

# ESTATE PLANNING

**SPRING SEMESTER**

**2017**

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# INTRO TO ESTATE PLANNING COURSE

**Estate Planning course subject matter  
includes:**

- 1) Tax – federal estate, gift & generation skipping tax & income tax;**
- 2) State property/trust/estate laws**
- 3) Conflict of laws**
- 4) Insurance, annuities, IRAs, JTWRORS**
- 5) The advisor's ethical considerations.**

# Choices in Structuring an Estate Planning Course

- 1) Fundamental (a) property & (b) tax (& business) law considerations/structuring analysis.**
- 2) Psychological elements/intra-family welfare/family wealth transfer counseling.**
- 3) Document preparation (e.g., wills, trusts, etc.), i.e., mechanics.**

# Current Status of the Estate/Gift Tax Laws

**2009 - \$3.5 million estate tax exclusion**

**2010 – estate tax and GST expired – but then retroactive enactment (late 2010) (\$5 million exclusion); possible to opt out of estate tax.**

**2011 & 2012 – \$5 million exclusion (indexed?) amount for estates and for gifts.**

**2013 – to return to \$1 million exclusion & high tax rate structure (pre-Bush tax cuts).**

**But (2013): PERMANENT FIX – American Taxpayer Relief Act of 2012 (ATRA) – 40% rate and \$5 mil. exclusion (indexed).**

# STRUCTURE OF ESTATE PLANNING MATERIALS

**See Table of Contents for the Estate Planning Materials. Segments include:**

- 1) The basics in property transfer structures.**
- 2) Gifts – sharing wealth before death; shifting appreciation potential and management to younger generation(s).**
- 3) Death-time wealth transfers – planning.**
- 4) Other property transfer techniques – alternatives to probate and gift transfers.**

# Chapter One – Focus on Estate Planning Basics

**What is the focus of “Estate Planning”?**

**What skills are necessary for an “estate planner” to be successful?**

**Who does estate planning? Attorneys?**

**Others? See p. 12 in materials.**

**What are the ethical and professional responsibilities of the advisor? Estate planning attorneys are governed by State Bar rules.**

# Finding the Essential Factual Information p.11

- 1) **Family information.**
- 2) **Financial information - information concerning assets & liabilities, i.e., net worth.**
- 3) **Information concerning the client's objectives for disposing of assets and expectations – i.e., client's asset disposition strategies.**

# Estate Probate p.13 Administration Mechanics

**Locate the Last Will.**

**File the Last Will in the Probate Court.**

**File inventory - What is an “Independent Administration”?**

**Satisfy estate liabilities owing to creditors.**

**Satisfy transfer tax and income tax obligations.**

**Distribute the assets to the beneficiaries.**

**Final accounting in the Probate Court.**

**Mechanics are subject to provisions of the Texas Estates Code (effective 2014)**

# Non-probate Properties

**Properties which are transferred beyond jurisdiction of the local probate court:**

- 1) Revocable trust assets**
- 2) JTWROS assets**
- 3) Life insurance proceeds – beneficiary designations**
- 4) Retirement plan distributions – beneficiary designations**
- 5) Payment on death (POD) accounts, including transfer on death deed.**

# Professional Responsibilities of the Estate Planner

**Rules of Professional Conduct: p.14**

- **Competence**
- **Diligence**
- **Communication**
- **Confidentiality**
- **Avoid conflicts of interest (including between spouses) – How deal with these conflicts?  
Waiver? Agreement? (& next slide)**

# Possible Situations of Conflicts of Interest

## Possible conflicts of interest:

- 1) **Spousal – possible disputes – community vs. separate property;  
children from a prior marriage**
- 2) **Representing the failing parent of the client.**
- 3) **Representing (a) the estate or (b) the trust vs. the beneficiaries.**
- 4) **Representing the family business (i.e., multiple family member partners).**

# Asset Management for the Client?

P.20

**What should the advisor do to help the client concerning the client's financial affairs?**

**Investment management?**

**Life insurance and casualty insurance review?**

**Social security/retirement benefits analysis?**

**Medicare/medicaid benefits assistance & extended care insurance arrangements?**

# Estate Planner's Fee & Deductibility p.21

**How determine the amount of the fee for estate planning services?**

**Who pays this fee? (Employee's employer?)**

**What availability of a federal income tax deduction for the cost of estate planning?**

**Code §212**

**Note the Merians case. P.24**

**Why be concerned about the availability of this federal income tax deduction?**

# Limits on Tax Deduction

## p.27

**§67 – miscellaneous itemized deduction?**

**2% “haircut”?**

**Applicable to trusts – Rudkin decision**

**§68 – limitation at the top – expired, but revived in the year 2013? Permanent extension in ATRA-2013. Applicable above \$300,000 for joint return.**