
ESTATE PLANNING FOR EVERYONE

Boston College Shaw Society
Boston College Alumni Association

November 20, 2013

Michael J. Puzo, Esq.
Hemenway & Barnes LLP
60 State Street
Boston, Massachusetts 02109
617-557-9721
mpuzo@hembar.com

WHAT IS ESTATE PLANNING?

- Process of insuring that your property will pass:
 1. To the persons whom you designate
 2. When you want them to receive it
 3. In the form you choose (outright vs. in trust)
 4. At minimal tax cost
- Planning for incapacity

WHAT HAPPENS IF I DIE WITHOUT A WILL?

- Court appoints Administrator (spouse, next of kin are given preference)
- Probate property passes per Massachusetts intestacy law
- Non-probate property passes to surviving joint owner or designated beneficiaries

WHAT IS PROBATE VS. NON-PROBATE PROPERTY?

Probate

- property held in decedent's sole name
- real estate probated in state where located

Non-Probate

- property passing to a named beneficiary (life insurance, IRAs, annuities)
- jointly held property (real estate, bank accounts)
- property held in trust

MASSACHUSETTS INTESTATE DISTRIBUTION (NO WILL)

If survived by:

- spouse and descendants
- spouse and parent(s)
- descendants only

Property goes to:

All to spouse if neither decedent nor spouse has children from another relationship; otherwise, spouse receives first \$100k + $\frac{1}{2}$ the balance, and decedent's descendants receive the rest.

First \$200k to spouse + $\frac{3}{4}$ balance. Parents receive $\frac{1}{4}$ the balance.

Descendants, equal shares at each generation

HEIRS UNDER MASSACHUSETTS LAW

1. Adopted child – treated the same as a natural child born to the adopting parent
2. Includes kindred of the “half blood” (half brother or half sister)
3. Stepchildren – do not inherit from step-parents or other “step” relatives
4. Children born out of wedlock
 - Inherit from and through mother
 - Inherit from and through father

WHO HAS THE RIGHT TO INHERIT?

- Spouses can claim statutory share
- Other relatives (including children) have no right to inherit
- Will should state intention to disinherit a particular relative

SPOUSE'S ELECTIVE SHARE UNDER MASSACHUSETTS LAW

If survived by:

- spouse and issue (descendants)
- spouse and kindred

Property goes to:

spouse gets \$25,000 outright and life estate in 1/3 of remaining property; balance to issue

spouse gets \$25,000 outright + life estate in 1/2 remaining property; balance to next of kin

EFFECT OF MARRIAGE ON WILL

- Does not revoke provisions in will for testator's descendants
- Revokes provisions for all persons other than descendants unless the will states that it is “in contemplation of marriage”

EFFECT OF DIVORCE ON WILL

- Once judgment is final, revokes any bequests to former spouse and relatives of former spouse
- Revokes any nomination of former spouse as fiduciary (executor/guardian/trustee)
- If remarry former spouse, provisions for former spouse are revived

WHAT DOES A WILL DO?

- Disposes of your probate property
 - tangibles (car, boat, furniture)
 - real estate (house, land)
 - bank accounts, mutual funds, investments
 - NOT Jointly owned property, life insurance, or retirement accounts
- Nominates guardian(s) for minor children
 - Can nominate guardians for adult children and spouse
- Nominates executor(s)

REVOCABLE “INTER VIVOS” TRUST (“LIVING TRUST”)

- Written trust document that can be amended during life
- Can be funded before or after death
- Avoids probate if funded before death
- Includable in Donor’s taxable estate

IRREVOCABLE TRUST

- Cannot be amended by the Donor
- Removes property from Donor's taxable estate (life insurance trusts, QPRTs, Crummey Trusts, GST Trusts, Minors Trusts, Charitable Trusts)
- Funded during Donor's life
- Transfer to trust = gift to trust beneficiaries

ADVANTAGES OF A TRUST

1. A trust can hold and manage property until children or grandchildren “grow up”
2. A trust can save estate and generation-skipping transfer taxes
3. A trust can manage property left to a spouse
4. A trust can provide for a special needs child
5. A trust can guarantee that children of a prior marriage will inherit
6. A trust can provide protection against creditors of beneficiaries
7. A trust can provide for unforeseen future needs and events

PLANNING FOR INCAPACITY

- **Durable Power of Attorney**
 - Designates an “attorney in fact” to exercise legal powers on your behalf
 - Powers may take effect only upon incapacity or be effective without need for incapacity

If proof of incapacity required consider medical privacy rules (HIPAA)

PLANNING FOR INCAPACITY

- **Health Care Proxy**

Designates an “agent” to make health care decisions on your behalf in the event that you are unable to do so

PLANNING FOR INCAPACITY

- **Living Will**
 - Provides directions for health care agent
 - May include burial or cremation instructions

YOU NEED NOT FEEL “WEALTHY” IN ORDER TO HAVE A TAXABLE ESTATE

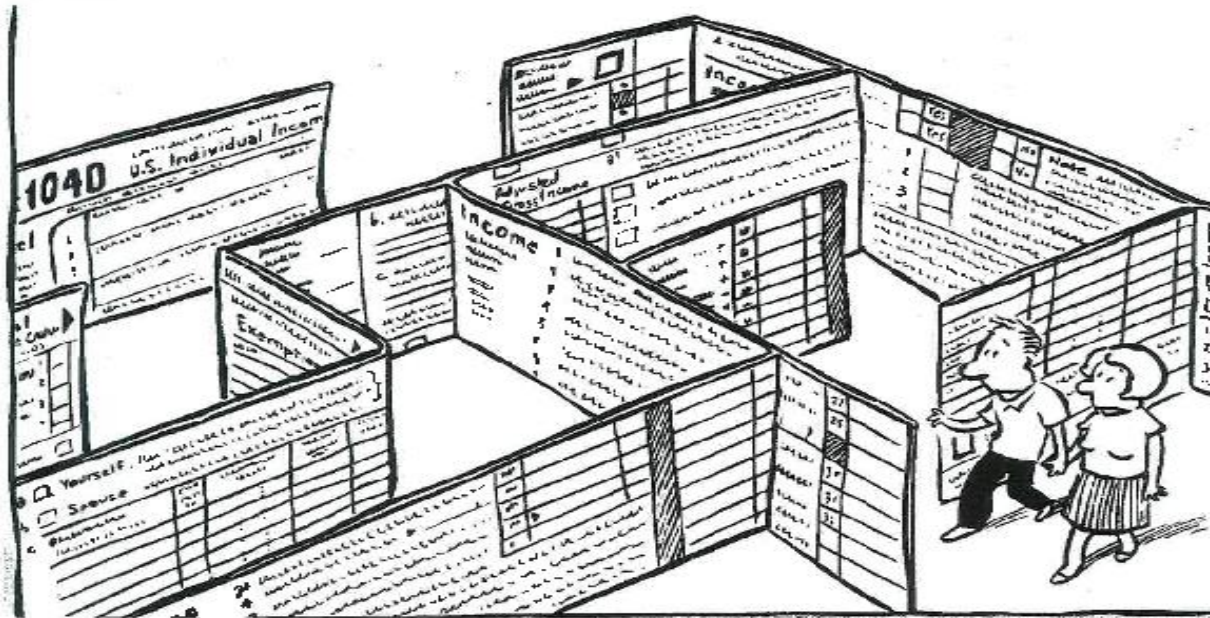
- **Taxable Estate**

Total fair market value of all assets owned at death less debts, expenses and deductions (marital, charitable)

JANE AND JACK SMITH

1. Tangible property (jewelry, car, furnishings, art)	\$ 40,000
2. House, Newton, MA (worth \$1,000,000) (*net of \$350,000 mortgage)	650,000*
3. UTMA Account for son	30,000
4. Bank accounts (savings, checking, CDs)	10,000
5. Brokerage account	30,000
6. Cottage on Cape Cod (no mortgage)	400,000
7. Life insurance (term, whole life)	600,000
8. Retirement benefits (IRA, 401(k))	<u>320,000</u>
TOTAL	\$2,080,000

IT'S NOT EASY!



GIFT TAX

- No Massachusetts gift tax
- Federal gift tax exclusion amount = \$5 million indexed for inflation (\$5.25 million in 2013) (\$5.34 million in 2014)
- Flat rate of 40%
- Unlimited gifts to spouse or charity
- Annual exclusion gift amount = \$14,000 per person in 2013
- Exclusion for Medical/Tuition payments
- Strategies focus on making the most of annual exclusion gifts and gifts under exemption amount

FEDERAL ESTATE TAX

- \$5 million indexed for inflation (\$5.25 million in 2013) (\$5.34 million in 2014)
- Unlimited marital and charitable deductions
- Top rate is 40%
- Strategies focus on deferring estate tax, using both spouses' exemptions and reducing taxable estate

MA ESTATE TAX

- Massachusetts estate tax rates range from 5.6% to 16%
- MA exclusion amount is \$1 million

GST TAX

- No Massachusetts generation-skipping transfer tax (“GST” tax)
- \$5 million indexed for inflation (\$5.25 million in 2013) (\$5.34 million in 2014)
- Rate is 40%
- Strategies focus on deferring GST tax, using both spouses’ exemptions, and making the most of gifts

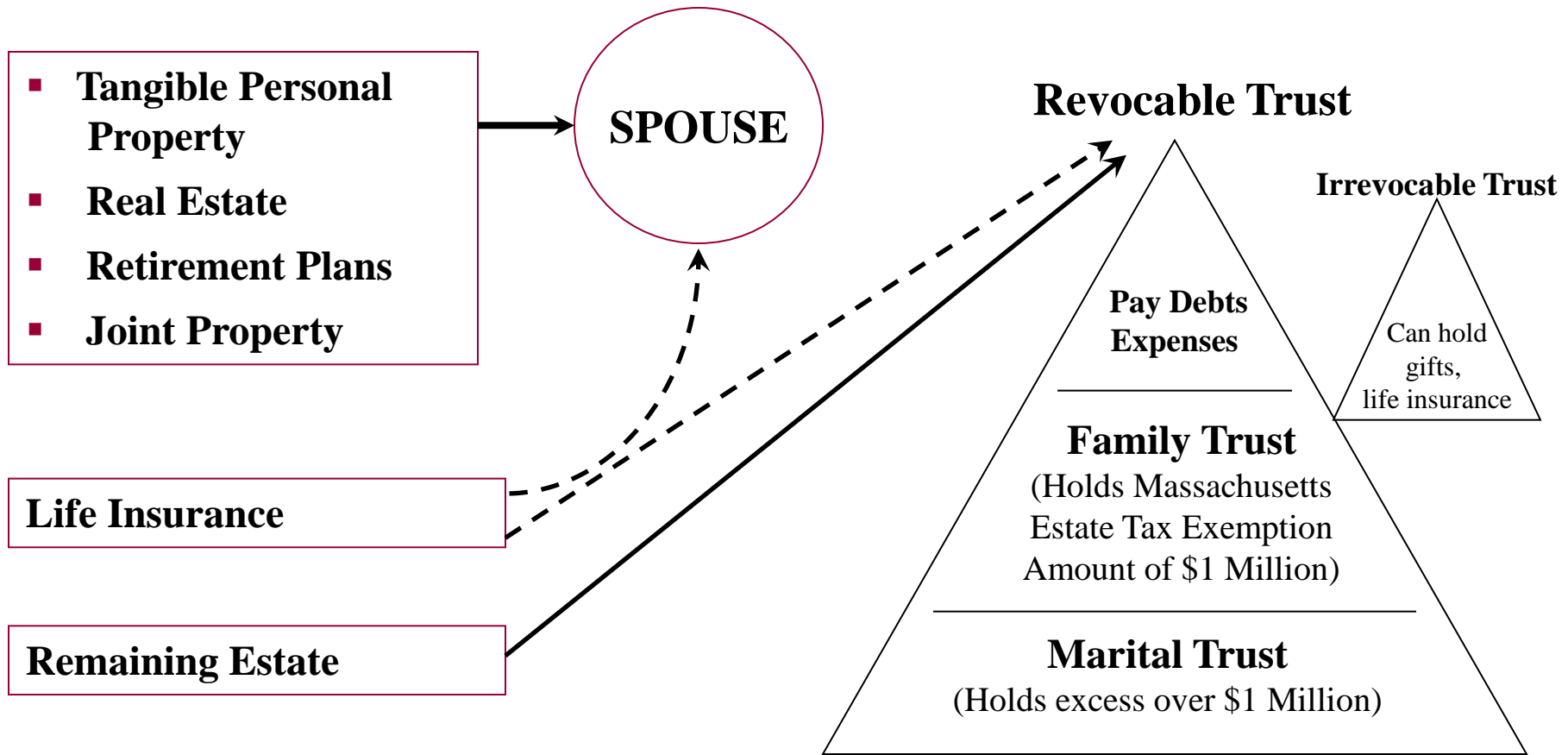
WAYS TO MINIMIZE ESTATE TAXES

1. Spend it!
2. Make “annual exclusion” gifts (\$14K (2013))
3. Direct payment of tuition or medical expenses
4. Give away your life insurance policy (must survive for three years after transfer)
5. Make gifts to charity
6. Disclaim part of your inheritance (must be done within nine months)
7. Make larger gifts up to exclusion amount (file gift tax return)

ADDITIONAL STRATEGIES FOR COUPLES

- Take full advantage of the federal and Massachusetts exemption amounts by:
 - Placing MA exempt amount (\$1M) in a “Bypass Trust” or “Family Trust”
 - Using marital trusts that allow for different state and federal “QTIP” elections to reduce both federal and state estate taxes at survivor’s death
 - If exempt amount is left outright to spouse, it will be includable in spouse’s estate

ESTATE PLAN FOR MARRIED COUPLE



Note: The information contained in this chart is not meant to serve as a substitute for independent legal counsel. Readers should consult qualified counsel for questions regarding particular legal matters.

USING GIFTS TO REDUCE ESTATE TAXES

Annual Exclusion Gifts

- \$14K (2013) per year per donee (same for 2014)
- No limit on direct payment of tuition or medical expenses
- Gift must be complete (donative intent + delivery; no power to revoke)
- May give property outright or in trust
- May give partial interests in property
- Value = fair market value of interest being transferred (opportunity for discounts)
- Donee acquires Donor's income tax basis
- No gift tax return necessary (unless spouse joins in gift)

USING GIFTS TO REDUCE ESTATE TAXES

Taxable Gifts

- Each individual may transfer up to \$5.25 million free of gift tax in 2013 (\$5.34 million in 2014)
- Must file gift tax return
- May give property outright or in trust
- Have property appraised by a qualified professional
- Good for appreciating property which will remain in the family
- Cost of transfer is lower for gifts than estates because the gift tax is tax-exclusive

USING GIFTS TO REDUCE ESTATE TAXES

Gifts To Charity

- Unlimited estate tax deduction for charitable bequests
- Lifetime charitable gifts provide an income tax deduction and reduce taxable estate
- Estate plan can allow executors or trustees to choose charities based on donor's preferences
- Estate plan can leave property to a family foundation
- A charitable remainder trust provides an income stream to heirs, with remainder to charity
- A charitable lead trust provides an income stream to charity, with remainder to heirs