



# BASIC ESTATE & INCAPACITY DOCUMENTS

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# REQUIREMENTS



- Wills
- Revocable Living Trusts
- Transfer on Death Deeds
- Survivorship Agreements
- Beneficiary Designations
- Do Not Resuscitate



# INCAPACITY



- ▶ General and Durable Power of Attorney
- ▶ Medical Power of Attorney
- ▶ Living Will
- ▶ Agent to Control Disposition of Remains
- ▶ Declarations of Guardian



# CHARACTERIZATION OF PROPERTY

- Community
- Separate
- Joint

Name on account or asset does not necessarily characterize property in Texas



# DIVISION OF ASSETS AT DEATH

- ▶ Transfer Title
- ▶ Administration of Estate/Trust
- ▶ How to divide assets among spouse/heirs per terms of the Will or Trust
- ▶ Probate and Non-Probate Assets



# PROBATE VS. NON-PROBATE ASSETS

## PROBATE ASSETS

- ▶ Assets passing through a Will require a Probate proceeding under Texas law.
- ▶ Probate is the legal passing of Title.
- ▶ Independent of court supervision
- ▶ Privacy if debt free or secured by Estate Assets where Affidavit need only be filed with court and inventory presented to heirs.
- ▶ Division of Assets at conclusion of Probate processing.

## NON-PROBATE ASSETS

- ▶ Assets passing to spouse or other beneficiaries by survivorship.
- ▶ Assets pre-funded in Revocable Living Trusts.
- ▶ Insurance, Annuities, Tax Qualified Plans and IRA's.

# TAX ISSUES

- Federal Estate Tax imposed at flat 40% rate above current lifetime exclusion of \$11,200,000 per person or \$22,400,000 for a married couple.
- Assets passing outright to spouse or in Marital Trust are tax deferred until surviving spouse dies.
- The use of a Family, Credit Shelter or Bypass Trust is funded up to the Federal Estate Tax Exemption of a decedent and, if governed by ascertainable standard (health, maintenance, support & education) with appreciation will pass Estate Tax Free to the decedent's heirs or beneficiaries.
- Assets (other than Tax Qualified Plans, IRA's and Annuities) generally get a step up (or step down) in basis for tax purposes.
- Unused Federal Estate Tax exemption of a decedent can be portable to surviving spouse. Must file IRS Form 706.
- Gifts between spouse are unlimited and do not reduce Lifetime Gift Tax Exemption.
- Annual gifts limited to \$15,000 from Donor to Donee.



# INCOME TAXATION OF ESTATE AND TRUSTS

- ▶ Two Tax returns filed during year of decedent's death. IRS Form 1040 is filed by surviving spouse for the time from first of year to date of decedent's death and one-half income from date of death to year end. Estate files IRS Form 1041 for other half of income from date of death to year end.
- ▶ After the Estate Administration then funding of Trusts.
- ▶ Created under Will, the Trustee is required annually to file IRS Form 1041. Amounts distributed to beneficiaries are deducted from the Trust income.
- ▶ Estate and Trusts are taxed at highest marginal tax rate (37%) above (indexed by inflation) of ordinary or interest income.
- ▶ Use of Trusts to hold Life Insurance:
  - ▶ Are Irrevocable.
  - ▶ Used for liquidity of survivor of proceeds for lending or purchasing Assets from Estate to allow Estate to pay Estate Taxes without liquidating Estate Assets.





# FUTURE OF PLANNING DUE TO TAX REFORM



# TAX REFORM IN 2018

## CURRENT FACTS

- No comprehensive Tax Reform since 1986 (31 years).
- Obama Administration had little interest in Tax Reform agenda.
- U.S. had highest corporate tax rate of the industrialized world.



# HISTORY

- On December 31<sup>st</sup> 2014, Senate and House Joint Committee (Senator Wyden & Rep. Dave Camp) prepared comprehensive report (287 pages) on Tax Reform but not submitted to the President.
- June 2016 Better Way Plan of House of Representatives. Blue print of proposed Reform.
- President Trump signed the Tax Cuts and Jobs Act in December, 2017.

# HIGHLIGHT TAX CHANGES

- ▶ Corporate tax rate reduced from 35% to 21%.
- ▶ 20% deduction of qualified business income from certain pass through entities such as partnerships, S corporations and proprietorships excluded at certain income levels of service industries. Maximum tax rate for pass through entities reduced to 29.6%
- ▶ 15.5% repatriation of overseas cash earnings and profits and 8% rate for non-cash assets. Purpose for U.S. companies to assist building infra-structure of U.S.
- ▶ Going to international territorial tax system vs world wide tax system with limitations.
- ▶ Seven new graduated tax rates beginning at 10% and capping at \$600,000 (married couple).
- ▶ State, local and real estate tax deduction capped at \$10,000.
- ▶ Limit on interest deduction for mortgage interest having a face amount of \$750,000 or less.
- ▶ Child care credit increased to \$2,000 with \$1,400 refundable credit.
- ▶ Personal exemption of \$4,000 repealed.
- ▶ Medical expense deduction floor reduced from 10% of AGI to 7.5% of AGI.
- ▶ Standard deduction doubled to \$12,000 for single taxpayer, \$18,000 for head of household and \$24,000 for married couple.
- ▶ 529 plans can now fund secondary education and home school expenses.