

To Our Readers:

I was born and reared in the red-clay foothills of this great Palmetto State. Since my earliest remembrance, I have relished the great natural beauty we now too frequently take for granted. From the blue hills of Oconee where I spent more of my Clemson days than I should have, to the Edisto beaches, there is wonderment for the traveler not too busy to look and listen.

I am truly indebted to the many devoted state employees who help to ensure that the legacy of this South Carolina lifestyle will be available for my children. For these reasons, I am pleased to have given of my time speaking to State preretirement seminar groups these past twenty-nine years.

It has not been a particularly burdensome chore. The seminar directors at the Retirement System and the Human Resource Directors of the state agencies have been a pleasure to work with. I am convinced they have the best interest of all public employees at the center of their focus.

I am grateful for their assistance in making this book available to preretirement seminar participants. If you have any suggestions as to how these materials can be improved, I would be pleased to hear from you.

As you move toward retirement, my hope and prayer is that you will find fulfillment in this next phase of your life and work, and that you truly experience the abundant life to which we are all called by our Creator. You may find I TIMOTHY 6:17-19 instructive.

Wishing you each the very best,

Al Todd  
1950-2005

## WHAT THIS GUIDE IS

This guide is designed to assist you in beginning to understand both the fundamental concepts of estate planning and some of the common estate planning schemes.

You can listen to speakers until your ears go numb, and you can read books on estate planning until your eyes look like interstate road maps, but you will probably not understand even the fundamental concepts of estate planning. I have found, however, that the old adage is true—one picture is indeed worth a thousand words.

These diagrams have been developed over twenty-nine years of explaining these concepts and the estate plans to our clients. They are overly simplistic, but they are reasonably easy to understand.

## WHAT THIS GUIDE IS NOT

You may have noticed that the title of this booklet is not *How to Write Your Own Will*. There is a very simple explanation for this. You should not write your own Will.

Estate planning is no more a self-help process than is an appendectomy. Appropriate estate planning requires the help of skilled advisors. This book is not designed to take the place of qualified legal advice. It is designed to supplement that advice and to reduce the amount of legal advice for which you must pay in making your own decisions concerning your estate plan.

In the same sense that you would not walk into a department store and ask for a “standard size” blue blazer, you should not allow anyone to push you into some sort of form Will. It is absolutely essential that the attorney who is assisting you have an in-depth understanding of your family and financial situation, and that the decisions you make be precisely designed to implement your unique objectives. While it is obviously true that many people make similar decisions, it is in the small details that the value of a well designed plan is proven.

A thorough and well drafted family estate plan will not only save estate taxes but will result in property passing to children and grandchildren in a manner that is designed to prevent them from having their inheritance ruin their lives.

My personal belief is that we are merely trustees of the material possessions our Creator has entrusted to each of us. My fervent hope is that this book would make each reader a more responsible trustee.

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## I. FUNDAMENTAL CONCEPTS

There are a few concepts which are so fundamental that failure to understand them will make it impossible to make appropriate decisions concerning your estate plan.

The purpose of these diagrams is to set forth those concepts in a very simplistic way. They were developed over a period of time to assist in explaining these concepts both to clients and to those who attend seminars taught by the author.

In most of the diagrams, the husband is shown as dying first. Of course, there are no gender sensitive rules in estate planning. Usually the wills for a husband and wife are the same.

Wills usually provide for either order of deaths so they do not automatically have to be changed when one dies.

*The symbols used in the diagrams are as follows:*

- H** - husband's estate
- W** - wife's estate
- CH** - children
- C<sub>1</sub>** - one child
- GC<sub>1</sub>** - one grandchild
- B + S** - brothers and sisters

## A. BASIC ESTATE TAXES

Estate taxes are basically socialistic in nature. The original idea was to take money away from people who had too much (when they died) and, by running it through the government, distribute it to people who had less. The development of this seemingly simple idea has resulted in a complex system of estate taxation.

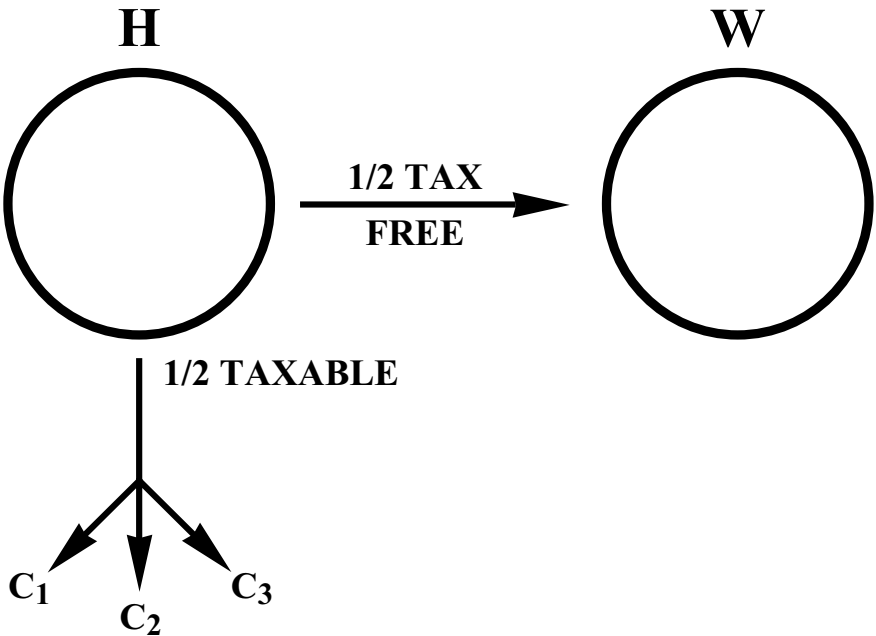
As space does not permit an in-depth treatment of the estate tax rules, a great oversimplification will have to suffice. The basic, overly simplified, there-are-lots-of-exceptions-to-'em, general rules are as follows:

1. When you die, your personal representative (used to be called executor) must file an estate tax return (due nine months after death) that shows the value of everything you owned on your date of death. This is your gross estate.
2. A husband can leave his wife (and vice-versa) any amount of property free of state or federal estate taxes at the time of the husband's death. The reason for this is very simple; if the property is not taxed at the husband's death, it must be taxed at the wife's death. This is like saying to the government, "I know I owe you the taxes, but I am going to leave this property to my wife, and you can collect the taxes later at her death."
3. In the diagrams in this booklet, property passing from husband to wife or wife to husband is generally shown with a horizontal arrow. Thus, property passing with the horizontal arrow passes free of state and federal estate taxes.
4. When property passes from parents to children, estate taxes must be paid. Diagrammatically, property passing from parent to child is shown with a vertical arrow, and is generally taxable.
5. For federal estate tax purposes, there is a credit which helps pay the family's tax bill. In 2007, this credit will pay the taxes on \$2,000,000 of assets. The chart on page 35 of this booklet illustrates the federal tax rates.
6. If the date of death is after June 30, 1991, there is no longer a separate South Carolina estate tax and as of 2005 South Carolina no longer collects a "state death tax credit," a revenue sharing feature of the federal estate tax. Thus, South Carolina receives no economic benefit from your death.
7. Generally an inheritance is not income taxable to the beneficiary.

## B. INTESTACY IS UNACCEPTABLE

Dying without a Will is a basic no-no. It is called dying *intestate*. Under South Carolina law, when a person dies without a Will their property passes according to our statute of *Descent and Distribution*. Often the beneficiaries which are specified to inherit an estate under this statute are not the same beneficiaries that a person would name if he or she took the time to write a Will. Additionally, this statute leaves property to beneficiaries outright when a Will with a trust for the beneficiaries would often have been more appropriate.

The diagram below illustrates who would inherit a deceased husband's estate if he were survived by a wife and three children. Half of the estate passes to the children and half of the estate passes to the surviving wife. The children's inheritance would be managed for them by their natural guardian, their mother, until they reach age 18, at which time they are free to spend their inheritance as they wish. (What would you have done with \$100,000 at 18?) Since receiving this inheritance at age 18 will most frequently have an adverse impact on a teenager, this diagram illustrates one of the great disadvantages of dying without a Will.



## C. SO, WHY DO I NEED A PLAN?

In Paragraph A., we discussed the potential problems with estate taxes. In Paragraph B., we saw why intestacy (dying without a Will) was a bad option, that is, unless you can ensure you will die broke. Other than the problems associated with dying without a Will (intestate), there are other compelling reasons to have a Will and/or a Trust:

**MINOR CHILDREN** - If you are married with minor children or older children that you do not believe are financially mature, it would be wise to ensure there was a plan to take care of those children in the event you and your spouse die at an early age. If there is no plan, a court will appoint a Conservator for your children (a person you may or may not know) and at the age of 18, they could demand all of the assets that are legally theirs.

**CHILD IN TROUBLED MARRIAGE** - You may have a grown child who is in a troubled marriage and if you die leaving a child assets outright and those assets are co-mingled in the marriage and the marriage ends in divorce, the assets you left to your child may be considered marital property.

**CHILDREN THAT NEED HELP** - You may have a child that is mentally disabled, physically disabled, dependent on some substance or a spendthrift. All of these problems require you to take action to put assets away for safekeeping under a method that is specifically tailored to that child's needs.

**EXCEPTIONAL CHILDREN** - Your child may be a "brain surgeon" or may be financially well off. An estate planner can help you put assets in trust for your child for their life so that they have access to the assets if they need them, but if they don't, those assets, at the death of the child, would go on to your grandchildren. What a legacy that would be!

**SECOND MARRIAGE** - If you are in a second marriage with yours, mine and our children, then certainly you have some very special needs to ensure that your children from your first marriage are taken care of immediately, your second spouse is taken care of and that the children from your second marriage are taken care of also.

**ELECTIVE SHARE** - If you remarry and decide that you want to leave all of the assets your deceased spouse just left you to your children, think again. The Elective Share law states that a surviving spouse may claim one third of your estate. Simple planning can prevent this.

**PROBATE FEES AND PRIVACY** - If I have a basic plan, there is a possibility that I may put all of my assets in a living trust during my life, so that at my death, there are no probate fees to pay in the Probate Court. This advantage often pays for itself in saving of probate fees. Also, by having assets in the living trust at your death, the administration of your estate will be a private affair.