

ESTATE

PLANNING

A general overview of Estate Planning provided for your interest by the
LAW OFFICES OF **BLOOM, BLOOM & ASSOCIATES, P.C.**

ESTATE PLANNING

Estate planning means planning for the disposition or distribution of your assets upon your death.

A good plan has several goals:

- To make sure your assets are distributed to the individuals or organizations you select in the manner which you choose
- To minimize the effect of federal and state taxes on your estate
- To allow you to select who will handle your affairs on your behalf
- To reduce and minimize the administration costs of running your estate

The more you understand the estate planning and probate process, the better the chance that your estate plan will accomplish your goals and objectives.

COMPONENTS OF YOUR ESTATE PLAN

Virtually every adult needs a will, regardless of financial situation, age, marital status or health. A will is a written document which:

- Outlines how you wish to distribute your property
- Designates a personal representative who is responsible for administering your estate, which includes: taking inventory of your property, preserving your estate, paying creditors and taxes and distributing the property among your beneficiaries
- Appoints guardians for minor children



Estate planning can involve more than just a will. It can also make arrangements for the accumulation and handling of assets while you are alive and upon your death. It may involve trusts to support your children until they reach a specific age, the ability to manage your assets during or after your lifetime, or to shelter your estate from taxes. It may also involve gifts to people or charities.

The first step in the estate planning process is to take an inventory of your liabilities and assets, including your home, jewelry, stocks and bonds, bank accounts, insurance and retirement plans. The second step is to determine what your goals are with respect to your estate. For example, do you want any assets to go to charity or for your children's education? Who would be a good candidate to serve as your personal representative or trustee or as your children's guardian? If something were to happen to your entire immediate family, what should happen to your property? The third step is to consider the tax ramifications of your plans.

IF YOU DIE WITHOUT A WILL

If you die without a will (or “intestate”), the probate court will take control of your estate and distribute your assets according to Michigan law. This method of distribution is designed in a general fashion, and may not match your goals.

First, your assets may not go to the individuals you would have selected. Since the law generally favors the closest family members, non-relatives whom you may have wished to include will be overlooked.

Second, if you have minor children, you will not be able to nominate their guardian; instead the State will make that determination. In addition, the absence of a will places a great burden on the eventual guardian. Because the court typically gives part of the estate to the children, the guardian may have to petition the court each year for an allowance to support the children, and must report expenditures. This is a time consuming and expensive procedure.



Third, without a will, the court will appoint a personal representative to oversee and administer your estate. If there is no relative willing or able to serve as personal representative, the court may appoint a professional representative (an individual or an institution). This will be an expense to your estate each year until the estate is settled. Many people find comfort in selecting someone they know and trust to oversee their estate.

Finally, if you die intestate, your estate will not have the benefit of tax planning to minimize the effects of federal and state taxes.

PROBATE

Most estates include probate assets and non-probate assets. Probate assets are those owned in your own name which requires some sort of intervention by the court to determine where the assets should go (stock shares, for example). Non-probate assets are those which transfer automatically to another person on your death. Examples of non-probate assets include:

- Assets held in a revocable living trust
- Proceeds of an insurance policy where beneficiaries are named
- Balances in retirement plans, Individual Retirement Accounts, or Keogh accounts which are payable to designated beneficiaries
- Property owned jointly with “rights of survivorship” which passes directly to the co-owner (such as a house in joint tenancy)

PROBATE INVOLVES TWO STEPS:

First, the probate court determines that your will is valid.

Second, the probate court oversees the process of settling your estate. A court will:

- Supervise the actions of your personal representative
- Rule on the legitimacy of any creditors’ claims against your estate
- Supervise the transfer of your remaining property to the beneficiaries named in your will or to your heirs if you die without a will

- Oversee a guardian's use of any property which is left to minor children until they reach legal age of majority

Probate can be informal or formal and may be unsupervised or supervised.

The probate process can take as little as six months or can drag out for years (for example, if your will is contested or if you own property in other states).

A properly drafted estate plan which is kept up-to-date will minimize probate delays and expenses.

Probate proceedings are public and normally require the assistance of an attorney.

AVOIDING PROBATE



There are certain reasons you may wish to avoid probate:

- If you desire privacy or if you own property in more than one state.
- To provide for uninterrupted management of your assets
- For a certain sense

of relief, knowing that everything has been taken care of prior to your death.

- If you become incompetent
- Tax planning opportunities
- Reduce or eliminate the costs and fees of probating the estate

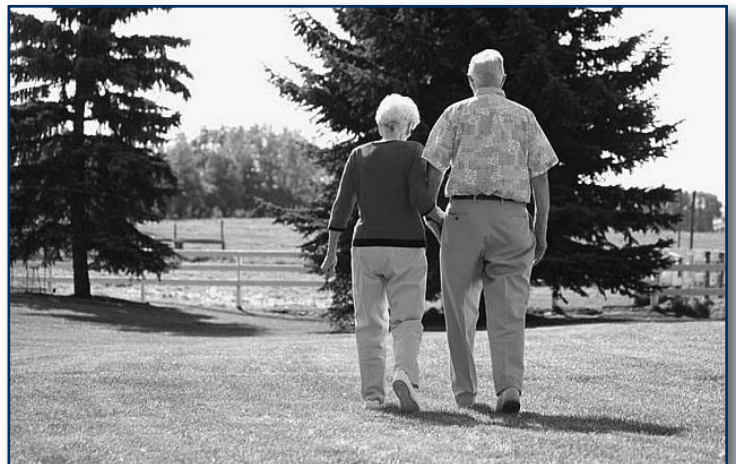
The practical way to avoid probate is by employing a revocable living trust (or "inter vivos" trust), which provides for the management of your assets during your lifetime and for their disposition upon your death. You may change or revoke the terms of the trust at any time and may designate anyone you like, such as a professional manager, your spouse, or even yourself, as trustee. In other words, during your life you remain in complete and absolute control of your assets.

ESTATE & GIFT TAXES

Estate taxes are deducted from the assets in your estate. If you fail to plan for estate taxes, your estate could be reduced by federal taxes which are as high as 45%, as well as state inheritance or estate taxes.

Whether or not your estate goes through probate, it will be taxed depending upon the size of the estate and whether your spouse survives you. For federal estate tax purposes, your estate includes:

- Property held in your own name
- Half of the value of property you held jointly with your spouse
- A percentage of the value of the property you held jointly with others, based on your percentage of ownership





- The face value of life insurance you own on your life
- Property over which you have a general power of appointment
- Value of IRAs, 401(k) accounts and other retirement accounts that you own

IMPOSITION OF ESTATE TAX

The federal estate tax imposed is in the nature of an excise tax on the transfer of property at death. It applies to estates of residents, citizens, and nonresident aliens. It is not a tax on the right to receive property. It is a tax on the right to transfer property at death, and is measured by the value of such property.

The starting point in figuring the federal estate tax liability is the gross estate. The gross estate of a decedent is the total value of all the decedent's property, whether real or personal, tangible or intangible. This includes not only all property in which the decedent had an interest at the time of his death, but also certain other property.

Once the property that makes up the gross estate has been determined, the next step is to value it. Generally, for estate tax purposes, the value of the property in the estate is its fair market value as of the date of death.

The value of the gross estate less allowable deductions yields the taxable estate. This involves subtracting the deductions from the value of the gross estate, such as: expenses, debts, taxes and charitable and marital transfers.

JOINT INTERESTS

In certain circumstances the gross estate may include the entire value of property held jointly at the time of the decedent's death by the decedent and another person or persons with right of survivorship.

A special rule applies with respect to property owned jointly by spouses. Only one-half of the fair market value of a joint interest is includable in the decedent's gross estate, regardless of which spouse furnished the consideration to acquire the jointly held property. This special rule for spouses doesn't apply if the decedent's surviving spouse isn't a U.S. citizen.

ESTATE TAX EXEMPTION & RATES

For estates of decedents dying during 2009, an estate tax exemption of \$3.5 million per person is allowed. The maximum estate tax rate for estates is 45% in 2009. In 2010, current laws call for the estate tax to be repealed. In 2011, current laws call for the estate tax to be re-imposed with a top rate of 55% and an estate tax exemption of \$1 million per person.

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GIFTS

ANNUAL EXCLUSION FOR PRESENT INTEREST GIFTS

During your lifetime you can gift up to \$1 million without any gift tax consequences. In addition you are entitled to make annual gifts that are in addition to your lifetime gift allowance. In 2009 the annual gift tax exclusion amount is \$13,000. The annual exclusion amount is per recipient and is increased each calendar year by an inflation adjustment. Gifts in excess of the annual exclusion (or gifts that do not qualify for the annual exclusion) are taxed to the donor at the same rates that apply to the estate tax.

The gift tax exclusion only applies to gifts of an unrestricted right to the immediate use, possession or enjoyment of property (or the income from property).

Transfers to a spouse who is not a U.S. citizen are covered by a \$133,000 exclusion (for 2009 as adjusted for inflation) rather than the \$13,000 (inflation adjusted) annual exclusion amount described above. Although the estate tax under federal tax legislation enacted in 2001 is repealed, effective 2010, the gift tax was not repealed.

Gifts by husband or wife to third party (gift splitting)

A husband and wife can elect to treat a gift made to a third party by either of them as though it were made

one-half by the husband and one-half by the wife. This gift splitting has the effect of doubling the amount of annual gifts that can be made by husband and wife.

The following conditions must be satisfied for gift splitting:

- Both husband and wife must be citizens or residents of the U.S. at the time when the gift is made
- The husband and wife must be married to each other at the time of the gift
- A consent to gift-split generally covers all gifts made by the husband and wife to third parties during the calendar year

DEDUCTIONS

You may deduct from your gross estate administrative costs, funeral expenses, the value of debts owed at the time of death, and charitable donations. In addition, the marital deduction allows you to leave any amount of property to your spouse tax-free as long as your spouse is a U.S. citizen. When your spouse dies and the property passes to your children or other heirs, it may be taxed.

TRUSTS

A trust is a legal arrangement through which you give property to a trustee (which may be you) to manage and use for the benefit of whomever you name. Trusts are a vehicle to hold property and to provide for certain action to take place with the best possible tax consequences. Trusts should be prepared in conjunction with a will, which insures that any remaining assets (such as personal property) are transferred to your beneficiaries.



The following are some of the more common type of trusts:

Revocable Living Trust: A revocable living trust takes effect during your lifetime. In addition to the benefit of avoiding probate and saving on estate taxes, a revocable living trust can ensure your own personal and financial welfare in the event that you become incapacitated during your lifetime. You will be able to select someone to make decisions and act on your behalf should you become incapacitated or incapable of making decisions. In addition, you may appoint a professional manager as trustee to manage and make decisions about the trust's assets.

Irrevocable Living Trust: This is a method to transfer ownership of an asset without making an outright transfer to the recipient; however, you relinquish the right to income and principal from the trust, as well as the power to change the trust agreement. You may name the beneficiary of the assets. In return the assets are not considered part of your taxable estate. Because the transfer is considered a gift to the trust, a gift tax may be imposed unless the transfer qualifies for the gift-tax annual exclusion or you use some or all of your unified credit. One popular use of an irrevocable living trust is to shelter a life insurance policy. If you die three years or more after transferring the policy to a trust, the proceeds will pass to the beneficiaries untaxed. However, if you die within three years of the date following transfer of the life insurance policy into your irrevocable trust, the life insurance proceeds will be part of your estate and may be taxed.

Marital Trust: You can provide for your spouse without leaving your property directly to him or her through this vehicle. You may appoint another individual to act as trustee of your estate, with your spouse as sole beneficiary, and the estate will qualify for the marital deduction.

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Rick Bloom, Sharon Miles, Ken Bloom & Jonathan Goldberg

QTIP (Qualified Terminable Interest Property) Trust: With this form of trust, the trust agreement dictates how your property will be distributed upon the death of your spouse.

Charitable Trusts: A charitable remainder trust provides you with an income-tax deduction while the income from the assets goes to you or a beneficiary; upon the termination of the trust, the charity receives the principal.

CONSIDERATIONS IN ESTATE PLANNING

The following are a number of considerations to weigh in planning your estate:

- If you leave assets directly to minor children, the guardian must keep records of even routine use of the inheritances and petition the court for any unusual expenditure on the children's behalf. Instead, you may be wise to bequeath your property to a trust established in the children's names, and to name their guardian as trustee, thus avoiding court supervision.

- If you give your personal representative broad powers to settle disputes or sell property as he or she sees fit, the personal representative will not have to seek permission from the court for each activity
- If you plan to be married you may wish to consider a pre-nuptial agreement to control your assets in the event of divorce or death. This may be particularly important in certain circumstances, such as if you own a closely held business or wish to bequeath your estate to children from a previous marriage
- It is wise to avoid provisions likely to be ruled invalid or to cause a challenge from neglected heirs. If you seek to totally disinherit a child, it should be unequivocally indicated in your will or trust. Also, bequests that appear as favoritism may cause challenges or just as damaging, lasting ill feelings in your family
- There is little that can be done after death to relieve your estate from taxes if you have not properly planned for the disposition of your estate
- Maintain an up-to-date inventory of all your assets and let your personal representative or trustee know how to locate this information
- Your estate plan is effective until you change or revoke it. You may alter your will by executing a new one or by adding a “codicil,” which is done in the same manner as a will. If you make changes to your will or trust by writing on the document itself, you may invalidate the entire will or trust
- Designating a beneficiary of your life insurance policy does not take the place of a will or trust. Life insurance is but one asset which needs to be considered in your overall estate plan. Under certain circumstances, it is even advisable to make your insurance payable to your trust
- Property owned jointly with a spouse (such as a home or checking account) will not be probated. Your spouse will have immediate access to the asset as the sole owner of any jointly owned asset upon a death. This is not necessarily true for all assets
- Married couples should work closely together in estate planning so family objectives can be met regardless of who dies first
- Do not have your beneficiary serve as a witness to your will or trust. If the witness must validate your intent, he or she may not be able to receive an inheritance
- If you think your estate might shrink or grow, use percentages instead of dollars to divide your assets
- The best assets to give as gifts during your lifetime are those which are gaining in value because the appreciation is excluded from your estate for estate-tax purposes
- Under Michigan law, you can establish a trust to provide for the care and related costs of a pet

Anytime your life circumstances change dramatically, your estate plan probably should be updated.

Changes in the following areas may alter your desires significantly:

- **Marital Status**
- **Ownership or Value of Property**
- **Birth of a Child**
- **Tax Laws**
- **Income or Employment Status**
- **Business Ownership**
- **Relocation**

At a minimum, you should have your estate plan reviewed every three to five years. Following are some final tips regarding estate planning:

Obviously, this brochure only scratches the surface of estate planning. Many legal and tax law requirements apply to the general principles discussed.

For further information, or to inquire about organizing your Estate Plan, contact the

**LAW OFFICES OF
BLOOM, BLOOM & ASSOCIATES, P.C.
31275 NORTHWESTERN HIGHWAY
SUITE 145
FARMINGTON HILLS, MICHIGAN 48334**

**TELEPHONE
(248) 932-5200**

**FACSIMILE
(248) 932-5201**

**KENNETH J. BLOOM*+
RICHARD J. BLOOM**
JONATHAN M. GOLDBERG****

*L.L.M. TAXATION

**ALSO CERTIFIED PUBLIC ACCOUNTANT

+ALSO ADMITTED IN CALIFORNIA