Estate Planning Opportunities

- Who gets my property at my death
- Estate Planning Goals
- Basic Tools
- Estate Taxes and Planning
- Lifetime Planning

Who gets my property at my death

- Asset ownership is key to determining the above
- Assets will pass at death:
  - By operation of law;
  - Under the terms of a contract; or
  - Under state laws relating to the administration of estate
- *Why is this important?*
  - Because assets passing by operation of law or under a contract are usually not subjected to administration in probate and are usually not affected by will

Operation of law & Contracts

- Operation of law
  - Some forms of property ownership determine, by legal definition, who will immediately succeed to a deceased co-owner's interest in the property. Examples include joint tenancy, joint tenancy with a right of survivorship, tenants by the entirety and life estates. Financial accounts you hold "in trust for" a designated beneficiary. In these situations, legal title passes the instant of death.
- Contracts
  - You can arrange to have money or other assets transferred to designated beneficiaries upon your death under various contracts, including life insurance, trusts, retirement benefits, annuities, partnership agreements, and stock-purchase ("buy-sell") agreements. The beneficiaries' rights spring into being at the moment of your death

Probate

- All of your assets which do not pass by operation of law or by contract pass through probate or intestacy proceedings. Your personal representative is called an “executor” if named in your will or “administrator” if not. “Probate” refers to the court proceeding required to transfer the assets of a decedent which do not pass directly by law or contract. To avoid probate, either don’t die or use the non-probate forms of ownership which allow your assets to pass to your beneficiaries by operation of law or under a contract. A will does not alleviate the need for probate. A will may clarify and simplify probate, but it is of very limited value until it is probated.

Intestacy

- When an individual does not have a will, the laws of intestacy which vary by state determine who inherits.
- For example, in Massachusetts, a husband and wife with children:
  - The spouse will receive one-half; and
  - The children will receive one-half.
- For example, a husband and wife with no children:
  - The spouse receives the first $ 200,000 and ½ of the remainder.
  - The deceased spouse’s heirs at law receive the remaining ½.

Estate Planning Goals

- Ensure welfare of family
  - Name guardian for minor children
  - Direct disposition of assets
  - Preserve and manage assets
  - Protect assets from claims of a beneficiary’s creditors
- Defer and minimize transfer taxes (estate & gift taxes)

Basic Tools

- Will
  - Names guardians and executors
  - Disposes of property in decedent's sole name
- Revocable trust ("will substitute")
  - Names trustees
  - Could be funded during lifetime
  - Disposes of property at death (including property that "pours over" by will at death
  - Sets out terms of any trust continuing after death
  - Provides long term management of assets

Trust Basics

- Trust – legal devise to control ownership and management of property
  - Donor establishes trust
  - Trustee has legal ownership of property and responsibility for managing it
  - Beneficiary enjoys the benefits of property
- Terms of trust instrument establishes rights and obligations
- Many variations
  - Revocable
  - Irrevocable

Fiduciaries

- Guardian
  - Responsible for person and property of minor children
- Executor
  - Collects and preserves assets of estate
  - Files income and estate tax returns
  - Makes distributions according to will
- Trustee
  - Ongoing administrative role
  - Decisions about distributions to beneficiaries
  - Responsible for managing trust investments

Other Important Mechanisms

- Joint ownership
  - Typically passes automatically to surviving joint owner
- Retirement plans and IRAs
  - Pass by beneficiary designation
- Life insurance
  - Death benefit passes by beneficiary designation

Transfer Taxes

- Federal Gift Tax
  - Applies to all gratuitous transfers made during life
- Federal Estate Tax
  - Applies to assets held at death
- Federal Generation-Skipping Transfer Tax
  - Additional tax that apples to distributions to grandchildren and more remote transfers
- State transfer taxes may also apply

Key Exclusions

- Gift Tax Exclusions
  - Annual exclusion gifts ($13,000)
    - $ 26,000 if spouse agrees to "gift splitting"
    - Payment of tuition and medical expenses
      - Must be paid directly to provider of services
- Unlimited Marital Deduction
  - Recipient spouse must be U.S. citizen
- Unlimited Charitable Deduction
- Gift and Estate Tax "Exemptions"

Federal Rates and Exemptions

Year	Gift Tax Exemption	Estate Tax Exemption (reduced by life time gifts)	Top Rate
2007	$ 1,000,000	$ 2,000,000	45%
2008	$ 1,000,000	$ 2,000,000	45%
2009	$ 1,000,000	$ 3,500,000	45%
2010	$ 1,000,000	No estate tax	35%
	2001 Tax Law	Changes “Sunset”	after 2010
2011 - 2012	$ 5,000,000	$ 5,000,000	35%
2013 and later	$ 1,000,000	$ 1,000,000	55%

Federal Estate Tax Base

- Estate tax applies to gross estate less deductions
- Gross estate includes:
  - Assets owned by decedent
  - Assets in which decedent retained control or right of enjoyment
  - Property that decedent could have reached during lifetime or deposed at death
- Gross estate generally does not include assets given away during lifetime

Massachusetts Estate Tax

- Exemption amount - $ 1,000,000
- Unlimited marital deduction
- Unlimited charitable deduction
- Similar to Federal Estate Tax

Generation-Skipping Transfer Tax

- Backstops the gift and estate tax
- Tax due when property is distributed to a “skip person” either directly from donor or trust
- Rate = highest estate tax
- GST exemption = $ 1,100,000

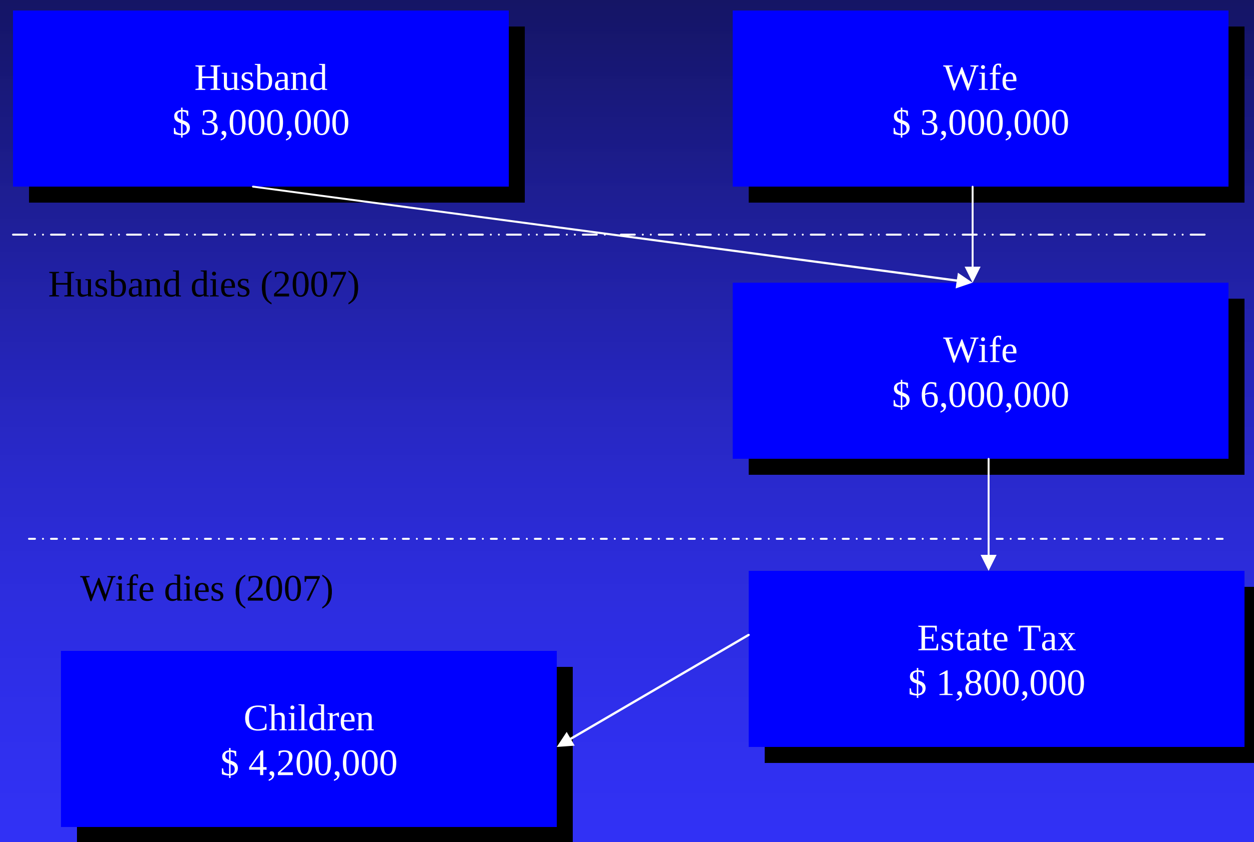
Income Tax Considerations

- Capital assets get basis step-up at death
- No basis step-up for capital assets given away during life time
- Retirement plans and IRAs
  - No basis step up
  - No discount on account of built-in tax liability
  - With proper planning, income tax deferral can continue after death
- Life insurance death benefits
  - Generally not subject to income tax

Basic Estate Planning

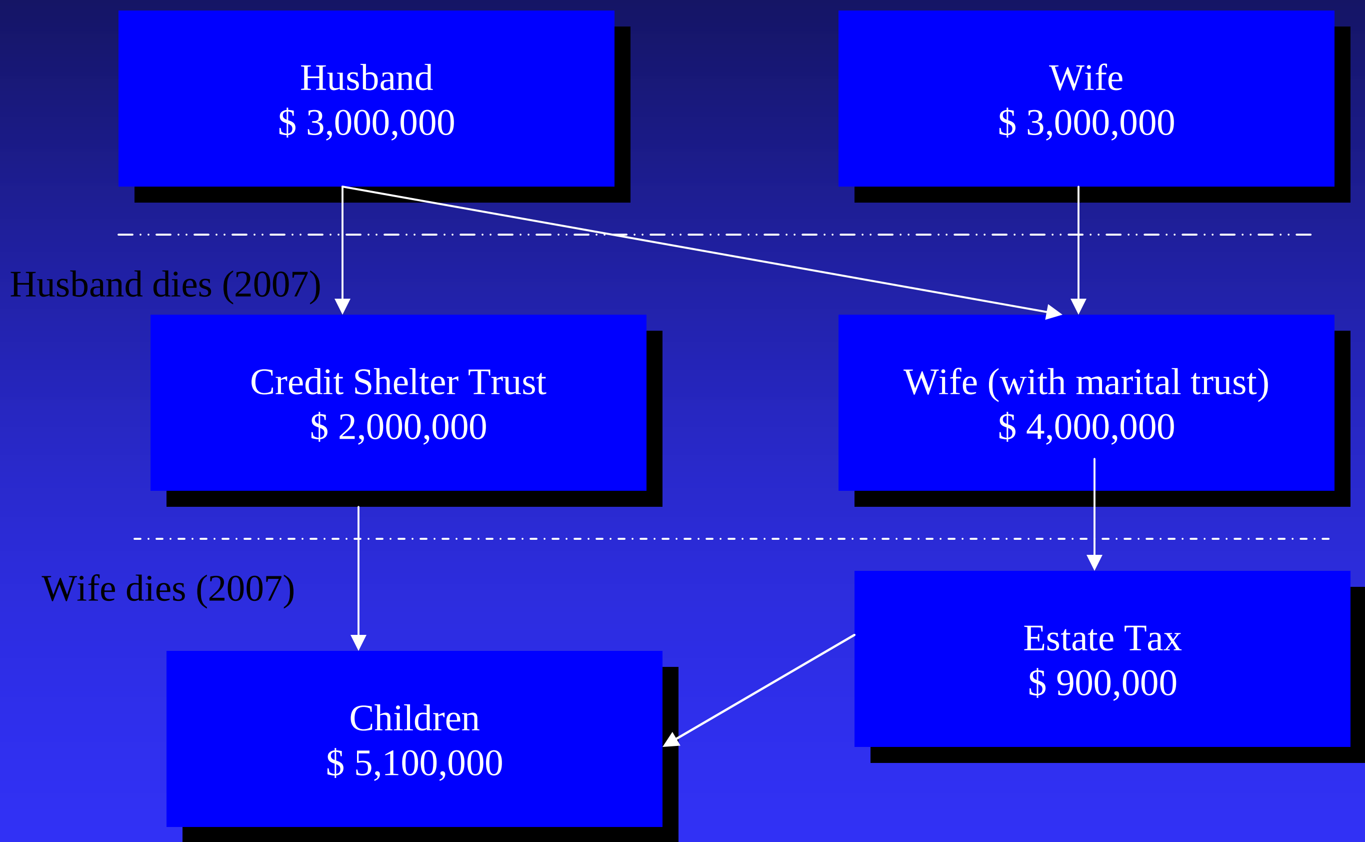
- For married couples
  - Trust at first death to protect tax exempt amount ("credit shelter" trust)
  - Tax deferred until survivors death
  - State estate tax may impact planning
- Assets must be divided between spouses to ensure full use of both estate tax exemptions
  - Each spouse should have sufficient assets in his or her individual name to fund credit shelter trust regardless who dies first

No Tax Planning



Tax on $ 6,000,000 = $ 1,800,000

Tax Efficient “Credit Shelter” Plan



Tax on $ 4,000,000 = $ 900,000

Lifetime planning

- Durable power of attorney
  - Name attorney in fact to act on behalf of principal for financial transactions in event of disability or incapacity
- Health care proxy
  - Name health care agent to make medical decisions in event of disability or incapacity
- Living will
  - Declaration of wishes concerning medical treatment in a end-stage or terminal condition
- Standby Guardianship Proxy (MA only)
  - Nomination of guardians in the event of disability or incapacity of parents

Lifetime Planning – continued

- Living trust
  - Alternative to guardianship or conservatorship in the event of disability or incapacity
- Declaration of homestead
  - Protection of home from creditors during life of spouses and minority of children