

Guide to Estate Planning



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BACKGROUND
KRUEGER BECK, PLLC

Our practice emphasizes estate planning, probate and trusts for individuals and business clients. Walt has practiced law on the Eastside for forty-three years and has been AV rated by Martindale-Hubbell since 1996. On April 1, 2013, Walt and Jessica created Krueger Beck, PLLC. The partnership combines Walt’s extensive experience and Jessica’s energy and experience as an attorney for eight years and more than three years of paralegal experience before and during law school.

WALTER R. KRUEGER



Walt earned his Bachelor of Arts degree in Political Science (magna cum laude) and his Juris Doctor from Gonzaga University, Spokane, Washington in 1975.

He is admitted to practice before all courts in the State of Washington and the United States Federal District Court, Western Washington. In 1997 he was elected to serve a three-year term on the Board of Governors of the Washington State Bar Association, and served as

Treasurer and Chair of the Long Range Planning Committee.

Currently, Walt volunteers with Eastside Legal Assistance Program's Multi-Language Clinic and the Bellevue Neighborhood Legal Clinic of the King County Bar Association. He is chair of the Kirkland Promise, the Greater Kirkland Chamber of Commerce Education Committee, which advocates for Early Childhood Education to become part of basic education in Washington State. Walt currently represents a pro bono refugee seeking asylum through the Northwest Immigration Justice Project.

He is a member of the Real Estate, Probate and Trust Sections of the Washington State Bar Association, King County Bar Association and East King County Bar Association and the East King County Estate Planning Council.

He is a past president of Kirkland Kiwanis and former secretary of the Board of the Mentee Educational Foundation. He is a former board member of the Greater Kirkland Chamber of Commerce, and past chair of its Public Policy Committee, and a former delegate to the East King County Chambers of Commerce Legislative Coalition. He is a former fourteen-year board member, past President and Treasurer of Kirkland Interfaith Transitions in Housing, nka Attain Housing, a non-profit corporation that serves the homeless on the Eastside. He also served as Chair of the Boards of Holy Names Academy and Holy Family Elementary School.

He has spoken on Estate Planning topics at the Peoples Law School at Seattle and Bellevue Community Colleges, and at seminars sponsored by Merrill Lynch, Archdiocese of Seattle, Catholic Community Services, Eastside Legal Assistance Program, American Heart Association and King County Libraries, and National Business Institute.

Honors include the Kirkland Chamber's 2015 Anne J. Owen Community Service Award, Eastside Legal Assistance Program's 1996 Volunteer of the Year, WSBA's President's Award for 2002, KITH's Volunteer of the Year for 2005, and 2009-2010 Kiwanian of

the Year.

Walt has been a student of Spanish for over fifty years and works with Spanish speaking clients.

JESSICA L. BECK



Jessica was admitted to the practice of law in the State of Washington in November 2011 and has built a strong practice by providing quality legal services to the community.

She graduated from the University of Washington in 2006 with a Bachelor of Arts degree in Law, Society and Justice and Sociology. She earned her Juris Doctor from Seattle University School of Law in 2011 with a focus in estate planning.

She is admitted to practice before all courts in the State of Washington.

She is a member of the Real Estate, Probate and Trust sections of the Washington State Bar Association and King County Bar Association, and East King County Bar Association. She is also a member of the Guardianship and Elder Law section of the King County Bar Association, and the East King County Estate Planning Council.

She has spoken on Estate Planning topics at seminars sponsored by the Washington State Bar Association, Edward Jones, Eastside Legal Assistance Program, King County Libraries, and the National Business Institute. She has also spoken at seminars sponsored by the Washington State Bar Association on the topics of small business succession planning for attorneys and general estate planning.

Jessica is a volunteer attorney for the Eastside Legal Assistance Program Wills Project. The Eastside Legal Assistance Program honored her as its 2014 Volunteer of the Year for her work on the

Wills Project and training its volunteer attorneys to draft wills and powers of attorney.

Jessica served as the 2017 Kirkland Chamber of Commerce Board President and sat on several Kirkland Chamber committees including the Executive Board, Finance Committee, and Public Policy Committee. She was a representative to the East King County Chambers of Commerce Legislative Coalition in 2019. She was also an ex officio board member for the Kirkland Downtown Association, and a member of Kirkland Community Foundation Feasibility Study Committee and Steering Committee. She served as a volunteer member of the Planning Committee for Kirkland Summerfest for three years.

Jessica loves taking long walks around Lake Washington with her husband and their English Bulldog, Dozer.

I. WHAT IS ESTATE PLANNING?

Estate Planning is the process of organizing & arranging for the orderly management & disposition of your affairs & assets during your life and after your death, to minimize:

1. Legal & Financial Complications.
2. Fees & Expenses.
3. Taxes.

II. PROBATE AND ESTATE PLANNING

A. PROBATE

1. Defined:

Probate is the administration of the deceased's estate by a court pursuant to the terms of the will or, if there is no will, according to the laws of intestate descent and distribution. Probate involves the

inventory and appraisal of assets, the payment of creditors' claims and taxes, and the distribution of assets in accordance with the will provisions or under the laws of intestate descent and distribution.

2. Advantages:

- a. If the estate is solvent, the executor is granted powers to settle the case without further court involvement. In Washington State this generally results in a reasonable expense.
- b. The Executor can have the court supervise and approve the Executor's actions, if needed.
- c. Creditors' claims generally cut off after four months.
- d. The increase in the family allowance award to \$125,000 permits small estates for spouses and dependent children to be protected from creditors.

3. Disadvantages:

- a. Public proceeding; however, an inventory is not filed in court, but must be provided to beneficiaries.
- b. Delays. Many estates can be closed within five to six months. A will may be challenged within four months of filing and notice.
- c. Expense of attorney's and executor's fees.

B. INTESTATE DESCENT AND DISTRIBUTION

A person who dies without a will dies "intestate." Without a will, the deceased's property may be subject to probate, and the property will pass to those heirs listed in the laws of the state in which the deceased resided. The state's will does not consider the actual intent of the deceased. The administrator will need to apply for a bond, or, if not

bondable, must post other security.

C. THE WILL

1. Advantages:

- a. Avoids distribution under the laws of intestacy.
- b. Low establishment cost for simple will.
- c. Simplicity during lifetime.
- d. Reasonable probate fees in the State of Washington.
- e. Credibility of the process.
- f. Names who you want to be Executor and helps prevent heirs from fighting.

2. Disadvantages:

- a. Requires probate.
- b. Potential time delays.
- c. Potential will contest, but proof must be clear and convincing to overcome the presumption of capacity once the will is admitted to probate.

3. Capacity:

- a. Does the Testator know the nature and extent of his or her property?
- b. Does the Testator know the natural objects of his or her bounty?
- c. Does the Testator know he or she is signing a will?

- d. Two witnesses in Washington and the testimony should be certified at time of witnessing.
4. Undue Influence:
- a. Was the Testator under undue influence such that the will was not his or her intent, but the intent of another?
5. Executor and Trustee Skills:
- a. Honest as the day is long.
 - b. Good business judgment.
 - c. Common sense.
 - d. Ability to communicate with all beneficiaries.
 - e. Professional executor will cost less in long run if sibling communication is dysfunctional.
6. Executor Qualifications:
- a. No corporation, minor, or persons of unsound mind, persons convicted of a felony or of a misdemeanor involving moral turpitude.
 - b. Trust companies organized under Washington law or authorized national banks.
 - c. Non-resident if he or she appoints an agent on whom service of all papers may be made. Agent must be a resident of county where estate is probated or attorney of record of estate.
 - d. Entities who are exclusively attorneys.

- e. Nonprofit corporations whose articles and bylaws permit and who are compliant with RCW 24.

D. COMMUNITY PROPERTY AGREEMENT

1. Advantages:

- a. Avoids probate.
- b. Minimal delay to transfer.
- c. Low cost to create and transfer.
- d. Creditor claim process available.

2. Disadvantages:

- a. Limited to property in the State of Washington.
- b. Limited to transfers between husband and wife.
- c. Creates unintended gift and limits tax planning if agreement provides that all property is community property whether owned now or in the future.
- d. Backup wills needed if both die.
- e. If community estate is \$2,193,000 or more in 2021, Washington estate taxes may be payable on the survivor's death.
- f. Not appropriate if marriage is unstable or if there are children from a prior marriage and the parent wants to provide for them.

E. COMMON METHODS OF AVOIDING PROBATE

1. Gifts during lifetime.

2. Contracts:
 - a. Life insurance beneficiary designation.
 - b. Retirement plan and IRA beneficiary designation.
3. Small estates - personal property valued under \$100,000 can be transferred by an affidavit of successor in lieu of probate. See www.washingtonlawhelp.org for forms.
4. Title Arrangements:
 - a. Joint tenancy property (JTWROS).
 - b. Bank "Totten" Trusts (In X's name in trust for Y).
 - c. Community property.
5. Revocable living trust.
6. Real Property Title Arrangements.
 - a. In name of owner or owners (recommended).
 - b. Joint Tenancy with Right of Survivorship (JTWROS).
 - c. Life Estate with remainder to beneficiaries.
 - d. Transfer on Death Deed.
 1. Any real property title change should be considered as part of an overall estate plan, not an ad hoc decision advocated by a beneficiary who wants the property.
 2. TOD is recorded and is public record.
 3. Although TOD is revocable, the safeguards of a

Will or Trust are not present, meaning Grantor may be subjected to undue influence or fraud.

4. Upon death of Grantor the death certificate must be recorded as public record that is available to all, including identity thieves.
5. Beneficiary takes real property subject to any debts.

F. PLANNING FOR CHILDREN

1. Simple Will - nominate guardians for person and estate of minor children (Age of majority is 18 in Washington):
 - a. Advantages - court supervision and bonding requirements.
 - b. Disadvantages - children receive the entire estate at age 18 and may not have the wisdom and maturity to preserve it. The cost of the guardianship is deducted from the estate.
2. Will with Contingent Trust for Children:
 - a. Advantages - trustee can hold the property beyond age 18. For example, the trustee can pay educational expenses until the child reaches age 24, and then pay $\frac{1}{3}$ of the trust principal to the child. At age 28 the trustee can distribute $\frac{1}{2}$ and the balance at age 31, or any percentages and ages you select.
 - b. Disadvantages - No bond or court supervision, so select responsible trustee who can pay for his or her mistakes.
 - c. A “special needs trust” should be considered to maintain eligibility for children or others who will be receiving governmental resources, such as SSI, COPES and

Medicaid.

III. REVOCABLE LIVING TRUST

A. DEFINED

A living trust is a trust you create while you are living, as contrasted with a testamentary trust which is created after your death by the terms of your will.

A revocable trust can be altered, amended, or revoked; an irrevocable trust is not meant to be changed, but the law will permit modifications if all interested parties can agree.

Thus, a revocable living trust is a trust you create and can alter, revoke or amend at any time during your life.

B. ADVANTAGES

1. Avoids probate, costs, delay, and publicity.
2. Avoids court appointed guardian.
3. Will substitute.
4. Successor trustee can act immediately, but must comply with institutional requirements (e.g., bank, brokerage firm) to prove change of trustee, such as by certification of trust.
5. Creditor claim process available.
6. Protects vulnerable adults if Co-Trustee or third party Trustee.

C. DISADVANTAGES

1. Costs more to set up than simple will.
2. Nuisance of transferring property to trust and record keeping

during lifetime.

3. More difficult to understand.
4. Possible mismanagement and lack of credibility in transfer from trustee to ultimate beneficiaries.

D. ESTABLISHING THE TRUST

1. Definitions:

- a. Trustor - the creator of the trust (also referred to as grantor or settlor).
- b. Trustee - the person or entity who holds title to the trust assets has a fiduciary duty to preserve and invest the assets for the benefit of the trust beneficiaries.
- c. Beneficiary - the person or persons for whose benefit the trust was established and to whom the trustee owes a duty to prudently preserve and invest the trust assets.

2. The Trust Agreement:

- a. Beneficiary Designation. Generally, the trustor(s), the person or spouses creating the trust, are also the beneficiaries while alive. Upon the death of a spouse, the surviving spouse usually continues to receive all trust income. After the death of the second spouse, the children or other designated beneficiaries receive the property, either in trust or outright when they reach a specified age, for example, one-half at age 25 and the balance at age 30.
- b. Trustee and Successor Trustee Designation. Generally, the trustor will also serve as trustee until he or she is unable to serve either because of disability or death, and the successor trustee will then serve as trustee. Spouses

who create the trust can serve as co-trustees. Upon the death of one spouse, the surviving spouse can continue to act as trustee until his or her disability or death, when the successor trustee will serve. Adult children may be competent to serve as successor trustees. For minor children, a person with good character and business judgment or a trust entity can be named to serve as successor trustee.

E. FUNDING THE TRUST

1. Probate and guardianship avoided only on property transferred to the trust (exception: Affidavit of Successor for estates involving personal property of less than \$100,000).
2. Lifetime transfers to the trust.
3. If trustor is incapacitated, an attorney-in-fact under a durable power of attorney can transfer property to the trust.
4. Pour-over wills to transfer property to the trust at death.

F. WHERE RECOMMENDED

1. Avoids multiple probates when real properties are in more than one state.
2. Best tool for preserving privacy to keep the world from knowing the contents of your estate plan. A will is a public document. Normally the trust is only seen by the beneficiaries.
3. Protection from being taken advantage of by unscrupulous persons if the trustee is someone other than the Trustor or if a co-trustee serves with the trustor/trustee.

IV. ESTATE AND GIFT TAXES

A. WASHINGTON STATE ESTATE TAX

1. Washington State has been imposing estate tax on estates larger than \$2 million since 2006. The current estate tax is imposed on estates larger than \$2,193,000.00 in 2021, the same as in 2018, 2019, and 2020
2. There is an unlimited marital deduction for transfers between spouses and a Qualified Terminable Interest Property (QTIP) deduction can be different on the state return than on the federal return.
3. The Washington taxable estate is the federal gross estate without federal deductions for state estate taxes less \$2,193,000.00 and less the amount of tangible personal or real property used for farming purposes that qualifies for the farm deduction.
4. A Washington State estate tax return must be filed within nine months of death on all estates whose gross value exceeds \$2,193,000.00.
5. Because the state exemption of \$2,193,000.00 is lower than the federal exemption of \$11.7 million in 2021, special planning is required to minimize the state estate tax.

If Washington Taxable Estate		The Amount of Tax Equals		Of Washington Taxable Estate: Value Greater Than
Is At Least	But Less Than	Initial Tax Amount	Plus Tax Rate %	
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	18.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$910,000	19.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,100,000	19.50%	\$7,000,000
Above \$9,000,000		\$1,490,000	20.00%	Above \$9,000,000

B. FEDERAL TAXES

1. Gift Taxes. No gift tax return must be filed if the gift is less than \$15,000 per donee in 2021. In a single year husband and wife can gift \$30,000 to one donee. There is no gift tax if you give more than \$15,000 in one year, but less than \$11.7 million in lifetime gifts in 2021. You must file a gift tax return if you gift more than \$15,000 in one year, (\$30,000 by husband and wife). Gifts between spouses are unlimited because of the marital deduction. The annual exclusion for gifts to a non-citizen spouse (US Resident and Non-resident Aliens) is \$159,000 in 2020.
2. Tuition/Medical Care. The gift tax exclusion is unlimited for amounts paid for tuition on behalf of a donee directly to an educational organization. Medical costs of a donee which are not reimbursed by insurance and essential transportation related to medical care are also excluded if paid directly to the providers.
3. Advantages of gifting.
 - a. Gifts of \$15,000 or less (present interest).
 - 1) No gift tax return.
 - 2) Decrease estate without using up unified credit.
 - 3) Avoid generation skipping tax of 40%.
 - b. Gifts of more than \$15,000.
 - 1) Satisfaction of seeing gift used while alive.
 - 2) Appreciation is removed from the estate and Washington State has no gift tax.
4. Disadvantages of Gifting.
 - a. Loss of control.
 - b. Loss of resources which may be needed for your own care later.

c. Donee receives Donor's tax basis in the property gifted and loses free step-up in basis (fair market value) upon death.

5. What is gross taxable estate?

NET WORTH + LIFE INSURANCE

_____ + _____

New: The Tax Cut and Jobs Act of 2017 increased the 2018 gift and estate tax exemption amount from \$5.6 million to \$11.2 million per person, but is not permanent. This may be repealed by a future Congress and, if not, there may be no federal estate tax on January 1, 2026.

6. Applicable Exclusion Amount. If the value of your estate is less than \$11,580,000, the exemption amount, and if you die in 2020, there is no federal estate tax liability.

Year	Exclusion Amount
2002 & 2003	1,000,000
345,800	
2004 & 2005	1,500,000
2006, 2007, 2008	2,000,000
2009	3,500,000
2010	\$5,000,000 or none
2011	\$5,000,000
2012	\$5,120,000
2013	\$5,250,000
2014	\$5,340,000
2015	\$5,430,000
2016	\$5,450,000
2017	\$5,490,000
2018	\$11,200,000
2019	\$11,400,000
2020	\$11,580,000
2021	\$11,700,000

7. Portability (DSUE). Any unused portion of the applicable exclusion of a first spouse to die can be available to the surviving spouse provided the first decedent's executor elects on a timely filed Form 706. This can protect up to \$23,400,000 in 2021 for the surviving spouse.

8. The rates in 2021:

Taxable Estate	Federal Estate Tax	Rate on Excess
\$11,700,000	0	40%

The \$15,000 per person annual exclusion for gifts is indexed for inflation, but is rounded down to the lowest \$1,000.00.

9. Unlimited Marital Deduction.

There is an unlimited marital deduction for gift and estate transfers between spouses, if the following qualifications are met:

- a. Decedent is a US citizen or resident;
- b. The interest is included in the decedent's estate;
- c. Surviving spouse is a citizen of the United States;
- d. Interest passes to surviving spouse; and
- f. Interest is a deductible one (not a nondeductible terminable interest).

On the death of the second spouse and transfer of the property to the children, to the extent the net estate exceeds the applicable exclusion and DSUEA, a federal estate tax is payable.

10. Charitable Gifting.

Help society and reduce your income taxes during life and income and estate taxes at death. During life you can gift an unlimited amount to 501(c)(3) non-profit corporations to reduce your estate tax. There are limitations, however, on the income tax deductibility of gifts during your lifetime. Donate low basis, high fair market value property, e.g., real estate, stocks. The charity sells the property free of any capital gains tax you would have had to pay if you had sold it. IRA's and retirement plans are great to give at death because you remove your income tax obligation, called "income in respect of a decedent," and reduce your estate for estate taxes, a savings of up to seventy plus percent.

11. Generation Skipping Tax (55%)

In 2021 a donor of a gift, or a decedent in a transfer subject to the estate tax has a \$11,700,000 Generation Skipping Transfer Tax (GSST) exemption for direct skips to a skipped person who is either a natural person, two or more generations below the generation transferor, or a trust in which all interests are held by skipped persons, or a trust in which no person holds an interest and from which no distribution may be made to a non-skip person. A transfer to one's spouse, brothers, sisters, or children is not subject to the Generation Skipping Tax. A transfer to grandchildren or great grandchildren would be a skip. There is an exception for an orphan grandchild when the grandchild's parent has predeceased the donor or decedent. The exemption can be allocated to a bypass or equivalent exemption trust, or to a reverse Q-TIP Trust. Gifts qualifying for the \$15,000 annual exclusion and payment of tuition and medical expenses are not subject to the GSST.

Portability does not extend to the GSST.

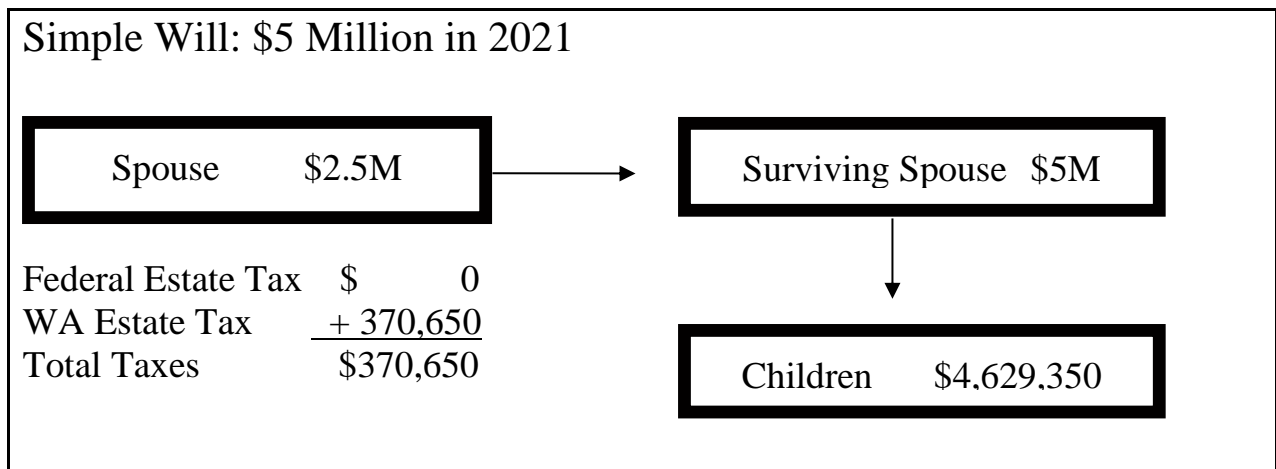
12. Carryover Basis at Death

The basis of stocks and real estate is often the price you paid for them. Real estate basis may be increased by improvements (a

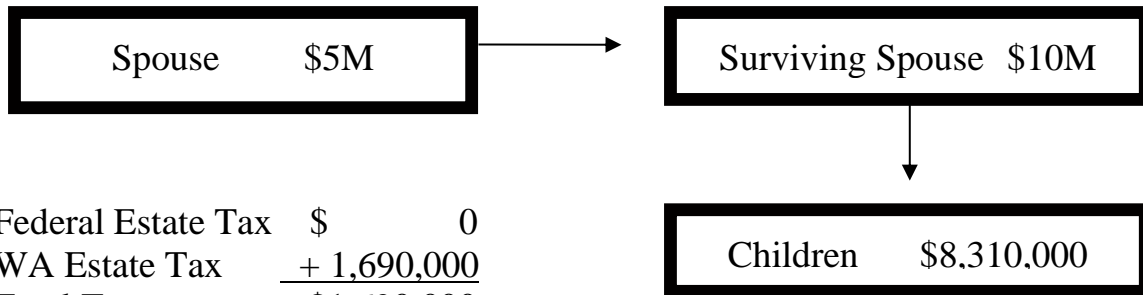
new addition or new roof), not repairs. Currently, at death a decedent's property (except income in respect of a decedent, such as IRA's) receives a free step up in basis to the fair market value on the date of death or, if estate tax is payable and the election is made by the executor, six months after death. No basis increase is available for gifts made within three years of death of the donor (except from a spouse), income in respect of a decedent, and stock of certain foreign entities. Keep records of improvements, gifts, and inheritances to prove the value of your basis. For community property, both halves receive a step-up in basis on the death of one spouse. The best evidence of basis is an appraisal by a qualified appraiser.

C. THE PROBLEM WITH AN "ALL TO SPOUSE" WILL.

If the first spouse to die leaves all his or her property to the survivor, the decedent's state exemption of \$2,193,000.00 is wasted.



Simple Will: \$10 Million with Portability



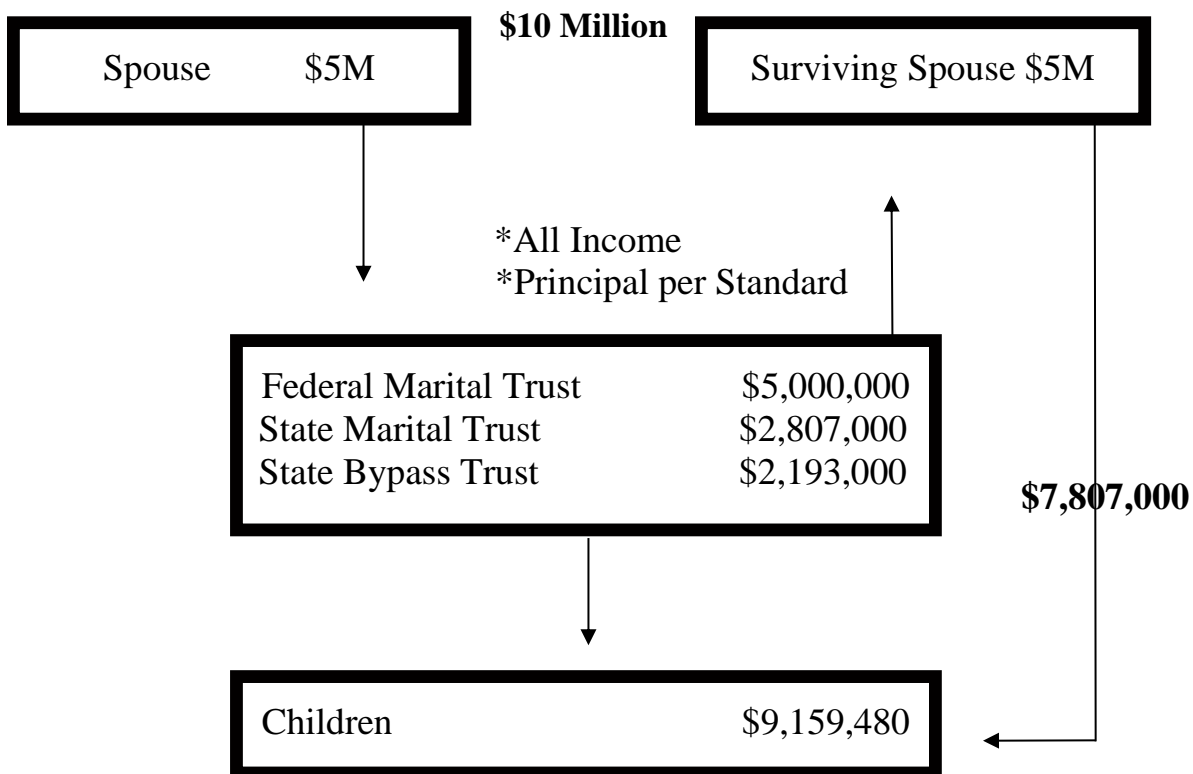
Federal Estate Tax	\$	0
WA Estate Tax	<u>+ 1,690,000</u>	
Total Taxes		\$1,690,000

D. THE SOLUTION - BYPASS TRUST.

1. Bypass Trust.

A spouse's will or a living trust can provide for the establishment of a trust to benefit either spouse during her or his lifetime with the remainder to pass to the children upon the survivor's death - the Bypass trust. (aka Credit Shelter Trust)

Bypass Trust 2021
(a.k.a. Credit Shelter, Equivalent Exemption)



	1 st Death	2 nd Death
Federal Estate Tax	\$ 0	\$ 0
WA Estate Tax on \$ 5,614,000	\$ 0	\$ 840,520
Savings Over All to Children	\$ 0	\$ 416,845

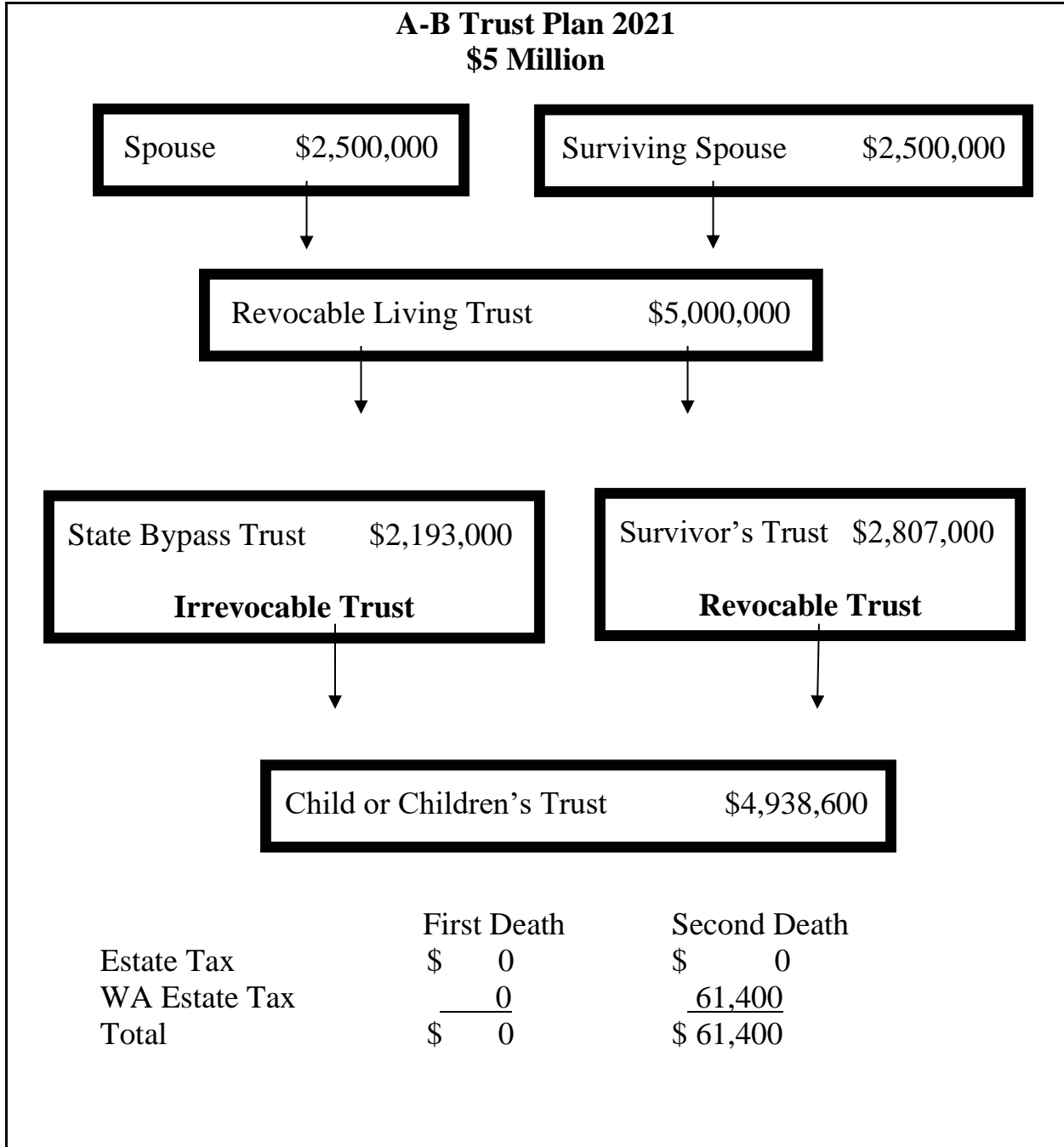
You save taxes by creating a bypass trust in your will or in a living trust which is funded after your death. The income can be paid to your surviving spouse. The principal generally is not paid to your spouse, but if your spouse's other resources are insufficient to provide your spouse reasonable maintenance, education, support and health, the trustee can distribute the principal to the trustee.

By establishing a bypass trust versus a simple will, the combined estate taxes on the two estates is reduced by \$416,845 in 2021.

2. Disclaimer Bypass Trust.

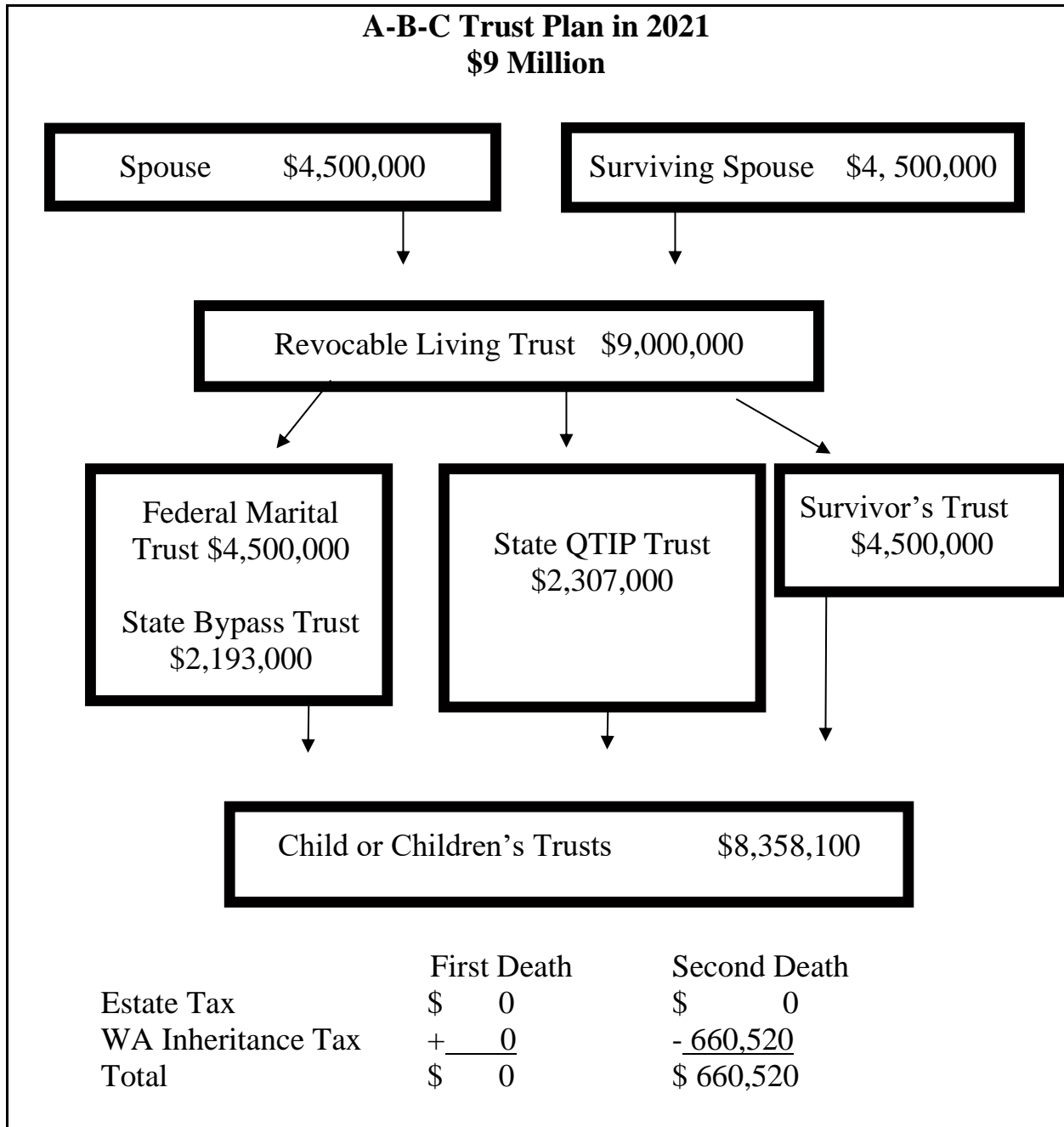
The disclaimer bypass trust gives flexibility in planning for community estates, especially with the changing applicable credit and the uncertainty of future legislation. A disclaimer bypass trust permits the survivor to determine if the bypass trust will be funded to save taxes and by how much.

A disclaimer is a refusal by a recipient to accept an inheritance or gift. A valid disclaimer of an interest passing at death must be in writing within nine months of the date of death, and before the recipient has accepted the benefit of the particular assets. Proper estate planning results in lower taxes, or none at all.



E. THE QTIP TRUST

The acronym "QTIP" stands for Qualified Terminal Interest Property; it is a lifetime income interest in certain property given to the surviving spouse.



1. The Problem. Husband and wife have a net worth of \$9

million and each have children from a prior marriage. When the first spouse dies, his or her living trust will establish a testamentary trust for the lifetime benefit of the survivor, and on the survivor's death, to the decedent's children, funded with the \$2,193,000 state exemption amount. The remaining \$2,307,000 of the decedent's assets will face immediate state tax unless passed to the surviving spouse. However, if the survivor receives the property outright, the survivor or the surviving spouse can spend or transfer those assets to the survivor's children or a new spouse.

2. **The Solution.** \$2,307,000 can be transferred into a state QTIP trust in which the surviving spouse receives all income from the trust for life, with the right to receive certain amounts of principal. Upon the death of the surviving spouse, the property will be included in the survivor's estate for state tax purposes, but the property will pass to those beneficiaries designated by the first spouse to die, or to those designated within a limited group of beneficiaries if the decedent gave the survivor a limited power to appoint.

F. US CITIZENS, RESIDENTS, AND NON-RESIDENTS

1. **Residency for Estate and Gift Tax.** Your domicile is your permanent or fixed home where you live with no present intention of moving elsewhere.
2. **Estate Tax.** Citizens and alien residents of the United States are taxed alike with all assets, wherever located in the world, in their gross estate for estate tax purposes. If foreign death taxes are paid, credit is allowed against the federal estate tax. Non-resident aliens are taxed on most property located in the United States but not all. Real property and tangible personal property, domestic shares of stock, IRA, and bank accounts associated with their businesses in the United States are taxed. Life insurance and personal bank account in the United States are not taxed.
3. **Gift Tax.** A federal gift tax is imposed on transfers by U.S.

Citizens and resident aliens regardless of where the property is located. A transfer to a Citizen spouse is unlimited; however, a transfer to a non-citizen spouse is limited to \$159,000 in 2021. A gift tax will apply to gifts by non-residents if the property is located within the United States. However, the gift tax does not apply to the transfer of intangible personal property by a non-resident who is not a citizen of the United States.

4. QDT. For transfers to a spouse, a non-resident decedent will be allowed a marital deduction provided the surviving spouse is a U.S. citizen. If property passes at death to a non-U.S. citizen spouse, there is no marital deduction unless the property passes into a Qualified Domestic Trust (QDT). A Qualified Domestic Trust qualifies if at least one trustee of the trust is required to be an individual citizen of the United States or domestic corporation by the trust instrument, and provides that no distribution, other than a distribution of income, may be made from the Trust, unless the trustee who is an individual citizen of the U.S. or a domestic corporation has the right to withhold from such distribution the estate tax. Additionally, the trust must meet regulations adopted by the IRS to insure the collection of any tax, and the executor must elect on the tax return to treat the trust as a QDT trust. Distributions before the date of death of the surviving spouse from a QDT trust will be taxed at the estate tax rate increased by the aggregate amount involved in any previous taxable distributions from a QDT reduced by the amount of prior tax paid. No tax will be imposed on any distribution of income to the surviving spouse, and no tax will be imposed on any distribution to the surviving spouse on account of hardship.
5. Marital Deduction. Protocols negotiated with Canada and Germany permit two forms of marital deduction, each with its own complexities. A Canadian domiciliary decedent's non-US citizen spouse may receive up to \$23.4 M, a combination of the estate tax applicable exclusion and the marital credit, without using a QDOT (lessor of the verified credit and the amount of the estate tax).

6. Credit. A non-resident decedent is limited to a credit of \$13,000.00, which is equivalent to an exempt estate of \$60,000. Treaties permit certain non-resident decedents a unified credit equivalent to a U.S. citizen's, currently at \$11,700,000 applicable exclusion, based on a pro rata share of the estate within the U.S. compared to the total property owned in and outside the U.S.
7. DSUE. The portability of the unused applicable exclusion of the first spouse to die is limited to a surviving spouse who is a citizen.
8. Tax Returns. Non-resident estates must file returns within nine months of death if the U.S. gross estate exceeds \$60,000.

V. ADVANCED ESTATE PLANNING TECHNIQUES

A. HOW SHOULD YOU OWN YOUR LIFE INSURANCE?

1. Proceeds are included in Estate if:
 - a. Payable to "The Estate," or
 - a. Insured had "Incidents of Ownership."
2. To reduce or eliminate the estate tax at the death of the surviving spouse:
 - a. Children as owners, or
 - b. Irrevocable Life Insurance Trust.
3. Caveat: Transfers of ownership of life insurance within three years of the transferring owner's death will be included in the estate.

B. LIFE INSURANCE TRUST

1. The irrevocable trust owns the policy.
2. To obtain a gift tax reduction you gift money to the trust and the Trustee gives notice to children of their right to withdraw within thirty days.
3. Premiums are paid with funds gifted to the trust.
4. Trustee collects proceeds upon insured's death. The trust could continue for the benefit of children or the trustee could use the proceeds to buy estate assets, or loan money to the estate to pay death taxes and other expenses, and then distribute the balance to the children.
5. RESULT: No death taxes on insurance proceeds.

C. OTHER LIFETIME TRANSFERS

1. \$15,000 Annual Gift Exclusion - 2019

In 2021, transfers in excess of the \$11.7 million per personal lifetime exemption will face gift tax.

However, the first \$15,000 in gifts made in a qualified manner by a donor to any one donee during each calendar year is not taxable and a gift tax return is not required to be filed.

Therefore, if you and your spouse have two children, the two of you could transfer \$60,000 per year to your children. With an ongoing gift program extending over 10 years, \$600,000 in gifts could be passed tax-free to the children (\$1,200,000, if each child has a spouse). Despite the application of the so-called “kiddie tax” on unearned income of children under 14, an annual gift tax program can be an effective part of the overall estate plan.

Better yet, because Washington state does not have a gift tax, you can give as much as you want as long as you do not exceed

the \$11.7M lifetime federal exemption. The gift is out of your estate, and no Washington estate tax will apply.

2. Retirement Beneficiaries and Withdrawals

- a. **Caveat:** Before you select your withdrawal choices before reaching age 72, make a rollover, or name a beneficiary, consult with an advisor who is knowledgeable regarding retirement plans and your estate planning goals. The Further Consolidated Appropriations Act 2020 (HR 1865), adopted December 20, 2019, delays withdrawals until age 72.
- b. Retirement funds accumulated before income tax payment by you or your employer are income in respect of a decedent. Thus, these funds are subject to income tax and estate tax.
- c. **Possible Primary and Secondary Beneficiary Choices:**
 1. Spouse (Best);
 2. Child or children (can take payments over child's life expectancy) (Best);
 3. Marital Q-TIP Trust;
 4. Bypass or Credit Shelter Trust;
 5. QDT Trust if spouse is non-US citizen;
 6. Revocable Living Trust;
 7. Charity (must be the sole beneficiary).
- d. **Beneficiaries other than spouse.**
 1. Payment over ten years unless a special

beneficiary, a minor, a disabled beneficiary, a chronically ill individual, or less than ten years younger.

2. Preferably split into separate IRAs for each beneficiary by December 31 of year after death of owner.
3. Begin distributions by December 31 of year after year of death.

e. Distributions to estates or charities.

1. Death after Required Beginning Date (RBD) used deceased owner's remaining life expectancy.
2. Death before RBD – must be fully withdrawn by December 31 of fifth anniversary year after death.
3. No better asset to give to charities.
4. Avoid giving to estate.

f. Trust as beneficiary.

Distributions for trust beneficiary limited to ten years unless a special beneficiary life if trust is

1. valid under state law;
2. irrevocable;
3. beneficiary is identifiable;
4. and IRA owner provides IRA custodian a copy of trust or list of beneficiaries.

g. IRA Distribution Options chosen by age 72

1. Recalculate life expectancy;

a. Pro: you will receive a larger payout if you live beyond your life expectancy at 72.

2. Surviving spouse can roll over into surviving spouse's own account(s) with child or children as designated beneficiaries to obtain maximum deferral of withdrawal.

3. Land Sales

A husband and wife can sell land to a particular child or children on an installment note at, for example, a 9% interest rate. Over a 30-year term, assuming an 8% per year appreciation, the million dollars of property would grow to approximately 8 million dollars. This sale, under these assumptions, would provide the potential for keeping enormous amounts of future appreciation out of the estate.

4. Private Annuities

In a properly structured private annuity, one party sells property to another in return for the buyer's unsecured promise to pay the seller a specific stream of income lasting for the life of the seller. The benefits of a private annuity include the deferral of gain on a sale of the property until annuity payments are actually received and an exclusion of the appreciating property from the annuitant's estate. Beware of the 80 year old French woman who lived over 100 years, however.

5. Family Business Planning

Lifetime gifts of stock or other interests in a family business to children active in the business can often remove the value of that stock from your estate. A properly drafted buy-sell

agreement can provide for a smooth transition of management and control; it can also serve to minimize valuation disputes among the owners or with the Internal Revenue Service. Adequate life insurance can fund that agreement and provide estate liquidity. Family partnerships and limited liability companies, private annuities, grantor retained income trusts, and reasonable compensation paid to children active in the business can be effective income and wealth shifting techniques.

6. Charitable Remainder & Wealth Replacement Trusts

Charitable remainder unitrusts and charitable remainder annuity trusts are often considered by clients as a means of converting low basis high fair market value into an income stream. A charitable remainder trust is established with you receiving a percentage of the trust each year, or an annuity, which is selected at the time of creating the trust. You also receive a current charitable income tax deduction. At the end of your life and your spouse's life, the remainder interest will pass to the charity. Some persons will add a wealth replacement trust, an irrevocable insurance trust, paying the insurance premiums with the money saved with the income tax deduction to purchase the insurance. The insurance proceeds pass to your beneficiaries free of estate tax.

7. Qualified Personal Residence Trust

In a Qualified Personal Residence Trust, the grantor places a residence or vacation property into a trust for a term of years. At the end of the term, the property passes to the remainder beneficiaries, typically the grantor's children. The property is valued at fair market value to determine the amount of gift, and a gift tax return is filed reflecting the remainder value the beneficiaries will receive in, for example, ten to twenty years. Assuming the grantor lives beyond the term established in the Trust, the property passes to the beneficiaries, and all future appreciation is excluded from the estate of the grantor.

However, should the grantor die during the term, the fair market value of the property at the time of death is included in the estate, and the Qualified Personal Residence Trust was of no benefit. At the end of the term of years, the grantor could rent the property back from the beneficiaries. This is a popular device in large estates.

VI. PLANNING FOR DISABILITY

A. DURABLE POWER OF ATTORNEY FOR FINANCIAL MANAGEMENT (DPOA)

Note: Effective January 1, 2017, the Uniform Power of Attorney Act (RCW 11.125) updated the law regarding Powers of Attorney in Washington State. Prior Powers of Attorney will remain effective but we are upgrading our Powers of Attorney.

1. Specific powers must be listed, e.g., the agent's ability to make gifts, rescind community property agreements, transfer stocks, file tax returns, disclaim the receipt of property under JTWROS, community property agreements, and wills, and transfer property to trusts for the benefit of the principal. You should address the authority of your attorney-in-fact to qualify you for Medicaid by spending or gifting down your estate. You may grant the authority or deny the authority.
2. Contingent DPOA, one that becomes effective upon disability of incompetency, is less acceptable to transfer agents.
3. You can name your spouse or all of your children as attorneys-in-fact and you can state who cannot challenge the attorney-in-fact's actions.
4. Advantages:
 - a. No guardianship.
 - b. Lower cost.

5. Disadvantages:

- a. Greater potential for misuse of funds by attorney-in-fact.
- b. If transfer agent, brokerage, or other institution will not accept Durable Power of Attorney, a guardianship or court action will be needed. Ask your broker or banker what the institution requires when drafting the power of attorney.
- c. No protection for vulnerable adult. A living trust with a trustee or co-trustee other than the vulnerable adult is better protection.

B. DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND HEALTH CARE DIRECTIVE

1. A Washington state statute states who can make health care decisions in your best interest if you are unable to. The list is in order of priority and if more than one person has authority, they must be unanimous: First, guardian. If none, then second, attorney-in-fact; third, spouse; fourth, children. We recommend a health care power of attorney and health care directive to all of our clients so that your wishes will be followed without interference.
2. An attorney-in-fact, that is, your spouse or child or friend, can make decisions based on known medical facts, if you cannot give informed consent.
3. Withdrawal can be conditioned, for example, upon concurrence of spouse and one or two doctors.
4. You can express your intentions in writing regarding withdrawal of artificial nutrition and hydration should you enter a persistent vegetative state with no reasonable possibility of recovery. Writing may help your spouse or children make this difficult decision in keeping with your wishes.

5. The Power of Attorney for health care can be notarized and witnessed with the same formality of a Health Care Directive.
6. Give written authority to make burial/cremation decisions in the power of attorney to avoid family disputes, especially in a second marriage.
7. In lieu of a Durable Power of Attorney for Health Care, the Health Care Directive can be coupled with a durable power of attorney for financial management provided the power of attorney states it encompasses the power to make health care decisions.
8. Mental Health Directives are also authorized, but are quite complex. A person with a history of mental health problems should consider one.
9. Physicians Orders of Life Sustaining Treatment (POLST) are recommended if you have serious medical conditions. The POLST is the only document that emergency medical technicians will honor. Speak to your doctor who can make orders which all medical personnel will follow.
10. Donate Life Today: If you have a heart on your driver's license, you are an organ donor. If you want to be, sign up at www.donatelifetoday.com. Anyone, regardless of age or health, can register.

C. END OF LIFE DECISIONS

1. The Washington legislature enacted the Death with Dignity Act in 2009 to legalize physician-assisted dying, which permits terminally ill patients to determine the time of their own death in certain circumstances.
 2. The law permits terminally ill, competent, adult Washington residents medically predicted to die

within six months the ability to request and self-administer lethal medication prescribed by a physician.

3. The law requires two oral and one written request from the patient, two physicians to diagnose the patient and determine the patient is competent, a waiting period, and physician verification of an informed patient decision.
4. Physicians, patients and others acting in good faith compliance with the law are given criminal and civil immunity.
5. To learn more about death with dignity in Washington, please visit Compassion & Choices of Washington at www.compassionwa.org.
6. Some persons reach the point where they wish to end their life by voluntarily stopping eating and drinking (VSED). See www.endoflifewa.org for more information.

D. AVOIDING FRAUD.

1. Vulnerable Adults.

Beware of unrelated and “new friends” who offer to help you with your care as your abilities lessen. Some crooks target vulnerable adults in order to steal their money. If you need help, it is better to create a trust naming a professional trustee to care for you and your funds. Call me or call Adult Protective Services (APS) if you have the slightest concern. APS can be reached at 1-877-734-6277 for abuse reporting or apscentralintake@dshs.wa.gov. Additional information is located at: <https://www.dshs.wa.gov/altsa/home-and-community-services/report-concerns-involving-vulnerable-adults>.

2. Pamphlets.

Contact the Consumer Resource Center of the Washington

Attorney General's office to obtain information from links such as *Internet Safety*. Call 1-800-551-4636, or go online at <http://www.atg.wa.gov/safeguarding-consumers> for more information.

3. Complaints.

If you believe you may have been the victim of fraud, you may file a complaint online at www.atg.wa.gov/FileAComplaint.aspx or call 206-464-6684, or 1-800-551-4636, or write the Attorney General of Washington, 800 Fifth Avenue, Suite 2000, Seattle, WA 98104. You may also call the National Fraud Hotline at 1-800-876-7060. Also see the numbers of Adult Protective Services above.

E. MEDICAID.

The laws in this area change frequently so check on current laws before taking action. Your goal is to avoid applying for Medicaid during a period of ineligibility. An excellent source of information on Medicaid, Medicare and Social Security is located at <http://www.washingtonlawhelp.org>

See Questions and Answers on Medicaid for Nursing Home Residents at <http://www.washingtonlawhelp.org/resource/questions-and-answers-on-medicaid-for-nursing-1>

If you are applying for COPEs (Community Options Program Entry System), see questions and answers on the COPEs program at <http://www.washingtonlawhelp.org/resource/questions-and-answers-on-the-copes-program?ref=HnYZy>

For Public Assistance for Immigrant Clients, see <https://www.washingtonlawhelp.org/issues/immigration/government-benefits-for-immigrants-and-refuge-1>

1. Philosophical Issues.
 - a. Although the law permits transfers to qualify you for Medicaid, what are your beliefs?
 - b. Do you want your assets to be used up before the government pays for your care?
 - c. Or do you want to gift your estate to your children so that you qualify earlier for Medicaid?
 - d. Will you have a better choice of facilities and care if you are self-pay or if you are on Medicaid?
 - e. If your children have the ability to transfer your assets to qualify you for Medicaid, does this create a conflict of interest between them and you?
 - f. If married, such a power may help one of you qualify for Copes or Medicaid and still preserve savings for the healthier spouse.

VII. FUNERAL PLANNING

Some people plan, some leave it to their survivors. A conversation with a trusted family member or close friend about your wishes for burial or cremation may suffice, so long as that person will be able to carry out your intentions after you are gone. In many cases, creating some sort of written prearrangement is preferred. At a minimum, your wishes for burial or cremation should be documented. There are also many options available for prepayment for desired burial or funeral services.

- A. Prearranging Burial, Funeral and Memorial Services:
 1. Under state law a person has the right to control the disposition of his or her remains. A written document expressing the decedent's wishes regarding the place or method of disposition that is signed by the decedent and witnessed by one person is

sufficient legal authorization for the procedures described to be carried out.

2. Example: a simple written document indicating where a person would like to be buried/cremated with some mention of the desired funeral or memorial service can be signed by that person and one witness, making it legally binding on the survivors.
 - a. Advantages include piece of mind for you and your loved ones that your wishes are documented and will be carried out, and reduction of possible conflicts between family members after your death.
3. Full burial or cremation instructions can be drafted by an attorney to insure documents are in compliance with all laws.

B. Prepayment of Funeral Expenses:

1. Lump sum payment or installment payment into a trust or life insurance policy arranged through a funeral home.
 - a. Risk of insolvency and fraud.
 - b. Have contract reviewed by an attorney before signing.
2. Questions to ask regarding a prepayment plan:
 - a. Where is the money being invested?
 - b. What occurs if you die before the payment plan is finished?
 - c. What happens if you decide to cancel the plan?
 - d. Will the plan cover cost increases caused by inflation?
 - e. How stable is the funeral home and what happens if the funeral home goes out of business?

- f. Do the funds earn interest and, if so, at what rate?
- 3. Best option: Open a joint savings account with a trusted survivor with sufficient funds to cover expected costs.
 - a. Caveat: There is a presumption that joint tenant with right of survivorship receives the funds free and clear, so use only with a survivor who will use the funds for your funeral expenses. You can also write that intent in your will.

VIII. ESTATE PLANS

A. COMPREHENSIVE ESTATE PLAN WITH LIVING TRUST

In addition to the revocable living trust, there are several other documents that should be included in your estate plan. A summary of the documents that constitute a comprehensive estate plan follows.

1. The Living Trust

The revocable living trust is the central document in your estate plan. It governs the disposition of the family wealth after the death of either or both spouses and it can reduce estate taxes. The living trust, if funded, also avoids probate and guardianship. A living trust may include:

- a. Disclaimer bypass trust.
- b. Contingent trust for children or grandchildren.
- c. QTIP or spousal trust.
- d. Living Trust for Children.

2. Pour-Over Will

If there are assets that have not been transferred to the living

trust during your lifetime, the pour-over will provides that those assets are to be transferred to the living trust for disposition in accordance with the terms of that trust. The will also transfers personal effects to the surviving spouse or others and provides for the nomination of a guardian for minor children.

3. Durable Power of Attorney for Financial Management.

A power of attorney allows one individual to handle the financial affairs of another, including buying or selling assets, depositing or withdrawing funds from bank accounts, etc. A power of attorney can commence either immediately or upon your becoming incapacitated. The power of attorney is unnecessary as to assets transferred to the living trust. However, if a living trust is not used or there is property outside of the trust, the power of attorney can postpone or avoid a guardianship, if you become disabled.

4. Durable Power of Attorney for Health Care and/or Health Care Directive

This special form of power of attorney gives your spouse or another individual or individuals the legal authority to make medical decisions (including termination of life support) for you if you are incapacitated and unable to make those decisions personally. Alternatively, the 1992 Health Care Directive can be coupled with the Durable Power of Attorney for Financial Management.

5. Burial or Cremation Instructions

6. Property Agreement

This document, for married couples, can convert all property, whether separate property or held in joint tenancy, to community property, if desired. If either spouse wants to maintain specific items as separate property, the property agreement can accommodate that choice.

7. Transfer Documents

Probate is avoided only as to property transferred to the living trust. To transfer real estate to the trust, a deed must be prepared. For other assets, such as brokerage accounts and bank accounts, letters to the transfer agents or custodians should be prepared.

8. Notebook

Each client receives a notebook containing copies of all their estate planning documents and is instructed to make copies of all ownership documents for placement in the notebook, and to modify existing beneficiary designations (if appropriate) and add copies of such designations to the notebook. This creates a complete set of important documents that an executor or attorney-in-fact can easily access, so no detective work is required in an already difficult time.

B. COMPREHENSIVE ESTATE PLAN WITH WILL

1. Will with or without:

- a. Disclaimer bypass trust.
- b. Contingent trust for children or grandchildren.
- c. QTIP or spousal trust.
- d. Living Trust for Children.

2. Durable Power of Attorney for Health Care and/or Health Care Directive.

3. Durable Power of Attorney for Financial Management.

4. Burial or Cremation Instructions.

5. Property Status Agreement.

6. Notebook.

C. SIMPLE ESTATE PLAN

1. Simple will.

2. Durable Power of Attorney for Health Care and/or Health Care Directive.

3. Durable Power of Attorney for Financial Management.

4. Community Property Agreement.

5. Burial or Cremation Instructions.

6. Notebook.