



*Postic & Bates*  
Estate Planning and Adoption Law

# 2008 Estate Planning Guide

*This manual is provided courtesy of the law firm of*

**POSTIC & BATES**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

2212 SHADOWLAKE DRIVE

OKLAHOMA CITY, OKLAHOMA 73159-7440

405/691-5080 (VOICE)

405/691-6329 (FAX)

[www.posticbates.com](http://www.posticbates.com)

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## INTRODUCTION

**Thank you** for considering the law firm of **POSTIC & BATES** for your legal services. Our mission is to provide the highest quality, professional legal services at a reasonable cost. We believe a successful relationship between an attorney and client is founded upon the confidence and trust which comes from effective communication and responsive service.

**A study conducted by the American Bar Association Foundation disclosed that the major factors people consider in seeking legal services are :**

- ! **the concern shown by the attorney for the client's problem ;**
- ! **the attorney's ethics and honesty;**
- ! **the attorney's competence in handling the matter for which he or she is hired;**
- ! **a fair fee charged by the attorney ; and**
- ! **the attorney's ability to handle the matter efficiently.**

All of these factors are addressed in this workbook. At **POSTIC & BATES** , we believe you have a right to know

- ! information about the attorney you are working with;
- ! a description of the legal services we will perform ; and
- ! what the legal services will cost you

## BEFORE HIRING YOUR ATTORNEY

At **POSTIC & BATES** , we are concerned about your legal needs and are committed to representing your best legal interests . We have limited our practice to those areas in which we have developed a high degree of skill and efficiency so that your time and money are not wasted . We regularly review changes in the law applicable to these areas to insure you are provided with documents and services reflecting the current law . For those services we do not offer , we provide a free referral service. We have investigated numerous attorneys and law firms and will only refer you to those we feel can best meet your needs professionally, ethically and at a reasonable cost.

Our office is located away from the downtown Oklahoma City traffic in the beautiful Shadowlake Office Park located between Southwest 8 9th and 1 04 th Streets on Pennsylvania Avenue in southwest Oklahoma City (**SEE THE MAP ON THE BACK COVER**).

Many people feel that they must have done something wrong or have an existing legal problem in order to visit and counsel with an attorney . However , we believe that you benefit most from professional legal services **BEFORE** you have a legal problem . In other words , our practice emphasizes the value of preventative legal services . We offer many low cost services to help you determine your legal needs and ways to meet them .

**We look forward to working with you . If you have any questions about the information contained in this brochure , or about any other legal matters , please give us a call or you can e-mail us at [www .posticbates .com](http://www.posticbates.com) .**

## ABOUT THE FIRM

Martin Postic, Jr., graduated from the University of Oklahoma College of Law and entered the private practice of law in Moore, Oklahoma in October 1980 with Douglas S. Stults under the firm name of Postic & Stults. Both Marty and Doug had graduated from Moore High School. In January 1982, that law firm was dissolved and, Marty incorporated as Martin Postic, Jr., A Professional Corporation, continuing a general practice of law in Moore, concentrating on estate planning, real estate and probate. Due to the need for more office space, ground was broken on the Shadowlake Law Center in south Oklahoma City in September 1982.



After construction was completed, our current law office was officially opened on June 1, 1983. In order to make better use of the office space, major remodeling was performed in 1985 which resulted in a new reception area, more attorney/client privacy, and a larger work room to accommodate computer equipment and additional filing space. In April 1987, Julie E. Bates, Marty's wife, joined the practice and the firm name was changed to POSTIC & BATES, A PROFESSIONAL CORPORATION.

Due to the office location, the attorneys for the firm are readily available for representation in matters to be filed or pending in Oklahoma, Cleveland, Canadian, McClain, Grady and Pottawatomie Counties, as well as in other surrounding counties.



## BIOGRAPHIES

**MARTIN (MARTY) POSTIC, JR.**, was born in Pottsville, Pennsylvania, on August 18, 1956, and moved to Oklahoma in 1966. He is a 1974 graduate of Moore High School. He obtained a Bachelor of Business Administration degree in marketing from the University of Oklahoma in 1977. Upon graduation, he was admitted to the University of Oklahoma College of Law where he received his Juris Doctor degree in May 1980. He was admitted to the practice of law in the State of Oklahoma on October 17, 1980. He is also licensed to practice law in the federal district courts for the



Western, Northern and Eastern Districts of Oklahoma, the federal Tenth Circuit Court of Appeals, and the United States Supreme Court. He concentrates his law practice in the areas of real estate, estate planning, probate avoidance, asset protection, and estate planning for the disabled. He is the author of Legally Protecting Your Assets From Creditors, Do I Need A Will?, Probating An Estate, The Living Trust, The Right To Die, Increasing Your Giving Potential, The Limited Partnership as an Estate Planning Tool, Trusts and Homesteads - Probate Avoidance or Pandemonium?, The Special Needs Trust, Ethical Considerations for the Attorney in Charitable Estate Planning, An Elder Law Primer for Attorneys and Ethics in Estate Planning.

Marty is a frequent speaker on the subjects of estate planning, probate avoidance, and asset protection, having appeared personally and as a guest on radio and television throughout the state. He is a member of the Oklahoma Bar Association and was the 1997 Chairman of the Real Property Section of the Association. He also maintains membership in the Estate Planning and Probate Section of the Oklahoma Bar Association, the American Bar Association, and the Oklahoma City Real Property Lawyers Association. He has also been an Adjunct Professor of Estate Planning at Oklahoma City University. He maintains active membership in the South Oklahoma City Rotary Club and is the Rotary District Governor for 2007-08 in Rotary District 5750. Marty is also an Eagle Scout and currently serves as an Assistant Scoutmaster of Boy Scout Troop 20 in Oklahoma City. He enjoys playing tennis, playing the guitar and studying foreign languages. He is married to his law partner, Julie Bates, and has two sons, John, age twenty, and David, age seventeen.



**JULIE E. BATES** was born in Swindon, England, on July 11, 1957, but was raised in Oklahoma. She is a 1975 graduate of Midwest City High School. Julie attended Oscar Rose Junior College (now Rose State College) and graduated from Texas Christian University in 1978 with a Bachelors degree in Communications and Business. She served as Coordinator of Public Information at Oscar Rose Junior College prior to entering the University of Oklahoma College of Law. She graduated with a Juris Doctor degree in May 1983. During her law school career, she attended Queens College at Oxford University in England. She was twice a member of the University of Oklahoma National Trial Advocacy Team and was named a member of the prestigious

Order of the Barristers -- a select honor for law students and attorneys who have exhibited exemplary trial advocacy skills. After being admitted to the practice of law in the State of Oklahoma on October 6, 1983, Julie joined the Oklahoma City law firm of Linn & Helms as a litigation attorney. She worked with that law firm until leaving to join POSTIC & BATES where she concentrates in adoptions. She is also licensed to practice law in the federal district courts for the Western, Northern, and Eastern Districts of Oklahoma and for the Northern and Western Districts of Texas, the federal Tenth Circuit Court of Appeals and the United States Supreme Court. She is the author of Civil Appeals to the Tenth Circuit: A General Overview of the Local Court Rules as Amended, and co-author of articles entitled Traffic Accident Reconstruction, Accident Reconstruction, Driver's Viewpoint Important to Design, and Accident Reconstruction in Personal Injury Lawsuits. She has also co-authored a chapter for a legal treatise on personal injury defense litigation. She is a member of the Oklahoma Bar Association, where she has previously served on the Awards Committee, Diversity Committee, Legal Ethics Committee, Committee on Rules of Professional Conduct and on the Civil Procedure Committee and is a member of the Board of Directors. She is also a member of the Oklahoma County Bar Association where she serves on the Fee Grievance & Ethics Committee and the Awards Committee, and is an adjunct professor at the University of Oklahoma College of Law. Julie enjoys reading, gardening and playing the piano. She is married to her law partner, Martin Postic, Jr., and has two sons, John and David.

### **The Top Ten Reasons to Die Without a Will or an Estate Plan:**

1. The state can do a better job deciding how to disperse my assets than I can.
2. The state can choose a better personal representative to handle my property during probate than I can.
3. The state can choose a better guardian for my minor children than I can.
4. The government will use my estate tax dollars better than my heirs or my favorite charity.
5. It wouldn't be fair to allow all of my accumulated wealth to pass to my heirs without paying a portion of it to the government.
6. My grieving loved ones will be better off looking after my affairs without my will or trust.
7. My family already knows how I want my estate distributed.
8. The value of my estate, as well as the names and addresses of my heirs need to be made public.
9. I'm going to spend everything I have before I die.
10. I don't have time to do estate planning.



## **FREQUENTLY ASKED QUESTIONS** **ON ESTATE PLANNING** **AND ASSET PROTECTION**

**W**e realize that most people have many questions about estate planning, both before they do their planning and afterwards. Listed below are some questions we are frequently asked by clients and callers:

### **What is estate planning?**

**E**state planning is the process by which everything you own is passed to your family or other intended beneficiaries . It is also the process by which your estate is controlled and managed in the event you become incapacitated - either through accident , illness or old age - and at the time of your death. Presently, you control your estate . You decide what to do with your money, your property and all of your other assets . You can either use them , sell them or give them away . However , when you become incapacitated , you are no longer able to control your estate . Therefore , someone else must do it for you . That “someone else ” can either be someone you choose or someone chosen for that particular purpose by a Court. Additionally, at your death you can choose who receives your estate through either a **Last Will and Testament** , **Living Trust**, **Joint Tenancy**, or **Beneficiary Designation**. If you fail or neglect to specify who or what receives your estate , the laws of the state of your residency at death will determine how your estate is distributed and to whom .

### **Why do I need to do estate planning?**

**B**ecause if you do not do your own estate planning , the government will decide how to distribute your estate ! Most people do not want the function of government to interfere with the distribution of their estate. However , in order to achieve the efficient distribution of assets , the laws of all states provide a



## Can I do my estate planning myself?

## What is probate?

method for distributing property after death . These laws, known as **The Laws of Intestate Succession**, provide that your assets will pass partly to your spouse (if you are married) and the remainder to your children. If you are single and have no children, the estate will pass to your parents or, if they are deceased, to your siblings. The laws provide that your estate will stay in your bloodline unless you have no blood or legally adopted relatives, in which case your estate will pass to the state. Although it may be your intention that your estate pass equally to your children, you may not intend for them to have their share of the estate at age 18. However, they will receive it at that time if you do not have a Last Will and Testament or Living Trust . By not doing estate planning, you give up the right to make the choices of distribution for your estate . In some instances , due to the circumstances of your beneficiaries , it may be your desire to protect them from their own inheritance . For example , some beneficiaries may be incapable of managing their own money . Through an intestate distribution , some beneficiaries may end up losing their share of your estate to either ( 1 ) bad investments ; ( 2 ) poor money management skills ; ( 3 ) creditor problems ; ( 4 ) spouse problems ; or ( 5 ) other factors . By carefully thinking out your estate plan and putting a capable representative in charge , you can protect your estate and see that it is used as you intend .

**Y**es you can . However, a wise man once wrote , “Law and brain surgery are two things you do not want to practice on yourself.” There is a tremendous value to the advice of a trained and disinterested third party , such as a qualified estate planning attorney. Although there are a large number of inexpensive (and expensive ) estate planning kits and software packages that allow you to do your own estate planning , they are only useful if they are properly prepared. Usually, the first time you or anyone else will learn if they are properly prepared is when you are dead or close to it. Why risk something as important as your estate planning on a kit you may not complete properly? Therefore , a form from a kit may work for some people , but it may not work for you . When it comes to estate planning, one size does NOT fit all!

**P**robate is the legal , court administered process by which your assets are transferred after your death to your heirs . If you own real estate , such as your home , the deed to that property may be in your name alone. Legally, only you can sign a deed to transfer title to that property to someone else . However , when you die , who has the authority to convey that property ? Although you would *assume* your spouse or children can do so, they have no legal authority unless and until they are appointed by a court . That is what the probate process involves . First, if you have a **Last W ill and Testament**, that instrument is filed with the court along with a legal document, known as a **Petition**, requesting that the instrument be accepted as your Last W ill and Testament. Realize that you have the right to prepare a Last W ill and Testament at any time . However, only the most recent document prepared while you are of sound mind can be accepted as your *Last W ill and Testament*. Before a hearing can be held on the petition , notice must be given to your **Heirs at Law** . Your heirs at law are the individuals who would be entitled to receive your estate if you died without a W ill. In other words , they are the individuals who would receive your estate by **Intestate Succession** . As an example , if you are married and have three children, but have a W ill leaving your entire estate to your brother , notice of the petition for probate would have to be given to your spouse and children, even though you did not provide for them in your Will . On the other hand , if your W ill left everything to your spouse and children , there is no requirement that notice has to be given to your brother since he is not an heir at law.

**O**nce a hearing is had on the W ill and it is accepted as your Last W ill and Testament , the Court appoints a **Personal Representative** who is either a person or entity named in your Will , or a person chosen by the Court . This person is also known as an “Administrator” or “Executor.” The Court then requires an inventory of your estate as well as the publication of a **Notice to Creditors** . This notice is in keeping with one of the other duties of probate - protection of creditors. Creditors with proper claims against your estate **must** be paid before any distribution can be made to your heirs . The notice gives the creditors a certain number of days (usually 6 0 ) in which to file claims against your estate. Any known creditors must be personally notified of their right to file claims , and any unknown creditors are notified by publication . During this same time period , an **estate tax return** is filed. Even if no taxes are owing , due to the small size of the estate , it is necessary to file the estate tax return in order to receive a release of the estate tax lien . Also during this time , allowances can be paid to the surviving spouse or minor children of the deceased person to support them during the estate administration period.

**W**hen the creditors' notice period expires, all claims are paid, the estate tax is paid and/or the estate released, the estate is ready to be distributed. At that time, the personal representative asks the Court for permission to make distribution. The personal representative also files a final accounting to show the Court and the beneficiaries what income has been received and what expenses have been incurred. Assuming there are no objections, the Court authorizes the personal representative to distribute the estate and the case is closed.

**A**s you might guess, this process is both time-consuming and expensive. The shortest probate process takes approximately six weeks to complete, but can take as long as a year or more. Obviously, contested cases may take much longer. Court costs and publication expenses will cost approximately \$2,500 or more, and attorney's fees can range from \$2,500 to much, much more. The personal representative is entitled to a statutory fee based on the value of the entire estate administered. That fee is 5% of the first \$1,000, 4% of the next \$4,000, and 2½% of everything above that. Some lawyers still base their fee for conducting the probate on the same statutory schedule for the personal representative. However, attorney's fees can be much more or much less. Lawyers, as well as accountants or other professionals involved in the estate can receive extraordinary fees for their services, all of which can be approved by the Court. The law also provides for sales procedures out of probate cases as well as options to waive accounting, inventory and other facets of the probate process. Keep in mind that **probate is a public process**. The probate records at the Courthouse are available to anyone who wishes to see them.

**If my estate is less than \$600,000, do I still need probate after my death?**

**M**aybe. The *value* of your estate does not determine the need for probate, it is the *character* of the property that determines it. For example, you can have \$5 million of real estate and it will not be subject to probate at your death if it is held in joint tenancy with your

## How can I avoid the need for probate?

spouse . On the other hand , you can own a \$ 2 ,0 0 0 lot that will be subject to probate if the deed is in your name alone. You can own a \$5 00 ,00 0 Certificate of Deposit and it will not be subject to probate if it names a Pay on Death (POD ) beneficiary , such as one of your children or grandchildren . However, your \$5 00 checking account will be subject to probate if it is in your name alone .

**T**he reason the \$ 6 0 0 , 0 00 figure has become so well known is that, from 1 9 8 0 through 19 9 7 , \$ 6 0 0 ,0 0 0 was the amount of the federal exemption from estate taxes . However , probate and estate taxes are two entirely different things . In each of the examples above , the assets which are not subject to probate ARE subject to estate taxes . Of course , if the entire estate is less than the current federal exemption amount of \$2 million , there will be no federal estate taxes .

**T**here are several ways to avoid probate . You can give away your entire estate before death . You can use joint tenancy to own your assets with an intended beneficiary. You can list pay-on -death beneficiaries on certain assets . You can contractually name beneficiaries of certain assets , such as life insurance . You can use a **Living Trust**. Each of these types of ownership have their advantages and disadvantages .

### **Giving away your entire estate**

If you give away your estate, you also give away the control over it. If you give away your home , you cannot control who lives there . You cannot control if it is sold or mortgaged . On the other hand , if you do not own it, it is not subject to estate taxes in your estate and it cannot be reached by your creditors. There are certain time periods which must elapse before these benefits apply. Also, giving your estate away can subject you to the federal gift tax. Giving away your estate , although sometimes beneficial, is VERY risky and should only be done after thorough legal consultation and ONLY done with a beneficiary you completely trust . Even then , the beneficiary's own legal problems can affect the property given to him or her . For example , if you give your daughter your home and she already owns her own personal residence , your home - which she does not occupy as her primary residence - can be taken by her creditors , even though you are still living there! As a result, you may end up either being removed from your home or forced to pay rent just to continue to live there .

### **Joint Tenancy ownership**

Joint tenancy has been called “the poor man’s will” because it can and does effectively avoid probate on the death of the first joint tenant. However, if you and your spouse own property as joint tenants and both of you die together, the property held in joint tenancy is still subject to probate. Joint tenancy property is also subject to estate taxes and may actually cause an increase in overall estate taxes since the property may be fully taxable in the estates of both joint tenants. Joint tenancy property is reachable by the creditors of all joint tenants and owning property in joint tenancy will require all of the joint tenants (and their spouses, in some cases) to agree to the sale or encumbrance of the joint tenancy property. Finally, holding property in joint tenancy can cause an adverse income tax problem since the surviving joint tenant will not realize a stepped-up basis in the property when the first joint tenant dies. For example, if your father owned real estate worth \$50,000 which he purchased for \$10,000 (his tax basis is \$10,000) and he puts it in joint tenancy with you, when you sell the property after his death you will have to pay capital gains taxes on the \$40,000 of gain ( $\$50,000 - \$10,000 = \$40,000$ ). At a current federal capital gains rate of 15%, that would create a tax of \$6,000. On the other hand, if the property was solely in your father’s name (or in the name of his trust) and the property passed to you at his death, you would realize a stepped-up basis to \$50,000 so that if you sold it for \$50,000 or less, there would be no capital gains, thus saving the \$6,000 tax.

### **Pay-on-Death designations**

This is possibly the easiest method of distribution. By executing documentation at your financial institution, you can designate a particular account or investment to pay on your death to a named beneficiary. Unfortunately, you cannot put restrictions on the use of the account after your death. Therefore, at your death, the particular account or investment becomes the property of your named beneficiary. If the beneficiary dies before you or with you, the asset may be part of the estate of the named beneficiary and possibly subject to probate.

### **Contractual beneficiaries**

This concept is most commonly used with life insurance. Your life insurance policy names a beneficiary to whom the policy proceeds are paid at your death. As with the pay-on-death designation, you usually cannot put restrictions on the distribution. Also, as with the pay-on-death designation, the death of the beneficiary still causes a probate situation for the asset involved.

### **Living Trust**

Creating a living trust involves transferring all of your titled assets into the name of the trust. You can be the trustee of your trust and

**My Will clearly states that everything goes equally to my children. Why does my Will need to be probated?**

in order to allow the trust to function after your death or incapacity, you can also list successor trustees to manage the trust for you and distribute your estate at your death.

**T**his is one of the biggest misconceptions of estate planning ! Some people feel that as long as their will is self-explanatory , it does not need to be probated . By law , your Last W ill and Testament is not effective **UNTIL** it is probated . It does not matter if it is clear and unambiguous ! It does not matter if you and your family fully and completely understand your wishes . Your assets titled in your name cannot legally pass to your heirs until the Court enters an Order showing that the assets pass to your heirs. Here is an example : You own your home in your name and have a W ill leaving your home to your two children. As you know, in order to sell your home during your lifetime , you would need to sign the deed to the new buyer. At your death , a buyer will not just accept a deed from your two children since no legal determination has been made that they are your only children , or that they are entitled to your hom e (you could have left it to your spouse , your brother , or your church, for instance ). Simply providing the buyer with a copy of your will does not solve the problem because there is no assurance the will is your *last* will and testament (you could have drafted another one later or the one provided might have been signed when you were incapacitated). Therefore , until a court of law has decreed that the will is your Last W ill and Testam ent and that it does legally pass title to the real estate , your two children have no authority to execute a valid deed to the buyer . As a result, no will is effective unless and until it is subject to a probate proceeding. It does not matter how inexpensive or elaborate the will is , it has to be probated to be effective.

**Are there any**

## reasons why I would not want to avoid probate?

**Y**es . If you do not feel you can find a successor trustee who can properly distribute your estate the way you desire , you may want to require the monitoring of the distribution process by the Court. If you feel that your children or other intended beneficiaries may argue and fight over the distribution of your estate , you may wish to have that distribution controlled by the Court. If you are a high-liability professional who might have a lot of claims or liabilities against your estate , you may wish to have all future claims barred through the probate process . Realize that the probate process is not necessarily a *BAD* thing ! It is time -consuming and more expensive than careful estate planning. However, it is a means of using a disinterested third-party (the Court) to control the distribution of your estate and to make sure your wishes are carried into full force and effect.

## Doesn't joint tenancy avoid probate?

**J**oint tenancy can avoid probate on the death of the **FIRST** joint tenant, but not on the death of the last joint tenant . Joint tenancy has been called the “poor man ’s will” since it can avoid probate and insure that property held in joint tenancy ends up in the hands of the last remaining joint tenant . For example , if you wish to have your house pass to your child , you can put it in joint tenancy between you and your child . Then , at your death , the house would belong to the child . However, many people do not realize that if the child dies first, the value of the house is included in the child ’s estate for estate tax purposes . Also , if the child is subject to a judgment or lien , the judgment or lien creditor has an interest in the real property held in joint tenancy. Finally, if you wish to sell the home held in joint tenancy, both your child **and** the child's spouse will have to sign the deed along with you . Although , in many instances , joint tenancy can be an effective probate alternative, there are sizeable risks that may make joint tenancy inappropriate for your use .

## My family

# already knows what I want. Do I still need a will or a trust?

People change and memories change . Therefore, what you think your family fully understands , may fully unravel after your death . Furthermore , even if your family clearly understands your wishes , by law , your oral instructions are not effective to pass title to property. Even if your family does understand and is willing to follow your wishes , their actions can cause adverse tax consequences for them . Several years ago , a client died with a will leaving everything to her brother. Actually, she had a brother and a sister , although she and her sister had feuded for years . Shortly before her death , she told her brother to just split the entire estate with their sister . At death , after the probate was completed leaving everything to the brother (as were the terms of the deceased sister 's will), the brother wrote a check to his living sister for \$ 4 0 0 , 0 0 0 , following his deceased sister's wishes . That \$ 4 0 0 , 0 0 0 "gift " from the brother to his sister cost him \$ 1 1 8 , 4 0 0 in federal gift taxes ! The tax , however , could have been completely avoided if the deceased sister had changed her will to divide the estate equally between her brother and sister. She didn 't do that, because she felt she gave crystal clear instructions to her brother to divide the estate and she was confident the brother would follow her wishes . She was right , but the end result was still a tax of \$ 1 1 8 , 4 0 0 . In another recent case , a woman died leaving most of her stock portfolio in joint tenancy with her son. The entire family knew for years that , when the mother died , the entire estate was to be divided equally among the son, a daughter-in-law (spouse of a deceased son ) , and two grandchildren (the children of another deceased child ) . When the mother died , the son decided that his mother 's wishes did not include the stock portfolio (which was the bulk of the estate ) , but just a small piece of real estate and her furniture . After more than a year of legal contests , the matter settled , dividing a portion of the estate , but costing the parties around \$ 4 0 , 0 0 0 in legal fees, and an irreparable division in the family. Ignorance of the law is not a *SIN* , just *EXPENSIVE!*

## What are

# estate taxes?

The estate tax is some times referred to as an inheritance tax, a transfer tax, or a succession tax . It is a tax imposed by both the state and federal government on the value of property transferred at your death . It IS different from income taxes. Even in death , you will have to pay your income taxes ! However , in addition to the income taxes , you may have to pay an estate tax . The federal government gives each deceased person a credit against the estate tax. Prior to January 1, 1998, that credit was \$192,800. This translated into an exemption of \$600,000 . In other words , if the total value of your estate at the time of death was less than \$600,000 , you would pay no federal estate tax . As a result of the Taxpayer Relief Act of 1997 and the Economic Growth and Tax Relief Reconciliation Act of 2001 , that tax credit is increased as set forth below. In the federal system , you first determine the tax on the entire estate , and then subtract the tax credit you have available. The amount the tax credit represents is now referred to as "the applicable exclusion amount," shown in the middle column below :

<u>Year</u>	<u>Applicable Exclusion</u>	<u>Tax Credit</u>
1998	\$ 625,000	\$ 192,800
1999	650,000	202,050
2000-2001	675,000	220,550
2002-2003	1,000,000	345,800
2004-2005	1,500,000	555,800
<b>2006-2008</b>	<b>2,000,000</b>	<b>780,800</b>
2009	3,500,000	1,455,800

The current federal tax rates range from 18 % to 46 % . There is an unlimited marital deduction and an unlimited charitable deduction . However, using the unlimited marital deduction can result in an overall tax increase for your estate since you lose the estate tax exemption of the first spouse to die.

The laws of the State of Oklahoma grant to each person an exemption of \$ 2 million for property. For deaths occurring before January 1 , 2007 , the exemption does not apply to *collateral* heirs (i.e., brothers , sisters , nieces , nephews , other relatives , friends, etc .) The Oklahoma tax ranges from 1/2% to 15 % and the tax will be repealed as of January 1 , 2010 . Oklahoma also allows an unlimited marital and charitable deduction . The estate tax can be avoided or substantially reduced with proper and timely planning . The Oklahoma tax is also figured differently than the federal tax. In Oklahoma , you determine the entire estate (gross estate ) , then subtract the amount of the applicable exemption (for this year, \$ 2 million ) and then calculate the tax on the amount over that

## Didn't Congress just repeal the estate tax?

exemption amount . The difference in the two types of calculation is that, with the federal system , you will have a higher *marginal* tax rate than you might have in Oklahoma.

Yes...*but* it does not become repealed until January 1, 2010. Although that sounds wonderful , there is a federal law which provides that a year later, January 1 , 2 0 1 1 , unless some new law is passed before then, the law repealing the estate tax is revoked which means that, January 1 , 201 1, ***we have the same estate taxes we had in the year 2 0 0 2 !*** Realize that , between now and 2 0 1 1 , there will be another president and two Congresses . ANYTHING is possible ! Therefore , doing estate planning now must still include provisions for estate taxes since ( 1 ) you could die before 2 0 1 0 and ( 2 ) Congress could reenact a form of the estate tax . Since the days of James Madison , when our forefathers considered outlawing the inheritance of wealth because it went against the American spirit of each person making his or her own money by working , the government has sought to take a taxing advantage of our passage from this world . Regardless of the argument , the fact is that the TAX remains! Even in 2009 -- the last year of the tax -- the estate tax rate would still be as high as 4 5 % ! Historically , the estate tax has been RAISED to pay for the costs of wars. Presently, we are in the middle of possibly the most costly war in our nation 's history. In addition , with a current Congress divided between Democrats and Republicans with vastly differing philosophies and budget deficits looming , do not expect any meaningful estate tax reform in the near future .

## If the value of my estate is less than the estate tax

**exemption  
amount, why  
should I worry  
about estate  
taxes?**

**Y**ou may not have to worry about them . However, estate taxes are just one part of careful estate planning. Therefore, don't ignore some of the other costs of dying aside from estate taxes , such as probate , burial and long term care . These expenses can reduce what you intend to leave to your beneficiaries .

**If my assets  
are held in a  
living trust,  
are they  
protected  
if I need to go  
into a nursing  
home?**

**N**o . This is another comm on misconception of the use of a living trust. Realize that the typical revocable living trust is one that you control. As a result, the assets in the trust are still considered yours . Even if you are not the trustee, if you retain the right to amend or revoke the trust, the assets are still considered resources of yours for nursing home purposes. Finally, even if you use an irrevocable trust which you create , if you are a beneficiary of that trust , the assets within the trust are not protected if you must go into a nursing home . Of course, in order to even avoid the problem of losing your assets to a nursing home creditor , we recommend you consider **long -term health care insurance**. Such a policy can pay most or all of the cost of your nursing care , whether in a nursing facility, assisting living center, or in your own home . Secondly , realize that

## If my assets are held in a living trust, are they protected from my creditors?

you do not immediately give up all title to your assets if you go into a nursing home . As long as your income and resources can pay your way through the home , you lose nothing. It is only under those circumstances where your income and resources cannot cover the costs of your nursing care that resort must be had to government assistance in the form of Medicaid. There are certain threshold requirements for Medicaid and we can discuss those requirements with you . There are ways to protect your estate from nursing home creditors . One method involves a **Special Needs Trust** . Such a trust involves transferring your assets to children or other intended beneficiaries who then create a trust for your benefit which limits your access to the income and principal of the trust. Unfortunately, you cannot be a trustee of the trust and assets transferred to the trust can still be counted against you in qualifying for Medicaid unless they are transferred well in advance of your need for Medicaid . Please make sure you include long-term health care planning as a part of your estate planning decision -making .

**No.** Once again, as in the case of long -term health care planning , assets in a revocable living trust of which you are the trustee and /or beneficiary are reachable by creditors. However, most of us have all the asset protection we need with the Oklahoma exemption laws . Those laws are some of the broadest and most protective in the country and provide that the following assets are exempt:

1 . Your home , subject to the following limitations :

In a city, town or village Up to one acre of land , selected by the owner.

Outside a city , town or village Not more than 1 6 0 acres in one or more parcels , selected by the owner.

**NOTE : At least 7 5 % of the total square foot area of the improvements for which a homestead exemption is claimed must be used as the principal residence in order to qualify for the exemption . If more than 2 5% of the total square foot area of the improvements for which a homestead exemption is claimed is used for**

**business purposes , the homestead exemption amount shall not exceed \$ 5 ,0 0 0 .**

- 2 . A manufactured home .
- 3 . All household and kitchen furniture held primarily for personal, family or household use (NOTE: A household computer may be considered an item of household goods , under certain circumstances).
- 4 . Any lot or lots in a cemetery.
- 5 . Implements of husbandry necessary to farm the homestead .
- 6 . Tools , apparatus and books used in any trade or profession for the personal, family or household use of such person or a dependent of such person .
- 7 . The person's interest, not to exceed \$ 4 ,0 0 0 . 0 0 , in wearing apparel that is held primarily for personal , family or household use of such person or a dependent of such person .
- 8 . All books , portraits and pictures that are held primarily for the personal, family or household use of such person or a dependent of such person .
- 9 . All professionally prescribed health aids for such person or a dependent of such person .
- 1 0 . Five milk cows and their calves under six months old that are held primarily for personal, family or household use of such person or a dependent of such person .
- 1 1 . 1 0 0 chickens held primarily for personal, family or household use of such person or a dependent of such person .
- 1 2 . Two horses and two bridles and two saddles held primarily for personal, family or household use of such person or a dependent of such person .
- 1 3 . Such person's interest, not to exceed \$ 7 , 5 0 0 . 0 0 in one motor vehicle .
- 14 . One gun held primarily for personal, family or household use of such person or a dependent of such person .
- 15 . Ten hogs held primarily for personal, family or household use of such person or a dependent of such person .
- 16 . Twenty head of sheep held primarily for personal , family or household use of such person or a dependent of such person .
- 1 7 . All provisions and forage on hand , or growing for home consumption , and for the use of exempt stock for one ( 1 ) year.
- 18 . 7 5 % of all current wages or earnings for personal or professional services earned during the last 9 0 days .
- 19 . Such person's right to receive alimony, support, separate maintenance or child support payments to the extent reasonably necessary for the support of such person and

## Can't I give away my estate so that I can qualify for Medicaid?

20. Any interest in a retirement plan or arrangement qualified for tax exemption purposes under present or future Acts of Congress .
21. Such person's interest in a claim for personal bodily injury, death or worker's compensation claim , for a net amount not in excess of \$ 5 0 ,0 0 0 .
22. All right , title and interest , including cash value , in and to any life insurance or annuity policy.

**E**ssentially, those items necessary for living are exempt. However, the following items are **NOT** exempt (unless they are part of a qualified retirement plan):

1. Parcels of real property other than your personal residence .
2. Stocks .
3. Bonds .
4. Savings accounts .
5. Boats .
6. Collectibles .
7. Mutual funds .
8. Vehicles in excess of \$ 7 ,5 0 0 .
9. Patents and trademarks .
10. General partnership interests .

**T**here are numerous other items not subject to exemption and , for the most part , you will not have an exemption in a particular item unless the exemption is specifically provided for by law . Also , in the event of a judgment or claim against you , you must assert your exemption in order to protect the property attempted to be taken . Therefore , knowing your exemptions is important! **Ask for our brochure entitled *Asset Protection and Charitable Planning* for more information on protecting your estate from creditors and taxes .**

**Y**es . However , timing is everything . If you are already in the nursing home, it may be too late! Generally, assets transferred from your control within three years of seeking Medicaid qualification are still considered resources of yours . For example , if you give your

home and bank accounts to your children in January and then apply for Medicaid in February, you will be denied , even though you no longer own anything. The government dictates the parameters for disqualification from Medicaid. However, in most instances, you will need to divest yourself of assets at least three years in advance of going into a nursing home. **For more information , review the chapter of this brochure on Long Term Health Care Planning .**

## **Will the government do more to help pay for long-term care in the future?**

**W**ith the passage of the Health Insurance Portability and Accountability Act of 1996 (HIPAA ) , the federal government defined the limited role it will play in providing long -term care financing in the foreseeable future . For , at the same time this legislation made Medicaid access more difficult, it also established favored tax benefits for people who purchase long -term care insurance . By thus encouraging the purchase of private long -term care insurance , the government has sent a clear message : This is all the help you can expect from us. ***Otherwise, you are on your own !***



## WHAT TO DO WITH THOSE RETIREMENT ASSETS

**E**xamine your own estate . Chances are your largest asset is your retirement plan . For years , the government , as well as competent financial planners have encouraged Americans to make early, regular deposits to a tax deferred retirement arrangement such as an IRA , pension plan, 401(k) plan, Keogh plan, or 403(b) annuity. With retirement plans that are tax deferred , the advantage of continued deferral is that dollars, which otherwise would have been sent to

Washington and state capitals in the form of income taxes and would otherwise cease earning income for the account holder , stay invested and produce income . By delaying the payment of taxes , dollars are earned that would otherwise never have existed. It is true of course that those earnings will also be taxed when withdrawn (except for a qualified distribution from a Roth IRA ) but the accumulation of income on income tax dollars which is deferred and which is in turn invested and compounded year after year , through succeeding generations after the death of the account holder, presents a very favorable tax strategy.

### When to Start Distributions

**T**he law requires that an individual start making required minimum distributions from qualified retirement plans by April 1<sup>st</sup> of the year following the year in which the individual attains age 70½ . The equation for calculating required distributions at age 70½ is really quite simple. There are , as you might expect, exceptions and special rules and other regulatory garble , but the basic rule is that there is a pool of assets which is subject to a requirement that part of the pool must be distributed each year beginning on a certain date and continuing each year thereafter. Each year the pool of assets is divided by a number to get the required distribution. This divisor changes and the pot of money into which the number is divided changes.

**I**t is necessary to comment at this point about the April 1<sup>st</sup> required beginning date . The April 1<sup>st</sup> required beginning date is a special grace extended to taxpayers for the first year that they start paying taxes on their retirement plans . In fact, if the individual uses the April 1<sup>st</sup> grace period for the first required distribution, TWO distributions must be made in that year, one for the year in which age 70½ occurred (which the April 1<sup>st</sup> rule allowed to be postponed to the next succeeding year) and one for the regular distribution for that year.

### How to Prolong the Distributions to Defer Taxes

**S**ection 401(a)(9) of the Internal Revenue Code permits required distributions to be made over a period not exceeding the life expectancy of the plan participant or IRA account owner and his or her beneficiary. Since the life expectancy of two persons is a longer period than one person, those interested in establishing the longest possible distribution period and , thereby slowing the required distributions as much as possible (thereby deferring income tax and enabling further compounding ), have a vested interest in making sure that the life expectancy of a younger beneficiary (as well as the participant or account owner) can be used .

**U**sually, for a married couple, the desired beneficiary is the spouse . An individual can change his or her beneficiary at any time . However, the beneficiary of record on the date when the plan participant or IRA account owner attains 70½ is the one which will control (i) whether the beneficiary is a Designated Beneficiary; and (ii) the amount of additional life expectancy which may be added to the participant's life expectancy for required distribution purposes.

**A**mong the possible beneficiaries a participant may choose, special advantages (i.e., the ability to use the beneficiary's life expectancy for required distribution purposes) are accorded to a specially defined **Designated Beneficiary**. A "Designated Beneficiary" is a living individual who can be ascertained as of the Required Beginning Date. Such a beneficiary must be ascertainable so that the beneficiary's life expectancy can be calculated. The beneficiary can be made by the plan participant or IRA account holder on a form provided by the plan or IRA sponsor, or if there is a default provision in the plan or IRA document naming a specific individual (e.g., spouse, or children by right of representation) that will do as well. An estate (e.g., estate of the participant or IRA account holder), is not a designated beneficiary even though a person's heirs or legatees are ascertainable at the Required Beginning Date. The problem from the IRS's point-of-view is that the heirs may be quite different when, after the Required Beginning Date, the participant or account holder actually dies. In fact, naming the participant's estate is a poor choice for a variety of reasons. Not only is there no Designated Beneficiary thereby accelerating distributions, but the plan or IRA assets are also subject to probate expenses and creditor's claims. If an estate is named as beneficiary, it should be well down the line of contingent beneficiaries.

**I**f a group of beneficiaries is named for a single IRA account or qualified plan (e.g., "my children by right of representation"), the life expectancy of the oldest of the group is used for calculating distributions to all members of the group. Charities are not Designated Beneficiaries. Accordingly a participant who names a charity as a primary beneficiary at the Required Beginning Date will be forced to use his or her own single life expectancy for required distribution purposes. Naming a charity as a beneficiary along with individuals, such as children, who would be eligible to be Designated Beneficiaries make the whole lot ineligible to be Designated Beneficiaries.

**T**he way to maximize the benefits where you wish to use several Designated Beneficiaries is to use separate IRA accounts. If you have three children and your church which you wish to list as Designated Beneficiaries, then create four separate IRA accounts. Then, you can name a child as beneficiary of the first three accounts (and, accordingly, use each of their individual lives in calculating the Required Minimum Distribution for each account), and use the charity as the beneficiary of the remaining account (requiring distribution to be made based on your life expectancy alone).

**N**ote that once the Required Beginning Date has come and gone it does not matter if the Designated Beneficiary dies thereafter. Payouts are still made as if the Designated Beneficiary is still alive.

### **Funding your Estate Tax Exemption with Retirement Assets**

**U**nfortunately, many people do not have enough other assets to fully utilize each spouse's unified credit (the exemption from federal estate taxes which is currently \$2 million) if IRA or qualified plan assets are paid to the surviving spouse. On the other hand, shifting assets to accommodate the shortage runs the risk that if the anticipated order of death does not occur the other spouse will be short of assets to fund his or her trust. For example, if the husband has a \$1.2 million IRA account, in addition to the family's \$200,000 home and \$700,000 of other assets, there is no way to fully use the husband's tax exemption if he dies first listing his wife as the beneficiary of his IRA. The \$1.2 million IRA account passes estate tax free to his wife (there is an unlimited marital deduction from estate taxes) thus leaving only one-half of the house (\$100,000) and one-half of the other assets (\$350,000) to offset against the estate tax exemption. Then, when the wife dies after the husband, she then has the \$1.2 million IRA, the \$200,000 home and \$700,000 of other assets for a total estate of \$2,100,000, and a rather large estate tax problem.

**I**n Oklahoma, one solution at least for half of the problem involves naming the spouse as the IRA or qualified plan beneficiary with a qualified disclaimer back to the credit shelter trust of the plan participant or IRA holder.

A “qualified disclaimer” has many requirements to make it effective and it must be exercised timely. However, such a disclaimer can help equalize the estate size. If the deceased IRA holder or plan participant has sufficient other assets to fund his or her credit trust then the surviving spouse accepts all of the IRA and qualified plan benefits that are payable to him or her and rolls them over, deferring tax and distributions as discussed. If, however, the deceased plan participant or IRA account holder would not have sufficient assets to fully use his or her credit shelter trust (the amount that can be passed or “sheltered” with estate tax) and if the assets of the surviving spouse when augmented by the qualified plan or IRA assets (including future growth) would exceed his or her exemption equivalent (\$ 2 million for 2008), then a timely disclaimer by the surviving spouse, causing assets to be paid to the credit shelter trust may be advisable. In the example above, the wife (surviving her deceased husband) can disclaim \$200,000 of the IRA, thus leaving her with a total estate of \$1,900,000, and giving her husband an estate of \$650,000 so that neither of them will pay estate taxes. Note that if disclaimed assets are held in the credit shelter trust, the surviving spouse may not have a limited power of appointment over the disclaimed assets, as is usually the case with the credit shelter trust. The retention of such a power violates the qualified disclaimer requirement that the disclaimant may not retain power over the disclaimed assets. If such a limited power of appointment does exist, it too must be disclaimed. However, absent other problems, the spouse may exercise powers as trustee of the trust under an ascertainable standard, such as for health, education, support and maintenance. If the non-participant spouse does not have sufficient assets to fully fund his or her estate tax exemption, there are some options available for plan assets or IRA accounts:

- (1) Split non-IRA and non-qualified plan assets evenly between the spouses, name the surviving spouse as the IRA or plan beneficiary, use the disclaimer technique to insure utilization of the exemption equivalent of the plan participant and take your chances with the non-participant spouse dying first, hoping that the annual exclusion gifts can bail out the estate of the surviving participant spouse.
- (2) Divide the assets as in (1) above and hope that changes in health will make clear which spouse will die first so assets can be repositioned.
- (3) Figure that as the clients age, the required distribution provisions will eventually force enough assets out of the retirement plans so that each spouse will be able to sufficiently fund credit shelter trusts to avoid tax, which in truth probably will not happen until fairly advanced ages.
- (4) For those who (i) wish for complete peace of mind, (ii) feel compelled to use each scrap of unified credit and (iii) wish to plan for maximum income tax deferral, purchase a life insurance policy on the non-participant spouse payable to the non-participant spouse’s credit shelter trust (note, this could be a term insurance need) until plan distributions or the appreciation of other assets allow both spouses to fully fund credit shelter trusts without using plan assets. There may in fact also be a risk of financial loss on the death of the non-participant spouse (e.g. second income or child care services) which would make such short term insurance advisable quite apart from unified credit concerns.



## LONG TERM HEALTH CARE PLANNING

Every national poll of older Americans confirms that one of their greatest worries is the possibility of outliving their retirement savings because of inflation. But there is another, more intimidating threat that is just as real: the possibility of losing those savings while trying to pay for long-term care.

In 1900, one of every 25 Americans was over 65. Today, one in eight is over 65. Grandparents now outnumber teenagers, and the population is growing older by the day. By the year 2050, Census Bureau projections indicate that one in five could be over 65.

In 1900, a 65-year-old American man had a life expectancy of less than two years. Today, the average 65-year-old man will live to be 80 and a woman of the same age can expect to live to be 85. Right now, one in 20 of all Americans over the age of 65, and one in five over 85, are in nursing homes<sup>1</sup>. These statistics do not include people with chronic conditions who are being cared for at home. Forty-three percent of people age 65 and older may spend some time in a nursing home<sup>2</sup>. Seventy percent of couples age 65 and older may have at least one spouse enter a nursing home<sup>3</sup>. The average annual nursing home cost nationally was \$44,895 in 2000, and was as high as \$80,000 in some areas of the country<sup>4</sup>. Obviously, long-term care is not something we can pretend happens only to other people. It is not a possibility, but a probability, in virtually every American family.

Everyone maintains car insurance for your vehicle. Yet, the odds of an automobile accident are 1 in 240<sup>5</sup>. However, if it happens, your possible cost will be your insurance deductible of between \$250 and \$1,000. Most everyone maintains home insurance. Yet, the odds of a home fire are only 1 in 1200<sup>6</sup>. Once again, your maximum cost will be your insurance deductible. However, as stated above, your odds of requiring a long term care event are **1 in 2!** The potential cost could be **\$112,238<sup>7</sup> OR MORE!** What have you done to prepare for it?

**CARE PROVIDER.** You need to decide who you want to have as your care provider if you become

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- 1 Health Insurance Association of America, *Long Term Care: Knowing the Risks, Paying the Price*, 1997; also, U.S. Census Bureau, 1995
- 2 *The New England Journal of Medicine*, 1991
- 3 *The Wall Street Journal*, 1990
- 4 New York State, Partnership of Long-Term Care, 1994
- 5 Life Association News, 1993
- 6 Life Association News, 1993
- 7 Assumes average nursing home cost of \$44,895 per year and an average stay 2.5 years.

incapacitated . If you are married, you will usually want your spouse . However , what if your spouse is deceased , incapacitated , or just unable to take care of you ? Who do you choose next ? Obviously , discuss with your chosen care providers what you want them to do and make sure they are willing to act.

**BURIAL** . Go ahead and make your burial plans NOW . I know it is hard, but it is much easier for you to do this than it will be for your family members to do it after your death or the death of a disabled family member. Additionally, if possible , go ahead and pay for your burial . A pre -paid burial is generally not considered a resource of yours for Medicaid qualification purposes .

**SUPPLEMENTAL INCOME** . It is always hard to decide what you might need in supplemental or incidental income . Figure out what you spend now for "luxuries" such as glasses , dentures , cable television , clothing , medications , nutritional supplements , and other incidentals . Medicaid does not cover the cost of these items and , therefore , other money will have to be available to pay for them .

**MONEY MANAGEMENT** . Who do you want to manage your money or the money made available for a disabled family member? It can be the same person as your health care provider. However , it might be wise to have someone else just to avoid the potential problems of having someone in charge of you AND your money at the same time .

**GOVERNMENT BENEFITS** . Apply for all government benefits available for you or your disabled family member. Many benefits are resource-based . That means , in order to qualify , you have to have a limited amount of resources (property). Even if you are turned down for benefits , apply again! Sometimes , as the old saying goes , "the squeaky wheel gets the grease". Therefore, if you are persistent, you may be able to gain benefits from the government for which you may have been arbitrarily turned down .

**LONG -TERM CARE INSURANCE** . Thanks to inflation , the price of long-term care has been doubling every ten years. Congress has passed tax legislation designed to encourage Americans to buy long-term care insurance . Under the new laws , people can make penalty-free withdrawals from IRAs and 401(k) savings plans to purchase long -term care policies . As with any insurance policy, it pays to shop around for the policy that best meets your needs. Look for one that will pay at least \$ 100 a day toward nursing home bills or home care , and be sure your policy includes inflation protection . You can also elect a zero waiting day period so that the policy will begin paying from the first day. On the other hand , with Medicare paying up to 100 days of nursing care , you may want to elect a waiting period of up to 100 days . Avoid policies with premiums that increase as you and your spouse get older, and if affordable , try to get lifetime benefits . Depending upon your age, long-term care insurance can be expensive . Before purchasing a policy, consider all other alternatives . Visit with a nursing home administrator . Find out if your church 's denomination offers nursing home or retirement facilities . Talk with your children about your long -term needs . By addressing the need for long -term care *before* it arises , you can protect your assets and those of your children.

## **AVAILABLE GOVERNMENT BENEFITS**

Before looking at available government help, you need to know about the types of care available. Long-term care can be divided into levels based on the types of services provided . The most professionally intensive level is that of providing medical care , such as the administration of injections , physical therapy, and rehabilitation . The middle level provides personal care , such as help with eating and dressing. The most basic level offers a clean and comfortable place to live and social activities.

**Institutional care** may be defined as care that is provided by non -family members outside the home . **Skilled nursing care** is the highest level of care. It is primarily for seriously ill people who need constant medical

supervision . **Intermediate nursing care** is provided for those who cannot live alone but who do not need 24-hour supervision by a registered nurse . **Custodial care** is the level of care most people have in mind when they think of a nursing home . It is also the level of care most people will need and the level of care they will need the longest.

Although circumstances may make some form of institutional care necessary, most people would prefer to remain at home. **Home-care assistance** can range from installing grab bars in showers to providing the services of visiting nurses and therapists . Did you know that, according to the ALS Association , 80 % of all long term care is provided by family caregivers ? The types of services frequently available for such assistance include (1) **friendly visitor programs**; (2) **telephone reassurance programs**; (3) **meals-on-wheels programs**; (4) **homemaker services**; and (5) **transportation programs**. Presently, home health care aides cost between \$ 12.00 and \$24.00 per hour<sup>8</sup>. Therefore , if this is the option you wish to choose , are you financially able to pay \$ 288.00 to \$ 576.00 **PER DAY** for such care ?

Finally, please keep in mind that caring for an aging relative is not just a financial burden , it can be an emotional burden as well. Reducing this kind of stress makes it easier to help loved ones continue to receive care in the home . **Adult day-care programs** are an excellent solution to the problem of caregiver stress. **Respite care** may also offer family caregivers a needed break . Please check with either the Department of Human Services or area aging services for the availability of such programs in your city.

**SOCIAL SECURITY** . Social Security is a form of social insurance that provides basic income maintenance . An eligible individual receives monthly cash benefits based on the prior payment of a payroll tax ( "FICA " ) by him self or herself, or by such a worker upon whom he or she is considered dependent. The benefits are payable to a covered worker if and when he or she retires or becomes disabled before age 65 . Benefits also are payable to eligible dependents who become survivors on the death of a worker. Widows , wives , minor children and adult children who have been disabled from childhood are among the people who may be eligible as dependents or survivors .

**SUPPLEMENTAL SECURITY INCOME** . The SSI program is for disabled and blind individuals of any age , and persons age 65 or older . This program can provide aid income to disabled persons who have never worked - including children - or persons whose disabilities prevent them from working . SSI is intended for those who have little income and few resources .

**SOCIAL SECURITY DISABILITY INSURANCE** . The SSDI program pays benefits to eligible workers under the age of 65 - and to their dependents or survivors - to make up for income lost when the worker becomes disabled or blind and is unable to return to work. The SSDI program is **ONLY** available to persons who have paid into the Social Security System by working a required period of time in certain occupational categories .

**MEDICARE** . Medicare is a form of public health care insurance that is available to people over age 65 or to people who receive Social Security benefits because they are disabled . They may be disabled workers , widows or adult children . A two-year wait is required between the time a person under 65 begins receiving cash benefits and the time Medicare coverage begins . Social Security taxes pay for most hospitalization under Medicare . Medicare was further expanded in 1986 to limit the patient's possible "catastrophic " liability for deductibles and coinsurance . This new coverage will be paid for by taxes on the beneficiaries themselves , using a sliding scale.

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Medicare coverage is divided into two parts . Part A , also known as the “basic plan” or “hospital insurance”, is largely financed by the Medicare tax on salaries . You pay no extra premiums for Part A coverage if you qualify for it. Part B coverage , known as “medical coverage ,” helps pay for medically necessary outpatient care by doctors and other medical specialists. It also helps pay for some home health care and services.

**MEDICAID .** Medicaid is a state -administered program of health care coverage for people with low income and assets and is subsidized by the federal government if certain standards are met by the state plan. In most states , anyone who is eligible for SSI is also eligible for Medicaid. Medicaid pays for hospital care , outpatient care by physicians and certain other health care providers and for board and lodging , as well as treatment, in certain long -term care facilities . New laws enacted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA ) tightened the eligibility requirements and made it extremely difficult to qualify for Medicaid without first spending down your assets.

### **Qualifying for Medicaid : It’s Not That Easy**

Most people have heard about Medicaid. However, the myths about qualifying for Medicaid are numerous !

***MYTH ONE: “If I go into a nursing home, the state will take all of my assets .”***

This is simply not true as long as you have the ability to pay for your care in a nursing home . A nursing home is really no different than an apartment . You pay monthly. However, if you cannot pay, the State of Oklahoma will intervene and pay for your care , assuming you meet their qualifications . One of those qualifications is that you have made all of your resources available for your care or are attempting to make them available (such as selling property ). If you refuse to make your resources available for your care , they can be taken or encumbered by the state for your care .

***MYTH TWO: “If I don’t make enough in income to pay for a nursing home, I will qualify for Medicaid .”***

In attempting to qualify for Medicaid, the applicant’s income must be less than 30 0% of the SSI benefit level. For 2008 , that amount is \$ 1 , 9 1 1 .0 0 a month . That simply means that if your income is greater than \$ 1 ,9 1 1 . 0 0 a month , you cannot qualify for Medicaid . There are exceptions to those situations where you have a spouse who will still be living at home. Also , please keep in mind that Medicaid qualification involves TWO TESTS - an income test and a resource test. If you have more than \$ 2 , 0 0 0 in total assets (resources ), you cannot qualify for Medicaid , regardless of your income . That is why you hear about people having to “spend down ” their assets when they are in a nursing home . Although there are procedures available to assist those with income over \$ 1 , 9 1 1 .0 0 a month , if your income exceeds \$ 3,000 .0 0 a month , you cannot receive Medicaid qualification under any circumstances .

***MYTH THREE : “My assets are owned jointly with my children . Therefore, they don’t count as my assets for Medicaid purposes .”***

Unfortunately, many people think they are positioning themselves for Medicaid qualification by putting their children ’s names on assets as joint owners . However , as long as an asset or countable resource is in your name or that of a spouse, it is still considered a countable resource , regardless of who else is on the title. The only way to separate yourself from the asset is to **COMPLETELY** take it out of your name and that of your spouse. However , giving it to a child can cause problems if the child has legal problems . That is why the **Special Needs Trust** is such a valuable option to consider.

***MYTH FOUR : “If my spouse goes into a nursing home, my separate assets are protected .”***

Oklahoma , like most states , imposes a duty on a spouse to provide for the other spouse . Therefore ,

in attempting to qualify for Medicaid , ALL assets of both spouses are looked at and considered .

**MYTH FIVE : “If my spouse goes into a nursing home , I can still keep half of our total assets. All I will have to do is spend down my spouse’s half to qualify for Medicaid .”**

In *general*, the spouse not in the nursing home can keep one -half of all countable assets on the date the other spouse enters a nursing home . However , there is maximum amount of \$ 1 0 4 , 4 0 0 that the spouse can keep . In other words , if the TOTAL countable assets are \$ 2 0 8 , 8 0 0 or less , the spouse staying at home can keep half . However , if the total countable assets exceed \$ 2 0 8 , 8 0 0, then they must be spent down to that level before the spouse in the nursing home can qualify. Of course , even with countable assets of \$20 8,80 0 or less, the half belonging to the spouse in the nursing home must be spent down .

### **Caring for a Disabled Child**

**W**hen most people think about long term health care planning , they think about nursing home care for an elderly relative. That is one sort of long term health care planning. However, many times , a family must also consider long term care for a disabled child as well. In any event , there are usually six problems facing the family considering long term health planning :

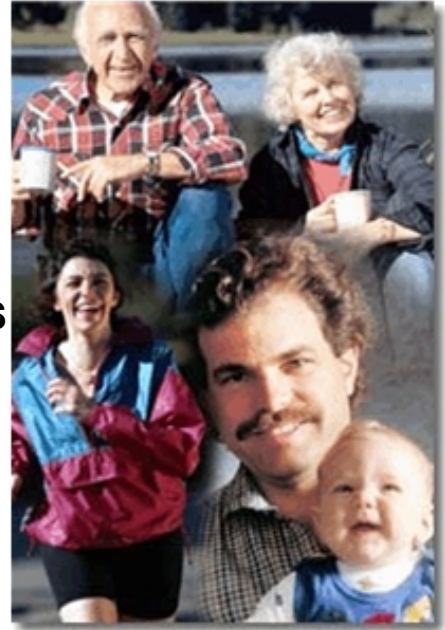
- ( 1 ) **Care Provider.** Who will provide care and supervision for my family member if I should leave my home (e .g., go into a hospital or long term care facility) or if I should die ?
- ( 2 ) **Burial.** Who will bury my family member? I want him or her buried with me, but who will know this 1 0 , 2 0 , or 5 0 years from now ? I don't want him or her buried in the back of some institution .
- ( 3 ) **Supplemental Income.** Each month I spend between \$ 1 0 0 to \$ 2 0 0 on the extra things my family member wants such as better quality clothes, gifts, trips, entertainment, etc. If government programs will not provide for these items , how will my family member receive these supplementary things ?
- ( 4 ) **Money Management.** My family member cannot manage his or her own money . How can I leave some resources for my family member to make sure they will be there as long as he or she lives ?
- ( 5 ) **Retain Government Benefits.** How do I leave an inheritance for my family member which will not disqualify him or her from governmental benefit programs ?
- ( 6 ) **Avoid Family Conflict.** I know that when I die, my other family members will argue about how to take care of the disabled family member. How can I avoid family conflict?

One of the most important things you can do for the benefit of your disabled child is to prepare a **Letter of Intent**. This letter of intent can be a list of instructions for your successor caregiver for the child so that the caregiver know what you want and what you do to take care of your child . At **Postic & Bates**, we have guides to assist you in preparing your own Letter of Intent that you can revise regularly as your family situation changes.

In order to properly protect assets for your disabled child , we recommend the use of a **Special Needs Trust** . This trust can be created and funded now , such as with a life insurance policy or other investment , or made a part of your Last Will and Testament or Living Trust . In either situation , the Special Needs Trust can provide for your disabled children and then , at the child ’s death , pay the proceeds of the trust either to your other children or to other family members , friends or charitable organizations . Since the trust is irrevocable , the assets within it are usually not considered a part of your estate for estate tax purposes and are protected from your creditors.

## TYPES OF ESTATE PLANNING DOCUMENTS AND CONCEPTS USED

Although estate plans vary among individuals, many of the estate planning documents and concepts used are similar. List below is an explanation of some of the more common ones:



### **Last Will and Testament**

This is the most common form of estate planning document. In Oklahoma, there are two types of wills. The first is called a "holographic" will. It is one prepared totally in the testator's own handwriting and signed and dated by the testator. The other type, referred to as a "typewritten" will, is one that is typed and signed by the testator before at least two witnesses. Other states have requirements for three or more witnesses. However, as long as a valid will is signed here in Oklahoma, it is valid in other states. A will is a document whereby you express, in writing, how you want your estate disposed of at the time of your death; who you want to have manage your estate for you; as well as various other instructions. Although many people include funeral instructions in their will, it should be noted that a will is generally not admitted to probate until weeks and even months after death. There is a statutory requirement in Oklahoma for a will to be filed for probate within one year after death.

### **Living Trust**

A living trust, also called an Inter Vivos Trust, is a document whereby you convey property from your individual name to a trust of which you (or you and your spouse) are the trustee. The trustees are the only people who can manage or control the property within the trust. It is also necessary that a trust have beneficiaries. Initially, you (or you and your spouse) will be the beneficiary of the trust. In that manner, you will owe no duty to any other beneficiaries (such as children) to account for what is in the trust. You can essentially do what you please with the trust property. Upon your death, the trust can name the successor trustees and can provide for the division and distribution of your estate after your death. Finally, a trust can

provide for the management of your property in the event you become disabled. In this manner, a trust can avoid the need for a guardianship. Since probate records are public records, having a trust provides a great deal of privacy. Remember, however, that a trust only avoids probate and guardianship as to the property that is placed in the trust. Therefore, it is beneficial to have a **fully funded trust**. This means one that contains **all** of your property, which must be legally titled into the name of either the trust or the name of you as trustee of your trust. In the event you already have arrangements made for the disposition of all of your liquid assets at your death and the only asset that remains titled in your individual name is your home, you can use a **Personal Residence Trust** which is a simplified version of the fully funded living trust designed to own only your home.

## Durable Power of Attorney

A power of attorney is a document by which you appoint someone (a friend, spouse, relative, etc.) to act in your place. It can be for a limited purpose, such as signing checks on your bank account, or signing a deed or mortgage for you in case of your absence (this was very common during the Persian Gulf war), or it can be for a general purpose which essentially gives your attorney-in-fact the power to do anything that you could have done. A power of attorney is valid until it is revoked, or until the creator dies or becomes incompetent. Further, if the power of attorney is a  durable power of attorney, it will be valid even after the incapacity of the creator. As of September 1, 1992, a durable power of attorney can be created to give a person the authority to make health care decisions for the maker of the power. As a result of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a durable power of attorney for health care should also include language allowing your attorney-in-fact to be able to review and discuss all medical records and treatments as well.

## Advance Directive for Health Care

This is the so-called "living will", which is not really a will at all. It is a document in which you state your intention and desire not to be connected to artificial life support in case your death is imminent or in the event you are in a terminal condition or a persistently unconscious condition. The document also allows you to designate a person, known as a health care proxy, to make health care decisions for you in the event you are unable to do so. Many people confuse this document with a Do-Not-Resuscitate (DNR) consent form which is a form, signed by the person or an authorized family member and the person's doctor consenting to the decision not to attempt resuscitation of the person in the event their vital signs cease. It is our recommendation that *everyone* have an Advance

Directive for Health Care. However, a Do -Not-Resuscitate form should only be used for those frail and elderly individuals for whom physical resuscitation might cause more damage than good. We recommend that a DNR form be discussed with your primary healthcare provider.

## Life Estate

Generally this is used only for probate avoidance purposes. It involves conveying your real estate to someone, such as a child, and reserving to yourself the right to live there for the rest of your life. Upon your death, your interest terminates and the person or persons owning the rest of the property (the remainder) will own it all. Unfortunately, as a life tenant, you cannot usually sell or mortgage the property (other than the sale or mortgage of your life estate which has little value). Upon your death, the remainder owners usually need to file an Affidavit to legally determine your death in order to terminate your ownership interest in real estate, and may have to file a court proceeding to terminate other ownership rights you held. A life estate has become a useful way to contribute property to a charity. You can retain use and control of the property during your life, and then have the property pass to a charity after your death.

## Irrevocable Trust

This trust, which is formed similar to a living trust, has a more limited use. You generally do not want an irrevocable trust to own most of your property because you cannot change the terms of such a trust. This form of trust is useful, however, to own life insurance since the proceeds of life insurance are of no personal benefit to you and can be taxable in your estate for estate tax purposes if you own the policy. This form of trust is also useful for charitable planning which can *substantially* reduce estate taxes, eliminate capital gains taxes and generate income taxes savings. Some forms of irrevocable trust can only be used to protect your assets from consideration as resources in qualifying for Medicaid. However, such a trust cannot be created by you and allow you to be a beneficiary since, by law, any beneficial interest you retain in the trust is fully reachable by your creditors, including nursing homes.

## Special Needs Trust

This form of trust is created to protect assets in the event you or your spouse must spend time in a nursing home and cannot afford its cost. The trust involves transferring assets from your name and that of your spouse to a child or other trusted individual who then creates this trust for your benefit. Your rights in the trust are limited to income and principal to supplement any government benefits you are receiving. Presently, there is a maximum disqualification period for Medicaid of 60 months. Therefore, for this trust to be beneficial to you, it must be created at least 60 months BEFORE you require

nursing home care. Otherwise, your family may be required to spend the assets placed in this trust for your care up to 60 months *after* you qualify for Medicaid. Unfortunately, you cannot be the trustee of your Special Needs Trust and you cannot make changes to the trust once it is executed. The trust also will require its own tax identification number and must file a separate income tax return annually.

## Pay on death designation

Many people use this option, usually provided by banks and investment companies, to allow for passage of certain property after death to designated beneficiaries. Common types of property for which this designation is used are certificates of deposit and savings bonds. Also, most IRA accounts provide for a pay on death designation.

## Gifting

Many people give gifts and do not think about how it is reducing the size of their estate. Many times, they do not think of the tax consequences either. Gifts are taxable under federal law. As of 2006, a person can give up to \$12,000 per year (up from \$11,000 in previous years) to any one or more persons and not pay gift taxes. As a result of the Taxpayer Relief Act of 1997, the amount a person can gift annually will increase, beginning in 1999, based on inflation. However, the exempt amount will be rounded down to the next \$1,000 increment. There can be multiple gifts. For example, if you have five grandchildren, you can give each of them \$12,000 for a total of \$60,000 this year. You and your spouse together can gift up to \$24,000 per person per year. For larger gifts, you must file a federal gift tax return. There is also a lifetime gift exemption limit of \$1 million. There is no Oklahoma gift tax. Many people do not realize that converting property ownership from your individual name to that of you and someone else (a child, for example) creates a possible gift which can be taxable. You can also make gifts through a charitable trust to generate sizeable estate and income tax benefits.

## Nomination of Guardian

This is a document by which you designate or nominate someone as YOUR guardian, in the event of your incapacity or in the event of an attempt to have a guardian established for your care and benefit. Realize that, if you have a living trust and a durable power of attorney, there should be no need for a guardianship over you. But, in the event such a guardianship proceeding is initiated, your written nomination, signed while you are still competent, can control the appointment process.



## PUTTING IT ALL TOGETHER

Alright, you have read all the materials in this book. Now, what do you do? How do you decide what is right for you? Is estate planning simply a “one-size-fits-all” approach? **Absolutely not!** However, there are certain elements that should be a part of every basic estate plan:

**Durable Powers of Attorney.** This document is possibly the most important document you can have. It allows you to appoint someone, such as a spouse, child, or trusted loved one, to sign things for you, make health care decisions for you, and generally handle your personal business in the event of your incapacity. Why is it so important? Well, without a durable power of attorney, there may be the need for a guardianship over you and your property. A guardianship - sometimes referred to as a “living probate” - is a court proceeding in which a judge appoints someone, such as your spouse or a child, to manage your person and your property. A guardianship costs thousands of dollars - money that could have been used to take care of you, instead of to pay a lawyer! Therefore, whether you have a will, a trust, or simply have all of your property in joint tenancy with your intended beneficiaries, you need a durable power of attorney. We recommend separate durable powers of attorney - one for business and one for health care purposes.

**An Advance Directive for Health Care (Living Will).** Many people state, “My family already knows my thoughts about artificial life support.” That may be so. However, what written proof do you or they have of those thoughts? Additionally, who has the authority to communicate those thoughts to your doctors? Under what circumstances DO you want artificial life support? These are the issues that can be addressed with an Advance Directive for Health Care. Such a document is commonly called a living will. It is not to be confused with a living trust or a last will and testament. Although you can prepare your own advance directive, Oklahoma has a specific statutory form for such a directive. In order to avoid problems or confusion when the use of such a document is required, it is recommended that you use the statutory form and have it properly signed, witnessed and notarized. Furthermore, in order to communicate your desires to your doctors, we recommend you meet with your doctors who may be called upon to make life and death decisions for you and discuss with them your intentions, concerns, and desires for artificial life support. By doing so, you can save your family and loved ones a lot of anxiety and concern if it becomes necessary to make decisions regarding artificial life support.

**A Last Will and Testament or Living Trust.** The choice is yours! The purpose of both of these documents is to set forth instructions for the distribution of your estate after your death. A will is usually cheaper to prepare. However, it will be subject to a probate proceeding after your death, usually costing thousands of dollars in legal fees and expenses, before your will is effective. A living trust, on the other hand, will not be subject to probate, as long as it is properly prepared and maintained. A will must be made public when it is submitted for probate after your death. A trust is kept private. You do not have to retitle any of your assets with a will. However, with a trust, you must retitle *everything* into the name of your trust. A probate judge will monitor the distribution of your estate through the probate process. Your successor trustee usually has complete control over the distribution of your trust estate without judicial monitoring. Regardless of which document you choose, you want to express your wishes, concerns, and desires for the distribution of your estate. Although we all hope to live many more years, **express your desires as if you are dying TODAY.** Why? You may not live to tomorrow! Both a will and a trust are revocable. That means they can be changed

at any time . Therefore, if your estate or family situation changes over time , so can your will or trust . If you do not have a will or trust , you will be leaving decisions regarding the distribution and use of your estate to family members who may or may not follow your stated desires , or a probate judge who has no knowledge of your family situation and your personal wishes .

**A Letter of Instruction** . This is not the same thing as your will or trust! The purpose of this letter is to set forth instructions and procedures for handling your estate after your death and implementing your will or trust. This letter should include :

- 1 . Names , addresses , and telephone numbers of advisors such as lawyers , accountants , financial planners , insurance agents , and others ;
- 2 . Information on the location of important papers , such as wills, trusts, insurance policies, safe deposit box keys , and other valuable papers ;
- 3 . Information on your burial arrangements ;
- 4 . Names , addresses, and telephone numbers of family members to call;
- 5 . Information on credit cards and other debts to be handled at your death ;
- 6 . Your wishes for the continued investment of your estate for the benefit of income beneficiaries .

Such a letter will be a valuable tool for your successor trustees, personal representatives and family members in knowing what to do with your property . The letter should be reviewed regularly and updated to reflect your then-current estate .

**Long -Term Health Care Plans**. In this day and time when there is much concern about the cost of nursing care , start making plans NOW for your long-term health care . As stated earlier in these materials, you should investigate the purchase of long-term health care insurance. With sufficient insurance, you will not need to worry about losing your estate to pay for your nursing care . You will not need to worry about qualifying for Medicaid . You will not need to worry about being a burden on your loved ones . The longer you wait, the more expensive long -term health care insurance becomes . Therefore, obtain it now, before the premiums increase and the need arises. If you cannot afford or do not want long -term health care insurance and do not have sufficient assets to generate the money necessary for nursing home care, please discuss this subject with us well in advance of the need to go to a nursing home . If you wait until the eve of moving to the nursing home , there is little that can be done to protect your estate from dwindling away paying your way through a nursing home .

### **ONE TRUST OR TWO?**

A common dilemma for a married couple is deciding whether to use one living trust or two . In other words , should the spouses have separate trusts or a joint trust? It is our recommendation that, if your entire estate is under \$2 million, a joint trust is more efficient and useful. It does not require that you and your spouse separate assets or lose control over any portion of your joint estate . However , if you and your spouse cannot agree on the final distribution of your entire estate , or if the total value of your estate exceeds \$ 2 million , you may want to consider using separate trusts . Although a joint trust - if properly prepared - can work to avoid federal estate taxes , many couples choose to create separate trusts which they individually control , using children or others as successor trustees. By doing so , there is little danger of the IRS or other taxing authority attempting to include the trust of one spouse in the estate of the other at death . In most instances , a joint trust must be “dismantled ” into two trusts upon the death of the first spouse . However, the ease of management of the joint trust during the joint lifetimes of both spouses makes such a trust desirable .

## WHAT DO I DO ABOUT ESTATE TAXES?

First, determine if you will have an estate tax . If your estate exceeds the allowable exemptions , there is only one way to avoid the estate tax: give your estate away! You can start by making lifetime gifts now to children , grandchildren , or other intended beneficiaries . However , the gift must be a complete gift . In other words , you cannot sign a deed and put it in your desk and consider it a gift to your child . Likewise , you cannot write a check to an heir and not allow the recipient to cash it . The gift is not completed until the deed is filed or the check cashed . Consider the use of a family limited liability company or family limited partnership as a vehicle to funnel gifts to children which can still allow you to keep total control of the assets within the company or partnership . However, if you do not choose to make lifetime gifts , the choice at death is simple : Keep what you have for your heirs and pay a portion of your estate to the government in the form of a tax , or give a portion of your estate to charities of your choice. It is clear that the money your estate will pay in estate taxes will not go to your family members or other heirs . Therefore , why not give it to a charitable beneficiary of your choice ? There are many ways in which you can make gifts to charities that benefit you as well as the charities . Charitable trusts can avoid capital gains on highly appreciated assets and charitable gift annuities can provide excellent income, especially to older individuals .

Do not simply eliminate charitable gift planning because you consider your estate too small or you do not consider yourself charitably inclined . Remember , each year you give about a third or more of your income to charity - - the IRS - - which uses that money for the charities supported by the federal and state government. Do you feel the federal government can manage your "gifts" as efficiently as your church or college ? Wouldn't you rather make a gift that allows you to give instructions for its use, instead of paying taxes for which you have no control over its use ? Charitable planning can benefit you as well as charities . Charitable gift annuity rates are **substantially** higher than bank CDs rates and can provide you with **lifetime income !** But you must start the planning now. **Ask for a copy of our brochure *Asset Protection and Charitable Giving* available through our office .**

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## DEFINITIONS OF ESTATE PLANNING TERMS

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We know that legal terms can be confusing. In plain English, here are definitions of some commonly used estate planning terms :



### ATTORNEY IN FACT

This is the name given to a person who you appoint to act for you in a power of attorney. This person is also sometimes called your **AGENT**.

### BENEFICIARY

The person or persons for whose benefit a trust is created .

### CORPUS

The property placed within a trust.

### DEWISEE

A person who receives a gift of real property from you by way of your will or trust or other distribution of your estate .

### ESTATE

Everything that you own .

### ESTATE TAX

A tax , assessed by both the federal and state taxing authorities , against the value of the transfer of things in which you own an interest at the time of your death to your beneficiaries . This is different from an income tax .

### GUARDIAN

A person appointed by a Court to take care of and manage the property and person of an incapacitated or partially incapacitated individual.

### HEIRS

The individuals and organizations named in your trust, will or determined by law who receive your **ESTATE** .

### GRANTOR

In the estate planning context, the person who creates a trust or makes a gift. In the real estate context, the person who conveys real property.

### GRANTEE

The person who receives a conveyance of real property.

### IRREVOCABLE

In the context of a trust , it means that the trust cannot be changed , modified or terminated .

### LEGATEE

A person who receives a gift of personal property from your **ESTATE** by virtue of your will or trust or other distribution of your **ESTATE** .

### MEDICAID

A state -administered program of health care coverage for people with low income and assets . It is subsidized by the federal government .

**MEDICARE**

A form of public health care insurance that is available to people over 65 or to people who receive Social Security benefits because they are disabled . **Medicare Part A** helps pay for medically necessary inpatient care in a hospital, skilled nursing facility or psychiatric hospital , and for hospice and home health care. **Medicare Part B** helps pay for medically necessary doctor services and many other medical services and supplies. **Medicare Part D** , effective November 15 , 20 05 , is the new Medicare prescription drug coverage plan .

**MEMO RANDUM OF TRUST**

A document , usually recorded, which shows that a trust has been created , names the **TRUSTEES** and successor trustees , and states their powers , and lists the property subject to the trust . It is sometimes called a Certificate of Trust.

**PERSONAL REPRESENTATIVE**

The person appointed by the Court, either as a result of nomination by your will or by virtue of law , to administer your **ESTATE** after your death . This person is also sometimes called your **EXECUTOR** or **ADMINISTRATOR** or **GUARDIAN** or **TRUSTEE** .

**PER STIRPES**

A method of dividing property from your **ESTATE** . It means that should one of your **HEIRS** die before you , the heirs of that deceased heir take the share intended for the deceased heir. As an example , if you left one -half of your **ESTATE** to your son and your son died before you leaving two children , then your two grandchildren would divide his share , each receiving one -fourth of your **ESTATE** . It is a Latin term which literally means "by roots".

**REVOCABLE**

In the context of a trust , it means the trust can be changed , modified or amended .

**RULE AGAINST PERPETUITIES**

An ancient rule of law , still valid today, which states that no interest in property is good unless it vests , if at all , not later than 21 years , plus period of gestation , after some life or lives in being at the time of the creation of the interest. In simple terms, if you create a trust today , it must terminate no later than the date of death of all of your now living heirs , plus 21 years .

**TESTATOR**

A person who signs a **LAST WILL AND TESTAMENT** .

**TESTATRIX**

A female **TESTATOR** .

**TRUST ESTATE**

All of the property placed in a trust . It is also sometimes called the **CORPUS** or the **PRINCIPAL** of the trust.

**TRUSTEE**

The person or persons who control and manage a **TRUST** .

**TRUSTOR**

Also called a **GRANTOR**. This is the person or persons who create a trust.



## **COSTS OF ESTATE PLANNING**

### **WE ALWAYS OFFER A FREE, NO -OBLIGATION CONSULTATION ON ESTATE PLANNING**

Fees for estate planning services vary. Depending upon what must be done, depending upon the size of your estate, depending upon the attorney or financial planner used, fees can vary substantially. For comparison, here are the fees presently being charged at POSTIC & BATES as of January 1, 2008:

1. **Fully Funded Living Trust**

Separate trusts for a married couple	\$2,000
Joint trust for a married couple	\$1,500
Trust for a single person	\$1,200

The fee includes all consultation, document preparation, review and explanation as well as execution in our office. **There will be an additional fee for signings occurring outside of our office.** The fee does not include any filing or transfer fees for transferring property to the trust(s). In Oklahoma, deed filing fees are \$13.00 for the first page of a document and \$2.00 for each additional page. Generally, the costs per county for filing a deed and memorandum of trust are a total of \$34.00 to \$36.00. The fee also includes a complimentary last will and testament, durable powers of attorney, a nomination of guardian, an advance directive for health care, and the preparation of all deeds necessary to transfer property to your trust. The attorney's fee must be paid in advance. We will bill you for the filing fees at the time your documents are signed. If additional fees are incurred in filing your transfer documents, we will bill them to you.

2. **Last Will and Testament (simple)** \$300.00

The fee includes all consultation, document preparation, review and explanation, and execution in our office. **There is an additional charge for execution outside of our office.** There are additional charges for inclusion of guardianship language for minor children (generally around \$100.00), and for trust provisions (fees vary up to \$800.00). Additionally, equipment is available for videotaping the execution of the document in the event questions may be raised regarding the competency of the testator. The fees for this document are payable in advance.

3. **General Durable Power of Attorney** \$250.00  
Typically, we recommend two, separate kinds of Durable Powers of Attorney - one for *medical* purposes and one for *business* purposes. Both of these documents are available for this one fee.
  
4. **Advance Directive for Health Care** \$50.00  
This document is provided free of charge to all of our estate planning clients who pay for any other estate planning services.
  
5. **Probate of an Estate** \$2,500.00 minimum  
The fees for probate vary, depending upon the extent of the estate and the work to be done. The minimum fee does not include filing and publication fees, which generally run around \$250 to \$300. A \$1,500 to \$2,000 down payment is usually required to retain this office to handle a probate case. In some instances, dealing with larger estates or anticipated contested matters, a larger fee down payment may be required and a larger fee may be charged. Usually, our office also prepares the Oklahoma estate tax return. The balance of the fee will usually be billed to you at the time of the completion of the final account or petition for distribution. However, additional fees can be billed to you during the progress of an unusually long or difficult probate case. In addition to the fees for handling the probate itself, the following fees are charged for preparation of various tax documents associated with an estate:
 

Federal estate tax return	\$400.00
United States fiduciary income tax return	350.00
  
6. **Limited Partnership or Limited Liability Company** \$1,000.00  
The fee, which is payable in advance, includes all consultation, document preparation, review and explanation, as well as execution in our office. It also includes the \$100.00 statutory filing fee to the Secretary of State. If your estate plan will involve more than one limited partnership, the fee for additional limited partnerships can be reduced, depending upon the nature and purpose of the additional limited partnerships.
  
7. **Irrevocable Life Insurance Trust** \$1,000.00  
The fee, which is payable in advance, includes all consultation, document preparation, review and explanation and execution in our office. We will also assist in the transfer of property from your individual names to the name of the trust.
  
8. **Special Needs Trust** \$1,500.00  
The fee, which is payable in advance, includes all consultation, document preparation, review and explanation and execution in our office. We will also assist in the transfer of property from your individual names to the name of the trust and assist you in preparing your own Letter of Intent to assist your successor trustees in caring for your disabled relative.

9. **Corporation** \$1,000.00  
 This is a “turn key” price for a corporation, payable in advance. The fee includes all consultation, document preparation, review and explanation, and execution in our office. It also includes payment of the \$50.00 statutory filing fee with the Secretary of State. We also provide you with a corporate minute book, shareholders’ ledger, and pre-printed stock certificates. We will prepare the certificate of incorporation, by-laws, and initial minutes to properly form your corporation under Oklahoma law.
10. **Personal Residence Trust** \$500.00  
 This fee is for a revocable trust to be used *solely* for holding your personal residence and is useful for those persons who have designated beneficiaries for their other assets, but still own their home. The fee does not include filing fees for a deed and memorandum of trust, which generally runs \$34.00.
11. **Charitable Remainder Trust** \$2,500.00  
 This fee includes all consultation, document preparation, review, explanation, and consultation related to the creation of an irrevocable charitable remainder trust. Additional fees may be involved in transferring or redesignating assets to the trust.
12. **Living Trust and Irrevocable Insurance Trust** \$2,000.00  
 This fee includes the preparation of both a revocable living trust (and its associated documents), as outlined in item 1, above, and an irrevocable life insurance trust, as outlined in item 7, above. This reduced fee is only available for those clients wishing to have these documents prepared at the same time. **The fee to prepare these same documents for a single person is \$1,500.00.**

For additional information on all aspects of estate planning and asset protection ,  
 contact:



2 2 1 2 SHADOW LAKE DRIVE  
 OKLAHOMA CITY, OKLAHOMA 7 3 1 5 9 - 7 4 4 0  
 405/691-5080  
 4 0 5 / 6 9 1 - 6 3 2 9 (FAX )  
[www.posticbates.com](http://www.posticbates.com)

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