the BOOM(x) ACADEMY

ASSET PROTECTION

Webinar Course Book

This digital eBook is meant to accompany the Asset Protection Webinar that I conduct monthly to help attendees, clients and BoomXers understand the ins and outs of asset protection law.

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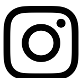
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EXPECTATIONS

Asset protection law is vast. It means a lot of things. It is a discipline within the practice area of estate planning, a subspecialty if you will. Estate planning law goes back to the Middle Ages. It is one of the oldest bodies of law and constitutes centuries of case law. In fact, most of estate planning law originates in court rulings, not statutes.

It is not reasonable to learn asset protection law in a few hours. We can, however, introduce you to the legal devices used by attorneys to construct a bulletproof asset protection plan.

WHAT IS YOUR OBJECTIVE?

When I begin workshops or start a client meeting, I often ask questions like this:why are we here today? What is the purpose of this meeting? What are your objectives? In almost every case, the answer to these questions are this: you have assets that you are afraid you will lose. Really, you are afraid of going broke. That is the central concern of most retirees.

Bummed you out yet? Don't worry.There is hope. The Law, to me, is like the Force. You know, like on Star Wars. What was it that Obi Wan Kenobi said about the Force in the original Star Wars movie from 1977. "The Force is what gives a Jedi his power. It's an energy field created by all living things. It surrounds us and penetrates us. It binds the Well, replace the word "Force" with "Law" and "Jedi" with "Lawyers" and you have it. Ok. I am prone to the melodramatic but think about it! All of the little statutes, court opinions, agency rulings and even local court rules are bountiful. There are so many rules, they are everywhere. These rules tell us when to go at a stop light, how much to pay the government, when we can be sued and even if some assets can be reached by the courts if we lose. All of these little rules make up the "Law". I use a capital "L" to distinguish what I see as the sum of all laws into the legal culture in which we are born, live, receive medical care or not and die. Really, the Law is what defines us. Now, follow me on the analogy. Without a doubt, those who leverage the Law to their benefit, do better than those who do not. Those who have the Law with them are like Jedis. Asset protection attorneys are like Jedi Masters! Too much?

I have helped scores of families who tried to put together and keep the assets of a family member who was now going broke from long-term care costs. When in these stressful meetings with family members trying to help their parents who did not plan ahead, I have said countless times, if only their mom had had a Spousal Protection Trust set up for her. Or, if only a wealth replacement trust was set up to pay for this huge tax debt. If only . . .

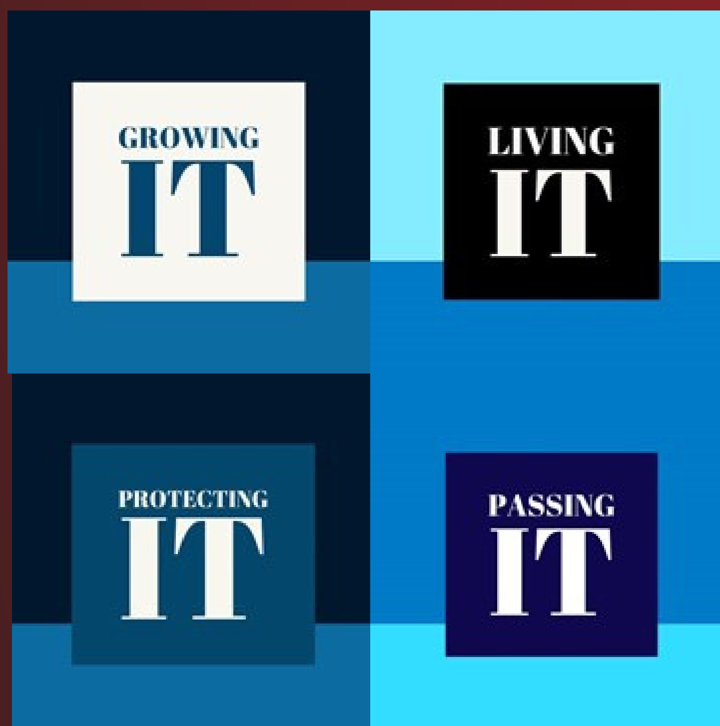
Ready to learn the Law? Let's do it!

FOUR COMPONENTS OF ASSET PROTECTION PLANNING

Planning has four components. Each component is integral to retirement planning but has different disciplines. I have a direct way of saying things and so it comes down to this. You work your entire life earning it during your working years. Once retired, assets often need to grow.Thus, smart investing, i.e., growing it, is a major concern. I believe too much energy is dedicated to this component but mutual fund companies disagree.

I have developed a method to craft your own personalized purpose statement as to money but, for this eBook, let's just stipulate that money really facilitates life. I call the second component "Living It". Financial engineers who help people with this component do more than recommend mutual funds, they forecast income, expenses, asset appreciation and depletion against life events, good and bad.

The fourth component, "Passing It", is based on the premise that you will likely leave assets behind. Where do these assets go? The tax man? "Passing It" is what lawyers call "estate transfer" and the arena of traditional estate planning, i.e., passing whatever assets you have left on the day you leave this earth.



ASSET PROTECTION

Protecting it implies two things: you have an asset worth keeping and that there are threats to the asset. There are four levels of threats that typically threaten retirement assets. They are represented below:

TIER 1: MEDICAL COSTS
LIKELIHOOD: PROBABLE
LOSS: HIGH TO DEVASTATING

Long-term care costs are the single biggest threat to your estate. An excellent resource to research the costs of long-term care based on up to date costs regionally is the Genworth study of long-term care costs. This study is conducted annually and is called the "Cost of Care." Here is a link to the 2018 study.

ANNUAL NATIONAL MEDIAN COSTS 2018

Homemaker Services: $48,048
Home Health Aide: $50,336
Adult Day Health Care: $18,720
Assisted Living Facility: $48,000
Semi-Private Room in a Nursing Home: $89,297
Private Room in a Nursing Home: $100,375

MEDIAN MONTHLY COSTS FOR SEATTLE

Monthly Costs: *Seattle Area, WA (2018)*

Category	Service	2018 Cost
Home Health Care	Homemaker Services[1]	$6,092
Home Health Care	Home Health Aide[1]	$6,092
Adult Day Health Care	Adult Day Health Care[2]	$1,317
Assisted Living Facility	Assisted Living Facility[3]	$5,750
Nursing Home Care	Semi-Private Room[2]	$9,243
Nursing Home Care	Private Room[2]	$10,494

LONG-TERM CARE STATISTICS

Most people will need some form of long-term services and support in their lifetime, including assistance with daily activities such as bathing and dressing, because of a physical impairment or a cognitive impairment like Alzheimer's disease.

An estimated 70% of people currently turning 65 will require long-term care in their lifetime, and they will receive care for an average of 3 years.

Eighteen percent of all seniors will require more than one year in a nursing facility. Most individuals and families cannot simply cover these costs and services with their income and assets.

Annual spending on long-term care in the United States–excluding unpaid family caregiving–has reached nearly $275 billion.

WHO IS PAYING?

47% is Medicaid, 23% is Medicare, 23% by Families out-of-pocket expenses, less than 4% by Veterans/State programs and less than 3% is private long-term care insurance.

While the majority of long-term services have been provided by Medicare and Medicaid, funding deficiencies at the State and Federal level have placed a focus on the importance of long-term care insurance. The market for these insurance products has been rocky and remained small to date.

The value of uncompensated care provided by family or friends is estimated at $450 billion annually.

LAWSUITS FILED AND SETTLED BY ATTORNEYS

For settlements resolved between 2012 and 2016:

Compensation to claimants: Attorneys reported that claimants received total compensation of $312.9 million on 250 claims, an average of $1.3 million per settlement.

Attorney fees were $111.9 million, an average of $511,850 per reported settlement.
On average, the attorney fees were 35.8 percent of the total compensation paid to the claimant.

How lawsuits are settled:

When an indemnity payment was made, 41.3 percent of lawsuits were settled in mediation.

Mediated settlements had an average indemnity payment of $1.2 million and an average legal fee of $504,509. Only six lawsuits were reported as resolved by jury verdicts in favor of the plaintiff.

These verdicts resulted in total paid indemnity of $17.4 million, an average of $2.9 million per case.

Regional comparisons: The largest number of lawsuits were filed in King County, with 124 lawsuits, or 49.6 percent of the statewide total.

Average paid indemnity in King County was $1.3 million. A few extremely large settlements in the North Sound region in 2015 resulted in the highest average paid indemnity for any region of $3 million.

Settlement by age of claimant: The most expensive settlements involved patients younger than 11 years old. In cases involving newborns and infants, the average settlement was $2.5 million and the average legal expense was $968,804.

For patients between one and 10 years old, there were four settlements averaging $4.4 million in paid indemnity and $1.9 million in legal expenses.

WHAT IS A TRUST?

FA trust is a fiduciary relationship in which one party, known as a trustor, gives another party, the trustee, the right to hold title to property or assets for the benefit of a third party, the beneficiary. Trusts are established to provide legal protection for the trustor's assets, to make sure those assets are distributed according to the wishes of the trustor, and to save time, reduce paperwork and, in some cases, avoid or reduce inheritance or estate taxes. In finance, a trust can also be a type of closed-end fund built as a public limited company.

Trusts are created by settlors (an individual along with his or her lawyer) who decide how to transfer parts or all of their assets to trustees. These trustees hold on to the assets for the beneficiaries of the trust. The rules of a trust depend on the terms on which it was built. In some areas, it is possible for older beneficiaries to become trustees. For example, in some jurisdictions, the grantor can be a lifetime beneficiary and a trustee at the same time.

A trust can be used to determine how a person's money should be managed and distributed while that person is alive, or after their death. A trust helps avoid taxes and probate. It can protect assets from creditors, and it can dictate the terms of an inheritance for beneficiaries. The disadvantages of trusts are that they require time and money to create, and they cannot be easily revoked.

A trust is one way to provide for a beneficiary who is underage or has a mental disability that may impair his ability to manage finances. Once the beneficiary is deemed capable of managing his assets, he will receive possession of the trust.

CATEGORIES OF TRUSTS

Although there are many different types of trusts, each fits into one or more of the following categories:

LIVING OR TESTAMENTARY

A living trust – also called an inter-vivos trust – is a written document in which an individual's assets are provided as a trust for the individual's use and benefit during his lifetime. These assets are transferred to his beneficiaries at the time of the individual's death. The individual has a successor trustee who is in charge of transferring the assets.

A testamentary trust, also called a Will trust, specifies how the assets of an individual are designated after the individual's death.

REVOCABLE OR IRREVOCABLE

AA revocable trust can be changed or terminated by the trustor during his lifetime. An irrevocable trust, as the name implies, is one the trustor cannot change once it's established, or one that becomes irrevocable upon his death.

Living trusts can be revocable or irrevocable. Testamentary trusts can only be irrevocable. An irrevocable trust is usually more desirable. The fact that it is unalterable, containing assets that have been permanently moved out of the trustor's possession, is what allows estate taxes to be minimized or avoided altogether.

FUNDED OR UNFUNDED

AA funded trust has assets put into it by the trustor during his lifetime. An unfunded trust consists only of the trust agreement with no funding. Unfunded trusts can become funded upon the trustor’s death or remain unfunded. Since an unfunded trust exposes assets to many of the perils, a trust is designed to avoid and ensure proper funding.

COMMON PURPOSES FOR TRUSTS

The trust fund is an ancient instrument – dating back to feudal times, in fact – that is sometimes greeted with scorn, due to its association with the idle rich (as in the pejorative "trust fund baby"). But trusts are highly versatile vehicles that can protect assets and direct them into the right hands in the present and in the future, long after the original asset owner's death.

A trust is a legal entity employed to hold property, so the assets are generally safer than they would be with a family member. Even a relative with the best of intentions could face a lawsuit, divorce or other misfortune, putting those assets at risk.

Though they seem geared primarily toward high net worth individuals and families, since they can be expensive to establish and maintain, those of more middle-class means may also find them useful – in ensuring care for a physically or mentally deficient dependent, for example.

Some individuals use trusts simply for privacy. The terms of a Will may be public in some jurisdictions. The same conditions of a Will may apply through a trust, and individuals who don't want their Wills publicly posted opt for trusts instead.

Trusts can also be used for estate planning. Typically, the assets of a deceased individual are passed to the spouse and then equally divided to the surviving children. However, children who are under the legal age of 18 need to have trustees. The trustees only have control over the assets until the children reach adulthood.

Trusts can also be used for tax planning. In some cases, the tax consequences provided by using trusts are lower compared to other alternatives. As such, the usage of trusts has become a staple in tax planning for individuals and corporations.

Assets in a trust benefit from a step-up in basis, which can mean substantial tax savings for the heirs who eventually inherit from the trust. By contrast, assets that are simply given away during the owner’s lifetime typically carry his or her original cost basis.

Here's how the calculation works: Shares of stock that cost $5,000 when originally purchased, and that are worth $10,000 when the beneficiary of a trust inherits them, would have a basis of $10,000. Had the same beneficiary received them as a gift when the original owner was still alive, their basis would be $5,000. Later, if the shares were sold for $12,000, the person who inherited them from a trust would owe tax on a $2,000 gain, while someone who was given the shares would owe tax on a gain of $7,000. (Note that the step-up in basis applies to inherited assets in general, not just those that involve a trust.)

Finally, a person may create a trust to qualify for Medicaid and still preserve at least a portion of their wealth.

TYPES OF TRUST FUNDS ACCORDING TO LAWYERS

Below is a list of some of the more common types of trust funds:

CREDIT SHELTER TRUST

Sometimes called a bypass trust or family trust, this trust allows a person to bequeath an amount up to (but not over) the estate-tax exemption. The rest of the estate passes to a spouse, tax free. Funds placed in a credit shelter trust are forever free of estate taxes – even if they grow.

INSURANCE TRUST

This irrevocable trust shelters a life insurance policy within a trust, thus removing it from a taxable estate. While a person may no longer borrow against the policy or change beneficiaries, proceeds can be used to pay estate costs after a person dies.

QUALIFIED TERMINABLE INTEREST PROPERTY TRUST

This trust allows a person to direct assets to specific beneficiaries – their survivors – at different times. In the typical scenario, a spouse will receive lifelong income from the trust and children will get what's left after the spouse dies.

SEPARATE SHARE TRUST

This trust lets a parent establish a trust with different features for each beneficiary (i.e., child).

A SPENDTHRIFT TRUST

This trust protects the assets that a person places in the trust from being claimed by creditors. This trust also allows for management of the assets by an independent trustee and forbids the beneficiary from selling his interest in the trust.

CHARITABLE TRUST

This trust benefits a particular charity or non-profit organization. Normally, a charitable trust is established as part of an estate plan and helps lower or avoid estate and gift taxes. A charitable remainder trust, funded during a person's lifetime, disperses income to the designated beneficiaries (like children or a spouse) for a specified period of time, and then donates the remaining assets to the charity.

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TYPES OF TRUST FUNDS ACCORDING TO LAWYERS

Below is a list of some of the more common types of trust funds:

SPECIAL NEEDS TRUST

This trust is meant for a dependent who receives government benefits, such as Social Security disability benefits. Setting up the trust enables the disabled person to receive income without affecting or forfeiting the government payments.

DOMESTIC ASSET-PROTECTION TRUST (DAPT

This trust is an irrevocable self-settled trust in which the grantor is designated a permissible beneficiary and allowed access to the funds in the trust account. If the DAPT is properly structured, the goal is that creditors won't be able to reach the trust's assets. In addition to providing asset protection, a DAPT offers other benefits, including state income tax savings when sitused (yes, that is actually a word lawyers use "sitused") in a no-income-tax state.

A DAPT is of no benefit until it's funded with assets. Trust assets typically include: (1) cash, (2) securities, (3) limited liability companies (LLCs), (4) business assets like intellectual property, inventory and equipment, (5) real estate, and (6) recreational assets such as aircraft and boats. Each asset under consideration for transfer into a DAPT must be evaluated from different vantage points, including its effect on: legal protection, taxation, business and growth potential, and future distributions to spouses and heirs. Thus, the asset-transfer planning process is a critical area requiring the assemblage of a range of skills.

THE SAME TRUSTS ACCORDING TO BOOMX PLANNING

Below is a list of the same trusts but titled according to their purpose:

SAVE DEATH TAX NOW TRUST

This is a Credit Shelter Trust but let's call it what it is – it saves death taxes when the asset owner dies. That's all you need to know.

THE SAME TRUSTS ACCORDING TO BOOMX PLANNING

Below is a list of the same trusts but titled according to their purpose:

OOPS! DIDN'T BUY LONG-TERM CARE INSURANCE AND NOW WE ARE BROKE TRUST

This is what I call a wealth replacement trust. Lawyers think of it as an insurance trust because the trust is meant to pay tax and the only asset it can have is an insurance policy. Neither is true. BoomXers know all too well that unreimbursed medical expenses are far more devastating to your assets than tax. So, we can use this kind of trust to fill the retirement savings of the surviving spouse when the first spouse dies if that spouse depleted the IRAs, bank accounts and brokerage accounts paying for ambulance rides, hospital bills and, the worst of all, long-term care costs at an assisted living facility or nursing home.

COMPLICATED FAMILY AND TAX TO SAVE TRUST

What lawyers call a QTIP is really used when we have kids from different marriages, love our second or third or fourth (fill in your number her) spouse but want to leave something to our kids from the other marriages. That's really all one should know about it. The lawyer jargon is ridiculous.

LEAVE BUT PRESERVE THE ANCESTRAL ASSET TRUST

This trust is used to preserve a family, ancestral asset and share it with descendants in a way that won't erode the asset or blow the family up.

SAVE OUR KIDS FROM THEMSELVES TRUST

This trust is used for a child who spends money like crazy. You know if you leave your estate to him or her outright, i.e., in cash, the Audi dealership is gonna make out like a bandito. Lawyers go on and on about how it can't be reached by creditors, in a bankruptcy. Big whoop! How about this? Let's draft it so the trust has an investment policy statement and meaningful rules to distribute income and even principal, if you desire, to your son or daughter or any other beneficiary in a way that empowers them rather than render them dependent.

THE SAME TRUSTS ACCORDING TO BOOMX PLANNING

Below is a list of the same trusts but titled according to their purpose:

OUR DOGGY HAS RIGHTS TOO TRUST

This trust is a trust for charities. There are 5 major ways to craft these trusts. However, in my experience, they are rare. I call it the doggy trust because I have helped give my clients more money to the humane society than any other charity. By far.

OUR DISABLED LOVED ONE NEEDS EXTRA HELP TRUST

Depending upon the circumstances, a son or daughter who is disabled may lose all medical or needs based benefits if we are not careful. This trust helps finance care and support for a disabled family member without losing those benefits and provides a framework for managing the money in a better way, if drafted carefully.

ADDITIONAL TOOLS TO PROTECT ASSETS

LAST WILL AND TESTAMENT

The Last Will and Testament is used if certain conditions exist at the death of the first spouse. Those conditions are described in the "Agreement as to Disposition of Assets."

FINANCIAL POWER OF ATTORNEY

The Power of Attorney delegates decision making to a third party, called the Agent. The Power of Attorney here is lengthy but is covers financial decisions only.

HEALTH CARE DOCUMENTS

Health care documents include:

Health Care Power of Attorney, which delegates decision making for health care decisions to a third party.

Authorization of Release of Protected Health Information, which lists the people in your family or possibly friends to whom you have given permission to have information regarding your care.

Living Will, which is often called an "Advanced Directive" or "Directive to Physician."

TRUST(S)

This section will contain the Survivor's Trust. In some cases, stand-alone trusts will also be contained here.

SCHEDULE OF ASSETS

An addendum to the Agreement as to Disposition of Assets Information to your Personal Representative or Successor Trustee to administer your estate.

ADDITIONAL TOOLS TO PROTECT ASSETS

PROPERTY AGREEMENTS

Washington is one of only nine community property states.

You will find the Agreement as to the Disposition of Assets, Addendum and Community Property Agreement here.

PERSONAL PROPERTY MEMORANDUM AND RESIDUARY CLAUSES

Personal Property Memorandum is a legal way to make sure certain items of personal property, e.g., jewelry, items of sentimental value or collectibles, are distributed to a certain person.

CERTIFICATES

A certificate is a summary of any trust and is presented to financial institutions rather than the trust instrument when opening a financial account or any other entity or person who is required to verify the existence of a trust.

TERMINOLOGIES

BENEFICIARY

A beneficiary is a person who is entitled to the benefit of something. When the term "beneficiary" refers to a trust beneficiary, it includes a person who has any present or future interest, vested or contingent and includes the owner of an interest by assignment or other transfer. A beneficiary of a beneficiary designation refers to a beneficiary of:

(i) an account with POD designation or security registered in beneficiary form (TOD); or

(ii) any other non-probate transfer at death; and

A beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

BENEFICIARY DESIGNATION

A beneficiary is a person who is entitled to the benefit of something. When the term "beneficiary" refers to a trust beneficiary, it includes a person who has any present or future interest, vested or contingent and includes the owner of an interest by assignment or other transfer. A beneficiary of a beneficiary designation refers to a beneficiary of:

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TERMINOLOGIES

COMMUNITY PROPERTY

Community property laws affect how you figure your income on your federal income tax return if you are married, live in a community property state or country, and file separate returns. If you are married, your tax usually will be less if you file married, filing jointly than if you file married, filing separately. However, sometimes it can be to your advantage to file separate returns. If you and your spouse file separate returns, you must determine your community income and your separate income. Community property laws also affect the basis in property you inherit from a married person who lived in a community property state.

THE COMMUNITY PROPERTY STATES ARE:

Arizona	Idaho	Nevada	Washington
California	Louisiana	New Mexico	Wisconsin

Three states, Alaska, Tennessee, and South Dakota allow couples to elect community property treatment of property.

Generally, community property is property:

- That you, your spouse (or your registered domestic partner), or both acquire during your marriage (or registered domestic partnership) while you and your spouse (or your registered domestic partner) are domiciled in a community property state;
- That you and your spouse (or your registered domestic partner) agreed to convert from separate to community property; and
- That can't be identified as a separate property.

Community income. Generally, community income is income from:

- Salaries, wages, and other pay received for the services performed by you, your spouse (or your registered domestic partner), or both during your marriage (or registered domestic partnership) while domiciled in a community property state; and
- Real estate that is treated as community property under the laws of the state where the property is located.

Separate property. Generally, separate property is:

- Property that you or your spouse (or your registered domestic partner) owned separately before your marriage (or registered domestic partnership);
- Money earned while domiciled in a non community property state;

TERMINOLOGIES

· Property that you or your spouse (or your registered domestic partner) received separately as a gift or inheritance during your marriage (or registered domestic partnership);

· Property that you or your spouse (or your registered domestic partner) bought with separate funds, or acquired in exchange for separate property, during your marriage (or registered domestic partnership);

· Property that you and your spouse (or your registered domestic partner) converted from community property to separate property through an agreement valid under state law; and

· The part of property bought with separate funds, if part was bought with community funds and part with separate funds.

DESCENDANT

"Descendant" of an individual means all the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this code.

DEVISE

The act of disposing of real or personal property by will.

DISTRIBUTEE

Any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment to distributed assets remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

TERMINOLOGIES

ESCHEAT

Escheatment is an archaic French term brought into modern probate law by none other than William the Conqueror. William, after invading England from Normandy, France enforced the concept of “allodial” title. Allodial title stood for the proposition that William and all subsequent Kings and Queens of England owned all of the lands of England as their divine right. In the absence of a male heir, any and all estates in the land would lawfully revert back to the Crown when the estate owner died.

In modern law, if a person passes without any lawful heir, the estate of the decedent is taken by the state revenue department where it is liquidated and absorbed into the state coffers.

ESTATE PLANNING

Estate planning is the term you hear bandied about, suggesting that estate planning is far more encompassing than it really is.Estate planning is about one thing – estate transfer. That is, the goal of estate planning is to transfer your assets to the correct person when you die. That’s it.Estate planning doesn’t benefit you directly because the trigger event of estate planning is your death.

ESTATE

In the modern US, the word “estate” only appears in the Bankruptcy and Estate Tax Code and refers to the sum of all of your possessions

GROSS ESTATE

The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

HEALTH CARE DOCUMENTS

HEALTH CARE POWER OF ATTORNEY

Delegation of decision making for health care decisions to a third party. This document gives a family member legal authority to make decisions for you, sure. However, an impactful health care power of attorney also gives guidance to your Agent as to your care, long-term care in particular.

TERMINOLOGIES

AUTHORIZATION OF RELEASE OF PROTECTED HEALTH INFORMATION

This document lists the people in your family or possibly friends to whom you have given permission to have information regarding your care. While your Agent always has the authority to receive health care information, other family members do not. Imagine how you would feel if your mother suddenly had heart surgery and you would not even receive information about the results of the procedure because of privacy laws. This can be remedied by listing all of the people you wish to have this information. This reduces stress and conflict.

LIVING WILL

This document is often called an “Advanced Directive” or “Directive to Physician.” This is what my clients call the “Pull the Plug” document. Morbid description but it immediately invokes a mental image.

HEALTH CARE REIMBURSEMENT TRUST

LONG-TERM CARE INSURANCE

is not necessary when and if a trust is funded during lifetime. Similar to a Medicaid Asset Protection Trust, this trust will purchase assets for the benefit of the estate of each spouse or of a single person. When the Trustor dies, the assets in the trust are used to fund the retirement of the surviving spouse, pay estate taxes (if any) but more importantly to replace any retirement assets that were spent on the medical bills of the Trustor who just passed. This is a wealth replacement trust.

IMPORTANT TRUSTS FOR SINGLES

MEDICAID ASSET PROTECTION TRUST

This trust is used for single people. It holds assets that were transferred into it more than five years prior to a Medicaid application. It requires foresight. But, once implemented, it is a powerful tool in the asset protection toolbox.

INSURANCE TRUST

This irrevocable trust shelters a life insurance policy within a trust, thus removing it from a taxable estate. While a person may no longer borrow against the policy or change beneficiaries, proceeds can be used to pay estate costs after a person dies.

TERMINOLOGIES

LAST WILL AND TESTAMENT

If you are married, the Will is absolutely necessary. It is my position that every couple must have a Spousal Protection Trust". It is that important. Federal law mandates that the Spousal Protection Trust must be established only by a Will if the Spouse is the beneficiary.

NET ESTATE

Net estate refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

NET WORTH

Net worth is a financial term, not a legal term.Net worth refers to the sum of all you own minus the sum of all of the amounts you owe, i.e., debt.

PROPERTY AGREEMENTS

A powerful tool in Washington is the Community Property Agreement because community property states allow spouses to define property rights between them by contract. This is convenient because community property law also allows title of probate assets to pass from the deceased spouse to the living spouse by a simple procedure that is fast and inexpensive when the couple had entered into one of these agreements. Couples must use this tool to insert flexibility into the asset protection plan.

THE AGREEMENT AS TO DISPOSITION OF ASSETS

This agreement governs the community and separate property and is a "switch" because, like a railroad switch, the train of your asset protection plan will direct the assets of the first spouse to die if one set of circumstances exists.

The circumstances that flip the switch are whether one or more of the following exist at the time of first death.

The survivor is:

Age 80 or over. (NOTE: This requirement may be revised. It is not a requirement of the law. Rather, it is a recommendation. The purpose is to fund the spousal protection trust if the survivor is "aged." Depending on the history of illness or longevity in the family, this age requirement may be lowered or increased.

Disabled. In particular, the survivor has been adjudicated disabled by a government agency authorized to make such a determination.

Currently or imminently in need of care. The Personal Representative of the deceased spouse makes this determination.

TERMINOLOGIES

ADDENDUM: SCHEDULE OF ASSETS

This document is incorporated into the Agreement and simply lists all your assets by spouse and by category, e.g., community or separate property. If for no other reasons, the Addendum gives your Personal Representative at least a clue as to what you own. Many people do not share that information with their children and so, when the time comes, the stressful fact-finding process of “what did mom own” begins. This is unnecessary. This document provides you a framework to organize your assets by category. Organized estates are easier to manage and protect.

PERSONAL PROPERTY MEMORANDUM

Your Will and Trusts have a provision that allows you to use a personal property memorandum to direct the disposition of specific items of personal property, e.g., a family heirloom or items of sentimental value to one heir, e.g., a wedding ring cherished by a daughter.

Washington law allows an informal writing, if found with your estate planning documents, to govern these dispositions. This is the personal property memorandum.

Simply list items you wish to distribute to specific people. You may add, subtract, or edit entered onto the form without notary or witnesses. Your personal representative is required to distribute the item accordingly.

Replacement trust but, really, it pays for long-term care costs retroactively far more efficiently and with greater flexibility than long-term care insurance.

REAL ESTATE

A term that includes fewer property rights than the broader term real property. Real estate is land, structures on the land and any resources in the land. Real estate is dirt. Dirt and things humans made on the dirt and stuff God put in the dirt such as oil.

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REAL PROPERTY

Real estate is dirt. Real property is a concept. Real property is a term to describe how the law conceptualizes the rights that dirt owners have in the dirt they bought. Can a dirt owner charge money for a non-dirt owner to farm a portion of his dirt? If so, how does the non-dirt owning but dirt renting person have any guarantees that he will be able to plant and harvest his crops to make the renting of dirt a good investment? The answer to this question is the difference between real estate and real property. Real estate just sits there. It is the dirt that will do nothing unless something is added to it. In this example, it is the legal guarantee that the dirt owner can do more with the dirt, the real estate, then leave it sitting idle. The owner may give away something and keep something. The owner can give a property interest but keep other property interests.

Imagine a bouquet of flowers that you put together. Not just any bouquet but an original arrangement of focal flowers, secondaries, fillers, and greens. Imagine that you have created a special hybrid flower and a non-toxic sparkling ribbon that also can be inserted into the bouquet as a non-organic accent to the bouquet. You also craft your own vases and sell each bouquet for thousands of dollars because of the uniqueness of the flowers, your special method of mixing it all together, not to mention your illuminating ribbons and proprietary vases.

Clearly, there is a lot going on with your bouquet. A flower is not worth thousands of dollars even if it is a special hybrid. Put together, it becomes worth far more. But is it possible to sell parts of the bouquet for more than the sum? Let's start with the flower that you created. A collector of flowers may not give a hoot about the common daisies in your bouquet but might be willing to pay far more for one of your unique specimens. You could take out one such specimen and sell it BUT prohibit the collector from reverse engineering it. If you allowed the collector to dissect it, engineer it and recreate it, then the specimens would be worth far more than the bouquet. If you allowed the collector to sell it but only if he gave you a share in the income, then you have just given away all of the flower, all of the right to create another one but only part of the economic value of the flower over time. The flower exists in the material world. The right to income from the flower does not. That is the difference between real estate and real property. Real estate is the bouquet. Real property refers to individual legal interests within the bouquet, i.e., the flowers.

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SPOUSAL PROTECTION TRUST

Contained within the Will, the Spousal Protection Trust holds the assets of the first spouse to die. This is necessary to protect those assets from creditors, in particular Medicaid liens and spend downs but also tax, i.e., some states have a separate state death tax for larger net worth couples. One could also include general creditors under some circumstances.

SURVIVOR'S TRUST

The Survivor's Trust holds the assets of the surviving spouse when the first spouse dies. In the event the surviving spouse is not ill, aged or in need of long-term care when the first spouse dies, the Survivor's Trust will also hold the assets of the deceased spouse.

The Survivor's Trust is not signed until the first spouse dies and is signed by the surviving spouse. It will be the responsibility of the surviving spouse or his or her agent, i.e., the person assigned as decision-maker pursuant to a power of attorney, to fund the survivor's trust.

TAXABLE ESTATE

The IRS is interested in the taxable estate, which is the gross estate minus certain deductions, most notably certain transfers of property to your spouse. Put a pin on this one and tack on your mental bulletin board for later.

TESTAMENT

In the Middle Ages, a Will was a written instrument that transferred title to real estate. A Testament was a written instrument that transferred title to personal property.

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TESTAMENTARY

Testaments transfer title to personal property at death.In legal lingo, the word "testamentary" has come to mean "at death." That is, a trust that is "testamentary", is a trust that springs into existence at the death of the trust maker. A "living" trust is a trust that exists when the trust maker signs the trust document.

The two trusts, living or testamentary, can have the same provisions. The distinction is not what the trust does, the property it contains or the beneficiaries. The distinction is when it is effective.

A testamentary trust is always contained in a Will. For example, if the Will maker has an estate that is so large that an estate tax will be assessed, a tax savings trust will be contained as an article within the article.When the Will maker dies, that is when the trust is legally effective. The trigger event is the death of the Will maker.

Believe it or not, some people are confused about whether the testamentary trust must be written while they are alive. Here is how you can remember this important point. Ready? You can't write and sign a trust document after you are dead. If you can remember that you will always get it right.

TERMS RELEVANT TO POWERS OF ATTORNEY

"Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, co-agent, successor agent, and a person to which an agent's authority is delegated. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

The term "attorney in fact" will not be used. To the extent that a third party is used to the term "attorney in fact", Agent should be constricted as meaning the same thing.

"Durable" means not terminated by the principal's incapacity.

"Digital Asset" refers to content found in the account owner's online accounts, audio or video files and productions, and miscellaneous digital files that are typically accessed by a computer or other digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

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TERMINOLOGIES

TERMS RELEVANT TO POWERS OF ATTORNEY

"Incapacity" means inability of an individual to manage property, business, personal, or health care affairs because the individual:

(a) Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or
(b) Is:
  (i) An absentee, as defined herein, or
  (ii) Outside the United States and unable to return.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Power of attorney" means a writing that uses the term "power of attorney" and grants authority to an agent to act in the place of the principal.

"Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by Will.

"Principal" means an individual who grants authority to an agent in a power of attorney.

"Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, tangible or intangible, or any interest or right therein.
"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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TERMS RELEVANT TO POWERS OF ATTORNEY

"Stocks, bonds, and financial instruments" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term shall also include but not be limited to commodity futures contracts, call, or put options on stocks or stock indexes, derivatives, and margin accounts.

And there you go!

There is a difference between “gross estate”, “taxable estate” and “net estate”. Gross is everything you owned the second your heart stopped beating. Taxable estate is what the IRS can tax after limited deductions. Net estate is what is left after exemptions granted by state law, not tax law, in probate court.

Why does this matter? Think about it.

You have to leave it all behind. The Law has to deal with this property. In the tax scenario, there is potential tax that will reduce the money you left behind. In the probate scenario, there are different exemptions to protect the property you used to own. Protect against what or whom you ask? Creditors.

The IRS is a creditor. A state tax agency is a creditor. Your disgruntled and frantic business partner could be a creditor or a claimant on the estate. Your ex-wife and the black sheep of the family might be an interested party who brings claims on the estate. Net estate is what is left after the smoke clears and that is what is left for your loved ones or charities.

Your job is to build a plan that is as close to this mathematical formula as possible: **gross estate = net estate**

That is, your goal is to understand the law to the extent that estate transfer has as little estate shrinkage as possible.