put or a call?
- How is the price determined, and when was the valuation last updated?
- Is the purchase funded with life insurance,* dependent on business cash flow, or outside financing?
 - Beware of *Connelly v. United States*, 602 U.S. 257 (2024).
- Do the will, revocable trust, entity documents, and buy-sell agreement use consistent terms?
 - Is the executor or trustee aware of the obligation to comply with the agreement?

Buy-Sell Agreement Review Checklist

- ☐ Current signed agreement and all amendments
- ☐ Current capitalization table
- ☐ Triggering events and required notices
- ☐ Mandatory versus optional purchase
- ☐ Valuation standard and appraisal procedure
- ☐ Date of last valuation or certificate of value
- ☐ Insurance owner, insured, beneficiary, and policy amount
- ☐ Purchase-price payment terms and security
- ☐ Interaction with trusts, marital property, and transfer restrictions
- ☐ Tax consequences under *Connelly*
- ☐ Treatment of S corporation eligibility and trust shareholders
- ☐ Disposition of voting and nonvoting interests
- ☐ Consistency with the client's equalization plan

Estate, Gift and GST Tax Systems

Three Transfer Taxes

- Gift Tax
 - Transfers during lifetime
- Estate Tax
 - Transfers upon death
- Generation Skipping Transfer Tax
 - Transfers to "skip persons"
 - Additional Tax

Unified Estate and Gift Tax System

- \$15,000,000* exemption per person (indexed for inflation)
- Excess transfers taxed at 40%
- Estate tax exemption “portable” to surviving spouse if certain conditions met (namely must file an optional/non-mandatory Form 706)
- Generation-Skipping Transfer (GST) tax system is not unified with gift/estate tax system and GST exemption is not "portable"

Assets Subject to Tax

- Interests in Businesses (e.g., LP, LLC, corporation, stock options, warrants)
- Personal Property
- Real Estate
- Financial Assets
- Retirement Accounts
- Life Insurance

Tax-Free Transfers

- Spouse (US Citizen)
- Qualified Charity
- \$15,000,000* Gift/Estate Tax Exemption
- \$15,000,000* GST Tax Exemption
 - Predeceased child exception
- Annual Exclusion Gifts

Annual Exclusion Gifts

- \$19,000 per donor/per donee*
- Methods of Completing:
 - Outright gifts
 - Crummey Trusts
 - Section 2503(c) Trusts
 - Section 529 Plans

*Indexed for inflation

Additional Exemptions from Gift Tax and GST Tax

- Medical expenses (direct)
- Tuition expenses (direct)

Income Tax Basis Rules

Basis of Transferred Assets

- Most assets *acquired from a Decedent* receive a **basis adjustment = FMV on date of death**
 - Adjustment doesn't apply to Income in Respect of a Decedent (IRD) assets
- Assets *acquired as a lifetime gift* receive a **carry-over basis**

2017 Tax Act Created and OBBBA Continued a New Paradigm

- \$15,000,000* exemptions for estate, gift and generation-skipping transfer (GST) tax
 - Approximately 99.9% of decedents have a net worth less than the basic exclusion amount (BEA)
- Have your clients carefully considered importance of income tax planning versus estate tax planning in their core estate plan?
 - Does their plan need additional flexibility?
 - Does their plan need to be “unplanned” in light of changes in law?

Tax Planning in a Core Estate Plan

Portability of a Pre-Deceased Spouse's Exclusion Amount

- If first spouse to die fails to use entire \$15 million basic exclusion amount, surviving spouse may “inherit” the unused estate tax exemption (the Deceased Spousal Unused Exclusion or “DSUE” amount)
 - Survivor can use DSUE amount for lifetime gifts or at death
 - Only most recently deceased spouse's exemption is “portable”
 - Must file Form 706 to claim
 - Ideal for retirement plan assets
- GST tax exemption is not “portable”

Transfer Tax Planning Options in a Core Estate Plan

- Traditional Method – Bequest to Bypass Trust equal to deceased spouse's basic exclusion amount
 - Rely on portability for any unused exemption
- Alternative Methods
 1. Outright to surviving spouse
 2. Outright to surviving spouse (with disclaimer to Bypass Trust)
 3. Bequest to QTIPable Trust (with partial QTIP election)
 4. Bequest to QTIP Trust (with Clayton provision)

Lifetime Gifts

VS.

Transfers at Death

Common Advanced Lifetime Planning Techniques

- Outright gift
- Crummey Trust
- Section 2503(c) Trust
- Irrevocable Life Insurance Trust
- Grantor Trust (IDGT)
- Grantor Retained Annuity Trust (GRAT)
- Generation-Skipping Trust
- Qualified Personal Residence Trust (QPRT)
- Installment Sale to Grantor Trust
- Spousal Lifetime Access Trust (SLAT)
- Private Foundation
- Charitable Lead Trust (CLAT/CLUT)
- Charitable Remainder Trust (CRAT/CRUT)
- Donor Advised Fund (DAF)

Utilizing Lifetime Gifts to Save Transfer Tax

- Gift taxes are calculated on a tax *exclusive* basis, while estate taxes are calculated on a tax *inclusive* basis
- How much does it cost to transfer \$1,000,000 to your children during life vs. at death?*

Lifetime transfer

Client starts with
\$1,400,000

Gift tax
\$400,000

Net to heirs:
\$1,000,000

Cost to transfer
\$1,000,000 to heirs
during life = \$1,400,000

Testamentary transfer

Client starts with
\$1,666,666

Estate tax
\$666,666

Net to heirs:
\$1,000,000

Cost to transfer
\$1,000,000 to heirs at
death = \$1,666,666

Lifetime Gifts Utilizing Minority Interest Discounts

\$1,200,000
Family business
gift to three
children

\$280,000 \$280,000 \$280,000

Gift tax values are based on the interest gifted (1/3 to each child = minority discount)

Total taxable value = \$840,000

\$1,200,000
Family business
passes to three
children at death

\$400,000 \$400,000 \$400,000

Estate tax values are based on decedent's interest held at death (100% = no discount)

Total taxable value = \$1,200,000

Estate Administration and Probate

Estate Administration: Probate

- Probate in Independent Administration
 - Application
 - Original Will and Codicils
 - Notice
 - Prove up
 - Testimony
 - Order
 - Oath
- Bond (if not waived)
- Letters Testamentary
- Notice to Creditors
- Notice to Beneficiaries
- Inventory and List of Claims
- Ancillary Probate

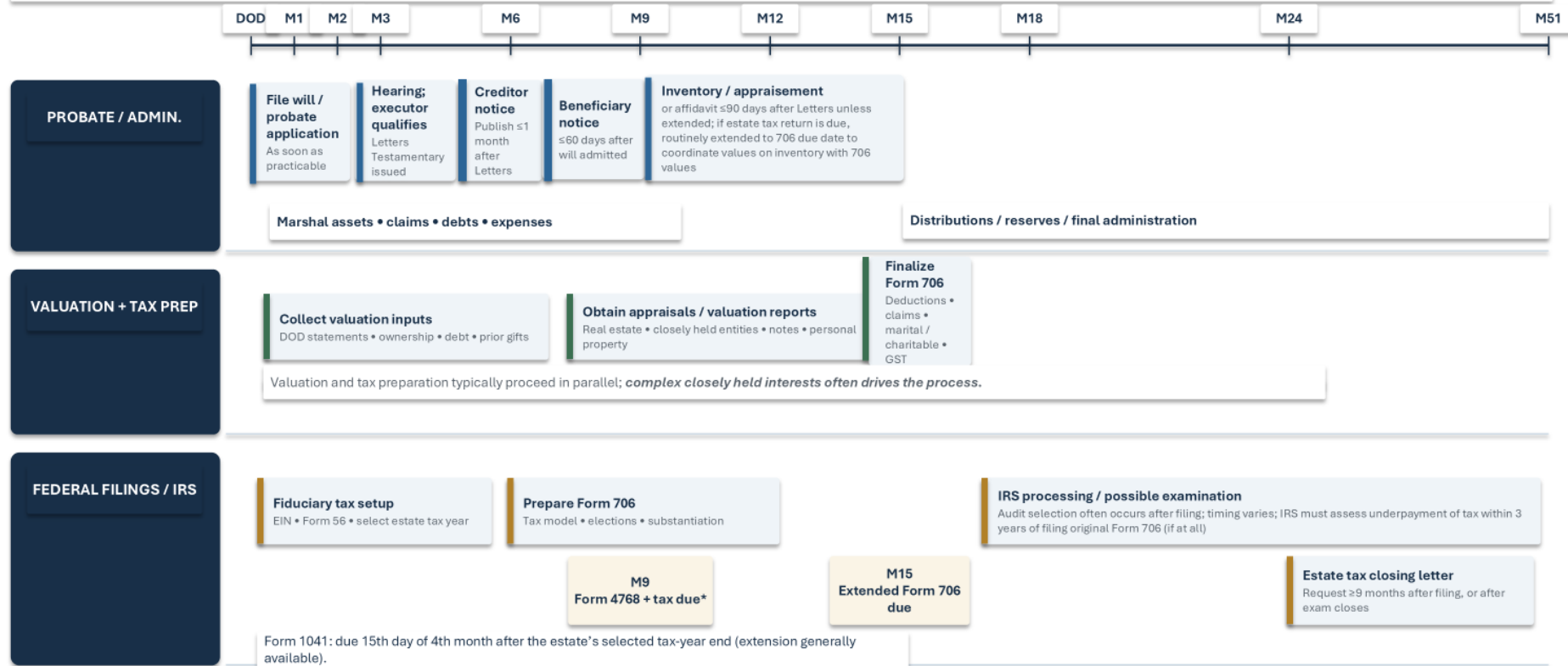
Estate Administration

Non-Probate Tasks

- Preparation of estate tax return Form 706 and income tax return(s) IRS Form 1041
- Arrangements for pets
- Maintenance and security of real property
- Freezing credit
- Forwarding mail
- Dealing with electronic assets and social media
- Canceling memberships
- Dealing with insurance, retirement benefits, pensions, Social Security, veterans benefits

Estate Administration & Estate Tax Timeline

Illustrative Texas probate + federal estate tax workstream | deadlines measured from date of death / appointment as noted



* Form 4768 generally extends the Form 706 filing deadline, not the estate-tax payment deadline; tax is generally due 9 months after DOD.

Texas deadlines shown are statutory outer dates and may depend on appointment / admission dates; local court timing varies.

Typical total duration: ~18–30+ months