GUIDE TO ESTATE PLANNING

UNDER STATE

AND FEDERAL LAW

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This booklet is designed to cover the fundamentals of estate planning under Washington and federal law. It contains information on the concepts of community property, death without a will, common will provisions, the probate process, community property agreements, and the taxes associated with estate planning. It will also describe other methods of transferring property such as joint-ownership-with-right-of-survivorship, beneficiary designations for life insurance policies and pension benefits, and living trusts. Related estate planning documents including durable powers of attorney, living wills, and medical powers of attorney for minor children will be discussed.

Reading this booklet will give you a good understanding of the fundamentals of estate planning in the State of Washington. It is intended as an introduction to estate planning for non-lawyers, and therefore is only a summary. Each person's family situation, assets, and goals are unique. Very seldom will preprinted estate planning documents or generic computer software accomplish your objectives. Planning for the disposition of your estate and providing for your family or other intended beneficiaries is a very important process. Therefore, we recommend that you consult your attorney and other advisors for assistance in designing the appropriate estate plan to accomplish your goals.

A word of caution. This booklet is intended to assist you in your estate planning process. It is not necessary that you understand it all or even read it all prior to consulting your attorney. Your attorney, based on your discussions in the initial conference, will be able to facilitate your decision-making process and propose and design documents to meet your needs. This booklet can then be used as a reference for your background information.

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WASHINGTON COMMUNITY PROPERTY LAW

Washington is one of nine community property states. Community property law is based on the concept that both spouses in a marriage contribute to the marriage and both spouses should enjoy equal ownership of the property and profits generated through the efforts of the spouses. If you are married and live in the State of Washington, community property concepts apply to your ownership of property regardless of whether you make any oral or written agreement to that effect. As you will see later, however, spouses may enter into special agreements which alter the effect of community property laws upon the property they own. It may also apply even if your property was acquired in a common law state.

DEFINITIONS

Community property is defined in the State of Washington as all property acquired during marriage other than property acquired by one spouse by gift or inheritance, and the rents, issues, and profits of separate property. Examples of community property would be the salary earned by a husband or a wife, a house purchased by a married couple with community funds, and a gift or inheritance given to both spouses rather than to an individual spouse.

Separate property is defined as:

1) all property acquired prior to marriage,

2) all property acquired, even during marriage, by gift to or inheritance by an individual spouse, and

3) rents, issues, and profits of separate property.

Examples of separate property are the car you owned prior to marriage, a beach house you received under your grandmother's will, or $13,000 given to you by your rich uncle. If you rent the property at the beach to a tenant, that rent would be separate property. If you invest the $13,000 in a savings account, the interest would be separate property.

CLASSIFICATION OF PROPERTY AS SEPARATE OR COMMUNITY PROPERTY

Frequently, because property is sold and reinvested, held over a long period of years, or acquired under uncertain circumstances, it is difficult to determine whether property is community or separate. The law favors community property, however, and if there is any doubt as to classification, any property held by a married person will be presumed to be community property.

Separate property can be sold and the proceeds invested in another asset. That asset will also be separate property provided that the source of the funds can be "traced" by clear and convincing evidence. Therefore, a spouse can sell his separate house at the beach and reinvest the proceeds in mutual funds held in his separate name, and the mutual funds will be separate property. If in the process, however, the separate property is mixed or "commingled" with community funds such that the separate property cannot be clearly identified, it will lose its classification as separate property. For example, if the proceeds of the beach house are deposited in the community checking account into which paychecks are deposited and out of which community bills are paid, it will no longer be separate property because it cannot be identified by clear and convincing evidence.

It is important to note that the name or names on the title to property do not determine its community or separate status. If property is acquired during marriage with community property or commingled funds, it may be community property even if held in the name of one spouse alone. Tracing the origin of the property can become very important in determination of its character.

Classification of property as separate or community is fundamental to estate planning. A spouse is free to sell, give away, or leave by will all of his separate property in any way he wishes. During lifetime, however, a spouse cannot give away any single item of community property or even "his half" without the consent of the other spouse. By will, a spouse may control the disposition only as to his or her half interest in any community property asset or half the value of the community property estate.

REGISTERED DOMESTIC PARTNERSHIPS

In 2007, the Washington legislature authorized registered domestic partnerships. The partners must live together, not be married to someone else, be either the same sex, or the opposite sex if at least one of them is over age 62. This legislation and subsequent expanding legislation enacted in 2008 and 2009 treats registered domestic partners similarly to spouses in the areas of community property rights, intestate succession, protection in a probate and fiduciary powers. Throughout this booklet, wherever reference is made to a “spouse” or to “husband and wife” or to “marriage” the same can be applied to domestic partners. However, because these rules are specific to the State of Washington, the tax benefits extended to spouses under federal law (outlined in a later section of this booklet) do not apply to domestic partners.

DEATH WITHOUT A WILL (INTESTATE SUCCESSION)

The estate of a person who dies without a will is distributed according to statutory rules set forth in Title 11 of the Revised Code of Washington as adopted by the State Legislature. In the case of a married person, the surviving spouse already owns half of the community estate. Therefore the decedent's half of the community estate and all of the decedent's separate property will pass according to the statute. The laws of intestate succession are based on the legislature's idea of how most people, had they made a will, would have wanted their estate to be distributed.

MARRIED PERSONS

A married person's estate will descend as follows:

1) The surviving spouse will receive all of the decedent's interest in the community property.

2) The surviving spouse will receive half of the separate property of the decedent if he or she left issue (children, grandchildren, or other lineal descendants) who will receive the other half by right of representation.

3) If there are no issue, the surviving spouse will receive three-quarters of the separate property and one-quarter will go to the decedent's parents. If the decedent left no parents, this quarter will go to his brothers and sisters or nieces and nephews.

4) If the decedent left no issue, no parents, no brothers and sisters, and no children of brothers and sisters, the surviving spouse will receive all of the separate property as well as all of the community property.

SINGLE PERSONS

If the decedent is unmarried, he will of course have no community property. His entire estate will be distributed as follows:

1) His children will each receive an equal share, with the issue (descendants) of any deceased children receiving the deceased child's share by right of representation.

2) If there are no children or other issue, the decedent's parents will receive the entire estate.

3) If there are no parents, the issue of parents receive the estate by right of representation (brothers and sisters, nieces, nephews, etc.).

4) If there are no issue of parents, grandparents receive the estate, with half going to the maternal grandparents and half to the paternal grandparents.

5) If there are no grandparents, the estate goes to aunts and uncles or cousins by right of representation.

6) If none of the above relatives survives, the estate "escheats" to the State of Washington.

GENERAL RULES

A child may inherit from either of the natural parents, regardless of whether his parents were married. An adopted child will receive an equal share along with natural children, but stepchildren do not receive a share from the stepparent. If, however, the stepchild is adopted by the stepparent, he would then inherit from the stepparent, but is no longer an heir of the natural parent, who has been replaced by the adoptive parent.

Couples who live together without marriage receive no property from a deceased partner under the laws of intestate succession. The property owned by the decedent will pass to the heirs described above unless he or she has a valid will. Disputes as to ownership are common in this situation and can be minimized with a carefully drafted agreement as to status of property.

WILLS

Each individual has the right to leave by will all of his or her separate property and one-half of any community property. An attempt to leave the whole of any community property asset to a person other than the surviving spouse is unenforceable. A married person may only leave his or her half interest in a particular item or half of the value of the community property to someone else. Consent of the other spouse is not required as to the disposition of one's half of the community property estate.

COMPETENCY TO MAKE A WILL

Any person eighteen (18) years of age or older who is of "sound mind" may make a will in the State of Washington. "Sound mind" means that a person must:

1) Remember who the members of his family are. It is not necessary that he leave property to his family members but he must understand and remember who are the "natural objects of his bounty";

2) Have a general understanding of what property he owns; and

3) Have a plan in mind for the disposition of his estate.

A person may be unable to manage his or her business affairs effectively, but still have the competency necessary to make a will. A person who is unable to physically sign his or her name, may "execute" a will by making an "X" or directing a Notary to sign on his behalf.

LEGAL FORMALITIES REQUIRED FOR A VALID WILL

The will must be in writing, and must be signed by the testator or testatrix and by two witnesses, who must sign in the presence of the testator or testatrix. Most wills will have "self-proving" provisions at the end, where a notary public attests to the competence of the witnesses and compliance with the formalities of signing. Having this provision is not required for a valid will, but will eliminate the necessity of obtaining testimony from the witnesses when the will is probated.

DECLARATIONS

Normally the will begins with a series of paragraphs in which the writer will recite his or her name, his residence, and family status. Close family members should be named even when they are receiving nothing so they cannot claim to be forgotten or "pretermitted" heirs. For this reason, older wills often leave one dollar to children being disinherited. This part of the will may also include definitions. For example, "issue" or "children" can be defined to include only natural children, or adopted children and/or stepchildren.

SPECIFIC BEQUESTS

The next major section of the will may make specific gifts of monetary amounts or certain described property to named individuals. Some wills omit this section, preferring to leave the entire estate to a single beneficiary or in equal shares to a number of beneficiaries.

Washington law permits a person to make a list of specific items of tangible personal property separate from the will or living trust. These "Bequests By Separate Writing" are legally enforceable as long as the will or living trust includes a paragraph stating that the testator intends to leave such a list. These lists may not be used for real property or for money, stocks, or bonds. They are effective, however, for all tangible personal property. The list must be signed, but witnesses or a notary are not required. Instructions for making a Bequest By Separate Writing and an example of a form are included as Appendix A and Appendix B for your further information. Keep in mind, however, that to be enforceable, the list must be referred to in your will or living trust.

RESIDUARY BEQUESTS

After specific bequests and bequests by separate writing, most wills will have a residuary clause under which all the rest of the estate is left to the primary beneficiary or beneficiaries. Most wills then name secondary beneficiaries and even tertiary (third-level) beneficiaries in the event that the primary beneficiaries do not survive the testator.

TRUSTS

A *trust* can be generally defined as an agreement under which the owner of real or personal property transfers the property to a trustee, who accepts responsibility for holding, managing, and distributing the property according to the terms of the trust. The person who establishes the trust is called the trustor or settlor. The trustor may name himself as trustee or name a trusted friend or relative or a bank or trust company to serve as trustee. Living trusts, trusts which are created during lifetime, are discussed in a later section.

A *testamentary trust* is a trust established under a will. When the intended beneficiaries of the will are minors or persons who need assistance with the management of the estate assets, the property may be left in a testamentary trust for the benefit of the beneficiaries. Minors' trusts are normally designed to last until a specified age, often older than the age of majority, which is eighteen (18) in the State of Washington. The trustee is usually given discretion to apply income and principal on behalf of the minor for health, education, maintenance and support. If there are two or more children, the trust can be designed with separate, equal accounts for each child, or as a single account with distribution according to need. The trust may also provide for partial distributions of principal at specified ages or for payment of all current income after the beneficiaries reach a certain age.

A testamentary trust created in a will does not become operative until the death of the testator (the person in whose will the trust is included). Therefore, the trust can be modified by changing the will at any time during the life of the testator. Upon the death of the testator, the terms and provisions of the testamentary trust become irrevocable. There are no record keeping requirements, tax returns or title transfers until the trust becomes operative upon the death of the testator.

An important advantage of the use of trusts is the ability to control the ultimate disposition of the estate. For example, persons with children from a prior marriage may leave a certain portion or all of their property to the surviving spouse for his or her lifetime, with the remainder to go to the children upon the spouse's death. This prevents the deceased spouse's children from being disinherited by the surviving spouse.

In the past, if a minor received a share from an estate with no trust, it was necessary to establish a special guardianship through the court for the purpose of holding the assets for the benefit of the minor until he or she turned eighteen (18). Under the Uniform Transfers to Minors Act, however, the personal representative may avoid the necessity of establishing a guardianship by distributing the property to a custodian to hold for the benefit of the minor until he or she reaches the age of eighteen (18). The age can be extended to twenty-one (21) or twenty-five (25) if the will specifically provides for distribution in this manner. Use of a trust rather than a guardianship or the Uniform Transfers to Minors Act allows the testator to control use of the assets, provide for distributions after the ages of eighteen (18) or twenty-five (25) and name the person who will be responsible for the funds. Also, the trust assets may be protected from the claims of creditors of the beneficiaries through spendthrift provisions. This protection may be very important in the event that a young adult becomes involved in a divorce, bankruptcy, or other litigation. Finally, a trust can direct the trust assets to other beneficiaries in case the beneficiary dies prior to the age for distribution.

Special Needs Trusts. Another type of testamentary trust that is becoming increasingly important is a supplemental or special needs trust. An individual can establish a supplemental needs trust for a person with a disability who is on a government entitlement program such as S.S.I. or Medicaid. As long as the trust only provides for items which are supplemental to the benefits provided by the government, the individual's entitlement to the government benefits should not be jeopardized. This is one way that parents with disabled children or any family member with a disabled relative, can make a special provision for the care of their relative after their deaths. It can also be used by a testator who has a spouse in a nursing home on Medicaid.

Tax Savings Trusts. In larger estates, significant tax savings may be achieved through the use of the exemption equivalent trust. This trust will be discussed in more detail in the section on taxes.

Beneficiary Designations: Coordinating Your Life Insurance and Pension Benefits with Your Testamentary Trust. The advantages of tax savings or management trusts may be lost if you fail to coordinate the beneficiary designations on your life insurance and pension plan with your estate plan. Life insurance, pension benefits, and joint-with-right-of-survivorship assets do not pass under your will. They pass according to the document or contract under which they are established. Therefore, if your children are the primary or secondary beneficiaries under your life insurance, the proceeds would pass to them outright upon your death rather than being directed into the trust established under your will. If your children were under the age of eighteen (18), the life insurance company would probably insist on the court appointment of a special guardian to receive the proceeds and hold them until the child reaches the age of eighteen (18), when the funds would be distributed in full to your child. The same is true in the case of pension benefits. This problem can be avoided with a properly drafted beneficiary designation naming the trustee of the testamentary trust established for the benefit of your children as the primary or secondary beneficiary.

FIDUCIARIES

A fiduciary is a person who stands in a relationship of trust and confidence to act on behalf of another. The fiduciary has legal duties to act only in the best interests of the estate or beneficiary, and in accordance with law. Fiduciaries can be held personally liable for breaches of fiduciary duties. Guardians, personal representatives, and trustees are all fiduciaries.

Guardians. Almost all parents of minor children also name guardians, and frequently alternate guardians, for their minor children in their wills. However, a guardian must also be approved by the court at the time the guardianship begins. In the event of a dispute, the court will name a guardian based on the best interests of the child. A single or remarried parent often wishes to name someone other than the ex-spouse who is the natural parent of the child as guardian. If, however, the natural parent comes forward to claim custody, the court would make a determination of what would be in the best interest of the child, often giving preference to the natural parent. The deceased parent's wishes, as expressed in the will, would be one factor considered by the court. The wishes of an older child will also be considered.

Personal Representative. The will also names the personal representative, or executor, of the will. The surviving spouse has a statutory right to be the personal representative of the community property estate. Most wills will also provide for alternate personal representatives, waive the requirement of a bond and specify nonintervention probate, which will be discussed below.

Trustees. Trustees and alternate or successor trustees are also named in the will. If desired, the will may provide that a resigning trustee or an adult beneficiary may designate the successor trustee.

PROTECTION OF SURVIVING SPOUSE

As mentioned above, the general rule is that each spouse has the right to direct the disposition of all of his or her separate property and one-half of the community property to the beneficiaries of his or her choice under the will. The surviving spouse already owns all of his or her own separate property and a one-half interest in every community property asset. In addition, certain provisions of law protect the surviving spouse's right to continue to manage the community property and protect him or her against total disinheritance by the deceased spouse. First, the surviving spouse has the absolute right under the statute to serve as the personal representative of the community property. This prevents interference by another personal representative in the management of the community property assets. In regard to the separate property, the deceased spouse does have the right to name a different personal representative to administer the separate property.

Second, a spouse is protected from being totally disinherited by the deceased spouse by homestead laws. A surviving spouse who has been disinherited under the will, and who has not received substantial assets from the deceased spouse outside of the will, may claim a homestead award or award of family support up to $125,000 from the community property estate, or if there is none, from the separate property estate of the deceased spouse. The $125,000 amount is automatically increased as the regular homestead exemption increases.

The surviving spouse and minor children may also petition for a support allowance during the period of probate. If the surviving spouse petitions for an award, the decedent's children who are not the spouse's children may ask the court to divide the award among the spouse and children.

PROBATE

THE PROBATE PROCEDURE

Probate is the legal process for transferring property when an owner dies. The process involves determining the heirs and beneficiaries, locating and valuing the assets, paying debts and taxes, and distributing the estate to the beneficiaries. In Washington, the probate process is quite flexible and can be as simple or as complex as is required by the nature of the assets and the beneficiaries involved. Most probate proceedings are relatively simple, requiring little direct court involvement. The procedure is almost identical whether the decedent died with a will or with no will. Having a will does not "avoid probate." But, a will naming a personal representative, waiving the bond, and specifying nonintervention probate will streamline the process and reduce expenses.

The process usually begins with the appointment at an informal court hearing of an individual as a personal representative. This will be the person named in the will or agreed to by the heirs, a close relative or, in some cases, a creditor. The duties of the personal representative are to collect the assets, pay the creditors, taxes and other expenses, and distribute the assets to the proper beneficiaries. The personal representative has fiduciary responsibility to act in the best interest of the estate and may incur personal liability for failure to perform his duties according to law.

Probate does not have any effect on estate taxes. Assets owned by the decedent will be included in the taxable estate regardless of whether the property passes outside of probate.

LENGTH OF PROBATE

The probate procedure has been simplified considerably in the past few years. A simple probate may be completed and closed six to nine months after the death of the decedent. Factors which may delay the process include will contests, disagreements as to classification of property or interpretation of the will, complexities in transfer of title, and calculation and payment of taxes due, if any. Occasionally, estates are kept open to facilitate transfer of a business or to achieve certain tax benefits.

AVOIDING PROBATE

There have been numerous publications describing the perils of probate and how to avoid it. Most of these were written prior to the streamlining of the probate process, in the days when the court had to approve each individual transaction by the personal representative. At that time, it was common to charge based on a percentage of the total estate rather than upon the time actually spent. This practice is still followed in some states. In the State of Washington, however, most attorneys charge an hourly rate for actual time spent. Many of the routine probate documents

may be prepared by a trained legal assistant whose time is billed at a lower rate than the attorney.

Most of the ways to "avoid probate" also involve cost and inconvenience. The living trust is one of the favorite recommendations for avoiding probate. Setting up such a trust, in which all assets are held by yourself as trustee and maintaining the trust throughout your lifetime may cost more in the long run than the probate procedure upon your death. There are certain other advantages of the living trust, however, that may make it appropriate for your estate plan. Living trusts are discussed in more detail in a later section.

ADVANTAGES OF PROBATE

A significant advantage of the probate process has been the cutting off of creditors' claims. As soon as the personal representative is appointed, he may publish a notice in a newspaper of general circulation advising creditors that any claims against the decedent's estate must be made within four months or be barred. A U.S. Supreme Court decision also requires actual notice be sent to known or easily ascertainable creditors. If the probate procedure together with the notice to creditors is followed, unknown creditors who may surface much later will have no claim upon the assets of the estate in satisfaction of those debts. If the procedure is not followed, such a creditor may claim the decedent's property after it has been distributed to his heirs for up to six years or even longer in some cases. The bar against creditors' claims applies also to personal injury and negligence lawsuits which may be filed against the decedent's estate for acts arising during his or her lifetime. For example, professionals who may be subject to malpractice claims for an act or omission which may have occurred in the past may use the creditors' claim process to protect their beneficiaries from claims which otherwise could be made long after death. However, since January 1, 1995, the creditors' claim procedure has been available to non-probate estates. It is no longer necessary in Washington to have a probate to achieve this creditor protection.

A potential disadvantage of probate is that during the probate process, the Personal Representative must give a notice of his appointment to all of the heirs of the decedent. Those are the people who would inherit the estate if the decedent had no will. If you have no spouse, children, parents or siblings, your heirs could be aunts, uncles and cousins, some of whom you may not know or be able to locate. Avoiding the probate process means the person in charge will not need to locate all of these collateral relatives.

ADMINISTRATION OF SMALL ESTATES

Estates consisting entirely of personal property with a total value of $100,000 or less may be handled through an affidavit procedure rather than the probate process. This procedure permits the persons entitled to property under the will or under the laws of intestate succession to collect and distribute the assets without the necessity of

following the probate procedure. The heirs are responsible for taking care of the claims of creditors. This procedure cannot be used to transfer title to real property.

COMMUNITY PROPERTY AGREEMENTS

The community property agreement is a very commonly used estate planning tool. A community property agreement is a special contract between husband and wife which is unique to Washington and Idaho and which avoids the necessity of a probate on the first death.

REQUIREMENTS

The general requirements of a community property agreement are that it be made between a husband and a wife, that it be in writing and signed by the husband and wife, that it agree about the status of property either immediately or upon the death of one spouse, and that it be acknowledged like a deed (i.e., notarized).

TYPES OF COMMUNITY PROPERTY AGREEMENTS

It is important to be aware that all community property agreements are not the same. Some community property agreements immediately convert any and all separate property into the community property of the spouses. Other community property agreements permit the ownership of separate property during the lifetimes of the spouses, but provide that upon the death of the first spouse, all the separate property of that spouse is converted to community property and automatically passes to the surviving spouse. A community property agreement can also be drafted to pass community property automatically to the surviving spouse on death, but have no effect upon separate property, which would then pass either by will or by intestate succession. Many people wish to maintain ownership of separate property during their lives in order to preserve the ability to make gifts without the consent of the spouse or to attempt to protect separate property from the claims of a spouse in the event of a divorce.

ADVANTAGES

There are a number of advantages to the use of community property agreements. First, there is simplicity of identification of all property as community property, thereby eliminating complicated tracing of separate and community property. Second, upon the death of the first spouse, there is no probate. The surviving spouse merely records an affidavit together with the original community property agreement and a certified copy of the death certificate with the county records. These documents will serve as the link in the chain of title for real property owned by the couple. The real estate records will then show that the surviving spouse is the sole owner of the real property. Other titled property such as vehicles may be transferred by giving licensing authorities copies of the community property agreement and the death certificate. The surviving spouse will file the final joint income tax return and a federal estate tax return, if required.

DISADVANTAGES AND LIMITATIONS

There are also disadvantages to community property agreements. First, it should be kept in mind that the community property agreement is a contract between both spouses. A will is signed by only one spouse, and that spouse is free to change his or her mind in the future and change the design of the estate plan in that will. Revoking or changing the community property agreement requires the agreement of both spouses. The agreement is not revoked by a pending divorce, an inconsistent will, or any other unilateral action. Therefore, if a spouse in later years becomes concerned that his surviving spouse might remarry and leave the marital property to a second spouse, he cannot establish a different estate plan requiring ultimate disposition to his children without the other spouse's consent. For this reason, community property agreements are often inappropriate for second marriages, because there is no protection for the children of the first marriage.

The community property agreement does not eliminate the necessity of a will, because there is no provision for simultaneous death, for secondary beneficiaries, for specific bequests, or for naming guardians and trustees for minor children.

Specific gifts of separate property or a portion of the community property cannot be made under a community property agreement. All property passes to the surviving spouse.

Because the community property agreement is unique to the State of Washington, it will not be effective to transfer real property located in another state. The property will pass according to the law of that state. The other state will recognize a valid Washington will, or, if none, will apply its own laws of intestate succession. It is possible to avoid a probate in the second state by holding the property as joint tenants with right-of-survivorship or in a trust. Also, in certain states, including Oregon, spouses can hold real property as tenants-by-the-entireties. This is a special form of survivorship ownership between spouses.

Another major disadvantage of a community property agreement is that it can defeat tax planning for larger estates. If your estate is large enough that tax savings may be achieved through an exemption equivalent trust, the community property agreement may not be appropriate.

The community property agreement does not bar creditors' claims. Therefore, professionals who may be subject to malpractice claims often prefer to use the probate process, but there is a non-probate creditors' claim process that may be used for that purpose.

In spite of its limitations, the community property agreement is an ideal estate planning tool for most married couples, and, together with carefully drafted wills, is a major part of the "estate plan" for most married couples in the State of Washington.

OTHER PROPERTY AGREEMENTS

There are other special contracts regarding property status which may be entered into by spouses, by persons intending to be married, or by persons who are living together without marriage. Examples of these are separate property agreements, prenuptial agreements, and agreements regarding status of property.

Separate Property Agreements are used between spouses to agree that certain specified property will be held by a spouse as separate property. These are sometimes used to show that a business is a female-owned business for the purpose of qualifying for certain contract quotas.

Prenuptial Agreements are common in cases where one or both parties have accumulated significant assets prior to marriage and often have obligations and responsibilities for children of a prior marriage. The agreement will recite which property is separate property and which property will be community property. The agreement may merely agree upon the classification of property as separate or community, thus avoiding any future disputes as to the facts, or it may alter the application of law by agreeing that property which would normally be classified as one kind will be the other kind. If the agreement is to affect pension or retirement benefits, additional waivers will need to be filed with the plan administrator after marriage. These agreements will be legally enforceable in Washington if there has been full disclosure of the assets of both parties, fairness in procedure, and independent counsel representing both parties.

Agreements Regarding Status of Property. People who live together without marriage often enter into a property agreement to avoid the so-called "palimony" disputes. There is no "common-law marriage" in Washington. But, Washington law now recognizes that an unmarried couple that lives together in a relatively long-term, stable relationship similar to marriage does acquire property rights in each other's property. In the event of suit, a judge will divide the couple's property using the same concepts applied in divorce cases. These agreements clarify or limit such rights and assure that each party is aware of the other's expectations.

LIVING TRUSTS

Another common vehicle under which assets pass outside the will and outside probate is the living trust. Under a living trust, a person transfers property during lifetime into trust, often holding it himself as trustee for his benefit until death. Upon death, a successor trustee named in the trust distributes the property as provided in the trust or continues to hold and administer it for the named beneficiaries. The living trust is the primary vehicle proposed by the advocates of avoiding probate.

APPROPRIATENESS

Living trusts are valuable estate planning vehicles for some individuals; however, for others they may not be appropriate. Each individual or couple needs to review the nature of their assets, their family situation and their goals before deciding between a living trust and a traditional will plan.

The most common factual situation appropriate for a living trust is a married couple with assets in excess of the amount that would be free of federal and state estate tax. The trust can be designed to divide into two trusts on the first death to obtain two of the federal and state exemption amounts, allowing more assets to pass free of federal and state estate tax to the children. See Appendix C for an illustration of the tax savings trust and pages 23-27 for information on federal and state estate tax exemption amounts.

Also, a married couple with children from prior marriages may find a living trust especially suitable. The trust could be designed so that both spouses would have assurance that their joint estate will be ultimately divided among all children upon the second spouse's death.

Persons who own real property in more than one state often consider a living trust. This way multiple probates (in each state where there is real property) can be avoided.

A popular reason for a living trust is to avoid the legal process, cost and potential publicity that a probate might allow. Other persons who wish to minimize the opportunity for heirs to question their estate plan or the acts of their personal representative may prefer a living trust.

Couples or single persons who are retired or near retirement and have reasonably stable assets and a well-established idea of their overall plan will often choose a living trust. These individuals are sometimes motivated by the built-in management assistance that a successor trustee can provide. Single persons who are retired, own real property and anticipate the need for management assistance also may find a living trust attractive.

A living trust may not be appropriate for all individuals. Individuals with no real property and estates less than $100,000 may find the initial cost and time required to set up a living trust unwarranted. The estate of these individuals may be settled by a small estate procedure rather than probate. Younger couples with children only from their present marriage or couples who are still acquiring their estates often do not choose a living trust. These couples usually have less concern about children being disinherited. Further, the cost of setting up and maintaining a trust over many years may be cumbersome.

SETTING UP A LIVING TRUST

In its simplest terms a living trust is a contract which gives instructions for the management of your property during your lifetime and for its ultimate disposition upon your death. The contractual arrangement can be designed to fit your needs. A revocable living trust can be amended or revoked at any time as long as both spouses are alive and competent. The trust may also be drafted so that one competent spouse may amend or revoke it. A living or "inter vivos" trust is so designated because it becomes effective during your lifetime, as opposed to a will, which only becomes effective on your death.

The living trust arrangement involves several different roles. First, there is the creator of the trust, called the *trustor* or *settlor*, who owns the assets and makes the design decisions about the contract. The *trustee* is the manager of the trust. The trustee makes investment and distribution decisions pursuant to the trust terms. Typically, the trustor serves as the original trustee. A trustee can also be another individual, a bank or other corporate fiduciary when and if desired. *Beneficiaries* are the individuals who have the benefit of the income and the principal of the trust. You may fill all three roles as long as you are competent and living.

A living trust is *funded* once you transfer your property into the name of the trust. It is essential to fund the trust in order to avoid probate. Property is transferred by retitling it in your name or the bank's name "as Trustee of (your name) Living Trust dated _____, 20__." This may include deeds for real estate, stock certificates, car titles, bank accounts, and other "titled" property. When bank accounts are set up in the name of your living trust, the bank account checks do not need to say "trustee" on the checks themselves, but it is important that the signature cards indicate that you are acting as a trustee. It is also important to remember that any titled property not transferred into the name of the living trust may be subject to probate. Personal property valued under $100,000 per person, however, can be transferred without a probate so many people will leave their vehicles and a small checking account outside of the trust.

As trustor and trustee of a revocable trust, you may do anything with your property that you could do before. There is no special tax identification number or fiduciary tax return required. Income is reported on your tax return under your own Social Security number, just as it was before. But, transactions involving property in the

trust must be signed by you as a trustee. Further, future property also must be acquired in the name of the living trust if you want it to be a part of the living trust.

If desired, upon the death of the first spouse, the trust may be divided into two parts. The survivor's share of the trust continues to be fully revocable and amendable. This is because the survivor's trust is "his or her half." The survivor can change the beneficiaries of the survivor's trust if appropriate. This will allow flexibility for changing circumstances. For estate tax purposes, the decedent's trust funded with up to the estate tax exemption amount of the decedent's share of the trust, usually becomes irrevocable upon the first spouse's death. In other words, the decedent's trust can no longer be amended. The surviving spouse will usually continue to have management control and make investment decisions as the trustee or co-trustee. The surviving spouse may also receive all income and any principal needed for health, education, maintenance, and support. The property in the decedent's trust will not be subject to death tax upon the second spouse's death. This is because the amount allocated to the trust on the first spouse's death is sheltered by his or her federal and state exemption amount. If the property appreciates, the increased value is also sheltered from tax on the second death. The decedent's trust will have its own tax identification number and tax return. Income will be distributed to and taxable to the surviving spouse. Upon the second spouse's death, the remainder of the decedent's trust is distributed to the original beneficiaries that he or she designated. If the estate is nontaxable and maximum flexibility is desired for the surviving spouse, the entire trust can remain revocable between the first death and the second death. This is often done when there are only children from the present marriage. Then, no special accounting or tax return would be required. If it is uncertain whether the estate will be taxable and the division of the trust beneficial, the trust may be designed so the division into two trusts is optional for the surviving spouse. But, such provisions must be spelled out in the trust prior to the first spouse's death.

Federal and state estate taxes are treated differently. With respect to the interplay of federal and state estate tax, please see the discussion on pages 232`12 -27.

On the death of the second spouse, there is no need for a probate proceeding. Instead, the successor trustee named in the trust (a child, bank or other trusted person) takes over to manage, liquidate, and distribute the assets in the trust. The trustee pays the debts, files the necessary tax returns, and then distributes the estate as directed in the trust document. Some trusts provide a continuation for the benefit of children, grandchildren or elderly or disabled relatives.

SUMMARY

There are many estate planning alternatives including dying without a will, joint tenancy, community property agreements, "simple" wills, wills with testamentary trusts, and living trusts. Appendix D contains a chart that illustrates estate planning alternatives and the features associated with each one.

OTHER CONTRACTUAL DISPOSITIONS

Even though you have a will, a community property agreement or a trust, a large portion of your estate may end up passing outside the control of these documents. Examples of these are the following:

JOINT-OWNERSHIP-WITH-RIGHT-OF-SURVIVORSHIP

When property is owned joint-with-right-of-survivorship (JWROS), there is no "transfer" of the property to the survivor; the ownership of the decedent is merely extinguished upon death and the surviving joint tenant owns the entire asset. Title can be cleared by furnishing a death certificate. No probate is necessary for this asset.

The words "co-tenancy" or "tenancy in common" do not carry survivorship rights. The interest of a tenant-in-common passes under his or her will or community property agreement.

Another example of survivorship ownership is tenancy-by-the-entireties by spouses in the State of Oregon. This form of ownership has been abolished in the State of Washington, but is still common in many other states.

A parent may add the name of one of his or her children to bank accounts for aid in handling business affairs. Most of these accounts are automatically set up as joint-with-right-of-survivorship accounts. Upon a death, however, there is always an issue as to whether the parent intended for that particular child to receive this asset to the exclusion of the other children, who are usually treated equally under the will. The controlling factor is the intent of the decedent, but frequently the intent is unclear. The statutes applicable to bank accounts include a presumption that the joint owner was intended to become the sole owner of the account, unless there is clear and convincing evidence otherwise. Often parents do appreciate the extra efforts of the child who assists in the management of their business affairs and do want that child to receive the added benefit of these accounts. Intent can be clarified by adding a special provision to the will which states the testator's intent in adding the name to the account or writing a letter to all of the children and maintaining a copy in the estate planning file.

Special caution should be used in putting other names on your property, either to aid in management, to qualify for state aid, or to avoid probate. Once another person's name is on your property, that property is subject to attachment in satisfaction of his debts or judgments against him. Outright transfers can also result in lost tax benefits and jeopardize qualification for Medicaid nursing home assistance.

Occasionally, one spouse may set up an account in the names of himself or herself and a child or parent, joint-with-right-of-survivorship. If the account is funded with community property assets this is considered to be a gift of community property to the new joint owner. If the other spouse had not consented to the death disposition, the estate may recover the entire account from the survivorship owner upon the death of the first spouse.

LIFE INSURANCE AND PENSION PLAN BENEFICIARY DESIGNATIONS

Other assets which pass by contract are life insurance and pension benefits. In both cases, the owner signs a beneficiary designation directing to whom the company or plan should pay the benefit. As mentioned earlier, these assets may be used to fund a minor's trust or to take advantage of a tax savings trust established in the will by naming the trust as a beneficiary rather than naming a person.

It should be noted that community property laws and federal pension laws limit a married person's ability to name someone other than the spouse as primary beneficiary of community life insurance and qualified retirement plan benefits. If parties agree in a prenuptial agreement that retirement plan proceeds are to be paid to a non-spouse, a separate waiver must be signed and filed with the plan administrator after the marriage.

Under Washington law, life insurance paid to a named beneficiary or trust is protected from the claims of the creditors of both the decedent and the beneficiary. Therefore, "my estate" should not be named as the beneficiary.

IRAs, 401(k) plans and other forms of retirement benefits or deferred compensation are subject to complex pension and income tax rules as well as community property and estate tax laws. While designation of a death beneficiary may seem like a simple matter, such designations have significant tax effects on the beneficiaries. It is important to have both primary and secondary beneficiaries named. Generally, it is better to name real persons, rather than naming a trust or "my estate." In many cases, however, we need to coordinate these assets with your estate tax plan or name a trust for young or disabled children as the beneficiary. It is essential to obtain the advice of an attorney who is experienced in dealing with retirement benefits in estate planning to implement this type of plan. In addition, you also need competent advice upon attaining age 70 ½ (the age at which must begin required minimum distributions) or when you inherit a retirement account (when other distribution rules apply to maximize the income tax benefits).

TRANSFERS OF SECURITIES (TOD or POD ACCOUNTS)

In 1993 Washington adopted a law that allows owners of registered securities (held either in certificate or account form) to designate a beneficiary or beneficiaries of the security upon death of the owner. These are called transfer on death (TOD) or pay on death (POD) accounts. It is important that the beneficiary designations be coordinated with your overall estate plan.

OTHER RELATED ESTATE PLANNING DOCUMENTS

DURABLE POWER OF ATTORNEY

A power of attorney is a special document under which you grant to another person, the "attorney-in-fact," the legal authority to act on your behalf. It may grant the power to do any and all acts on your behalf or only certain described acts. A *durable* power of attorney remains effective even when you become disabled, incompetent, or otherwise unable to transact business on your own. Normally, in the estate planning context, durable powers of attorney do not become effective until your disability is certified by your own physician, but they can be drafted to be effective immediately. If you are in an automobile accident and lapse into a coma, your named attorney-in-fact will have the authority to take care of your business affairs for the duration of your disability. Spouses' durable powers of attorney name each other as attorney-in-fact, and then often name an alternate in case neither spouse is able to serve. Durable powers of attorney are very valuable in avoiding the expense and delay of obtaining a court-appointed guardian or other court order to permit the transaction of necessary business. Any person who acts under a power of attorney has fiduciary responsibility to the person for whom he acts and must account to him or his heirs for the actions taken.

A power of attorney may also grant authority to make health care decisions if you are unable to do so yourself. It can cross reference your advance directive or living will, and can grant the authority to consent to treatment or to refuse treatment in accordance with what the attorney-in-fact believes your wishes would be if you were able to make the decision yourself. These provisions may be included in your financial power of attorney or described in a separate document.

DIRECTIVE TO PHYSICIANS (LIVING WILL)

Under the Natural Death Act, any person who is at least eighteen (18) years of age and of sound mind may sign a directive regarding the use of artificial life support systems. By signing this directive, you state that in the event that you are terminal and are in eminent danger of death, you do not wish to be maintained by artificial life support systems. The directive may be revoked at any time. Signing it will not affect your insurance or any right you may have to personally accept or reject medical treatment.

In 1992, the Washington legislature expanded the statute to allow you to also express your wishes in the event you are in a persistent vegetative state or permanent coma. You also now have the ability to direct whether or not you wish to have artificial nutrition (and hydration if you so choose) withheld. Many people also specify that they be made comfortable and that pain medication not be withheld.

Keep in mind that this document is a method of expressing your desires in advance. The doctor and hospital will be making judgments as to whether you are in fact in

eminent danger of death and the wishes of your attorney-in-fact or your closest relatives will undoubtedly be considered. Living wills and health care directives are becoming more accepted all the time, however, and one of the major benefits is relieving your loved ones from making these decisions alone.

MEDICAL POWER OF ATTORNEY FOR MINOR CHILDREN

A medical or limited power of attorney is a document under which a parent or parents may name another person as attorney-in-fact for the purpose of consenting to medical treatment when serving as temporary custodian of a minor child. This document will assure the doctor or hospital that, first, this individual has the authority to consent to medical treatment and, second, that you agree to pay for the treatment. Any time you leave your children with relatives or friends for any extended period of time, you should give them such a power of attorney. You may also include a provision in your Durable Power of Attorney naming someone to act for medical and other decision-making purposes on behalf of your minor child if you and his or her other parent is unable to act.

In your Durable Power of Attorney, you may also designate someone to make other decisions for your minor children if you are unable to do so.

ESTATE TAXATION

FEDERAL ESTATE TAX

An estate tax is a tax imposed on the estate as a whole prior to distribution. In 1981 federal estate tax laws were revised extensively with the result that very few estates were subject to estate taxation. In 2001 and 2010, the federal estate tax laws were revised again. Under the laws, there was no tax at all if your estate passed outright to your husband or wife, because there was an "unlimited marital deduction" for all property left to the surviving spouse (provided the surviving spouse is a U.S. citizen). These assets would be subject to tax upon the second spouse's death.

In addition, each individual had an exemption from estate tax, which allowed each person to transfer a certain amount of assets free of estate taxation to any beneficiary. The 2001 and 2010 legislation set out the exemptions as follows:

2001	$675,000
2002	$1,000,000
2003	$1,000,000
2004	$1,500,000
2005	$1,500,000
2006	$2,000,000
2007	$2,000,000
2008	$2,000,000
2009	$3,500,000
2010	$5,000,000
2011	$5,000,000
2012	$5,000,000
2013 and after	$1,000,000

In December 2010, Congress amended the estate tax laws again applying to years 2011 and 2012. The exemption is $5 million for those two years, indexed for inflation in $10,000 increments. All property owned by the decedent is counted in this total, including life insurance, pension benefits, trust property, joint with right of survivorship property, property that passes under probate, and prior taxable gifts. If the estate exceeds the exemption amount, the excess value of the estate is taxed at 35 percent for decedents dying in 2011 and 2012. If Congress does not pass additional legislation, then for years 2013 and beyond, the exemption amount will be reduced to $1 million per person and assets over that amount will be taxed at rates of 41 to 55 percent.

Under the 2010 laws, if a married couple has a combined estate of over $10 million and the couple has wills or a community property agreement under which the surviving spouse receives all property outright, there may be federal estate tax payable upon the second death. There would be no tax on the first death because of the unlimited marital deduction (assuming the surviving spouse is a U.S. citizen).

Upon the second death the entire combined estate of the surviving spouse is subject to tax. The survivor's exemption amount will shelter one person's estate tax exemption amount but the federal exemption of the first spouse to die may be wasted. This result can be avoided by having properly drafted wills or a living trust with exemption equivalent trusts to shelter the first spouse's exemption amount. In addition, if the first spouse dies in 2011 or 2012 and if a federal estate tax return is filed, the deceased spouse's unused exemption amount can pass to the surviving spouse so the survivor can pass two exemptions tax free. However, unless Congress enacts additional legislation to extend this rule, this "portability" of exemption will not apply after 2012. Therefore, it is much more prudent to include proper estate tax planning provisions in your estate planning documents.

An *exemption equivalent trust* can be established either in a will or in a living trust. It can name the surviving spouse as trustee, and allow the surviving spouse to use all of the current income and any of the principal needed for his or her health, education, maintenance, or support. The trust will then name the beneficiaries to receive the remaining balance of the trust estate upon the death of the second spouse. Because the trust property is considered to be passing from the first spouse to die rather than the second spouse, the value of the trust estate is not counted in the second spouse's taxable estate for federal estate tax purposes. Therefore, estate tax exemptions of both spouses can be used, and $10 million or more can be sheltered from federal estate tax. See the illustration at Appendix C.

This is a very simple, easy to manage trust that could easily save the combined estate over $1,750,000 or more in estate taxes. All of the assets in the trust will be available to the surviving spouse, if needed, but because the surviving spouse's share of the estate will be subject to tax upon his or her death, those assets should be used first. Another advantage of the use of this trust is that the first spouse to die is assured that the balance of his or her trust estate will ultimately pass to his or her children or other secondary beneficiaries.

Any gift from your estate to a church, college, or other qualified charity is also deductible in determining the amount of the taxable estate. Often persons interested in making charitable gifts will leave amounts below the exemption amount to individual beneficiaries and the amounts above that amount to charity, thus avoiding payment of estate tax.

FEDERAL GIFT TAX

You may use your exemption amount ($5,000,000 for 2010-2012) either by making gifts during your lifetime or by bequests at your death, or some combination thereof. In addition, you may transfer an "annual exclusion amount" without using any of your estate and gift tax exemption amount. Currently, the annual exclusion amount is $13,000 per year, per recipient and there is no limit to the number of recipients. So, if you have several beneficiaries in mind, it is possible to make substantial gifts without using any portion of your estate and gift tax exemption amount.

If the gift is made by spouses, the total amount of the annual exclusion per donee is $26,000. Gifts at or under these amounts are not subject to gift taxation and do not have to be reported on gift tax returns (unless the gift is of one spouse's separate property). Gifts above these amounts to any one donee in any calendar year must be reported on a federal gift tax return, Form 709, by April 15 of the following year, and are counted toward the lifetime gift and estate exemption. No tax will be due until the exemption amount is exhausted. The tax rate on taxable gifts is 35 percent for 2010-2012.

Gifts to qualified charities are deductible for both income tax purpose and gift tax purposes.

Occasionally people make gifts which are subject to federal gift tax without realizing it. For example, putting someone else's name on a deed may be making a gift to them of an interest in that property, and you may have to file a gift tax return if the amount of the transferred interest exceeds the annual exclusion. Gifts to spouses are fully deductible as long as the recipient spouse is a U.S. citizen and filing a gift tax return is not required.

STATE INHERITANCE, ESTATE, AND GIFT TAX

An inheritance tax is a tax imposed upon the person who receives a distribution from an estate. Prior to 1981, Washington had an inheritance tax, with the rates variable according to the recipient's kinship with the decedent. In 1981, the inheritance tax was abolished and an estate tax was adopted. Prior to 2001, state estate tax was due only if federal estate tax was payable and only to the extent of the federal estate tax credit for taxes paid to states. Therefore, the net effect was that the estate itself paid no additional tax, but a portion of the amount that would have otherwise gone to the federal government went to the state government.

Under the 2001 federal legislation, the state death tax credit was reduced by 25 percent in 2002, by 50 percent in 2003, by 75 percent in 2004, and completely repealed as of January 1, 2005. The result was a sharp decline in the amount of tax passing to the states.

For a time, the State of Washington took the position that the estate tax due the state was the full state death tax credit amount regardless of the fact that the credit was being reduced for federal estate tax purposes. This meant that even though many people were no longer in danger of being subject to *federal* estate tax, they were subject to Washington estate tax.

In February 2005, the Washington Supreme Court ruled that under current Washington law, there is no state estate tax separate from the federal state death tax credit. In other words, when the federal state death tax credit was abolished, Washington's estate tax was too. In response, the Washington Legislature passed an act in April 2005 creating a stand-alone estate tax. There is an exemption from the

tax of assets valued at $2 million for 2006 and thereafter. The tax rates range from 10% to 19% under present law.

The State of Washington no longer imposes a gift tax, so in certain circumstances it may makes sense to make a large gift prior to death to avoid Washington estate tax. This can be especially helpful if the estate is under $5 million and thus not subject to federal estate tax. However, it is important to consider all potential tax implications before making a large gift, so it should not be done without legal and accounting advice.

The following table reflects the Washington estate tax payable for various sized estates.

Total Estate	Washington Tax
$ 1,500,000	0
2,000,000	0
2,500,000	50,000
3,000,000	100,000
3,500,000	170,000
4,000,000	240,000
5,000,000	390,000

The Washington State estate tax is separate from the federal estate tax so even if the federal estate tax exemption is $5 million, Washington estate tax will still apply. Married couples and state registered domestic partners may shelter up to $4 million of assets from Washington estate tax using the techniques outlined above. However, there is no ability for the survivor to utilize the unused Washington estate tax exemption of the first spouse/registered domestic partner if that amount is not sheltered in a trust.

The State of Oregon also enacted separate legislation and its exemption has not risen in line with the federal amount. Oregon's state inheritance tax filing threshold is only $1,000,000.

The following table reflects the Oregon inheritance tax payable for various sized estates.

Total Estate	Oregon
$ 1,000,000	0
1,500,000	64,400
2,000,000	99,600
2,500,000	138,800
3,000,000	182,000
3,500,000	229,200
4,000,000	280,400
5,000,000	391,600

For married couples, these state tax regimes present an interesting additional challenge. Many tax planning wills and trusts provide that the federal exemption amount of the first spouse to die is captured in an exemption equivalent trust, with the decedent's excess assets passing to the surviving spouse either outright or in a marital trust. The idea is that no tax will be due at the first death. The problem is that if $5 million were allocated to an exemption equivalent trust in 2011, it will be over-funded for Oregon purposes by $4,000,000, and Oregon will impose a tax on the excess amount at the first death. An option is to under-fund the exemption equivalent trust so that no more than $1,000,000 is transferred to the trust, but doing so wastes $4,000,000 of the deceased spouse's federal exemption. Oregon and Washington have "okayed" a "fix" for this problem by allowing a portion of the exemption equivalent trust to be treated as a marital trust for state purposes. This fix really only defers payment of the state estate tax on the marital trust portion until the second death. To take advantage of this fix, most plans need to be revised to include the appropriate language in the wills or trust.

INCOME TAX

Distributions of the assets from an estate are generally not included in the taxable income of the recipient. Certain assets on which income tax had not yet been paid, however, such as an IRA account, a tax deferred annuity, or an installment contract, will be subject to income tax.

The personal representative is responsible for filing the decedent's final Form 1040 income tax return for the short year from January 1 until the date of death. The estate is also a taxable entity, and if the assets in the estate earn $600 or more in income, the personal representative must file a fiduciary income tax return, Form 1041. In most cases, the estate itself pays no tax, but a portion of the taxable income and a portion of the deductions pass through to each beneficiary.

Irrevocable trusts are also taxable entities and must file annual fiduciary income tax returns, Form 1041. Trust tax rates are imposed at lower income levels so that income over about $11,200 per year (indexed to increase) is taxed at the highest trust rate (currently 35 percent). The trustee is responsible for this return.

Revocable living trusts established for the benefit of the creator of the trust do not have to obtain a federal tax identification number or file fiduciary income tax returns. All of the trust and non-trust income is reported on the owner's personal Form 1040 just like it was before creation and funding of the trust. A fiduciary return may be required, however, after a trustor's death or incapacity.

Under federal law beneficiaries receive an adjustment in the cost basis of capital assets received from a decedent to the fair market value of the asset on the date of death. If the asset is subsequently sold at an appreciated value, the recipient is taxed on the gain from the date of death to the time of sale. However, built in capital losses may be lost if the asset has decreased in value. This adjustment in basis is lost if the

property is given away prior to death. As between spouses, the surviving spouse receives an adjustment in basis for the entire community property assets, not just the decedent's one-half. This may be a substantial benefit to community property ownership in certain estates. Couples who move to Washington from a non community property state do not obtain this benefit automatically, but do have the right to convert property to community property by special agreement once they live in Washington. This is an important topic that should be discussed with an estate planning attorney when moving into Washington.

CHARITABLE PLANNING

One of your estate planning goals may be to support one or more of your favorite charitable organizations. There are many different methods you might employ to facilitate your charitable plans ranging from the simple to the more complex. There are different tax consequences associated with these different methods.

BEQUEST IN WILL OR BY BENEFICIARY DESIGNATION

Perhaps the simplest method to leave a legacy is by a bequest in a Will or Living Trust. This can be a bequest of specific assets, of a specific dollar amount or of a percentage of your estate. The charity may also be designated as the beneficiary of your non-probate assets such as a life insurance policy or retirement account. The bequest will qualify for the charitable deduction from estate taxes. Further, a charitable organization does not pay income tax so if they are the recipient of a retirement account, the income tax due on that account would be avoided.

RETAINED LIFE ESTATE

An individual may grant title to real property to the charity during the lifetime of the individual but retain the right to live in the property for life. The property would not be included in the estate for estate tax purposes and the donor would receive an income tax deduction represented by the value of the remainder interest the charity is expected to receive in the future. This is done by signing a deed to the charity that includes the appropriate life estate language. No probate is required for the charity to take title upon the death of the donor. A death certificate is simply recorded with the county recorder. Typically, the donor continues to pay any property taxes and for any repair or upkeep of the home.

CHARITABLE TRUSTS

Charitable trusts are vehicles designed to provide benefit to the donor, or the donor's family, for a period of time and then to provide a benefit to the charity. Like any trust arrangement, it is an agreement between the donor of the trust property and the trustee to use and manage the trust property for the trust beneficiaries. Charitable trusts may be established during lifetime or may be part of an estate plan that takes effect at death. If established during lifetime, there are income and estate tax deductions available. If established at death, there is no income tax deduction.

Charitable Remainder Trust. A charitable remainder trust is a trust that pays to the donor during the donor's lifetime or to the donor's family after the donor's death, a specified amount of the trust assets. At the end of the term, the remaining trust assets are distributed to the charity. The trust can be a "unitrust" which pays a specified percentage of the assets to the lifetime beneficiaries each year or an "annuity trust" which pays a specific dollar amount to the beneficiaries each year. If

established during lifetime, the donor receives an income tax deduction for the value of the assets the charity is expected to receive. The assets will be included in the donor's estate but there will be

a corresponding estate tax deduction based on the amount the charity will receive. A portion of the payments the individual beneficiaries receive will be subject to income tax.

Charitable Lead Trust. Basically the reverse of the charitable remainder trust, the charitable lead trust is designed to pay a specified amount to charity for a period of time and then at the end of the term pay any remaining assets to the individual beneficiaries. Depending on the type of lead trust, the donor may or may not receive an income tax deduction. If established during lifetime, a portion of the assets will be included in the donor's estate for estate tax purposes. If established at death, a portion of the assets will be included in the estate.

Charitable organizations often serve as trustees of charitable trusts. The donor may also serve as trustee but will need sound legal and accounting advice to assure they are calculating the required lifetime payments and valuing the assets correctly. A tax return is required each year for the trust.

Gift Annuity. Similar to the charitable trust, a gift annuity is an arrangement directly with the charity to provide income to the donor. The donor transfers assets to the charity in exchange for the promise that the charity will pay the donor a stream of income for life. At the donor's death, the remaining assets belong to the charity. The charity's own assets are obligated to pay the claim should the donated assets be depleted. In order to offer gift annuities, the charity must be licensed by the state insurance commissioner.

When choosing assets to transfer to a charitable planning vehicle, the donor should be mindful that capital gains tax may be partially to totally avoided on assets that have appreciated significantly in value in the donor's hands. Therefore, rather than sell the asset, pay the capital gains tax and invest the balance, the donor may contribute that asset to the charitable planning vehicle. The charity or charitable trust may sell the asset and avoid the gain. The proceeds of sale are then used to provide a stream of income to the donor or to the donor's family.

OREGON LAW

Oregon and Washington law are similar in many respects and different in other respects. Some of the differences are summarized here. The most critical distinction in estate planning is that Oregon is not a community property state. In Oregon, property ownership is based on the common law concept that the titling of the property is usually the controlling factor in determining ownership. In Oregon then, if an asset is held in one spouse's name, it is presumably owned by that spouse regardless of when or how it was acquired.

Although Oregon does not have community property or allow community property agreements, spouses can hold property as tenants-by-the-entirety. Under this classification, property can pass automatically upon death, to the surviving spouse.

Oregon's intestacy laws for married persons are different from Washington's. In Oregon, if you are married and have no children or grandchildren, your surviving spouse will receive all of your estate. If you have children who are not your surviving spouse's children, your surviving spouse will receive half of your estate and your children or grandchildren will receive the other half. If your children are also your spouse's children, your spouse will receive your entire estate. And, in Oregon, a surviving spouse has a statutory right to elect against your will and receive a "forced share" of the deceased spouse's probate estate.

The statutes in Oregon allow individuals to execute durable powers of attorneys and advance directives (living wills). In Oregon, however, you cannot name a health care decision maker on a "general" power of attorney. Oregon has combined the designation of a "health care representative" and health care instructions into a single statutory form.

Oregon also has a relatively simplified probate statute, although not as simplified as Washington's. Oregon judges can become more involved in the probate process, personal representatives fees are set by statute, and a more elaborate set of accounting and closing documents must be prepared.

Please see the discussion on page 26 regarding Oregon's inheritance tax. Oregon does not have a gift tax. Oregon trusts and estates and trusts with Oregon resident trustees are subject to Oregon income tax.

When individuals move from Oregon to Washington (or vice versa), it is important that they reconsider their estate plan to determine if it will still be achieved. New residents to Washington will certainly want to evaluate the benefits of community property and ascertain the appropriateness of their durable power of attorney and living wills. Those who move from Washington to Oregon may want to retain the benefits of the community property aspects of their assets.

COSTS

ATTORNEY'S FEES

Attorneys in the Vancouver area typically charge from $150 to $300 per hour for estate planning and probate work. After you have discussed your estate planning goals and needs with the attorney, he or she can often quote a fixed or "not to exceed" fee. Fixed fees are more difficult to determine in the probate area because of the uncertainty of the issues which may arise. Typically, an approximate range of anticipated fees can be given for the actual probate procedure. Legal services required to resolve disputes, solve problems with title transfers, complete sales transactions, prepare tax returns and other matters will involve additional fees. There will also be a probate court filing costs of $235 (or higher depending on the case) and a publication cost for the notice to creditors of about $110 for Washington probates. In Oregon, the probate court filing costs depend on the size of the estate and range from $178 to $962 and publication costs of about $134.

PERSONAL REPRESENTATIVE

An individual who serves as a personal representative is entitled to a reasonable fee for services, sometimes determined on an hourly basis and sometimes as a flat fee at the end of the probate. The fee is taxable income to the personal representative and can be waived if desired. Corporate personal representatives will charge an hourly rate similar to an attorney or a percentage of the estate.

TRUSTEES

Corporate trustees typically charge around 1 to 2 percent of the total trust principal per year for their services in administration of a trust and management of the assets. Usually their services include preparing the annual accounting of the trust and the Form 1041 Fiduciary Income Tax Return. Many banks and trustees have a variable rate depending on the size of the trust and the scope of the services desired. Individual trustees are also entitled to compensation, but may waive fees.

ACCOUNTANTS

Accountants who prepare the final income tax return, gift or estate tax returns, or fiduciary income tax returns will normally charge an hourly rate for their services.

MINIMIZING EXPENSES

Estate Planning. You can decrease the cost of estate planning services by being organized and providing the attorney or other professionals with accurate information. For example, be prepared prior to an estate planning meeting with your attorney. Consider ahead of time what your goals are. Write down your questions. It

is not necessary or even advisable to have all your decisions made prior to meeting with your attorney, but have a general idea of what you want. Take a list of your beneficiaries' names and birthdates. Think about the persons who might serve as guardians, trustees, or personal representatives. Take photocopies of the deeds or contracts on out-of-state real property to determine the best way to provide for transfer. Bring a list summarizing your property. It is not necessary to itemize property in the will, but the character of ownership and how title will pass should be discussed and understood. Discuss with your attorney the advantages of naming only one personal representative or trustee. Make sure your personal representative knows where your financial records are kept and keep them up to date. If desired, write a letter to your named guardians or trustees expressing your desires and goals for your beneficiaries in detail. This letter should be kept with your important records.

Probate. If you are named personal representative of an estate, take a copy of the death certificate, the original will, and a list of the names and addresses of all those named in the will and the closest relatives, even if not named in the will. Later your attorney will need photocopies of deeds and real estate contracts, the current real property tax statements, and a description of all the property in the estate.

Do as much of the "leg work" involved in the probate as you are comfortable doing. Be sure to keep careful records and provide your attorney with copies of all necessary documents. Remember that you are personally liable for breach of fiduciary duties and be sure to get your attorney's advice before entering into any transactions. Keep the other beneficiaries informed as to the progress of the probate.

Provide information and records to your attorney or accountant in a legible and organized form. Review their drafts for accuracy. Make notes of any questions. Keep a file of your copies of all documents. Keep track of all of your expenses and time spent. Most expenses and fees are deductible on the estate or income tax returns.

CONCLUSION

Planning for the disposition of your estate and providing for your family or other intended beneficiaries is a very important process which should be given priority. We all tend to get busy in our daily lives and put it off. Or we think that because we haven't decided about everything yet, we can't start. Or we assume the will we did ten years ago in Oklahoma is still "good." It may be a valid will, but probably doesn't accomplish your estate planning goals effectively and efficiently in the State of Washington.

It is our recommendation that you read this booklet carefully, discuss it with your spouse or family members as appropriate, and consult an experienced estate planning attorney for assistance in selecting and designing the appropriate documents to accomplish your estate planning goals. Remember, however, that it is not necessary to understand or even read this entire booklet prior to meeting with your attorney. It will serve as a supplement to the information provided by the attorney and a reference for your understanding of the estate plan proposed.

Keep in mind that when planning your estate, you are planning for the management and disposition of everything you have worked a lifetime to accumulate, and you are establishing a plan to provide for and protect the persons you care about the most.

APPENDIX A - INSTRUCTIONS FOR BEQUEST OF TANGIBLE PERSONAL PROPERTY BY SEPARATE WRITING

The Washington Probate Code expressly permits the use of a separate writing to dispose of tangible personal property. If you want to use such a statement rather than itemize the disposition of tangible personal property in your will or living trust, you should comply with the following:

1) For the statement to be effective, it must be referred to in your will or living trust.

2) The statement should not include items specifically disposed of in your will or living trust. The will or trust provision supersedes the bequest by separate writing.

3) The statement will not effectively dispose of money, evidences of indebtedness, documents of title, interest in real property, securities, or property used in a trade or business. Common examples of property which may be disposed of by the use of the statement are personal effects, jewelry, family heirlooms, furniture, antiques, household items, sporting equipment, automobiles, etc.

4) The statement should be dated and must be signed by you.

5) You should clearly describe each item so that it is easily identified and not confused with another similar item.

6) Each beneficiary (also referred to as a "devisee") should be identified by his or her proper name and relationship to you. The address of the beneficiary should be added if the beneficiary is not closely related to you so that proper identification is assured.

7) You may wish to consider providing for an alternate beneficiary if the first named beneficiary does not survive you, although this is not necessary. The second beneficiary should be clearly designated as an alternate beneficiary.

8) You may change the devisees or property designated in the statement from time to time or revise or revoke the entire statement. Changes should be made only be preparing a new statement patterned after the form given you by your attorney, and the old statement should be destroyed. Changes should never be made by alteration on the face of a signed statement.

9) The statement should be reviewed periodically and kept up to date.

10) The statement should be kept in a safe place where it can be easily found, preferably with your original will or trust.

11) If you move out of Washington, it is possible that your new state of residence may not recognize the statement as a legally binding instrument of disposition. Therefore, following such a move you should consult an attorney in your new state of residence to determine if changes in your will and the use of a separate statement are advisable in light of the differences in state law.

APPENDIX B - FORM - BEQUESTS BY SEPARATE WRITING

GIFTS OF PERSONAL PROPERTY
BEQUESTS BY SEPARATE WRITING

TO MY PERSONAL REPRESENTATIVE:

As authorized by my Will or Living Trust, I direct you to give all of my interest at my death in the following items of tangible personal property to the person whose name is listed first opposite the description of the item below, provided the named individual survives me:

Item(s) of Property	Beneficiary
1.	1.
2.	2.
3.	3.
4.	4.

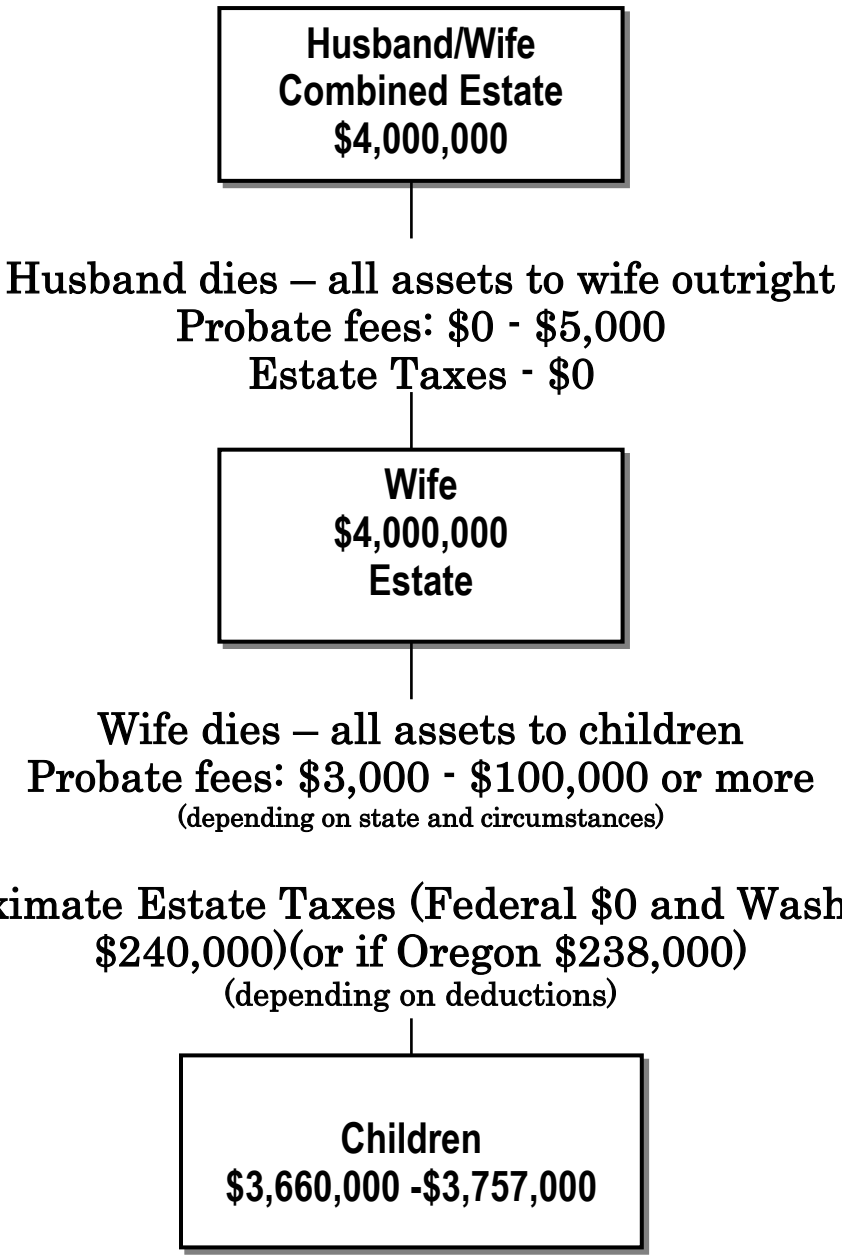
If I have listed a second name for any item of property in the list above, the person named second shall receive the item should the individual listed first not survive me. Otherwise, any property left to a person who does not survive me shall pass according to the provisions in my Will regarding miscellaneous personal property.

DATED: _____

SIGNED:_____

APPENDIX C - ILLUSTRATION OF TAX-SAVINGS TRUST

Simple Wills and/or Community Property Agreements



Total Avoidable Costs Approximately: $243,000 - $340,000

Example of Savings with A Trust for Surviving Spouse*

$4,000,000 Community Property Estate placed in revocable living trust. Husband and Wife in full control, have full benefit and power to

One spouse dies. Trust is divided into two trusts.

DECEDENT'S TRUST
$2,000,000
Becomes irrevocable.
Spouse can be trustee.
Spouse gets all income and principal as needed.

SURVIVOR'S TRUST
$2,000,000
Spouse has full control and full benefit, power to revoke or amend.

Upon first death, no probate procedure, no court costs, no public record, no delay, no estate taxes.

Second Spouse Dies.
Trusts terminate or continue on for children.

DECEDENT'S TRUST
$2,000,000 or more
To children free of estate tax .

SURVIVOR'S TRUST
$2,000,000
To children free of estate tax .

Upon second death, no probate procedure, no court costs, no public record, no delay, and no estate tax.*

* For Washington residents, no federal or state estate taxes. For Oregon residents, no federal estate tax but state inheritance tax approximately of $99,600, with total of approximately $3,900,400 being distributed to children or other beneficiaries.

* Same tax advantages can be achieved with wills which include similar trusts. If wills are used, the trust is a "testamentary trust" and probate will be necessary on both deaths.

** This trust is sometimes called an Exemption Equivalent Trust, Unified Credit Trust, Credit Shelter Trust, Bypass Trust, Disclaimer Trust, or A-B Trust.

APPENDIX D - ESTATE PLANNING ALTERNATIVES

Planning Alternatives	Avoids Probate at Death of First Spouse	Avoids Probate at Death of Second Spouse	Can Provide Maximum Tax Savings	Avoids Need for Conservatorship	Provides Family Privacy	Can Establish Trust for Beneficiaries	Allows Maker to Pre-test Administration during own Lifetime	Can Prevent Attachment of Beneficiary's Assets
INTESTATE SUCCESSION (NO WILL)	NO	NO	NO	NO	NO	NO	NO	NO
JOINT TENANCY	YES	NO	NO	NO	NO	NO	NO	NO
COMMUNITY PROPERTY AGREEMENT	YES	NO	NO	NO	NO	NO	NO	NO
SIMPLE WILL	NO	NO	NO	NO	NO	NO	NO	NO
WILL WITH TESTAMENTARY TRUST(S)	NO	NO	YES	NO	NO	YES	NO	YES
UNFUNDED LIVING TRUST	NO	NO	YES	NO	NO	YES	NO	YES
FUNDED LIVING TRUST	YES	YES	YES	YES	YES	YES	YES	YES