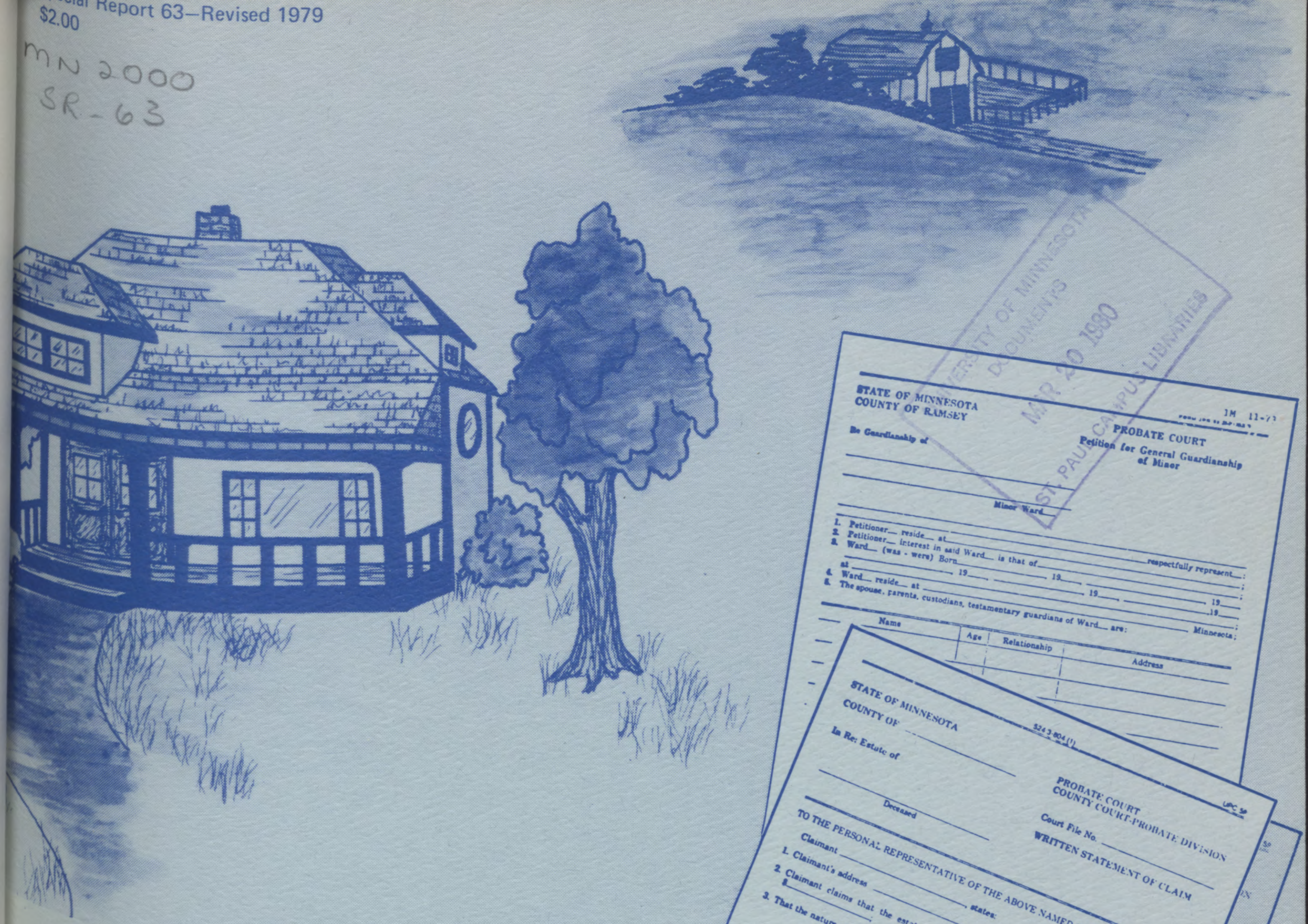
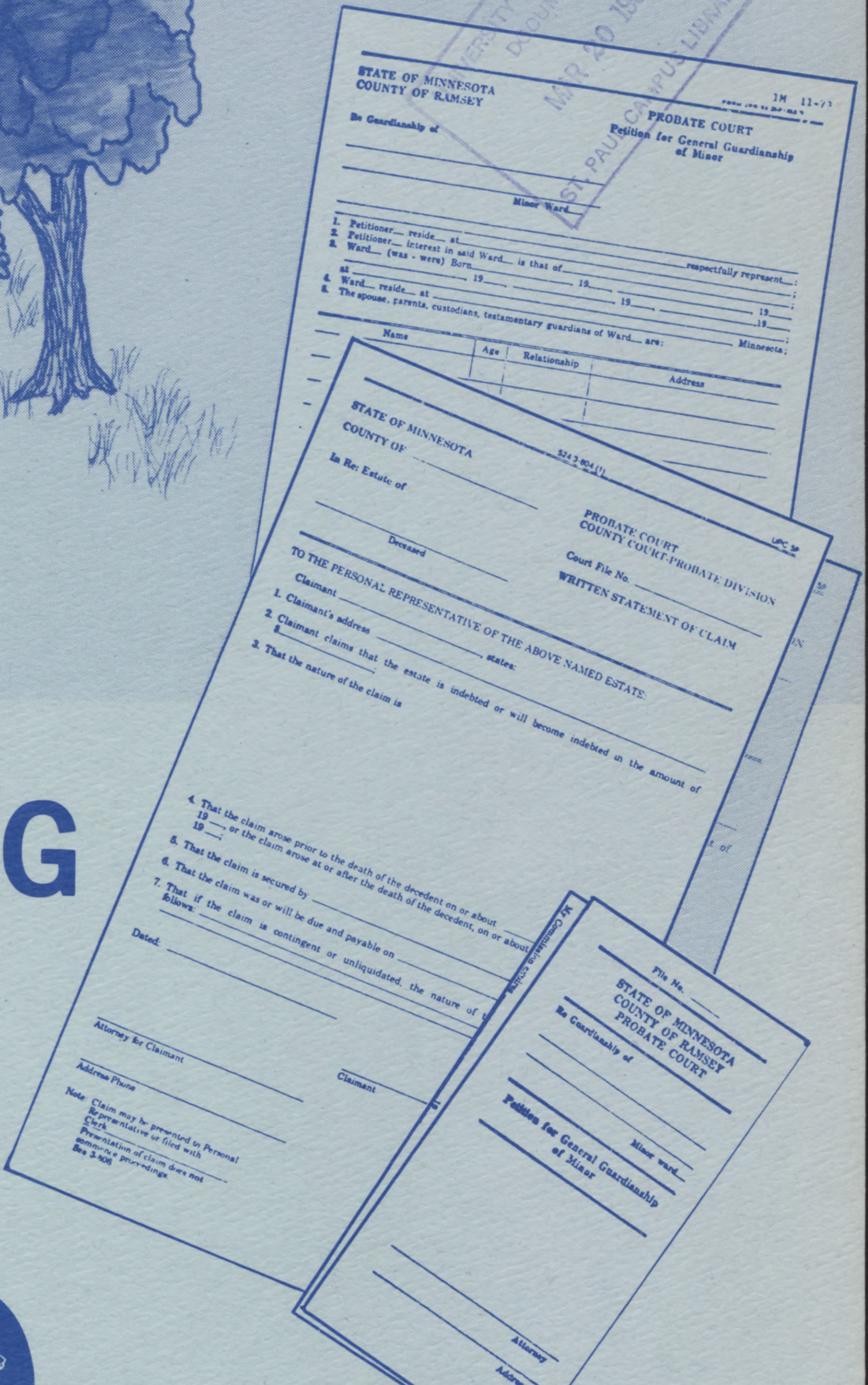
Special Report 63—Revised 1979
$2.00





PLANNING YOUR ESTATE

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PREFACE

This publication is the product of a joint educational effort conducted by the Minnesota State Bar Association and the Agricultural Extension Service of the University of Minnesota.

Although the information contained in this document has been reviewed and approved by several experts, the authors recommend that the reader consult his or her attorney before initiating or modifying legal arrangements designed to resolve estate planning problems.

The authors wish to acknowledge the helpful comments provided by Robert Stein, William Hedeen, and John Byron and the numerous suggestions made by practicing attorneys, accountants, life insurance underwriters, and social security representatives who have served as faculty in the legal affairs programs over the past twelve years.

PLANNING YOUR ESTATE

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I. INTRODUCTION TO ESTATE PLANNING

You know what good planning can do. When you are faced with a complicated job, you stop to plan how you can accomplish it. By planning a budget your paycheck seems to go a little further. If you really want something, a lake cabin for instance, you save and plan for it. Planning makes things go smoother, helps you achieve your goals, and lets you accomplish what you set out to do with fewer mistakes.

Estate planning is a part of this broader scheme of planning your life and finances. It involves developing a coordinated plan of transferring and distributing your property after your death. But it also involves maintaining and protecting your property during your lifetime. This lifetime planning may often be more important since, without it, there may not be any property to dispose of at death. Estate planning, therefore, is the arrangement of your affairs in a manner best calculated to maintain and protect your property now and provide for its disposition upon your death.

This does not mean that all your lifetime planning should be concerned with providing for your heirs. In fact, to do so may result in defeating your own ends. But in doing your lifetime planning, your estate objectives should be kept in mind. For example, the decision to invest in particular stocks should in part be based on the effect of such an investment on your estate.

Estate planning is important because it always involves two things that are of particular importance to you. First, you are concerned with your estate--those things that you have worked hard to earn and sacrificed to save. Second, you are concerned with the transfer of your estate to those people who are apparently the most important to you. Together, your estate and your loved ones may represent the two things of the most value to you.

There is a false impression that estate planning is only for the very wealthy or those who are either retired or approaching retirement. But since the purpose of planning is to arrange your property now so as to protect your family, the younger person of modest means has a greater need to plan. The young couple with a modest estate and young children is urgently in need of advice as to the best means of protecting one another and the children in the event of an untimely death. The need for planning is not measured in either dollars or years. The majority of Minnesota family estates are in need of planning. Even though it may involve only selecting one insurance option over another or the drafting of a simple will, this planning is necessary.

Despite the necessity of planning, it is very often neglected. In addition to the idea that "planning just isn't necessary for me," estate planning brings with it the thought of death to many people. As a result of a natural reluctance to think of death, they fail to act. Others are deterred by their impression of the costs involved. Most frequently, the savings realized are very large in relation to the fees involved. Whatever the reason, many people put off planning until it is too late.

Failure to plan brings with it undesired consequences. The results of a failure to plan depend on the individual estate. There may be a penalty of additional income and estate taxes. The businessman or farmer who fails to plan may, by his failure, bring on the liquidation of his business or farm in order to pay taxes and administration expenses or because there is no one prepared to carry on the business. But the most severe penalty is paid by the family of the person who fails to plan. The improvement of family welfare, the primary goal for most parents, includes not only present but future material benefits. To provide present benefits and neglect the future is only a partial accomplishment.

Because the primary problems involved in estate planning are legal ones, the services of a lawyer are a necessity. But there will also be a need for consultation with other members of your estate planning team. The accountant is frequently a necessary member of your team, especially if you are a businessman or farmer. A life underwriter is almost always involved. And if a professional trustee or executor is desired, the trust officer of a bank should be consulted. There should be no rivalry among these people. Each of them is rendering a valuable service. Ideally, they are members of a team with the single objective of developing the most effective estate plan possible for you.

While estate planning is a complex process, it is more manageable if we think of it as being composed of separate workable categories. It is useful to think of it as involving six distinct steps.

1. Taking an Inventory

Before you can plan you must understand what makes up your estate. This involves making a list (inventory) of the real and personal property in which you have any ownership interest. It is important to know, *for sure*, the form of ownership. And you should also put a "value" on each item; what would it bring if you sold it today?

Also included in such an inventory is a statement of your planning goals and family information.

2. Reviewing Your Current Plan

You have an estate plan now whether you have made one up specifically or not. Your plan is made up of several parts. First, for some of your property the state of Minnesota, through its intestate succession laws, and the federal government, through Social Security, have provided you with part of your estate plan. You may also have life insurance or property held in joint tenancy, both of which are parts of your estate plan. If you have planned, you may have a will or a trust. And your business organization may be coordinated with your estate plan. Your total current plan should be examined to see if what you want to accomplish is achieved. What you should ask is "What if I died *today*? How would all my property be distributed?" Realization of the results will help you recognize and articulate your planning goals.

3. Recognizing Your Planning Goals

Estate planning is complex because it involves satisfying multiple goals. Many objectives are involved. You want certain property to go to certain people. But you may also want some people to have an income from your estate. And you probably want to pay as few taxes as legally necessary. Frequently these objectives conflict with one another. Thus, it is important for you to determine what your personal objectives are in planning your estate.

4. Reviewing the Tools

There are several tools available to you in achieving your objectives. These include wills, joint tenancy ownership, insurance, business organizations, gifts, trusts and others. It is important for you to become familiar with these tools and appreciate how they can be used. Each one has its own advantages and disadvantages. Therefore, not every tool will be appropriate for your planning needs. But a combination of the tools can be successful in developing an effective estate plan for you.

5. Developing Your Plan

Once you have taken an inventory, and reviewed your current plan, objectives, and tools, you are ready to develop your plan. At this point the services of professional planners usually are essential. The advice of these experts will permit you to take advantage of certain estate planning tools in the satisfaction of your objectives. Generally, it is not possible for you to merely rip pages out of a book, fill them out and have an estate plan that will satisfy your goals. It is usually necessary to tailor-make your estate plan to suit your needs. The experts can accomplish this for you.

6. Periodic Reevaluation

Over time, your estate will change in size and composition. Over the same time your planning goals may change as well. As these changes occur, the plan you originally had may not achieve the goals in the same manner you had anticipated. Thus, estate planning is a continuous process that requires reevaluation periodically.

Because of its importance, estate planning should not wait. You should begin to plan now. We all know of someone who was going to write up a will, but who didn't. We have heard of those who were going to "do something" for their children's education "just in case," but who didn't. When placed in the hands of professionals, an estate plan can be created quickly. Acting now will allow you to arrange your estate and dispose of it as you wish and at the same time provide for your loved ones. Failure to act may have undesirable results concerning distribution of your estate and heap other difficulties on your heirs--something no one wants.

II. TYPICAL MINNESOTANS

To help illustrate estate planning, we would like to introduce three hypothetical, but typical, Minnesotans. Your estate and goals may be different or more complex than those of the Nelsons, Evanses, or Joneses. But it is helpful to see how the tools of estate planning can be used to best achieve their goals.

1. Jim and Sue Nelson

Jim and Sue Nelson live in Mankato with their two-year old daughter, Julie. Jim, 25, works for Acme Engineering, a manufacturing company, as a metal press operator. Sue, 23, devotes her time to taking care of Julie. She hopes to find a job of some kind in a few years when Julie begins school.

Jim went to college after he graduated from high school but quit after his first year, finding that college wasn't for him. After serving in the Army for two years, Jim returned to Mankato and got the job with Acme. He is now making about $14,000 a year at Acme and hopes that he will be able to get a promotion to foreman within the next few years.

Jim and Sue recently bought a house in Mankato and have about $29,000 remaining to be paid on it. Jim estimates that it is now worth about $35,000 since he made some minor repairs and repainted it. The deed shows that title was taken by "James and Susan Nelson, as joint tenants with rights of survivorship." They have the usual household furnishings, personal effects, and automobile. The certificate of title for the car is in Jim's name alone. Jim estimates that this personal property is probably worth around $8,000. But there is still about $3,000 remaining to be paid on their year-old car. Jim and Sue also owe about $1,000 for various household furnishings that they bought when they purchased their house. The Nelsons have a checking account that fluctuates between $300 and $700 each month, and a savings account that they try to keep around $1,000. Acme provides Jim with a $10,000 term insurance policy and has a qualified pension fund to which he has contributed about $1,500 so far. Sue is named as the beneficiary under the insurance policy, and Jim's parents would be the beneficiary if Sue would predecease Jim. In addition, Jim is covered by a decreasing term insurance policy that would pay off the remaining balance on their home mortgage should he die.

Neither Jim nor Sue has a will. They felt that since they weren't rich they didn't need one. But, after talking with Sue's father who served as administrator of the estate of one of his brothers, Jim and Sue have decided that they should talk to someone about drawing up a will. Jim's main concern should he die is that Sue would be able to remain in their house. He realizes that she might be forced to go to work to support herself and Julie but would like to provide enough so that she could get by for at least a little while. In case he and Sue would both die, he would hope that his brother Ed would take care of Julie.

2. Don and Marilyn Evans

Don and Marilyn Evans live in Bloomington with two of their three children, Kris, 16, and Brian, 10. Rich, 19, is attending college near St. Cloud and hopes to attend medical school upon graduation. Don, 40, works for 3M in the International Sales Division. Marilyn, 37, is not now employed, but she would someday like to get back to working as an interior designer.

Don went to college after high school and, following graduation, went to graduate school. He has a Master's degree in Marketing from the University of Minnesota. He started working for 3M after his Master's and has progressed up through the company at a rapid rate since. At the present time, he is making around $60,000 a year.

The Evans's youngest child, Brian, was born with cerebral palsy. As a result, he is undergoing speech and physical therapy at the Sister Kenny Institute in Minneapolis as an outpatient. He will be required to take part in more therapy throughout his life. And his handicap may present employment problems in the future for him. Providing for Brian's needs both now and in the future is of special concern to Don and Marilyn.

Don and Marilyn own their home in Bloomington which is now worth about $100,000. They still owe about $42,000 on it. In addition to their home, they also own a lake cabin near Fergus Falls that Marilyn inherited from her parents. Its market value is about $40,000. Title to their home is in the name of Don and Marilyn as joint tenants, while title to the lake cabin is in Marilyn's name alone. With their household furnishings in both the cabin and their home, and their two automobiles, Don and Marilyn's personal property is worth around $30,000. They also have a few miscellaneous debts totalling about $2,500.

Don has invested in securities and intends to continue to do so. He has received several stock options and has exercised them all. He has also bought other stock through his broker. His stock, most of it in 3M, is currently worth about $125,000. These shares of stock are in Don's and Marilyn's names as joint tenants. Marilyn has also invested in stocks with some of the money she inherited along with the lake cabin. Her stock, which is in her name alone, is currently worth about $25,000. In addition to his stock, Don has purchased life insurance. At present, the death benefits of his insurance policies total $115,000. He is the owner of the policies and the proceeds are to be paid to Marilyn. If she predeceases him, the policies are to be paid to Rich, Kris and Brian. Marilyn has purchased life insurance covering herself as well. The $30,000 in death benefits are payable to Don and to the children if he should predecease her.

Don and Marilyn have a joint checking account that has an average balance of about $700. They have purchased savings certificates worth $5,000 and have about $3,300 in a joint savings account. Both of these accounts and the certificates are payable to the survivor should either of them die.

Don has a will which gives everything to Marilyn and to the children if she would predecease him. Marilyn's will is similar. Both of these wills were drawn up about 15 years ago, just after Kris was born. Since that time, Don has done some thinking about his will and thinks that he might like to change it. He wants to make some special arrangements for Brian to make sure that he will always be able to get the necessary therapy. He also wants to encourage Kris to continue her education and help Rich make it through medical school. In order to accomplish this, Don realizes that it is important to avoid unnecessary expenses at his death in transferring his estate to his family.

3. Frank and Shirley Jones

Frank and Shirley Jones live near Owatonna. Frank, 55, operates a 400-acre dairy farm with his son, Frank, Jr., 29. Shirley, also 55, is a housewife, and is very active in their local church. Their other child, Sharon, 33, is single and lives in Minneapolis where she works as a registered nurse at St. Mary's Hospital.

Frank inherited his father's 320-acre farm when his father died 12 years ago. Since that time, he and Shirley have purchased another 80 acres and have added it to their farming operation. Title to the 320 acres he inherited is in Frank's name while the other 80 acres are in his and Shirley's names as joint tenants. He estimates that his farmland is worth about $480,000. He further estimates that his equipment, livestock, stored crops, feed and seed are currently worth around $130,000. His annual income is usually around $12,000.

Frank, Jr. lives nearby with his wife and two children and works the farm with his father. While his father owns all the equipment and land, Frank, Jr. receives 25 percent of the annual profits. But in bad years, his father generally absorbs the losses. In addition, Frank, Jr. receives wages for his work. This usually amounts to about $8,000 annually. He handles the books and records of the farm since he went to the University of Minnesota and received a degree in farm management.

Aside from the farm, Frank and Shirley have the standard personal property which is worth around $9,000. They also have about $7,000 in a joint savings account. Their checking account usually has around $1,000 in it. Frank has a $10,000 life insurance policy covering himself which is payable to Shirley.

Frank owes about $60,000 on the 80-acre parcel of land that he purchased and about $20,000 on various loans taken out to buy machinery and equipment. He and Shirley also have personal debts of about $2,500.

Frank and Shirley have "never gotten around" to having wills drawn up, but now that they are beginning to think about retirement, they think that it may be a good idea. Frank wants to make sure that Frank, Jr. will be able to take over the 400-acre farm. But Frank doesn't want to neglect Sharon and he isn't ready to retire quite yet. He still feels that he "has a few good years" left in him and plans to continue farming for at least another five or ten years. He hopes that he could make sure that Shirley can live comfortably if she survives him. And, both he and Shirley want to "leave something" to their church. In short, Frank hopes that he can provide for his family and his church without surrendering too much control over the farm business.

III. THE ESTATE INVENTORY

Before you can begin to plan for the disposition of your estate, it is extremely important that you understand what constitutes your estate. Your estate consists of all things of value in which you have any kind of ownership interest. To own a piece of property in its fullest sense is to have the exclusive right to possess, use and dispose of that property. But there are many degrees and types of ownership which affect these rights. And there are also different types of property.

1. Types of Property

The two main kinds of property are *personal* property and *real* property. Personal property usually consists of things that are movable. It includes tangible things such as livestock, furniture, automobiles and jewelry. It also includes intangible items like stocks, bonds, bank accounts and debts. Consecutive interests can exist in personal property. But because personal property is normally not permanent, successive interests in personal property are not created often without the use of a trust. Personal property can be transferred without any writing. Because of this, disputes over who owns a piece of such property may arise. It is therefore important that you decide who should own personal property and put it in writing.

Real property consists of such things as are fixed, permanent, and immovable. It is made up of the land and those things that are growing on it or attached to it. Thus, a lot, the trees and shrubs growing on it, the house built on it and the plumbing and wiring in the house, are all considered to be real property.

2. Property Ownership

The extent of your right to possession, use and control of real property is called your "estate" in the land. (This estate in land should not be confused with your total estate, the combination of real and personal property that you are planning. Your total estate may or may not include an estate in land.) The type of estate that you have in a piece of real property determines when you get your rights in the property as well as how long those rights last. The estate that a person owns in the property is determined by the wording of the deed, will or statute that transfers the property to him. There are several different estates in land that should be kept in mind in planning your estate.

The *fee simple* is the most common form of outright ownership. It is the "largest" interest that you can have in land. If you hold a fee simple estate, it means that you are entitled to exclusive use forever. The only limitation on your use of the land are those imposed by the government through such things as zoning regulations, nuisance laws or eminent domain. If you hold a fee simple you may dispose of the land during your lifetime or leave it for someone by will at your death. If you die without leaving a valid will, land held in fee simple descends to your heirs according to the laws of the state. The fee simple interest is usually created by using the words "and his heirs" in the deed or will that transfers the property.

A *life estate* is an interest that lasts for the length of a person's life. Usually it is measured by the life of the owner of the interest, but it may be measured by the life of another. A life estate cannot be inherited. However, an estate for the life of another can be passed on after the death of the owner of the estate, provided that the person whose life is the measure of the estate is still alive.

The person who owns a life estate or an estate for the life of another is called a "life tenant." Because someone else will own the property after his estate ends, the life tenant is restricted as to what he can do with the property. While he has the exclusive right to possession, the life tenant cannot do anything that would lower the market value of those interests in the property that follow his. He cannot allow the land or any buildings to deteriorate. And he cannot change the premises in such a way as to give the holder of the subsequent interest reasonable grounds for objection. For example, while a life tenant could plant and harvest crops from the land, he could not cut off valuable timber from land that was unsuitable for farming.

When the owner of a fee simple transfers less than he owns, he is allowed to create a "future interest" in a third person. For example, if Frank Jones wanted to give his farm to Frank, Jr. for his life, he could also give his daughter Sharon the right to own the property when Frank, Jr. dies. Sharon would be the owner of a *remainder* interest in the farm. She would be a "remainderman." A remainder is an estate that will give its owner the right to possession at some future time when prior estates terminate. Even though her right to possession is postponed, Sharon could mortgage, sell, or will her interest in the farm. But she could not cut off Frank, Jr.'s life estate. Remaindermen must wait for prior estates to expire naturally before they are entitled to possession.

Remainders may include all the interest that the original owner was entitled to, but they may be for less than a fee simple as well. There may also be more than one remainder. For instance, Frank could leave his farm by will to his wife, Shirley, for her life, with a remainder for life to Frank, Jr., and a remainder to Sharon and her heirs. Shirley would have a present life estate, Frank, Jr. would have a remainder for a life estate, and Sharon would have a remainder in fee simple.

Where the only interest transferred by a present owner is a present estate of limited duration, the owner keeps as a future interest the balance of his original estate. The part of his estate that he retains is called a *reversion*. In effect, a reversion is similar to a remainder. The difference between the two is that a remainder is created in someone other than the original owner.

There are other estates and interests in land, both present and future, that you may possess or may use in your particular estate plan. They frequently involve very complex areas of the law and are not often used. As a result, these interests are better dealt with by your attorney when you are discussing your estate and estate plan with him.

In addition to the estates in land which you may own individually, there are other estates which you may own with one or more other persons. Two or more persons can be the owners of an estate of limited duration or a fee simple. There are two main types of co-ownership in Minnesota.

Tenants in common are owners of undivided shares in the land. While their shares in the land need not be equal, neither tenant in common exclusively owns a particular portion of the land. Each is entitled to joint use and possession of the whole property. A tenancy in common may be partitioned if the co-tenants so desire. This may be accomplished by bringing an action against the other co-owner and asking the court to divide the land equitably, or, if that is impracticable, to sell all or part of it and divide the proceeds. Of course, if the co-owners can agree on a division, they can accomplish the partition by exchanging deeds.

When a tenant in common dies, his undivided share passes to his heirs or under his will. This is the major difference between a tenancy in common and a *joint tenancy*. When one joint tenant dies, the other is the sole owner. However, the deceased joint tenant's share in the property does not pass to the survivor. Instead each joint tenant is thought of as owning the whole of the property subject to the equal rights of the other.

The survivorship feature of a joint tenancy can be destroyed by either party. The joint tenancy is severed when one joint tenant transfers his interest in the property to another. The result is that the joint tenancy is converted into a tenancy in common with the purchaser as the new co-tenant. A joint tenancy may also be partitioned in the same manner as a tenancy in common.

At the present time, Minnesota law favors tenancies in common over joint tenancies. All transfers of land to two or more persons are presumed to be tenancies in common rather than joint tenancies unless "expressly declared" to be joint tenancies. Thus, if the deed to Jim and Sue Nelson's house was to "James and Susan Nelson and their heirs," they would be tenants in common rather than joint tenants. If a joint tenancy is desired, the property should be transferred to Jim and Sue "as joint tenants, with right of survivorship, and not as tenants in common."

Co-ownership of personal property is possible. It is generally similar to co-ownership of real property. The most common example of jointly-owned personal property is the joint bank account. It is possible to have a joint account whose proceeds are payable on the death of one party to the survivor. It is also possible to establish an account which enables both parties to deposit and draw on the account without any survivorship rights. It is thus important that you make clear which type of account you want when you open such bank accounts.

There are still other interests in property that are involved in estate planning. There are *legal* interests and *equitable* interests. Normally, the ownership of property carries with it the power to enjoy it and manage it. When we say that Frank Jones owns his farm we mean that he has the legal title to it and that he can use it for his own benefit. This is what we generally mean by ownership of property.

But since not all persons are capable of managing their property, the law allows management to be separated from the enjoyment of property in some cases. This is done by separating the legal title from the beneficial or equitable interest in the property by means of a "trust." A trust is a legal relationship whereby one person obtains legal titles to property under an obligation to deal with the property for the benefit of other persons. The result is that the manager of the property, the "turstee," owns the legal interest in the property. That is, he may act as the owner of the property for commercial purposes. He may be able to sell the property and invest the proceeds, mortgage the property or lease it. The equitable interest is owned by the "beneficiaries." This means that they can enjoy the use and possession of the property and draw an income from it. The beneficiaries, however, do not have an interest in the property itself. They have a right to enforce the trust and a right to the income.

A final interest regarding property has come into use in estate planning largely due to tax legislation. This is the *power of appointment*. A power of appointment is a power created by one person in another, or reserved by himself, to determine the person or persons who will receive a particular estate. The power may be as broad or as narrow as the creator desires. For example, Frank Jones could leave his farm to his wife for her life with a power to appoint the property by deed or will to whomever she desires. A power that can be exercised wholly in favor of the holder or his estate is a "general" power. A "special" power is one that may be exercised in favor of only a limited group. The distinction between the two is important for tax purposes as we will see later.

The law concerning powers of appointment is very complex. Whether the property over which you possess a power of appointment is includable in your estate or not is a question that must be answered by your attorney. Knowledge of particular facts is required to make that determination.

As you have probably concluded by now, the laws governing property ownership are well established, but complicated. While it is possible to discuss the general nature of the law and describe the basic kinds of property ownership, it is impossible to deal here with any individual set of circumstances. But the information that we have discussed can be used to help you prepare an inventory of the property over which you have some rights. This will enable you to discuss with your attorney what you own and how you own it.

3. The Estate Inventory

Making an estate inventory is the first step in planning your estate. It is important that this inventory be maintained, with periodic updating, over time. An estate planning inventory consists of family information and a statement of objectives as well as a listing of the property you own. This is so that you think about your reasons for planning and what you want to achieve. This will enable your planner to serve your particular needs and desires more efficiently.

Your estate consists of all the real and personal property in which you have an ownership interest. It is important that you do not forget such things as pensions or profit-sharing arrangements. Life insurance policies should be listed, including the face amount, cash value, beneficiaries and who owns the policies.

Bank accounts should be listed including how they are held and the location of the bank. Detailed information such as this is required by your attorney so that he can meaningfully develop an estate plan that is suited to you. And it makes sense to have this information available for maintaining good records on your own behalf.

In addition to the property in which you have an ownership interest, an estate planning inventory includes your major financial liabilities. Your creditors will be involved in the settlement of your estate and it is better if they are identified beforehand. Otherwise, unnecessary claims procedures must be followed.

You should inventory your estate now if you have not done so in the past. A sample estate planning inventory form is seen in Exhibit 1. It should be used by you for this purpose.

Estate Planning Inventory

If an estate owner is to receive sound advice from professional estate planners, a complete inventory must be taken. Such an inventory should include all pertinent data relative to the estate owner's assets, liabilities, future commitments and expectancies, family, responsibilities, and personal objectives.

As an aid in taking an estate planning inventory, the following outline was developed. It should be recognized that all of the outline may not apply to each estate owner.

Time invested by an estate owner in developing his estate inventory will generate many returns.

The inventory will arrange your personal affairs in an orderly manner.

Your personal objectives will be formalized.

Estate planners will be able to better assist you.

FAMILY INFORMATION

Husband's Name ______ Age ______ S. S. No. ______

Business Address ______ How Long ______

Wife's Name ______ Age ______ S. S. No. ______

Home Address ______

Children (If married, give married names) **Names of Family:** (Spouse and children)

Name ______ Age ______ Spouse ______

Home Address ______ How Long ______ Children ______

Occupation ______ Occupation ______

Name ______ Age ______ Spouse ______

Home Address ______ How Long ______ Children ______

Occupation ______ Occupation ______

Name ______ Age ______ Spouse ______

Home Address ______ How Long ______ Children ______

Occupation ______ Occupation ______

Name ______ Age ______ Spouse ______

Home Address ______ How Long ______ Children ______

Occupation ______ Occupation ______

Other Dependents **Relationship**

Name ______ Age ______ ______

Home Address ______ How Long ______ ______

Name ______ Age ______ ______

Home Address ______ How Long ______ ______ ______

* Material in this exhibit was adapted from the Cooperative Extension Service, Oklahoma State University, Stillwater, Oklahoma.

FAMILY INFORMATION CONTINUED

Special Family Information:

Previous Marriage ______________________________

Health Problems ______________________________

Where is the family burial plot ______________________________

Commitments* ______________________________

____

*Explain any unusual financial arrangements.

I have important papers belonging to:

Name ____________ Papers ________ They are kept in ________

Name ____________ Papers ________ They are kept in ________

Name ____________ Papers ________ They are kept in ________

Desires for specific property to be inherited by a certain person.

____

Special Documents: These will help the professional estate planner.

Wills: Husband's (yes) (no) Wife's (yes) (no)

We (do) (do not) have a trust.

We (do) (do not) have a partnership.

We have a copy of all gift tax returns. (yes) (no)

Income tax returns for past five years are available. (yes) (no)

I am a trustee/guardian. (Description of the property and persons involved.)

____

PERSONAL OBJECTIVES

To whom do you wish for your estate to pass? ______________

____

Do you wish to retain the maximum estate for the lives of both husband and wife? ______________

Are there any plans for gifts? To whom: relatives? charities? churches? friends? colleges? ______________

____

When do you plan to retire? ______________

Do you plan to continue to manage your affairs after retirement? ______________

If you pre-decease your spouse what suggestions or recommendations would you make concerning your estate? ______________

____

Are there educational needs to be filled for children? ______________

____

____

GIFTS

Date	Type of Property	Donor H	W	Jt.	Donee	Donor's Basis	Value of Gift	Tax Paid

Include all gifts of more than nominal value.

OUR ESTATE

BANK ACCOUNTS

	Bank	Average Balance: Husband	Wife	Joint*
Checking		$	$	$
Savings				
Cash				
TOTAL				

*Specify kind of ownership:

BONDS

Description and Year Purchased	No. of Bonds	Ownership H.	W.	Jt.	Total Face Value	Current Value	Basis
TOTAL							

STOCKS

Description and Year Purchased	No. of Stocks	Ownership H.	W.	Jt.	Current Value	Cost
TOTAL						

A monthly report of stock held by your broker would be very helpful.

NOTES, MORTGAGES AND ACCOUNTS RECEIVABLE

Description and Year Acquired	Cost	Face Value	Original Owner	Name of Person Who Owes You
TOTAL				

FINANCIAL INFORMATION

	Husband	Wife	Joint
Income (Last Year)	$	$	$ x x x
Current Income			
Salary			
Self Employed			
Retirement			
Annuities			
Net Rent			
Interest			
Royalties			
Bonuses			
Dividends			
Trusts			
Capital Gain (Income)			
TOTAL			

BENEFITS AFTER RETIREMENT

Employer's Name and Address (H) ______________________________

Employer's Name and Address (W) ______________________________

Type	Check if Applicable		Retirement Benefits (Annual)		Amount Invested	Death Benefits	
	H.	W.	H.	W.		H.	W.
Pensions							
Profit Sharing							
Self Employed							
Pension Plan							
Deferred Compensation							
Social Security							

SUMMARY

For Last 5 Years	(19___)	(19___)	(19___)	(19___)	(19___)
Family Income					
Taxes, Fed. and State					
Living Expenses					
Insurance Premiums					

CHATTEL MORTGAGES

Property Mortgaged	Name of creditor or lender	Date due	Amount due
			$
		TOTAL	$

PERSONAL LIABILITIES

Unsecured Notes, Installments and Contracts

Name of Creditor or lender	Date due	Amount due
		$
	TOTAL	$
Insurance Loans		
Notes endorsed		
Real Estate Taxes		
Personal Taxes		
State Taxes		
Federal Taxes		
Unsettled Claims		
		$
	TOTAL	$
	TOTAL, ALL DEBTS	$

PERSONAL PROPERTY

Item	Description	Ownership			Basis	Current Value
		H.	W.	Jt.		
Livestock						
Automobile						
Farm machinery						
Crops Inventory						
Home Furnishings						
Jewels and Furs						
Art Collections, etc.						
Other						
TOTAL						

MORTGAGES AND DEBTS

Real Estate Mortgages and Amounts Owed on Real Estate Purchase Contracts

Property	Name of creditor or seller	Date due	Amount due
			$
		TOTAL	$

GROSS ESTATE

Source	Husband	Wife	Joint
Bank Account			
Bonds			
Stock			
Notes, etc. Receivable			
Insurance			
Real Estate			
Business Investments			
Personal Property			
TOTAL			

MORTGAGES AND DEBTS

Kind	Husband	Wife	Joint
Real Estate			
Chattel			
Unsecured Notes			
TOTAL			

Gross Estate including Life Insurance $__________

Less Gross Estate Indebtedness __________

NET ESTATE $__________

Husband's Net Estate __________

Wife's Net Estate __________

Joint Net Estate __________

NET ESTATE $__________

DATE __________

LIFE INSURANCE

Company	Policy Number	Face Amount	D.I.	Value	Ownership H.	Ownership W.	Ownership Jt.	Insured H.	Insured W.	Insured O.*	Named Beneficiary
		$		$							
TOTAL											

*Name the Insured ______________________________ D.I.=Double Indemnity.

REAL ESTATE

Legal Description	Town, State	Year Acquired	Ownership H.	Ownership W.	Ownership Jt.	Market Value	Basis
TOTAL	x x x	x x	x		x	$	$

BUSINESS INVESTMENT (Exclude Farm Land)

Name of Business	Kind	Type	Book Value	Market Value	Percent Owned
(e.g.) Parish Products	Oil	Corp.	$100,000	$150,000	33 1/3

TOTAL MARKET VALUE H ____________________ W ____________________ Jt ____________________

Income statements and balance sheet for the last five years are available? yes ________ no ________

A. Elements of the Plan

Most people who do not have a will feel that they do not have an estate plan. This is not true. Everyone has an estate plan whether you have made one up specifically or not.

The first part of your estate plan is provided by the state of Minnesota. The statutes that have been written on intestate succession are a part of your plan if you do not have a will.

A second part of nearly everyone's estate plan is Social Security. At your death, your estate will receive a lump sum benefit payment for aiding in burial expenses. In addition, some of your survivors may be eligible for certain benefits under the survivor's benefits program.

The intestate succession statutes and Social Security are a part of your estate plan that you have whether you do any direct planning or not. You may also have other portions of a coordinated estate plan. Many people have life insurance. This is an estate plan since it directs that part of your estate, the amount of the insurance, be paid to those you designate. Property held in joint tenancy is also an estate plan. This property will belong to the other joint tenant upon your death.

Additional legal and business devices may be involved in your current estate plan. You may have a will, you may have established a trust or you may have a business organization that is related to your estate plan.

It is important that you understand what plans are now in effect for your estate and what some of the alternatives might be. In this chapter we will discuss these elements of your current plan as well as how estates are "probated" and administered.

1. Intestate Succession

"Intestate" means without having made a valid will. Intestate distribution of property is the distribution of the property of a person who has died without leaving a valid will according to the laws of the state. If there is a valid will, it controls the distribution of property rather than the intestacy laws. A person who dies with a valid will is said to have died "testate" rather than intestate.

All real estate within the state of Minnesota is subject to the Minnesota intestate succession laws. Real property outside the state is distributed according to the laws of the state in which it is located, even if owned by a Minnesota resident. All personal property is subject to the Minnesota laws if the deceased was a Minnesota resident. Real and personal property are distributed according to the same rules of distribution.

If the head of a family dies without a will, one of the first steps in the distribution of the estate is having the "family allowances" set aside for the widow and minor children. The family allowances are articles of property and payments that the family is allowed to retain or is entitled to. This property is not considered to be a part of the distributable estate. In Minnesota the family allowances are made up of three classes of property: the homestead, personal effects and maintenance payments.

Where there is a surviving spouse, the homestead passes free from any other disposition. If there are no children, the spouse receives the homestead. But if there are surviving children or descendants of children, then the spouse gets a life estate in the homestead with the children sharing the remainder in equal shares. The homestead consists of the residence of the deceased and the land on which it is located. It is limited to one half acre in a city or 80 acres of a farm. The homestead is also free from any subsequent liens that were not valid at the time of the decedent's death.

The surviving spouse is entitled to further allowances. She is entitled to the wearing apparel of the decedent, furniture and household goods not exceeding $2000 in value and other personal property not exceeding $1000 in value. If this accounts for all of the personal estate of the decedent except for one automobile, the spouse will also be allowed the automobile. If there is no surviving spouse, any minor children are entitled to the same amounts of personal property.

During the administration of the estate, the family of the decedent is entitled to maintenance payments. The administrator of the estate may authorize installments up to $500 per month. But if this is insufficient, the family may petition the probate court for a larger allowance.

After the family allowances have been satisfied, the remainder of the estate requires distribution. The law sets up a general order of preference among heirs: spouse, children, parents and then other relatives. But since the law is dependent on those relatives that survive the decedent, it is first necessary to determine which relatives have survived. Then the share of each relative can be determined.

Exhibit 2 shows how the estate of a person who dies intestate is distributed in Minnesota. The estate is distributed among those heirs who are in the highest class according to the law. For example, if a person is survived by his spouse, parents and a sister, the spouse will take the entire estate to the exclusion of his parents and sister. Only if there are no members of a higher class of heirs do you go to the next class of heirs to determine who receives the estate. If no heirs are found, the property "escheats" to the state. This means that the property reverts to the state due to the fact that there are no heirs to inherit it.

Because the underlying theory of intestate succession is that the nearest relative of the intestate will inherit to the exclusion of more remote relatives, it is sometimes necessary to determine the "degree" of relationship between an heir and the intestate. Each generation represents a degree. Exhibit 3 shows the degree of relationship among various heirs. A man is related to his parents and children in the first degree; to his grandparents, brothers and grandchildren in the second degree; and so on. The degree of relationship becomes important in Minnesota only when distant relatives are the only heirs of the decedent. For example, if there are no descendants of brothers or sisters, the estate passes to the next of kin in equal degree.

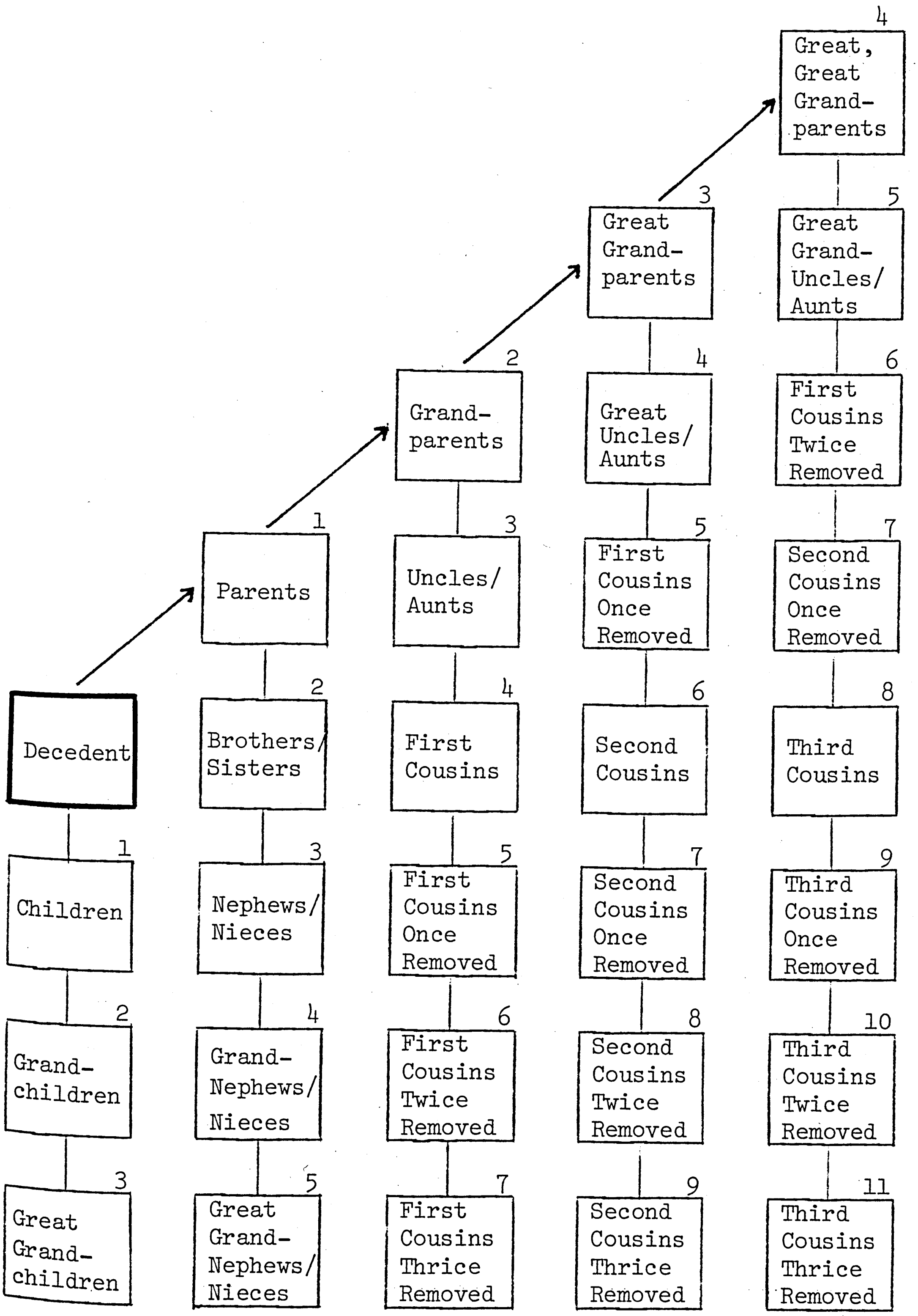
There are a few additional rules of intestacy that apply to special groups of heirs, particularly children. If a man whose wife is pregnant at the time of his death dies, the child who is subsequently born is entitled to an intestate share of the estate equal to that which he would have received if he had been born at his father's death. Adopted children can inherit from their adoptive parents and relatives as if they were legitimate children. Illegitimate children can inherit from their mother the same as if they were legitimate. But they can inherit from their father only if he had acknowledged being their father or was found to be their father in a paternity suit. Half-bloods, those who are related by blood to only one parent, may generally inherit equally with those of whole blood of the same degree.

Because no one succeeds to the property of another unless he survives the decedent for an instant of time, problems may arise when two people, a property owner and his heir, are both killed in circumstances that make it difficult to determine who died first. To remedy the disputes that could result, there is a provision in the Minnesota statutes which provides that where title to property depends on one person surviving another and there is no sufficient evidence that the persons died other than simultaneously, the property of each person is distributed as if he had survived. Thus, if a young married couple with no children is killed in a car accident and it is impossible to determine if one

Exhibit 2. Intestate Succession in Minnesota. Distribution of Property Under Minnesota Law in the Absence of a Will.

	Closest Surviving Relative	Distribution of Estate
A.	Spouse	Spouse takes all.
B.	Spouse and children	Spouse gets 1/3 and children get 2/3; when there is only one child, spouse and child each get ½.
C.	Children/grandchildren (no spouse)	Children take all in equal shares with share of deceased child divided among his descendants.
D.	Parents (no spouse or children)	Father and mother share equally; if only one parent survives, he takes all.
E.	Brothers/Sisters (no spouse, children or parents)	Brothers and sisters share equally with share of deceased brother or sister divided among his descendants.
F.	Nephews/Nieces (no spouse, children, parents, brothers or sisters.	Descendants of deceased brothers and sisters of equal degree share equally.
G.	Next of Kin (no spouse, children, parents, brothers, sisters, nephews or nieces)	Next of kin share equally if of equal degree; if claiming through different ancestors, those claiming through nearest ancestor take.
H.	No Kindred	Estate escheats to state.

Exhibit 3. Degrees of Relationship



Figures show degree of relationship.

survived the other, the property of each would pass to his heirs.

It may be possible that an heir will not receive the full value of his intestate share following the death of the intestate. For if any heir wishes to share in the intestate distribution of an estate, he must permit the administrator to include, in determining how much he is entitled to, the value of any property that the decedent, during his lifetime, gave him as an "advancement." This is based on the theory that the decedent would want an equal distribution of his estate among his heirs and that this can be achieved only if lifetime transfers are taken into account in determining the shares. But, due to the difficulties that arise when, for example, a father pays the college tuition of one daughter but not the other, a lifetime gift is presumed to not be an advancement unless it is shown to have been intended as such. A written declaration of intent by the decedent or a written acknowledgment of the gift as an advancement by the heir is required.

While the intestate succession laws provide a method of distribution of your estate, there are many disadvantages to relying upon them. The statutory plan is inflexible. It is not based on your desires which arise from your property, family and objectives. Thus, the statutory scheme will seldom achieve your goals. It is often no more than a stop-gap that will provide for the distribution of your property until you plan your own method of distribution.

Reliance on the statutes may have undesired consequences. If, for example, a young married couple is involved in a car accident and the wife survives for a short period of time, the husband's property would pass to her and then to her heirs. Thus, his parents and family would inherit nothing while her family would inherit everything. This may very well be contrary to anything he desired.

If you have minor children, there are further complications. First, of course, your surviving spouse will not get all your property. At least one half will belong to your child or children. Second, a guardian will be required to be appointed by the probate court to protect the children's shares of property. Court approval may be required for any transfers of their property.

Even in those cases where the state law does what you want, there are advantages to drawing up a will. A will can waive any bond requirements for a personal representative. By will your executor can be named and you can suggest the person to be appointed guardian for your children. You can specify what property should be used to pay taxes and expenses.

2. Wills

If you have previously thought about the need for an estate plan and have done some planning, you probably have drawn up a will. A will is the legal expression of your wishes as to the disposition of your property after your death. It is inoperative until your death. Besides disposing of your property, a will may also name your executor (the person you want to handle your property), nominate a guardian for your children, and waive any bond requirements.

If you have a will, the state intestate succession laws that we have discussed are generally not applicable to your estate. By making a will you have already decided who will receive your property, how much they will receive and how they will own it. In short, you have made your own "law" for distributing your estate. The intestacy laws may be applicable to a part of your estate, however, in the event that some of your property was not disposed of by your will.

Your will has no effect during your lifetime. Only upon your death does it become effective to carry out the desires you have expressed in it. As a result, your will can be revoked or modified at any time during your lifetime. At this stage of the estate planning process, therefore, your will should be examined carefully to see if it achieves what you want. It is entirely possible that within a comparatively short time after you have made a will, your estate or your family may have changed to such an extent that your former will no longer suits your plans. For example, Don Evans, the executive with 3M, has a will that was drawn up fifteen years ago. Since then, his youngest child, Brian, was born with cerebral palsy. As a result, Don wants to modify his will and his entire estate plan to provide for Brian's special needs.

3. Joint Tenancy

In the previous chapter we discussed the joint tenancy as a means of owning property. Because the property held in joint tenancy remains with the surviving joint tenant, it is a common element of many estate plans. Many people own their homes in joint tenancy. Both the Nelsons and the Evanses hold their homes in joint tenancies. You may also hold substantial portions of your personal property in joint tenancies. Don and Marilyn Evans own some securities as joint tenants. And all of our typical Minnesotans have joint bank accounts. The property held in joint tenancy may be a very significant part of your estate. It is therefore important that you determine exactly what property you hold in joint tenancy. This will have an impact on your planning since it cannot be disposed of in any other manner without first severing the joint tenancy. While you may very well want to keep some property in joint tenancy ownership, there may be good reasons for not holding as much as you now do in joint ownership. The disadvantages of joint ownership will be discussed later. But for now, the important thing is to examine what property is held in joint tenancy and to realize what effect that has on your planning abilities.

4. Contractual Arrangements

In addition to the will and the joint tenancy, you may have entered into some contractual arrangements that are, in effect, estate plan components. They are considered to be estate planning tools since they direct that a specified portion of your estate be passed to a named party at a future date. And while it is easy to overlook them in determining what your current estate plan consists of, they may involve a major portion of your estate.

The most common of the contractual tools is life insurance. Many people are covered by a life insurance policy of some kind. All of our typical Minnesotans are either insured parties or beneficiaries under a life insurance policy. In some cases, like Don and Marilyn Evans', the life insurance accounts for a large portion of a person's estate. And it is possible that life insurance may be the entire estate. If you own a life insurance policy, you should examine your policy to determine who the beneficiaries are. Often the beneficiary designation is made with little attention being given to the alternative planning arrangements that are available. It is important that this be coordinated with the rest of your estate plan.

You may also possess an annuity contract. In its simplest form, an annuity is a right to a sum of money each year for a specified period. Annuities can be either private, for example, through a transfer of an asset in exchange for $5000 per year for life, or commercial, where an insurance company assumes the obligation of making the required payments. If you own an annuity, it will have an impact on how you arrange your affairs in providing for your retirèment. And it may also affect your planning for the distribution of your estate after death, since the annuity may also contain substantial death benefits. Thus, you should review any annuity contracts to see how much they provide, for how long, and whether there are any death benefits involved.

If you own your own business or farm, the way your business is organized may involve an estate plan component. Frequently, partners or shareholders of small corporations agree to buy the interest of a deceased associate. This allows the business to continue without requiring the admission of a new and untried investor to the business. These agreements may be structured around an option to buy the interest at death or retirement, a mandatory buy-out provision, or an installment sale. The form such agreements take varies, but their importance in planning your estate cannot be understated. If you own your business, your interest in it is likely to constitute a major portion of your total estate. Arrangements to transfer that interest must be considered since they restrict your ability to dispose of your interest by other means.

If you work for someone else, you may be participating in a pension or profit-sharing plan. A pension plan is a plan established by an employer to provide for the payment of benefits over a period of time after retirement. Such plans may be funded entirely by your employer ("noncontributory" plans) or they may be partially funded by contributions that you make ("contributory" plans). Jim Nelson, the Mankato factory worker, is contributing to such a plan. A profit-sharing plan provides for participation by employees in the employer's profits. Such plans are generally noncontributory. Many pension plans do not provide death benefits other than payment of the employee's contributions and interest on the contributions to the surviving spouse or children. Profit-sharing plans, on the other hand, ordinarily do provide substantial death benefits. In any event, if you are not self-employed you should accurately determine the extent of the retirement and death benefits under your plan. Such benefits may not only be an important part of your retirement plan, but they also affect how you arrange the rest of your affairs for retirement and disposition after death.

5. Trusts

If you have specifically planned your estate, you may have established a trust. As you remember, a trust is an arrangement in which one person manages property for someone else. A trust is usually established by a trust instrument that spells out what property is included in the trust, who the trustees and beneficiaries are and what, if any, powers are retained by the creator of the trust.

There are two types of "living" trusts (trusts formed during the creator's lifetime). A revocable trust is one that you can terminate at any time during your lifetime if you find that it no longer conforms to your wishes. Such trusts do not save federal estate taxes, so some people establish irrevocable trusts. An irrevocable trust cannot be altered, amended or revoked. The transfer of property into such a trust is as complete as if by a completed gift.

If you have drawn up a will, it may include a "testamentary" trust. Such trusts are common and, like the will that establishes them, are not effective until death. Therefore, they can also be revoked. Such trusts are frequently used for managing the property of children in case both parents die. They are also used to save federal estate taxes when taxes present planning problems.

If you have established a trust, the instrument should be examined to ensure that it still achieves what you want. If it does not, you may be able to modify it or revoke it entirely. On the other hand, if you have established an irrevocable living trust, it is important that you consider it in developing the rest of your estate plan.

6. Social Security

An important element in many estate plans is Social Security. The types and amounts of benefits under the Social Security program and the manner of their payment are fixed by law. As a result, Social Security is not a flexible tool like a will, a trust, or life insurance for estate planning purposes. Nevertheless, you should be familiar with the benefits available under Social Security. For purposes of planning for your retirement, projected Social Security benefits are a factor to consider in developing an investment program. For the young family, projected survivor's benefits will affect the amount of life insurance needed to provide for the family in the event of an untimely death.

Before we begin to discuss some of the Social Security programs, a word of caution is required. One of the unchanging features of the Social Security program is that the amount of the benefits and the Social Security tax are subject to frequent change. However, the basic concepts and definitions used to determine benefits have remained relatively constant. As a result, while the portion of our discussion dealing with how benefits are calculated will continue to be applicable for years to come, any calculations may be changed by increased benefits. Therefore, to calculate your projected Social Security benefits you should visit your local Social Security office to get the latest information.

A fully insured worker under the Social Security program is entitled to monthly retirement benefits, the amount of which is determined by his earnings average over the years in which he contributed to Social Security. To be fully insured, a person must have worked in employment covered by Social Security for a fixed number of years. For example, if you reach 62 in 1977, 6½ years are required. For a worker who reaches 62 in 1980, 7 years are required. But no one needs more than 10 years to qualify as a fully insured worker.

Your social security benefit is calculated in a way that attempts to replace a portion of your income lost as a result of retirement, disability, or death. Your five lowest years of earnings are excluded in computing your average. There is a maximum amount of income that will be considered for each year of employment. For example, in 1960 the maximum earnings covered by Social Security was $4800, in 1970 the maximum was $7800, and in 1979 the maximum is $22,900. If your income exceeds these yearly maximum figures, only the maximum figure is used to compute your average. Because wages have risen steadily in the last 25 years, your earnings in prior years are given today's value so your average wage will reflect the buying power of your income over your working career. This is called indexing.

You may elect to receive retirement benefits at age 62. If such an election is made, the monthly benefit is permanently reduced: at 62 to 80 percent of the benefits at 65. If you do not retire at age 65, your earnings continue to be subject to the Social Security tax. Any Social Security retirement benefits that you receive are not subject to income taxation.

Monthly benefits are also payable to the spouse of a retired worker as early as age 62. If she is 65 at the time her husband begins to draw monthly benefits or if she waits until she reaches 65 before claiming benefits, she is entitled to a monthly benefit of one half the benefit of her husband. Of course, if she is a fully insured worker as a result of her own earnings, she is entitled to the greater of one half of her husband's benefit or her benefit as a retired worker.

If a fully insured worker dies before or after retirement, his widow is entitled to a monthly benefit. If she is age 65 or older when he dies, this benefit would be the same as her husband's benefit would have been if he were still alive. Reduced benefits are available as early as age 60.

Upon the death of a fully insured worker, a lump-sum death benefit of $255 is made to his surviving spouse. If there is no surviving spouse, the death benefit goes toward defraying the worker's burial expenses. This sum is not subject to federal or state inheritance taxes.

Perhaps the most important Social Security program for the young family is the survivor benefits program. Under this program a surviving spouse is eligible for benefits if he or she is caring for a child under 18. In addition, each child is eligible for benefits as well. The benefits to the surviving spouse are cut off when the youngest child reaches 18, but the benefits to the children continue until the child reaches 22, provided that he is unmarried and a full-time student.

The amount of the benefits available for the surviving spouse and children is measured by the amount of retirement benefits the deceased spouse would have received if he had reached 65 in the year that he died. The spouse is entitled to 75 percent of the retirement benefits and each child is entitled to a maximum of 75 percent as well. However, there is a maximum amount that will be paid to a single family. If the spouse remarries, the benefit to her terminates, but all unmarried children under 22 remain eligible.

The amount of benefits available can be quite substantial especially for the family of a person who has only been in the labor force for a short time without many low income years that would reduce his earnings average. For example, if Jim Nelson,the young metal press operator, were to die with his wife and daughter surviving him, and if his earnings average was $8,000., his wife would be entitled to a survivor benefit of $724.00 per month. If he had two children, his wife would be entitled to a benefit of $844.50, the family maximum.

The surviving benefits program also covers those workers who have not been on the work force long enough to qualify as a fully insured worker. It includes "currently insured" workers as well as fully insured workers. A currently insured worker is a worker who has earned credit for at least 1½ years of work within three years before death.

Exhibit 4 shows examples of monthly cash benefits under the Social Security program in various situations. Such benefits should not be overlooked in planning your estate. The retirement benefits available to you and your spouse will have a great impact on your retirement planning, and the survivor's benefits should be considered by the young family in assessing the amount of insurance required. In short, the Social Security program benefits are an important part of your current and contemplated estate plan.

7. Veteran's Benefits

The federal government has provided benefits for veterans of the armed services. Perhaps the best known programs are the educational assistance program (the "GI Bill") and the loan guarantee benefits. But there are other benefits that are worth noting for estate planning purposes.

The Veteran's Administration will pay a $250 burial allowance for any eligible deceased veteran. In addition, a $150 interment allowance will be paid for a veteran not buried in a national cemetary. For veterans who die of service-connected disabilities, a burial allowance up to $800 in lieu of any other buriel benefits will be paid.

Exhibit 4. *Examples of Social Security monthly cash benefit payments (effective July 1979).*

AVERAGE YEARLY EARNINGS after 1950*	$923 or less	$3,000	$4,000	$5,000	$6,000	$7,000	$8,000	$9,000	$10,000
Retired worker, widow at 65 or disabled worker	$122.00	$251.80	$296.20	$344.00	$388.20	$435.00	$482.60	$510.00	$534.70
Wife under 65 and one child	60.70	133.10	210.00	286.00	323.90	340.00	361.90	379.00	401.00
Widowed mother or father and one child	184.00	377.80	444.40	515.40	582.40	652.60	724.00	765.20	802.20
Widowed mother or father and two children	184.00	384.90	506.40	630.00	712.20	775.20	844.50	889.00	935.70
One surviving child	122.00	188.90	222.20	258.00	291.20	326.30	362.00	382.50	401.10
Maximum family payment	184.00	384.90	506.40	630.00	712.10	775.20	844.50	889.00	935.70

*Generally, average earnings are figured over the period from 1951 until the worker reaches retirement age, becomes disabled, or dies. Up to five years of low earnings or no earnings can be excluded. The maximum earnings creditable for Social Security are $3,600 for 1951-1954; $4,200 for 1955-1958; $4,800 for 1959-1965; $6,600 for 1966-1967; $7,800 for 1968-1971; $9,000 for 1972; $10,000 for 1973; $13,200 for 1974; $14,100 for 1975; $15,300 for 1976; and $16,500 for 1977; $17,700 for 1978; and $22,900 for 1979.

In certain circumstances there are provisions for surviving members of veteran's families. Payments are authorized for widows, or widowers, unmarried children under 18 and certain parents of veterans who die from a disease or injury incurred or aggravated in line of duty. The rate of payment is based on the veteran's pay grade at the time of his or her death. The rate payable for a widow or widower with one or more children is increased $29 monthly for each child under age 18. And he or she may also be eligible for an additional $72 monthly if in need of regular special care.

Children of the veteran may be eligible for similar benefits in their own right if the widow or widower is ineligible for any reason. Children who are determined helpless as of age 18 or who are pursuing an approved course of instruction and between the ages of 18 and 23, may continue to receive benefits at a special rate whether or not there is an eligible widow or widower.

For the families of veterans who die from causes not related to their service, the Veteran's Administration provides a different death pension. Payments to surviving spouses range from $5 to $117 monthly and from $53 to $139 for spouses with one child. The amount payable is based on the spouse's income. There is an income limitation of $3,300 per year for a spouse alone and $4,500 per year for a spouse with one or more children. Income above these levels is a bar to payment of the pension. Children of the veteran may be eligible for pension in their own right, subject to an income limitation.

While these benefits are fixed by law and are not flexible tools for estate planning purposes, they should not be ignored when considering your current estate plan. If you qualify for such benefits, they may very well be significant parts of your plan.

8. Other Benefits

There are other benefits that may be available to you. Frequently, membership in organizations such as fraternal orders, religious societies or veteran's organizations carries with it benefits that are payable upon death or retirement. While these benefits may take various forms and may not be as substantial as other benefits, they should not be overlooked. They make up a part of your current plan.

B. Settlement of Estates

When you die, your property must usually be managed, your debts satisfied, estate and inheritance taxes paid, and the remainder of your assets distributed to your heirs. This is often accomplished through procedures established by the state and supervised by the probate court. This process is referred to as "probating" your estate. Originally, probate referred only to the proving of wills, but it is now also generally used to mean the process of settling an estate.

The probate process is an important procedure in many cases. It serves several important purposes. The probate process establishes the decedent's will. An unprobated will provides no legal basis for the rights of a decedent's heirs in property that belonged to the decedent. Thus, probate is necessary for beneficiaries to establish their rights. Probate protects the beneficiaries against claims by creditors of the decedent after a specified time. Under the Minnesota law, if a creditor doesn't respond to published newspaper notices within four months, his claim against the decedent's estate is forever barred. The administration procedures also serve to protect the creditors by giving them an opportunity to satisfy their claims out of the decedent's property before it is distributed to his heirs. Probate provides recognition of the ownership rights of the decedent's heirs in his property so that they can transfer the property. The probate records provide such recognition. For example, if Don Evans, the 3M executive, owned his home by himself, rather than in joint tenancy with his wife, she would be able to continue to occupy the home following Don's death. But without probate of his will, she would encounter difficulties if she attempted to sell the property. Following probate of his will and administration of his estate, the court decree will show that Mrs. Evans has the authority to sell the property. Finally, the probate and administration procedures ensure that a decedent's property is finally distributed as he desired and provided in his will.

Formal probate and administration is not required in every case. If the decedent's estate is relatively small, with no real estate owned by the decedent alone, if the heirs are known and if there are no problems presented with creditors, an informal distribution may be possible. In such cases, the purposes of probate are served by informal agreement and there is no reason to comply with the formalities of a formal administration.

Certain property that the decedent owned is not subject to the probate process. For example, property held in joint tenancy is not subject to probate on the death of the first joint tenant. This is because the disposition of the property is already known--the other joint tenant gets it--and the creditors of the decedent are cut off by this arrangement so that they can't satisfy their claims out of the joint tenancy property. Other examples of "non-probate assets" include life insurance, bank accounts that are payable on death to another named person and certain public employee's retirement benefits.

If the estate is modest in size, but can't be settled informally because there is some property included in the estate whose certificate of title is in the decedent's name or because the family cannot agree on a distribution of the assets, it still may be possible to settle the estate without full court-supervised administration. In Minnesota, if the decedent's probate estate, in addition to his homestead, does not exceed the family allowances and expenses of the estate, the decedent's last illness and funeral, by more than $30,000, the probate court may assign the property to the decedent's heirs without further proceedings. This procedure is possible with or without the appointment of a personal representative. A spouse, heir or creditor of the decedent may petition the court to have the estate handled in this manner. A formal proceeding to establish the will of the decedent is still required, however. Such procedures may be useful in cases such as that of Jim Nelson, the young factory worker. Since most of his assets are non-probate assets (his home is in joint tenancy and the life insurance and pension benefits are paid directly to Mrs. Nelson), the administration of his estate would be easily accomplished under such summary proceedings. And, if Mrs. Nelson survived her husband and his will left everything to her, informal administration may be possible.

Generally, a decedent's estate is offered for probate in the county in which he had established his permanent residence. However, if a resident of another state owns property in Minnesota, there must be a probate proceeding in the county in which the property is located.

There are usually five steps involved in settling an estate when formal administration is required. The amount of time required to proceed through these steps will, of course, vary with each estate. The size of the estate, the nature of property owned by the decedent and the number and attitude of the beneficiaries will influence how fast the estate can be settled. The basic steps involved in settling an estate are: (1) appointment of the personal representative; (2) collection of the decedent's property; (3) management of the estate; (4) payment of debts, taxes and expenses of settlement; and (5) distribution of the net estate.

1. Appointment of Personal Representative

The settlement of an estate usually begins with the naming of the person who is to manage the property of the estate. However, there may be an earlier stage in some cases. There may be an unavoidable delay between the death and burial of the deceased person and the naming of the personal representative. In Minnesota, the personal representative cannot be appointed until five days after the death of the decedent. Sometimes action will be required to protect the decedent's property before the personal representative can be appointed. In such cases, a special administrator may be appointed to preserve the estate property until the regular personal representative is appointed.

If a special administrator is not required, the settlement of an estate begins with the appointment of the general personal representative. The procedure involved in appointing the personal representative is similar whether the decedent died testate or intestate. If the decedent dies intestate, the surviving spouse, next-of-kin, or creditors may petition the probate court for the appointment of a personal representative. (Formerly, a personal representative of an intestate estate was called an "administrator" or "administratrix." The personal representative of a testate estate was called an "executor" or "executrix." However, the law no longer distinguishes between the two cases. "Personal representative" is used to refer to both types of representatives.) The law controls the order of persons who have priority for appointment. In an intestate situation, the surviving spouse of the decedent is the first choice, followed by the other heirs of the decedent. Persons with a prior right to be appointed personal representative may renounce their right and nominate another person. Any person under the age of 18 is not qualified to serve as a personal representative. The court may appoint two or more co-administrators, or a bank or trust company may be appointed.

If the decedent left a will, it must be probated. Probate of the will means proving to the probate court that the written document is the will of the decedent. This process is usually begun by the personal representatives nominated by the will, but any person who has custody of the will is responsible for filing it with the court.

There are two types of probate available. In one--"formal probate"--notice of the hearing to determine the validity of the will must be given to the surviving spouse, children, and heirs of the decedent. At the hearing, these people must make any objections that they have to the admission of the will to probate, and, if they fail to do so, are barred from thereafter contesting the will or objecting to its validity. If evidence concerning the validity of the will is required, the affidavit or testimony of one of the witnesses to the will is usually sufficient. If the will is "self-proved" by acknowledgment of the will by the decedent and the witnesses before a notary, the will is presumed to be valid unless fraud or forgery is shown.

In "informal probate" the will is first admitted to probate and any objections and contests may be asserted after admission. Notice need be given only to those persons who demand it. The will is admitted to probate without a hearing on the basis of the application filed by the nominated executor. In general, if a contest to the will is not expected, informal probate is preferred. But, if a contest is possible, formal probate should be followed as a precautionary measure.

The personal representative may be appointed in the same proceeding that establishes the decedent's will. The personal representative nominated in the will is given first priority for the appointment. However, the testator may, by will, confer on another person the power to nominate a personal representative of the estate.

A bond is not generally required of a personal representative unless the will (if any) requires it or if persons with an interest in the estate demand it. However, the court may require a bond if it finds it to be necessary to protect interested persons.

Upon appointment and following the admission of the will to probate, the personal representative is granted "letters testamentary." These show his appointment and authority to act on behalf of the estate. Through the course of the administration of the estate, the personal representative may have occasion to use many certified copies of the letters. These letters, along with other probate forms are shown in Exhibit 5.

As we will see, the personal representative is the manager of the estate until it's settled. He is given broad powers over the property owned by the decedent. But, he is also subject to duties and responsibilities. A personal representative is a "fiduciary," which means that he is required to use care, diligence and prudence at all times when performing his duties. If he has special skills, such as an accountant or lawyer, he is required to use those skills in the best interests of the estate. He is not required to have perfect judgment or be right in all his decisions, so long as he has been careful, diligent and prudent. But, any failure to conform to this standard makes him personally answerable for any harm suffered by a beneficiary as a result. The personal representative owes a duty to the beneficiaries to keep confidential all information that he obtains in the course of his duties. He must also be impartial between or among the interests of different beneficiaries, the beneficiaries and himself, and the estate and creditors.

2. Collection of Decedent's Property

After the appointment of the personal representative, the next step in settling an estate is collecting the decedent's property. Not only is he responsible for collecting all the decedent's property of which he knows, but it is also his

Exhibit 5. Probate Forms.

FORM 4332 MILLER DAVIS CO MPLS

Form 524.3-301 #1 UPC 17

STATE OF MINNESOTA

COUNTY OF________________

In Re: Estate of

____
Deceased

PROBATE COURT
COUNTY COURT-PROBATE DIVISION

Court File No. ________________

APPLICATION FOR INFORMAL PROBATE OF WILL

TO THE HONORABLE REGISTRAR OF THE ABOVE NAMED COURT:

Applicant, ____________________, respectfully states:

1. Applicant resides at ____________________________,
2. Applicant has an interest herein as ________________________,
and is, therefore, an interested person as defined by the laws of this state.
3. Decedent was born ________________, 19____, at ________________,
4. Decedent died on ________________, 19____, at ________________,
5. Decedent at the time of his death resided at ____________________,
City of____________, County of________________, State of____________;
6. That the names and address of decedent's spouse, children, heirs and devisees and other persons interested in this proceeding and the ages of any who are minors so far known or ascertainable with reasonable diligence by the applicant are:

Name	Age	Relationship/Interest	Address

7. That venue for this proceeding is in the above named County of the State of Minnesota, because the decedent was domiciled in such county at the time of his death, and was the owner of property located in the State of Minnesota, or because, though not domiciled in the State of Minnesota, the decedent was the owner of property located in the above named county at the time of his death.
8. That no personal representative of the decedent has been appointed in this state or elsewhere whose appointment has not been terminated.

Exhibit 5. (cont.) Probate Forms

9. That applicant has not received a demand for notice and is not aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere or proper notice has been given.

10. That the original of decedent's last will executed on ______________, 19___, and codicil or codicils thereto executed on ______________, 19___, or, if previously probated elsewhere, an authenticated copy thereof and statement probating the same, is in the possession of the court or accompanies this application.

11. That the applicant, to the best of his knowledge, believes the will and codicil or codicils thereto, if any, has or have been validly executed.

12. That after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will and codicil or codicils thereto, and the applicant believes that the instrument which is the subject of this application is the decedent's last will.

13. That the time limit for informal probate as provided by the laws of this state has not expired because three years or less have passed since the decedent's death.

14. That at least 120 hours have elapsed since decedent's death.

WHEREFORE, your applicant requests that said will, including any valid and unrevoked codicil or codicils thereto be informally probated, and granting such other and further relief as may be proper.

FURTHER, under penalties for perjury for deliberate falsification therein, I declare or affirm that I have read the foregoing application and to the best of my knowledge or information, its representations are true, correct and complete.

Dated: ______________

____
Applicant

____
Attorney for Applicant

____
Address/Phone

Exhibit 5. (cont.) Probate Forms

FORM 4343 MILLER DAVIS CO MPLS

Form 524.3-306 #2
Form 524.3-310 #2
Form 524.3-801 #2

UPC — —

STATE OF MINNESOTA

COUNTY OF ________________

In Re: Estate of

____

Deceased

PROBATE COURT
COUNTY COURT-PROBATE DIVISION

Court File No. ________________

NOTICE OF INFORMAL PROBATE OF WILL AND APPOINTMENT OF PERSONAL REPRESENTATIVE AND NOTICE TO CREDITORS

TO ALL INTERESTED PERSONS AND CREDITORS:

Notice by publication is hereby given, that an application for informal probate of the last Will of the above named decedent, dated ________________, 19___, has been filed with the Registrar herein, and the application has been granted informally probating such Will. Any objections may be filed in the above, and the same will be heard by the Court upon notice of hearing fixed for such purpose.

Notice by publication is hereby further given that informal appointment of ____________ ____________, whose address is ________________________, as personal representative of the estate of the above named decedent, has been made. Any heir, devisee or other interested person may be entitled to appointment as personal representative or may object to the appointment of the personal representative and the personal representative is impowered to fully administer the estate including, after 30 days from the date of issuance of his letters, the power to sell, encumber, lease or distribute real estate, unless objections thereto are filed with the court (pursuant to Section 524.3-607) and the court otherwise orders.

Notice is further given that ALL CREDITORS having claims against said estate are required to present the same to said personal representative or to the Clerk of the Court within four months after the date of this notice or said claims will be barred.

Dated: ________________________

____
Registrar

____
Clerk

____
Attorney

____
Address

NOTE: If notice to creditors has been previously given, delete the notice to creditors herein.

Exhibit 5. (cont.) Probate Forms

FORM 4401 MILLER-DAVIS CO., MPLS

Form 524.3-601 #1 UPC 43

STATE OF MINNESOTA

COUNTY OF ______________

In Re: Estate of

____
Deceased

PROBATE COURT
COUNTY COURT-PROBATE DIVISION

Court File No. ______________

ACCEPTANCE OF APPOINTMENT AND OATH BY INDIVIDUAL

ACCEPTANCE OF APPOINTMENT BY INDIVIDUAL

TO THE ABOVE NAMED COURT:

I, (We) ______________________________
as a condition to receiving letters as ______________________________
in the above entitled matter, hereby accept the duties of the office, agree to be bound by the provisions of the statutes relating thereto, and hereby submit to the jurisdiction of the Court in any proceeding relating to the said matter that may be instituted by any person interested therein.

Signed on this ________ day of ________________, 19____.

____

OATH OF INDIVIDUAL APPOINTEE

STATE OF MINNESOTA }
COUNTY OF ______________ } ss.

I, ______________________________
of ______________________________, ______________________________
in the County of ______________ State of ______________ do swear
that I now assume as ______________________________
in the above entitled matter to the best of my ability.

____

Subscribed and sworn to before me this
________ day of ______________, 19____.

____
Notary Public,
______________ County, Minn.
My Commission Expires ______________, 19____

SEAL

FORM 4403 MILLER DAVIS CO. MPLS

Form 524.3-601 #3 UPC 43

STATE OF MINNESOTA

COUNTY OF________________

PROBATE COURT
COUNTY COURT-PROBATE DIVISION

In Re: Estate of

Court File No. ____________________

____
Deceased

LETTERS TESTAMENTARY

The above named decedent having died on ____________________, 19____, having been appointed and qualified, ____________________ is authorized to act as personal representative according to law.

Dated: ____________________

____
Judge/Registrar

Exhibit 5. (cont.) Probate Forms

Form 4434 MILLER-DAVIS CO. MPLS

524.3-804 (1) UPC 59

STATE OF MINNESOTA

COUNTY OF ____________________

PROBATE COURT
COUNTY COURT-PROBATE DIVISION

In Re: Estate of

Court File No. ____________________

WRITTEN STATEMENT OF CLAIM

____
Deceased

TO THE PERSONAL REPRESENTATIVE OF THE ABOVE NAMED ESTATE:

Claimant ____________________, states:

1. Claimant's address ____________________;
2. Claimant claims that the estate is indebted or will become indebted in the amount of $____________;
3. That the nature of the claim is

4. That the claim arose prior to the death of the decedent on or about ____________, 19 ___, or the claim arose at or after the death of the decedent, on or about ____________, 19 ___;
5. That the claim is secured by ____________________;
6. That the claim was or will be due and payable on ____________, 19 ___;
7. That if the claim is contingent or unliquidated, the nature of the uncertainty is as follows: ____________________.

Dated: ____________________

____
Claimant

____
Attorney for Claimant

____
Address/Phone

Note: Claim may be presented to Personal Representative or filed with ____________ Clerk.
Presentation of claim does **not** commence proceedings.
See 3-806

responsibility to inform himself of the full extent of the decedent's assets.

Assembling the decedent's property is essentially a two-step process. First, creditors, debtors and other interested persons must be advised of who has been appointed personal representative to settle the estate. This is accomplished by a published notice in a newspaper in the county where the estate is being probated. Second, the personal representative must take appropriate steps to get possession of the decedent's property.

Cash belonging to the decedent should be deposited in a bank in a separate account to the credit of the personal representative. The deceased person's own bank balances would be transferred to the same account. Joint bank accounts may create problems since, by terms of the account, the balance of the account may not pass to the surviving depositor. The personal representative must determine whether the balance passes to the survivor or whether it is part of the probate estate for which he is reponsible. The personal representative must locate any safe deposit boxes rented by the decedent. The contents of the boxes should be retained by him.

The only life insurance for which the personal representative has legal responsibility is that payable to the estate of the deceased person. If the decedent was a co-owner of property with another person, the personal representative must find out if the property was held in joint tenancy or tenancy in common. If in tenancy in common, the estate is part owner of the property and the personal representative is under an obligation to protect the estate's interest in it.

Personal effects of the decedent are available to the family as part of the family allowances in a testate estate as well as in an intestate estate. And the law allows the personal representative to leave property with the person to whom the property will pass. As a result, personal effects may be left with the members of the decedent's family unless possession of the property is required for the administration of the estate.

The personal representative must determine who owed the decedent any money and make every reasonable effort to collect the debt. He has power to compromise debts owed to the estate, provided that the compromise is reasonable and justified. The personal representative must also determine whether the decedent was the owner of any real property and, if so, whether he was sole owner or co-owner. For these purposes, the personal representative must examine all relevant deeds and other title documents. Even though real property owned by the testator passes to the beneficiaries under his will by operation of law and the personal representative may have little or no control over the property, he must usually know the existence and nature of the ownership in order to correctly report the property for tax purposes.

If the decedent was the proprietor of his own business, a partner, or a majority shareholder in a closely-held corporation, the personal representative must protect the business assets. This may present problems if the business is to continue since the assets may be lost between the death of the decedent and final distribution of the assets of the decedent. But the personal representative should take all steps that are reasonable and necessary to preserve the assets of the business and at least temporarily preserve the business as a going concern.

3. Management of the Estate

Once the personal representative has collected the decedent's property, his next duty is to make, file with the probate court, and send to the surviving spouse and other beneficiaries under the will, an inventory of property owned by the decedent at the time of his death. The law requires this to be done within three months after his appointment. The inventory must include the fair market value of the property as of the decedent's death. In order to determine the value of the property, the personal representative may hire an appraiser. Separate appraisers may be employed for different kinds of assets. If any property is omitted from the original inventory, the personal representative must file a supplementary inventory to include the omitted property in the estate. Non-probate assets must be included in the inventory since it is used for estate and inheritance tax purposes.

Traditionally, the personal representative's primary duty was regarded as being to collect, conserve and distribute the estate assets, not to actively manage or invest them. This view has changed somewhat so that personal representatives are now seen as estate managers. They stand in the shoes of the decedent. But, because they also represent the creditors of the decedent, they must preserve property to pay the decedent's debts. And, because they still owe a duty to the heirs of the decedent, they cannot gamble or waste the estate assets. Their job is to manage the estate assets in such a way as to pay all of the debts and expenses, while, at the same time, preserving as much of the property as is possible for the spouse, heirs or beneficiaries.

As soon as the personal representative makes an inventory and appraisal of the estate and determines the amount of claims against the estate, he must prepare to have cash on hand to pay the debts, taxes and expenses of administration. While these obligations can't be exactly computed immediately, a reasonable estimate can be made shortly after the personal representative is appointed. If necessary, the personal representative will have to determine which assets will be sold so as to meet these obligations. If the personal representative finds that he has more cash on hand than is necessary to meet estate obligations, it is improper for him to retain the extra money for any significant period of time without making it productive. However, he is restricted to investments such as interest-bearing accounts or secured loans.

If the decedent operated his own business, the personal representative is authorized by law to continue its operation. If he intends to continue the business for more than four months, however, court approval may be required.

The personal representative has the power to sell, lease or mortgage any of the estate assets except the homestead. The consent of a surviving spouse is required for any dealings in the homestead.

Any of these powers of the personal representative can be restricted by a testator in his will. Or the court can impose restrictions. Likewise, the will can give the personal representative broad powers to enable him to make quick decisions. If the person chosen as personal representative is capable, it is probably better to give him the broadest powers possible. This allows a much more efficient administration and avoids difficulties that may result if the administration is prolonged.

4. Payment of Debts, Taxes and Expenses

When the personal representative has gathered together the estate assets and raised the necessary money to pay estate obligations, he is ready to begin doing so. The law requires him to wait until the expiration of the four month period which is given to creditors to file their claims.

Before the personal representative can pay any of the decedent's debts, he must first accept or reject a claim filed against the estate. If he has any doubt concerning the validity of a claim, he must investigate the basis of it and, if he feels justified, reject it even though he risks being sued. If the claim is rejected, the creditor has two months in which to file the suit against the personal representative. If he fails to do so, his claim is barred. Unless restricted by will, the personal representative also has power to compromise any claims so as to avoid such lawsuits.

After passing upon the validity of claims, the law provides an order of payment. If the estate has enough money to pay all the claims and other expenses, this is not important. But, if the estate does not, the payment order is very important. It should be remembered that certain assets such as the homestead are exempt from payment of estate obligations.

If the available assets are insufficient, payments are made in the following order: (1) administration expenses; (2) funeral expenses; (3) taxes; (4) medical and hospital expenses of the last illness of the decedent; and (5) all other claims.

The taxes that are owed by the estate may involve more than estate and inheritance taxes. There may be real property taxes, personal property taxes, and federal and state income taxes both for the decedent and for the estate, to be paid. Once it is determined which taxes must be paid, the personal representative must determine who is to pay them. He may be required to pay them or they may be apportioned among beneficiaries according to the terms of the will or by state law. The amount of taxes owed is, of course, dependent upon the value of the estate assets, the estate planning of the decedent and the tax planning of the personal representative during the administration of the estate.

The final group of estate obligations are the expenses of administering the estate. There are several different items that must be paid by the personal representative for administering the estate. First, the personal representative is entitled to compensation for his services. He can, however, renounce his right to all or any part of the compensation by filing a statement with the probate court. Second, if a bond was required of the personal representative, there will be bond costs. Third, if appraisers are employed, they must be paid. This item may be substantial if the appraiser bases his fee on a percentage of the property appraised or relatively minor if he charges a flat fee. Fourth, the attorney that is retained by the executor must be paid. His fee is generally based on an hourly charge. Because of this, it will vary according to the complexity of the estate and the duties that he performs. It is therefore a good idea for the personal representative to discuss with the attorney what services each will perform and get an estimate of how much the attorney's fees will be before he is retained. Finally, there are court costs that will be incurred. As a rule, they do not constitute a very substantial item compared with the total value of the estate. But, like all of the other expenses, they must be kept in mind and provided for by the personal representative.

5. Distribution of Assets

After all of the estate obligations are satisfied, the personal representative is ready to distribute the rest of the estate assets. But, before he can do so, he must file an "accounting" with the probate court. This shows what he has received, what he has paid out and for what purposes, and what he has left over for distribution to the heirs or beneficiaries as well. If a beneficiary or creditor objects to the accounting, contending that any acts by the personal representative were improper, he is entitled to his day in court. The court will determine whether there was an error that resulted in harm to the beneficiary or creditor. If there was, the personal representative is responsible for the damage and must pay the beneficiary.

The next step in distributing the assets is preparing a "schedule of distribution." This is a statement of who is to receive what property. In the case of a will and an estate ample for all the gifts, the schedule can be made up directly from the will. If the estate is intestate, the personal representative must follow the intestate succession laws in preparing the schedule.

If the estate is not sufficient to satisfy all the gifts, then according to the terms of the will or the law, some gifts must be eliminated or "abated." This is an unpleasant duty, but it must be done. "Lapsed gifts" must also be taken into account in preparing the schedule. These are gifts that can't be made because of the death of the beneficiary prior to the death of the testator. In such cases, the issue of the beneficiary receive the gift in equal shares. Once the schedule is prepared, it is filed along with the accounting.

The personal representative can now make the actual final distribution of property according to the schedule of distribution. This requires that any specific gifts of property be satisfied by distribution of that piece of property. Gifts of money may be satisfied by gifts of property of equal value, provided that the beneficiary has not demanded payment of money. When two or more beneficiaries or heirs are entitled to individual interests in any property, the probate court may partition the property. The personal representative will generally obtain a receipt for the property or a release from further liability to the beneficiary on account of the property. In many cases, the personal representative may have made earlier distributions of some of the estate assets. He is not prohibited from doing so and in fact is under a duty to proceed with reasonable promptness to satisfy the gifts made by will. However, he must retain enough assets to pay the debts, expenses and taxes of the estate. And, if he makes an early distribution of certain gifts, he must distribute similar gifts to other beneficiaries.

Following distribution, the personal representative may close the estate. This may be accomplished by petitioning the court for an order of general protection or by filing with the court a sworn statement that he has fully administered the estate. If the order of general protection is obtained, the personal representative is discharged from further claims or demands from beneficiaries or creditors. If the estate is closed by statement, the appointment of the personal representative is terminated one year after the filing of the statement if there are no court proceedings involving him in progress at that time.

The amount of time required to settle an estate is variable. But, it is not uncommon for an estate administration to run for quite a long time. There are several reasons for this. First, the creditors of the decedent have four months to file their claims. The prudent personal representative will not close the administration and distribute all the assets until the time for filing creditor's claims has elapsed. Otherwise, he may be forced to pay the debts out of his own pocket. Second, the federal estate tax return is not due until nine months after the decedent's death. The representative ordinarily waits until then to pay the tax to determine whether the election of the alternative valuation date results in a lower tax. (For federal estate tax purposes, estate assets may be valued either as of the date of death or at the alternate valuation date six months after the date of death at the personal representative's option.) The return must then be audited and accepted by the Internal Revenue Service before the representative, who is responsible for paying the tax, can safely make final distribution. If there is a dispute over any part of the tax return, further delays may occur. Third, the state inheritance tax is not payable until one year after the date of death of the decedent. And, the state tax authorities may postpone their audit until the IRS completes its audit of the federal return. Finally, if the estate includes income-producing assets, it may be to the advantage of the beneficiaries to prolong the administration for as long as possible. Because the estate is a separate income tax "person," if estate income is retained by the representative rather than distributed, the income is taxed to the estate and not to the beneficiaries.

Estates can't be kept open indefinitely for no valid reason, however. Either the court or a beneficiary can force the personal representative to explain why an estate has not been closed within 18 months. But, due to the reasons mentioned above, there may be very good reasons why the estate has remained open and there has been no final distribution of property.

V. RECOGNITION OF PLANNING GOALS

The third step in planning your estate is to recognize your planning goals. What do you hope to accomplish by planning your estate? The over-all goal in most estate plans is to arrange your affairs so as to retain the maximum benefit of your property and to pass it on with the least possible loss. The accomplishment of this general objective, however, involves satisfying several subordinate goals. This results in some of the complexity of estate planning. These sub-goals frequently conflict when you begin to plan and it is often impossible to satisfy all of your goals. Many sub-goals come to mind. For example, some of your goals may be reducing death taxes, reducing the estate settlement costs, assisting a family member to get established in business, keeping the family business in the family or providing adequate lifetime income for you and your spouse.

However, most of the major specific goals that are to be achieved by estate plans can be placed in the following groups:

1. Direct the distribution of the estate assets.
2. Transfer the largest possible amount of property to the heirs.
3. Provide income and capital security for yourself and your spouse.

1. Direct Distribution of Assets

One of the major purposes of any estate plan is to guarantee that the property is divided and transferred exactly as you desire. In fact, dissatisfaction with the distribution of property under the intestate succession laws is often the reason people plan their estate. And, frequently professional planners suggest that you first consider how you want your property distributed. After that is accomplished, different tools can be used to minimize death taxes and settlement costs and provide income security for yourself and your spouse.

Directed distribution might include arrangements that will treat all children equitably, if not equally. For example, Don Evans will probably want to provide more benefits for his youngest child who has cerebral palsy than he will for his other children. Or Frank Jones may be more generous to his son, who will continue the family farming business. In addition, a parent may want to reward certain children for special favors by specifying what assets they should receive from the estate. Directed distribution may also include providing financial support for a charitable or educational institution or organization. Don Evans may also want to provide for research into cerebral palsy.

In general, directing the distribution of your estate insures that it will be transferred to those heirs or organizations that you feel, for whatever reason, should receive your property. But while this may be your dominant goal, there are alternative ways of achieving it. Some tools are more costly than others and some add to settlement costs and time. In addition, some tools eliminate the use of part of your estate for your benefit for retirement. Finally, you are not completely free in directing the distribution of your estate. There are some restrictions imposed by law. Subject to these limitations, the tools available must be evaluated as means to achieve your goal of directing the distribution of your estate.

2. Transfer the Largest Amount of Property

Most people want to insure that the cost of transferring their property to their heirs is held to a minimum. For some, this is a dominant goal. They wish to maximize the net value of their estate after it is transferred to their heirs rather than during their life. This will help provide for the continuity of a farming or business operation or maximize the benefits that their heirs will receive.

Such a plan must focus on minimizing death and income tax obligations. The fact is that unless the estate is more than $400,000 there is no federal estate tax problem presented if you are survived by your spouse. But, if the estate is in excess of $400,000, the taxes may be minimized by several means. Where both spouses possess separate estates, proper tax planning insures the payment of the minimum in taxes in the combined estates. It is possible to become too tax conscious and to make tax savings the sole consideration in planning. The tax tail should not be allowed to wag the estate planning dog. Proper estate planning in most cases should involve only those techniques that are consistent with other objectives.

A second factor to consider in transferring property upon death is the cost of settling the estate. Generally, the smaller the estate the larger is the percentage of the cost of administration. These costs may be reduced in several ways. They are based on the probate estate. Therefore, property passing *otherwise* than by probate avoids these charges. However, the advantages of using these methods of distribution may be overcome by other disadvantages relating to taxes, settlement time or directed distribution.

In addition to minimizing taxes and settlement costs, liquid assets must be available. Assets that are readily convertible into cash are required for debts, taxes and settlement expenses. Proper planning will insure that funds to meet these obligations will be available. In the absence of such planning, it is necessary to liquidate assets which at a forced sale will not bring their market value. While the ideal estate is one in which there are sufficient liquid assets to meet all estate obligations, this is seldom attainable without planning. The most common way of assuring liquidity is the purchase of life insurance.

3. Provide Income and Capital Security

An estate plan should guarantee that you have the opportunity to enjoy the goods and services that can be acquired with your income. For some people this may involve the consumption of their assets with little concern for the amount of the estate left to transfer. For others, an adequate level of income and assets to meet normal living expenses plus unexpected contingencies during the retirement years would be acceptable. But in either case, they should be able to specify the level of income and capital assets that is necessary to provide security throughout life.

It is quite possible that the security income and wealth level will change during your lifetime. As parents grow older, their need for funds to use in travel and other consumptive uses will decrease. Fewer funds for contingencies involving their children might also be needed because the children have been able to develop and finance their own contingency plans.

Because estate planning involves satisfying multiple goals, it is something for which you seek help. From whomever you get professional advice, one of his first considerations will be or should be discovering what your goals are with respect to estate planning. Because of this it is important that you have considered your goals before you talk to your attorney about planning your estate. He can help you arrange your affairs so as to best achieve your goals, but it is up to *you* to think through your goals and present them to him.

Estate planning goals are like all long-term goals. We tend to avoid thinking about them or we think about them too much. When specific problems pop up, we may try to seriously consider them more. We avoid expressing them frequently because of (1) a lack of clarity, or (2) conflicts in goals. First, there is the difficulty of us not being sure that we are satisfying all of the goals that we may want to satisfy. We also may be unsure of how to weigh their relative importance. Secondly, conflicts of interest develop in the satisfaction of each of the goals. It may not be possible to provide adequate income for your wife and at the same time provide a nice "nest-egg" for your children as well. These kinds of goal conflicts force you to make choices that you would otherwise not like to make. But these choices should better be made by you than by someone else.

The variety of these goals and the importance you give each one of them makes each estate plan unique unto itself. There is no single estate plan that seems to fit everybody's needs. There are special things that you undoubtedly want to do in the distribution of your estate that are different than anyone else. As a result, *general* advice-giving in this area should be suspect. Each estate plan should be custom made with you in mind.

It is usually wise for you to sit down with your wife and other loved ones and consider with them (probably in a somewhat open manner) what your feelings really are. You should, for example, clearly point out that you are not avoiding the equal treatment of one member of the family without good reason.

You should also recognize that your goals are going to change over time. The importance of providing income for your entire family, of course, changes as your family grows up and moves away. It may be more important later on to be sure that the entire farm or business be transferred to an operating son than to make sure that one member of the family gets the same amount of money as the other.

VI. TOOLS OF ESTATE PLANNING

After you have collected all the required information concerning your estate and your current plan and recognized your planning goals, you are ready to begin thinking about how your estate may best be utilized to further your goals. There are available a number of tested tools to build your estate plan. In some plans nearly all of the tools must be used. In others one or two will be sufficient. Proper use of the proper tool results in an estate plan suited to you. Therefore,it is important for you to become familiar with the available tools.

In this chapter we will discuss the tools that you may use in planning your estate. The advantages and disadvantages of each will be outlined. While it may appear that one tool is a ready answer to nearly every estate planning problem, it cannot be stressed too strongly that no tool is to be blindly used. All of the pros and cons must be weighed in each individual case before a determination is reached whether to use it or not. And the advice of professional planners in this regard is essential.

A. Wills

While there are several tools available to you in planning your estate, the will is the most familiar. Almost every person who plans his estate will have a will prepared for him. The estate plan may consist only of a will. For the person of modest means, a "simple" will may be sufficient. For a person of moderate or substantial means, a will with trust provisions may be required. The estate plan may consist of several instruments, but there will always be a will.

A will is a legally enforceable declaration by which a person makes a disposition of his property to take effect after his death, which is revocable during his lifetime and inoperative until his death.

Your power to distribute your property is broad. You can generally give your property to whomever you please. There are, however, some restrictions. Some of these restrictions relate to whom you give your property and some relate to how your will must be prepared in order for it to be valid. Generally speaking, your will must be the expression of your desires and must conform to the requirements for execution of wills established by the law. In addition, you are not permitted to completely disinherit certain people.

1. Prerequisites to Making a Will

In every state, there is a law concerning the age at which you can make a will. In Minnesota, you must be 18 at the time you make the will. In addition, you must be of sound mind to make a valid will, but you need not possess superior or even average intelligence. There are certain standards that have been developed to determine if a person has the required mental capacity. One is of sound mind if he can understand in a general way (1) the nature and extent of his property, (2) his descendants, and (3) the disposition which he is making of his property. He must also be capable of appreciating these elements in relation to each other and of forming an orderly desire as to the disposition of his property. Like the age standard, "testamentary capacity" is determined as of the date of the making of the will and not of the death of the person who made it. If a person had the capacity to make a valid will at the time he made it, then his will is valid although later he ceased to have that capacity and at the time of his death did not have it. Further, one may have testamentary capacity even though he is under the care of another or lacks the ability to make a contract or transact other business.

A will may be invalid if it is made as a result of undue influence, fraud or mistake. Generally, a will is invalid if it is the result of an influence that destroys the free will of the testator and substitutes another's volition for his. This does not require that there be physical coercion or threats of violence. Such things as threats of lawsuits among children, creation of resentment toward the testator's children through false statements or threats of criminal prosecution of the testator may constitute undue influence. In order for the will to be invalid, it must be caused by the undue influence. It must be shown that the pressure resulted in a will which the testator would not otherwise have made.

A will is invalid if the testator has been willfully deceived by a beneficiary as to the character or contents of the instrument, or as to other facts which are material to the disposition of property. For example, if a beneficiary induced the testator to sign a will by telling him that it was a different document, it is invalid as a will, even though it conforms to other requirements.

Finally, probate will be denied when the maker, through mistake, executed the wrong document as his will. The typical case is where a husband and wife are making mutual wills and each signs the wrong instrument. Such an error is very serious since it shows that the maker lacked the intention to make the document his will. If a will omits to include certain provisions, there is nothing that can be done at probate to remedy it even though provision was omitted by mistake. In the case of words included by mistake, the probate court has the power to deny probate of those words or to reject the entire will.

When the maker of a will lacks general mental capacity to make a will, or when he signs the wrong document, the entire instrument must be denied probate. In cases of inclusion of provisions through mistake, undue influence or fraud, most courts normally reject only the portions of the will which are affected and probate the remainder.

2. Restrictions on Disposition

In addition to the requirements for a valid will discussed above, there are certain limitations placed on the disposition of your estate. You cannot by will deprive your spouse of a share of your property. Minnesota law allows a surviving spouse to renounce the will and elect against it if she desires. If she chooses to do so, she is entitled to one-third of all the personal and real property of the deceased spouse. And, if there were only one surviving child or no children, she is entitled to one-half. (This fractional share is, of course, a portion of the probate assets of the decedent.) In order to elect against the will, the spouse files with the probate court a written instrument announcing her intention within nine months of death or six months after admission to probate of the will. In effect, this provision of the law gives a spouse a minimal share of the other spouse's estate.

This "statutory share" may be limited or completely eliminated by an agreement entered into before marriage. Agreements made after marriage are also given effect by courts. Both types of agreements, however, must be fair and entered into after all the relevant facts are disclosed.

In some cases, a spouse is protected against transfers made by the other spouse which were made in order to defeat the marital rights of the surviving spouse. A transfer of assets by a person who retains a power of appointment, a power of revocation, or a power to consume the property transferred may be attacked in court by a surviving spouse. He or she may be able to claim a share of such transferred property.

There is no law that limits the power of a parent to disinherit his children by transferring his property by will to other persons. However, such wills are often challenged because of the maker's incompetency or for alleged fraud or undue influence. And when juries rule on such questions, they undoubtedly let the "unnatural" provisions of the will influence their decision. It is not necessary to give a child $1 in order to disinherit him, but it may be a good idea to at least mention the child in your will. Failure to do so may be material in determining whether the maker of the will had the mental capacity to recognize the persons who are his children.

If, however, a testator mistakenly omits a child from his will, the forgotten child is entitled to the same share of his parent's estate as if his parent had died intestate. This protection is afforded after-born children (children born after the death of the deceased parent) as well. These laws are based on the idea that the parent did not wish to disinherit his child.

3. Execution of Wills

The law imposes several requirements concerning how wills are to be executed in order for them to be valid. First, ordinary wills must be in writing. Oral wills are invalid in Minnesota. Second, a will must be signed by the maker or in the maker's name by some other person in the maker's presence and under his direction. Third, the will must be witnessed by at least two persons, each of whom witnessed either the signing or the testator's acknowledgment of the signature of the will. Some states require three witnesses, and as a result, it is often recommended that three witnesses be employed. Any person generally competent to be a witness may witness a will and a will is not invalid because it is signed by a witness who is also a beneficiary under the will. The witnesses must sign the will though they need not sign their correct or full names.

While it is not required, an attestation clause subscribed by the witnesses is usually included following the testator's signature. Such a clause generally recites that there has been compliance with all of the required formalities. An attested will (one that has complied with the above requirement) may be made "self-proved" by the acknowledgment of the testator and the affidavits of the witnesses made before a notary that the requirements for execution have been met. Either or both of these additional formalities makes proving the will and getting it admitted to probate much easier.

These execution requirements are strictly followed by courts and every effort should be made to follow them. In addition, there are other details that should be observed. Typewritten wills are usually preferable, since exact copies can be made and it avoids the dangers of illegibility that may result if the testator writes the will himself. It also removes the temptation to make small subsequent changes after execution and tends to avoid disputes as to when alterations were made. Any sort of erasures and corrections on the face of the will should be avoided. Precautions should be taken to ensure that the document offered for probate is the same instrument which was executed. At the very least, the pages of the will should be permanently fastened together at the time of execution. The testator and witnesses often sign each page in the margin for purposes of future identification. Finally, the attestation clause can recite the number of pages contained in the instrument.

After all execution formalities are completed, the instrument belongs to you. It is your will and you should choose the manner of its safekeeping. Some testators prefer to keep the document among their valuable papers. Wills may also be deposited with the probate court of the county in which you reside. Finally, your will may be kept by your attorney, in his office safe. Legal secretaries regularly check the death notices in the newspapers. If the name of someone whose will is in your lawyer's custody appears, the will must be brought to the attention of the potential heirs and the probate court. If someone knowingly withholds a will from the probate court, he is in contempt of court and is subject to fine or imprisonment.

4. Special Types of Wills

In addition to the ordinary wills that we have discussed, there are other kinds of wills that are recognized by the law. Some of these require less formality than ordinary wills and some are variations of the ordinary wills.

Holographic wills are those which are wholly in the testator's handwriting. In Minnesota, the fact that the instrument is holographic does not dispense with any of the formalities of execution. In some states holographic wills are valid without formal attestation. Because holographic wills are invalid without attestation, any handwritten corrections on an ordinary will are also likely to be invalid in Minnesota if execution formalities are not followed. Thus, attempting to change any provisions in your will without having witnesses present will probably not be successful.

Some states recognize the validity of "noncupative" (oral) wills in some circumstances. Frequently, such oral wills must be witnessed and reduced to writing within a designated number of days. And usually, these will are only effective to transfer personal property. The privilege of making a valid oral will is also sometimes restricted to people in military service. However, neither kind of oral will is valid in Minnesota.

Occasionally, a person wants to draw up a will before he takes an extended trip or before he undergoes major surgery. In such cases, he makes provisions for the disposition of his property in case he doesn't return or fails to survive the operation. Such wills are known as "conditional" wills. If, in fact, the testator does not survive, the will will probably be given effect provided, of course, that execution formalities are observed. But, if he survives the trip or surgery and later dies of other causes, the validity of the will may be questioned. In some cases, such wills have been declared invalid and in others they have been effective. But, no matter what result, there is a good chance that such wills will be challenged when they are presented for probate. As a result, it is preferable that an ordinary, unconditional will be executed.

Sometimes two people, typically a husband and his wife, will execute the same instrument as their respective wills. Often such "joint" wills are in favor of the surviving co-testator, and upon the death of him, to the same third parties. There are no particular legal problems presented by such wills unless they are executed under an agreement between the co-testators to dispose of their property in a particular manner. And, the mere execution of a joint will strongly suggests an agreement to not revoke it. If such a constraint exists, a later will, executed by the surviving testator, may not be given effect, since the joint will was irrevocable. Such wills are not favored by professional estate planners. They are too rigid and lock the surviving co-testator into a plan that may not be desirable ten or twenty years later. Joint wills may also have disastrous tax consequences if the co-testators are husband and wife. "Mutual" wills, separate but complementary wills, may also be found irrevocable if an agreement to not revoke them is involved. Mutual wills are better to use than joint wills, but there should be an express agreement concerning whether the surviving party is privileged to revoke his will following the death of the other co-testator.

5. Revision and Revocation of Wills

Within a comparatively short time after you have made your will, your estate, your family or both may change to such an extent that your will no longer suits your case. Changes in the tax laws may make it advisable to change your will. If such a change is required, there are two ways of making it.

You may execute a "codicil." A codicil is a legal instrument that modifies an existing will. It must be executed in accordance with all the requirements of the execution of a will. Usually, a codicil is used to make relatively minor changes and it should reaffirm the original will in all other respects.

A new will is generally preferable to a codicil if a change is desired. This is because a codicil may lead to difficulties in interpretting the two instruments together. Also, if a codicil detracts from the interest of any person under the will, he may contest the probate of the codicil. This will mean more expense and delay. The principal occasion for a codicil is when there is not enough time to permit the drafting of a complete new will. And, if a codicil is to be used, it should not be prepared until the original will has been carefully studied and the effect of the codicil accurately forecast.

In addition to modifying your will, you may revoke it, either in part or entirely. Your will may be revoked by a subsequent will or codicil, physical act or operation of law. Subsequent wills or codicils that expressly revoke an earlier will are ordinarily conclusive as to the revocation of the earlier will. But, the mere designation of a subsequent will as the testator's last is not an express revocation. Even though there is no express revocation of the earlier will, a subsequent will of necessity revokes at least portions of an earlier will that are inconsistent with provisions of the later will.

A will may be revoked by being burned, torn, obliterated, cancelled, or destroyed with the intent of revoking it. The will need not be entirely destroyed, and the slightest burning or tearing of the instrument or the cancellation of any material part is usually sufficient to constitute a revocation if the testator so intended. Crossing out provisions and cutting off the signature of the testator are common ways of revoking a will by this method. Attempts at revoking a will by this manner frequently lead to disputes because of the lack of proof of the testator's intent. It is very difficult to prove that a person who is now dead did a certain act for a specific reason. Thus, a will should not generally be revoked in this manner.

Finally, portions of your will are revoked automatically if your marriage is dissolved. Any provisions in your will that confer benefits on your spouse are revoked if you are subsequently divorced. Property that is prevented from passing to a former spouse is disposed of as if the former spouse failed to survive the testator. No change of circumstances other than the dissolution of marriage revokes a will.

6. Components of a Will

While a will is usually very specific in describing beneficiaries and property passing to beneficiaries, it is often necessary to go outside the will to accurately determine these matters. In some cases the designation of the property or beneficiary may allow the testator to alter the gift or beneficiary by later acts. But, so long as these acts have a lifetime motive, the gifts will be upheld under the doctrine of "facts of independent significance." Let's suppose that Jim Nelson's will gives "the automobile that I own at my death" to his brother Ed. At the time Jim's will was executed, he owned a Volkswagen, but shortly before his death he bought a Cadillac. The result is that the gift to Ed is worth $10,000, rather than $3,000. The gift to Ed is probably valid even though it had the effect of increasing the value of the gift to Ed. It is more probable that he bought the Cadillac because he wanted to drive a Cadillac rather than to give more to Ed.

Unattested documents may be incorporated into the will by reference so that they are considered parts of the will for purposes of construing the will and distributing the testator's assets. There are two requirements for this doctrine to apply: (1) the will must refer to a writing already in existence, and (2) it must be sufficiently described to permit its clear identification. The type of document to be incorporated has an effect on whether it is in fact incorporated into the will.

A list of items of tangible personal property may be made a part of your will, even though it does not meet the requirements for incorporation by reference noted above. Such lists may dispose of items not otherwise specifically disposed of by the will, other than money, promissory notes, title artifacts, securities and property used in business. To be valid, the list must be either handwritten by the testator or signed by him, and must describe the items and beneficiaries with reasonable certainty. The writing need not be in existence at the time of execution of the will and it may be altered by the testator after it is prepared. The will may simply refer to the list in existence at the time of the testator's death.

7. Inclusions in a Will

Wills range all the way from one sentence statements such as "I leave everything to Mother," to elaborate documents of several pages disposing of many kinds of property to many people and institutions. Because they vary to such an extent, it is impossible to discuss what should be included in your will without knowing your objectives or what is included in your estate. But, it is possible to examine what is generally included in a simple will--one without the complications of trusts. However, each attorney has his own preferred format. What is discussed here is not meant to be the ideal will. It is only a general discussion of what is standard in basic wills. Your will may be very different from what we present.

The beginning of a will generally carries your name and your permanent residence. You should be described by your legal name and, if you have been customarily named in some other fashion, that should be stated. The statement of permanent residence is important since the validity of a will is usually determined by the law of the state in which a testator permanently resides at the time his will is executed.

Another purpose served by the opening section of a will is to revoke all previous wills and codicils. This is important because you don't want your new, self-contained will to be an amendment to some outmoded instrument. Practice differs as to whether a revoked will should be destroyed or retained. Some attorneys recommend that if there is any doubt as to the testator's capacity, and if he would prefer the old will to intestacy, it should be kept.

Some professional planners name the children of the testator presently living in the opening section of a will. They also make provision for after-born children and adopted children. It is important to define exactly who is included when you refer to "children" in your will. This is because there is a strong inclination in many people to make gifts to "children" as a group and failure to define the group has resulted in an enormous number of disputes.

Following the opening recitations, the first article of a will frequently provides for the payment of all estate and inheritance taxes out of a designated fund. Commonly, such taxes are paid out of whatever is left over after satisfying any specific gifts and paying debts of the decedent and expenses of administration. This is referred to as the "residue." A provision which apportions the taxes is important since it directs the executor to use specific property to pay the taxes. It is important that the property out of which the taxes are to be paid be specifically defined. For instance, a statement that taxes payable with respect to "my estate" shall be paid out of the residue is unclear as to whether the taxable estate (with property that escapes taxation excluded) or the testamentary estate (the entire estate). The tax apportionment clause can't alter the tax liability, it can only affect the source of funds used for payment.

In Minnesota, if a tax apportionment clause is not included in a will, the taxes are payable out of the property that is subject to taxation. This means that any property that is disposed of in such a manner as to obtain a deduction is not subject to depletion for purposes of paying taxes. A tax clause is often recommended despite this provision in the law to make sure that the taxes are paid out of the specified property in the event that either the law is changed or the testator moves to another state which does not have a similar law.

After the provision for payment of taxes come specific gifts. Usually, the first property disposed of by a testator are his personal effects. These include clothes, jewelry, household furnishings, books, portraits and all other items of property which would be considered as belonging to the testator for personal use. This property would usually be included in the family allowances and, unless specifically mentioned in the will, would go to the surviving spouse and minor children.

To dispose of such specific items of tangible personal property, a will may refer to a list of such property and the names of relatives or friends to whom the testator wishes these items to pass. Such a provision in a will may be useful in distributing several items of small monetary value but of potentially large sentimental value. The list may be changed from time to time, and even a new list may be prepared after the will is executed. However, such a list may not be used to dispose of money, securities, evidences of indebtedness, documents of title or property used in a trade or business. A "devise" must be used to dispose of such items of property.

A devise is a testamentary disposition of either real or personal property (Formerly "legacy" or "bequest" was used to describe gifts of personal property, and "devise" was used to mean gifts of real property. The law no longer draws this distinction.) There are several different types of devises which should be noted. "General" devises are gifts of specified amounts of property such as 100 shares of IBM stock. They are not gifts of any particular shares, but gifts of a specified number of shares out of the mass. A "specific" devise is a gift of a particular thing. Needless to say, an accurate description of the article in question is necessary. For example, rather than giving your "violin," it would be better to make a gift of your "Stradivarius violin." And you should also provide what happens to the violin if the devisee does not survive the testator. A "pecuniary" devise is a gift of money. It is important that you do not become too generous with gifts of money. It is easy to provide for gifts of money that at the time of executing the will are perfectly reasonable, but which later, in less prosperous times, prove to be over-optimistic. One way to avoid this is to express the gift in both dollars and in fractions of the total estate. For example, if you wanted to give your nephew $5,000, you could provide for "$5,000, but in no event more than 5 percent of the total value of my probate estate."

Most gifts of real property are specific devises. But, it is possible that you may give a son a specified number of acres of farmland out of a much larger acreage. If you are certain that your residence is in joint tenancy, there is usually no need to make a gift of it. Disposition of it is controlled by two types of ownership. If devised property is subject to a mortgage, you should indicate whether the mortgage is to be paid out of the estate or assumed by the devisee.

After you have made any particular gifts of your property, the next article of a will provides for the disposition of the residue; that is, all that's left over. The residue may consist of any and all kinds of interests in property. Since a will is effective at the date of death of the testator, it covers the property he owned at his death, not the property he owned at the time he made the will. If he made his will long before he dies and does not change it, it is possible that the residue will include property that he did not expect to own when he made his will. Thus, the residuary gift may be more important than the testator imagined when he made his will.

Next in the usual order after the disposition of all the property comes the naming of the personal representative. The personal representative named may be an individual or it may be a bank or a trust company. And, you may name two or more co-personal representatives. It is often a good idea, especially when an individual is named as representative, to provide for replacements in case the named representative dies first or does not wish to serve.

Included in the same provision, or immediately following it, are provisions dealing with the personal representative's bond and his powers. You may relieve your personal representative of the obligation to give a bond as security for the performance of his duties.

While Minnesota law provides a personal representative with certain powers, there is often included a provision listing any additional powers and including powers provided by law. Even though such a listing may not add any powers to the personal representative, it is nonetheless a good idea to include it. This provides both the personal representative and the beneficiaries with the opportunity to see the powers in a precise and definite form without having to look up the law.

If you have any minor children, you will probably also want to nominate a guardian for them. Again, you can provide that no guardian will be required to furnish a bond. According to the law, the probate court is not required to appoint the person you nominate as guardian. But in practice, the courts give effect to the preference that you express in your will.

The closing recitation generally follows the nomination of a guardian. This merely identifies the document as your will once again and includes the date the will was signed. It is generally followed by an attestation clause which recites that all the formalities for executing a will were followed. This is signed by the witnesses who also list their addresses.

Again, this is the bare skeleton of a simple will. There are many other things that may be included. If a trust is to be established, the trustee must be named and his powers discussed. The distribution of the trust income must be provided for. These provisions may lengthen a will considerably. It is also possible for you to personalize your will somewhat. A will is a solemn document and what you say is likely to be taken seriously by your beneficiaries. If you feel that you want to say something to your children, a carefully written clause may be inserted. Of course, this should be kept reasonable. It would be fruitless to comment on a new tax law or give your opinion of Hitler. But, if you make clear the fact that you are merely giving advice and do not use language that might be interpreted as part of the disposition of your property, there should be no confusion.

You should also be warned that when you receive a first draft copy of your will from your attorney it will seem rigid, formal, and stilted--lawyers' language often appears this way to the non-lawyer. But much of it saves space and avoids confusion. There are expressions, called "words of art," which contain a preciseness and definiteness which might take paragraphs to reproduce if they were not used. For example, you may see either the phrase *per stirpes* or *per capita* in your will. Roughly, a gift to descendents *per capita* would give all of them an equal part, regardless of what degree of relationship, while a gift *per stirpes* would treat each equally distant branch of the family alike, with no individual taking any share if he has a parent living who takes a share. There are many other expressions like this. In those parts of your will which are technical, purely technical language should be used, for it is safest to avoid confusion as well as save space.

B. Life Insurance

Life insurance is a very important element in planning your estate. The function that it performs depends on the individual insured, his financial status and often his age. For the young family, the primary purpose is usually to compensate for the premature loss of earnings and funeral expenses. The object is to create an instant estate if the insured dies before he can create one for his family. There is no reasonable possibility for provision for his family by any other method of accumulation of property. Early in the career of the young family man, he need not worry about the shrinkage of his estate by taxes and administration expenses. His aim is to provide a means to carry the family through the critical period that would result if anything were to happen to him.

As the years go by, the role of life insurance changes. By the time of retirement, loss of earnings from retiring rather than from death may pose the greater problem. In the intervening years, life insurance may have been used to build an estate, through permanent values in the policies. By that time, loan values, cash surrender values and paid-up insurance values may constitute a sizeable sum. This may then be used as a retirement annuity or a paid-up policy.

For the mature, successful man, insurance is often used as a means to conserve the rest of his estate. Often he will have accumulated substantial assets, some of which are not liquid such as real estate, stock in closely held corporations and other business assets. A classic example of this is our Minnesota farmer, Frank Jones. The vast majority of his estate is tied up in his farming operation. To avoid a forced sale of such assets that would probably not bring the full market value, life insurance may be an essential source of cash to pay estate debts, taxes and expenses.

Life insurance can also provide an important source of funds elsewhere in the business environment. It may be used to provide the necessary cash for the purchase of a deceased partner's interest in a partnership. If the insured is a sole proprietor, an employee may enter into an agreement to purchase the business on the death of the owner. Life insurance may again be used to fund the purchase from the estate of the deceased owner. If the insured was a major stockholder in a closely held corporation, life insurance may compensate the corporation for the loss of an important man or serve as a source of funds to finance the transfer of his interest in the corporation. Such an arrangement benefits the other stockholders by allowing them to retain control of the business. And the heirs of the stockholder are given a market for otherwise unmarketable assets.

1. Special Characteristics

Life insurance has a number of special characteristics that make it very useful as an estate planning tool. Because of the important role that life insurance normally plays, state law protects the insurance proceeds and the cash surrender values from the claims of the insured's creditors. These laws are based on the idea that the obligation of an insured person to his family is entitled to priority over obligations to his creditors.

Insurance proceeds may be payable in such a way that will avoid probate administration. This will help hold down the costs of administration of your estate. But even where the proceeds are subject to probate, the costs may be less than that of other assets because it requires less work to collect insurance proceeds than it does to collect other assets.

A life insurance contract is also unique because there is generally available a variety of options for the payment of the proceeds. These options will be discussed in more detail later. But, an important advantage of life insurance is that either the insured or the beneficiary can select how the proceeds will be enjoyed.

Perhaps the most important characteristic of life insurance is its unique ability to create an estate instantly when the insured dies. No other form of investment has this quality.

2. Kinds of Insurance

There are a number of life insurance policies available to you. Not only are there several types of policies, there are many different features found in policies of the same general type. Each insurance company provides special features for its policies. What follows is a brief description of the basic types of policies and policy features. Details of individual policies must be obtained from your life insurance agent.

"Term insurance" provides pure insurance. It is, in effect, temporary insurance for a particular period. At the end of the period, it has no value. If the insured wants similar protection when the period runs out, he purchases a new policy at a slightly higher premium, provided he is still insurable. Because of the uncertain protection given by this approach, most companies sell policies that are guaranteed renewable. This gives the insured the right to purchase a term policy giving the same coverage in future years without evidence of insurability.

One of the most popular term policies is *"five-year-renewable term,"* under which the face amount of the policy stays the same over the years but with premium increases every five years. Under a *"decreasing term"* policy, the annual premium stays the same each year, but the face amount of the policy decreases. This is often sold as mortgage cancellation insurance which assures that the family home will pass to survivors free of the mortgage. As the loan balance decreases with each mortgage payment, the insurance coverage decreases correspondingly. A "convertibility rider" can be included in a term policy. This gives the insured the option to convert his coverage to an ordinary life policy, at a higher premium, without evidence of insurability.

Perhaps the most widely sold type of policy is *"ordinary life"* (also called "straight life" and "whole life"). This policy combines decreasing term insurance with an investment feature. When you take out such a policy, the annual premium stays the same for the rest of your life. In this respect it differs from term insurance which calls for periodic increases in the premium for the same insurance coverage--a portion of each premium pays for pure insurance protection to guarantee that the beneficiaries will be paid the face amount of the policy upon the insured's death. The balance goes toward building a cash surrender value in the policy. This means that if you want to surrender the policy you will receive a specified amount in return, depending on how long you have paid on the policy. In addition, when the policy is in force, the insured has the right to borrow an amount up to the cash surrender value.

A variation of the ordinary life policy has a more substantial investment feature, meaning that annual premiums are higher and the cash surrender value builds up at a faster rate. *"Limited pay life"* policies provide for the payment of all premiums in a given number of years (often 20 years). The insured pays premiums for the designated number of years, after which the policy is paid up for its face amount. The higher premiums build up a fund that produces the income needed to pay the cost of the insurance after the policy is paid up.

"Endowment" policies carry the features of ordinary life insurance with the addition that the face value is payable at some specified time during life, if you live until then. The insured pays a premium out of which the principal is built up and at the same time an added premium for which you can have an agreed amount of principle or secure an annuity after a given age. If you live to the age for which you have contracted, you will be paid the principal or an annuity in an amount specified by the policy. At the same time, your beneficiary is protected by the life insurance feature.

Each of these types of insurance policies has its costs and benefits. The need to be filled and your ability to pay must be considered when you decide which policy is for you. Term insurance furnishes maximum protection for the period of coverage at minimum cost. It has no surrender value and offers no protection after the term, however. Ordinary life insurance gives lifetime protection at the lowest level premium, but payments continue for life. The limited payment policy requires a greater annual premium, but it is required to be paid only for the limited period required by the policy. An endowment policy requires a larger premium, but it makes a fund available to you during your lifetime if you survive to the end of the period of the policy.

Often a combination of these policies can fill your needs within your financial ability to pay. Once the need and ability to pay has been state, a qualified life underwriter can often provide the policy for you. This is why he is a valuable member of your estate planning team.

3. Settlement Options

There are basically four ways that the proceeds from life insurance policies can be handled. A lump-sum payment can be made to a named beneficiary. A lump-sum payment can be made to the insured's estate, or to the insured's personal representative. The proceeds can be left with the insurance company and paid out in installments under one of the company's settlement options. Finally, the proceeds can be placed in a trust.

Probably, the most frequently used method of settling life insurance proceeds is a lump-sum payment to the named beneficiary (usually the insured's spouse) or to the secondary beneficiaries (usually the insured's children). The advantage of such an arrangement is that it gives a surviving spouse immediate use of the insurance fund. It may be preferred over a trust since the expenses of a trust administration are avoided. The principal advantage of a lump-sum payment over leaving the funds with the insurance company is with the rate of return on the money. You can usually get a better return on the money from any investment that you might make, including such conservative investments as government bonds or insured savings deposits, than you receive from the insurance companies. The biggest disadvantage of such a settlement is that the preservation of the fund depends on the beneficiary. If he or she is not experienced in financial affairs or is a spendthrift, it is possible that the fund which was designed to provide lifetime protection will be wasted away in a short time. A trust or a settlement option that leaves the money with the insurance company will prevent this.

A method of settling the proceeds that coordinates the proceeds of insurance with other assets is to designate the insured's personal representative or estate as beneficiary. This will cause the proceeds to pass by the testator's plan and will ensure that the executor has the necessary funds to pay debts, taxes and expenses. There are disadvantages, however. First, this will subject the proceeds to the delays of probate. Second, the proceeds will be subject to the claims of the insured's creditors. Finally, payment to the personal representative or estate may result in the loss of tax exemptions.

If the proceeds of a life insurance policy are left with the insurance company, there are several different methods by which they may be paid out. If a "fixed payment" option is selected, a specified amount is paid periodically (for example, $150 per month) until the policy proceeds are exhausted. If the primary beneficiary dies before the fund is exhausted, the remaining payments are made to the secondary beneficiaries. A "fixed period" option results in payment of a fixed amount for a predetermined number of years. The amount of each payment is determined by the amount of the insurance fund plus interest and the number of years selected. Secondary beneficiaries may again be paid if the primary beneficiary dies before the fund runs out. A "straight annuity" may be purchased with the insurance proceeds. This provides for periodic payments for the beneficiary's life. But the periodic payments are often low, no provision can be made for secondary beneficiaries and it involves a gamble that the beneficiary will outlive his or her expectancy. Finally, most insurance companies have an "interest" option. Under this arrangement, the proceeds are held by the company and interest is paid periodically. Usually, a power to withdraw from the fund is also included, although the amount or number of withdrawals may be limited by the insurance company.

Leaving insurance proceeds with an insurance company has a number of advantages. The settlement plan can provide a lifetime annuity for the beneficiary, a feature unavailable other than through an insurance company. The settlement plan relieves the beneficiary of the burden of financial management and provides for a safe, fixed rate of return. This certainly may be particularly important if the beneficiary is of relatively modest means. And, while interest income is generally taxable, up to $1,000 of the interest portion of installment payments made to a surviving spouse will be free of federal income tax.

There are, however, disadvantages of such settlement options. Settlement options may not be as flexible as you might want. You may not want to decide who gets what at your death but may prefer to allow a third person to decide, depending on the needs of various beneficiaries at different times. At present, the only way to accomplish such a "sprinkling" arrangement is through the use of a trust. Another disadvantage for some people is that the insurance proceeds usually cannot be invested in assets that offer the possibility of appreciating in value. The money cannot be invested in such things as stock that may pay dividends as well as increase in value. Finally, if the insured elects an inflexible settlement plan for his beneficiaries, they will be unable to change it after he dies.

The final way of settling the proceeds of life insurance is to designate the trustee of a lifetime trust as the beneficiary. On the death of the insured, the proceeds are added to the rest of the trust assets to be administered according to the wishes of the insured. It may also be possible to pay the proceeds to a trust established under a will. We will discuss such trusts in more detail later, but for now a few advantages and disadvantages should be noted. The trustee may be given the power to invest the proceeds in assets that will increase in value. Thus, the proceeds may in effect increase. Also, the trust may provide an overall plan for disposition, including providing for the sprinkling of benefits among various beneficiaries. However, the trust does not offer the security of leaving the proceeds with the insurance company. While the investments of the trustee may increase in value, they may also decrease. In addition, there are certain administration costs that will be incurred. As a result, part of the proceeds, or the income from proceeds, will go to paying the trustee.

4. How Much Life Insurance?

Many people have some life insurance but frequently they discover, or are told, that it is not enough. Determining whether you have enough life insurance is a difficult task, but it must be done.

The traditional way of deciding how much life insurance you need is to place a dollar value on the income needs of your family if you should die within the next year, and on the insurance that would be required to produce the needed amount of money. The family's needs generally fall into the following groups:

1. Immediate cash to meet immediate expenses of last illness, funeral expenses, death taxes, estate administration costs, etc.

2. Income needed to raise children.

3. Future emergency fund.

4. College education fund.

5. Income for spouse from time children leave home until retirement (and social security) age.

6. Retirement income for spouse.

Specific dollar amounts are arrived at for each of these categories, and the present value of the required fund is determined. From this is subtracted the value of other sources of income that will be available for the family's support. Social Security survivor benefits and employee death benefits must not be forgotten. Also to be considered are savings accounts, investments and other income-producing assets. Life insurance is needed to make up the difference between the family requirements and what these other sources of income fail to provide.

Such an approach has its flaws. It cannot possibly take into account any future changes in the family's circumstances. And, it assumes that $500 ten years from now will purchase what $500 today can supply. But an attempt must be made at calculating your life insurance needs. While there may be many arbitrary decisions and some coin tossing involved, an informal guess is better than no guess at all. Your life underwriter can help you a great deal in determining your insurance needs. And your insurance needs, like the rest of your estate plan, should be re-examined periodically.

5. Life Insurance as Part of Your Estate Plan

Life insurance can be an important part of your coordinated estate plan. But to fit it into your overall plan you must do some planning. Inadequate planning and coordination between your insurance and the rest of your plan can result in many complications. Of particular importance is who you designate as beneficiary. Many married people provide that their spouse is the primary beneficiary and their children are secondary beneficiaries. This may be very adequate in many cases. But, if your estate plan includes a trust, you may very well want the insurance proceeds includable in such a trust. For example, if a trust for your children is established in the event that your spouse does not survive you, direct payment of the proceeds to your children may result in having to establish a guardianship for them in addition to the trust.

The beneficiary designation is particularly important if your estate will incur estate taxes. If the proceeds are payable to your personal representative, they will be taxable. Careful planning can enable such proceeds to escape such taxes.

You may also want to transfer any insurance policies that you own insuring yourself. There may be good reasons to do so. But such transfers must also be coordinated with your and your spouse's estate plans.

In short, life insurance often plays a substantial role in estate planning. It may constitute a major portion of your estate. Because it is so important, you can't afford to fail to integrate it into your overall plan. Your attorney and your life underwriter must work together to ensure that your life insurance meets your needs and estate planning objectives.

C. Annuities

Closely connected to insurance contracts are annuity contracts. Annuities are decidedly different from insurance contracts, however. While most insurance is insurance against death, an annuity is insurance against living. Insurance companies come out better when the purchaser of an annuity dies young and when the buyer of an ordinary insurance contract lives to a ripe old age. Annuities are designed to provide a regular income guaranteed for life.

The idea behind an annuity is simple. The purchaser of the annuity pays to the company a sum of money in exchange for guaranteed payments for life. The annuity company determines the amount of periodic payments to the purchaser on the basis of the life expectancy of the purchaser. That is, the company considers how long a man or woman of a given age typically lives without considering how long the particular purchaser may live. For example, let's suppose that Frank Jones, our 55-year-old farmer, wants to purchase an annuity. He goes to his insurance company and purchases an annuity for $30,000. The insurance company, through its actuarial tables, determines that Frank's life expectancy is 70 and therefore agrees to pay him $2,300 per year in monthly payments. If Frank dies within six years, the insurance company will have paid $13,800 or less while it will have received $30,000. But, if Frank lives for 20 years, he will have received $46,000 on a $30,000 investment. The difference is made up by the insurance company from the money it makes on those purchasers of annuities who die prematurely. It should be noted, however, that insurance and commercial annuity companies are still in active business which seems to indicate that the chances of outliving your expected life are weighted against you.

There are variations of this "straight life" annuity. If you don't want an annuity that will leave nothing for your heirs if you should die soon after buying the contract, there are annuities that are designed to meet this problem. A familiar type is the "years certain" annuity. It guarantees that if the purchaser dies within a stated number of years after buying the contract, monthly payments will continue to be made to the beneficiary until the period has expired.

Another variation is the "joint and survivor" annuity. It provides payments for two people to last as long as either lives. Annuities that provide such additional guarantees cost more than straight life annuities because they may continue well beyond the end of a single life-span.

There are also different ways to purchase an annuity. So far we have looked at a lump sum purchase--you pay a single sum of cash and the annuity starts immediately. But you can purchase an annuity that will provide income in the future. These "deferred" annuities are generally bought on an installment basis. Another way to buy an annuity is by converting a permanent life insurance policy. If it provides protection that you no longer need, the cash value may be used to purchase an annuity. But before you convert a life insurance policy, you should be sure that you no longer need the protection that it provides.

Rather than purchasing a commercial annuity, it may be possible for you to establish a private annuity. In this type of arrangement, the "annuitant," generally an older family member,transfers property to a younger member of the family in return for a promise to pay a lifetime monthly payment. This type of annuity seems attractive due to the tax avoidance benefits that it carries and since the purchaser of the property is not required to pay one large original payment in order to get possession of the property. However, the tax benefits should not be the main reason to establish a private annuity. In case the purchaser of the property dies, or simply cannot make the required payments, the annuitant has lost both his property and his means of support. If the annuitant's estate consists of only one large income-producing property, it may not be a good idea to transfer the property out of his control. In addition, a period of inflation could greatly diminish the buying power of the monthly payments. And finally, the tax consequences are not completely settled. In short, unlike commercial annuities, private annuities may be somewhat of a gamble and all terms included in the annuities document should be carefully considered. Professional help is essential.

In general, annuities provide a safe and stable source of retirement income. They do not offer any promises of overnight profits or threaten spectacular declines in value. They do not require any time for management. They are designed to provide a regular income guaranteed for life. If you have a sum of money, annuities are a sure way to make it last for the rest of your life.

There is also an important tax advantage presented by annuities. Each payment under an annuity contract is made up of both the purchaser's original investment and interest. Only the interest portion is taxable. But that interest is not taxable until it is actually paid to you. By then you are likely to be in a lower tax bracket.

The major disadvantage of annuities is that they are extremely rigid. They can't be modified to meet emergencies and there is generally no cash surrender value or loan value once they begin. In contrast, most life insurance provides a hedge against future changes by providing for borrowing against the policy or surrendering it for its cash value. A trust arrangement can be used to accomplish many of the same objectives that are behind purchasing an annuity with a great deal more flexibility. A trust also allows you to realize any appreciation in the value of your property.

Thus, while an annuity may not be a substitute for other more flexible tools, they should not be overlooked as a possible component of your estate plan. They offer particular advantages that are not presented by any other tool.

D. Joint Tenancy

A frequently used tool in many estate plans is joint tenancy ownership. As you recall, when property is owned by two persons in joint tenancy, the surviving joint tenant owns the property following the death of the other joint tenant. In this way, joint tenancy ownership serves as a will substitute. It provides for the disposition of your property after your death.

Both real and personal property can be owned in joint tenancy. In addition, it is possible to arrange joint bank accounts so as to pass the account to the survivor of the parties to the account. These bank accounts are not legally joint tenancies, but they have much the same effect. Such accounts are ordinarily established by depositing money in the name of the depositor and the intended beneficiary. Whether there are survivorship rights depends on the agreement between the depositors and the bank. It does not depend on whether "and" or "or" is used in listing the co-depositors.

A major difference between joint bank accounts with survivorship rights and property held in joint tenancy is that you can dispose of the proceeds of a joint bank account by will if the account is specifically identified in your will. Thus, even though you establish an account that would result in passing the proceeds of the account to the other depositor, you can change how the money will be distributed by a provision in your will. This cannotbe done with property held in joint tenancy. When you create a joint tenancy, the other joint tenant cannot be denied his share of the property.

The main reason for using a joint tenancy is to avoid probate. Because the disposition of the property is legally established by the type of ownership, it is not necessary to have the probate court rule on the transfer of the property. This feature of the joint tenancy is often very attractive to those who are planning their estates. And, since nearly all types of property can be placed in joint tenancy, it is possible to develop an estate plan (based on the joint tenancy) that will virtually avoid all probate. In small estates where there will not be any estate tax liability, such a plan may suffice. However, even in these cases, a simple will is desirable. A will can prevent some of your property from passing under the intestacy laws in case you fail to take title to it in joint tenancy. Furthermore, if you have minor children, you will probably want to nominate a guardian for them.

Another advantage of using joint tenancy ownership is that creditors of a deceased joint tenant cannot reach the property to satisfy their claims against him. To subject the property to their claims, creditors must sever the joint tenancy during the debtor's life. While this may not be important in every estate, it is an advantage of using joint tenancy ownership as an estate planning tool.

A final advantage that joint tenancy offers is that it keeps the ownership of property unified. A farm may lose a sizeable portion of its value as an operating unit if it must be broken up because of the death of one owner. It is probably undesirable to divide ownership of the family residence between a surviving spouse and children. Joint tenancy can prevent this division in ownership.

These advantages may be outweighed in many cases by the disadvantages of owning property in joint tenancy. This is particularly true if you must be concerned about estate and gift taxes because joint tenancy ownership carries with it several important tax consequences. First, if you purchase property, taking title in joint tenancy with another person, with only one of you supplying the money, you may be responsible for gift taxes. This is because a joint tenancy gives each co-owner an interest in the property that can't be destroyed. If the property is sold, both are entitled to share the proceeds of the sale. You cannot transfer your share of joint tenancy property so as to prevent the other joint tenant from receiving it on your death without first severing the joint tenancy. And, severing a joint tenancy may also result in gift taxation. This responsibility for gift taxes may be significant in some cases. Don and Marilyn Evans own stock as joint tenants that is currently worth about $125,000. If Don paid for the stock, the gift taxes that were paid (or are owed) may be substantial.

There are two exceptions to this that are important. If you open a joint bank account whose proceeds are payable to the survivor, there is no gift tax incurred until the party who did not put any money into the account withdraws money.

The second exception involves real estate acquired by a husband and wife and joint tenants. If only one of the spouses supplied the money for purchasing the real estate, there is a gift tax involved only if the spouse who supplied the money elects to treat the purchase as a gift. If the election is not made, no gift tax will be incurred. It may be desirable to treat the purchase as a gift in certain cases. If the property appreciates in value, the election shields part of the increase in value from gift taxation if the joint tenancy is later secured. The election is also a prerequisite to preferred treatment under the estate tax law.

The second tax problem presentated by joint tenancy ownership involves the estate taxes incurred at the death of the first joint tenant. Use of the joint tenancy does not eliminate estate taxation. There are three separate rules for determining how much is included in the decedent's estate. If a married person dies owning a qualified joint interest with his spouse, 50 percent of the value of the jointly owned property is included in the decedent's gross estate. There are a number of technical rules that limit this rule, one of which is that the creation of the joint interest was a completed gift.

If any of the requirements for this "fractional interest rule" are not met, the full value of the jointly owned property will be included in the decendent's estate for estate tax purposes unless it can be shown that the money for the property was provided by some party other than the decedent. If part of the money for the property was provided by the decedent and part was provided by the surviving co-tenant, a percentage of the value of the property equal to the percentage of the purchase money provided by the decedent will be included in his estate. The decedent's personal representative has the burden to prove that the surviving co-tenant contributed to the purchase price. The effect of this is that in many cases the full value of the jointly held property will be included in the estate of the first co-tenant to die. This "consideration furnished" rule applies to joint tenancies held by persons other than spouses and to property held by spouses that is not a qualified joint interest.

A special rule may apply to farm or business property that is held in joint tenancy. A portion of the value of a farm or business may be excluded from a decedent's gross estate if his or her spouse materially participated in the operation of the farm or business. The amount excluded under this "material participation" rule is computed under a formula that takes into account the unrealized appreciation in the jointly owned property and the number of years in which the surviving spouse materially participated in the operation of the farm or business. The maximum amount of the exclusion is 50% of the value or $500,000, whichever is less.

For Minnesota death tax purposes, it may likewise be possible for a surviving spouse to treat his/her contribution to the operation of a farm or business as a furnishing of consideration and thereby exclude a portion of the value of jointly owned property. However, under both the federal "material participation" rule and the state rule, active involvement in the business operation is required.

To illustrate the joint tenancy rules, let us assume that Don and Marilyn Evans bought their house in 1965 for $60,000 with Don supplying all the money. If he died when the house was worth $100,000, the entire value would be included in his estate. If it could be shown that Marilyn supplied $20,000 of the purchase price, only two-thirds of the value, $66,667, would be included in Don's estate for tax purposes. If the house is a qualified joint interest, $50,000 would be included regardless of who supplied the purchase money. However, a gift tax may have been paid earlier.

The final tax problem created by the joint tenancy arises at the death of the surviving joint tenant. When a joint tenant dies, the surviving co-tenant has a fee simple in the jointly held property. The full value of the property will be taxed at the survivor's death. The effect of this may be seen if we carry our examples one step further. Assuming the Evans' house is still valued at $100,000 when Marilyn dies, this $100,000 will be included in her estate. Thus, where Don supplied all the purchase money, $200,000 will have been subject to estate taxes in the transfer of the house from Don and Marilyn to their children. Even under the fractional interest rule, $150,000 will be subject to tax.

These tax problems may be quite significant in estate plans that require careful tax planning. But in those estates where death taxes do not present any planning difficulties, the tax disadvantages of joint tenancies are not important. This does not mean that the joint tenancy is a tool that can solve all your estate planning problems. There are some further difficulties that may be encountered in relying on the joint tenancy without further careful planning.

Because the creation of a joint tenancy carries with it an immediate right to enjoy the property, a joint tenant cannot be deprived of that right even if he or she did not pay for any part of the property. This means that if you purchase property and take title in joint tenancy with another, you cannot sell it by yourself and you cannot provide for any other disposition of your interest in the property by your will. If you want to merely give the other joint tenant a life estate, you are prevented from doing so. Thus, the joint tenancy is a rather inflexible tool. If, for example, your personal representative discovers that he needs cash to pay debts, expenses or taxes, he cannot sell any of the joint tenancy property to meet the obligations.

If you adopt a joint tenancy estate plan, you must be careful to avoid two other problems. It is easy to place all your property in joint tenancy with your spouse and thereby bar yourself from providing anything for anyone else. Or you may place all your farm business assets in a joint tenancy with your son with whom you have formed a partnership and not leave anything for your spouse. You must be careful to think about *who* you would like to have your property after your death before you develop a joint tenancy estate plan.

In addition to forgetting people that you might like to remember, it is possible to forget property. This can happen through merely overlooking some of your property when you are creating joint tenancies. Or you may purchase property and fail to take title in joint tenancy. Don Evans, the 3M executive, might decide to invest in a rather speculative company, hoping to strike it rich, and not want his wife to know how much of their money he has gambled. So he takes title to the stock in his name alone and gives as his address his office address. If he dies owning the stock, there will be a partial intestacy and the stock will pass under the intestate succession laws. And as a result, probate will be required. Thus, the goal he sought to achieve by placing all his property in a joint tenancy has been frustrated.

The joint tenancy is a valuable estate planning tool. Like the other tools that are available, it offers features that no other tool can match. But it is no more than one tool among several. It is not the complete answer to your estate planning needs even though it has been called the "poor man's will." The use of a joint tenancy requires careful planning and coordination with the rest of your estate plan. When viewed as a tool rather than a cure-all, the joint tenancy can play an important role in developing an estate plan suited to your estate and objectives.

E. Sales

Another estate planning tool available to you is an outright sale of your property. One effective way for you to provide for the disposition of your property after your death is to simply transfer it for value during your lifetime. Of course, this may not fulfill any goals that you might have concerning your estate. But selling part of your property may be a valid method of disposing of part of your property in some circumstances.

A sale of your property may take one of two forms. First, there is the cash sale. You transfer your property in exchange for a certain amount of money that you receive at the time you transfer the property. Second, there is an installment sales contract. You transfer your property in exchange for a sum of money that is to be paid over time in installments.

The sale of your property carries with it important income tax consequences. When you sell property, the difference between the sales price and your "basis" (investment) in the property is the gain or income from the sale. This amount is subject to federal and state income taxation. This income may be eligible for more favorable income tax treatment if it is capital gain. Whether the gain is capital gain depends upon the type of property sold.

The amount of gain on income which would be subject to income tax may be decidedly different if property is sold by a decedent's estate or heirs. At the present time an estate or a decedent's heirs receive as their basis in property the value of the property at the time of death. This is known as a "stepped-up" basis. In a time of inflation, this value may be significantly greater than the decedent's basis in the property. Therefore, if the property is sold shortly after death and before a significant post-death change in value, it may be possible for such a sale to occur with little or no income tax liability.

The stepped-up basis provision will expire on December 31, 1979. However, an estate or a decedent's heirs will still receive an increase in basis to the value of the property on December 31, 1976. Thus some of the appreciation in the value of the property will still escape income taxation.

If a cash sale is involved, the entire gain will be included in your gross income for the taxable year. The sale of a substantial amount of property will thus result in an increase in income tax liability for that taxable year. However, the availability of income averaging greatly reduces the harsh tax consequences of such a transaction.

If an installment sales contract is used, the taxable gain from the sale of the property may be spread over a period of years. There are several requirements which must be met before the installment sale method may be used. The payments received in the year of sale cannot exceed 30 percent of the gross sale price.

Interest must be charged at a reasonable rate, and payments must be received in two or more tax years. There may be a problem in qualifying for installment sales treatment when the property sold is heavily mortgaged and the buyer is assuming the debt. The excess of the debt assumed over the basis of the property is considered to be part of the payment in the year of sale. This may make it impossible to meet the 30 percent test.

If all requirements are met, however, the reportable gain in any year is that portion of the payments received that the gain bears to the total contract price (sales price less any mortgages). This may be illustrated by a sale of land. Assume that Frank Jones' cost basis is $60,000 and the land is sold for $120,000. The buyer assumes a $40,000 mortgage, makes a $20,000 down payment, and agrees to pay the $60,000 balance over a period of three years. Frank's gain is $60,000 ($120,000 less his $60,000 cost basis); his total contract price is $80,000 ($120,000 less the $40,000 mortgage) and thus the reportable ratio is 75 percent ($60,000/$80,000). In the year of sale, Frank would report 75 percent of the $20,000 down payment, and in each of the following two years, he would also report 75 percent of each $20,000 payment. In this manner, he accounts for his total $60,000 gain over a period of four years.

The ability to spread the taxable gain from an installment sale over the period of the contract makes such sales useful in estate planning. You can arrange the periodic payments so as to provide for retirement income. At the same time, you will not be forced to pay income taxes on the full amount of profit from the sale in a single tax year. Finally, such arrangements are good for the buyer since he has control of the property and may be able to pay for the property with the money earned from it. However, once the benefits of the installment sale have been elected, the transaction cannot be undone without immediate tax consequences. If the installment obligation is disposed of by the transferor of the property, the disposition will cause immediate recognition of the balance of the gain from the sale in the year of disposition. There is an exception to this rule for transfers of such obligations at death. However, this exception does not apply if an installment obligation is used to satisfy an estate debt including any monetary devises. Thus, once the property has been sold on the installment basis, little flexibility remains for future estate planning with regard to the installment obligation received by the seller since the transfer of the obligation, even by gift, will trigger recognition of the deferred income.

It is possible to combine a partial gift with either of these sale arrangements. (As used here, a "gift" is a transfer of property for less than the fair market value of the property.) This may be desirable if your intended heir can't afford to pay the full market value of your property or if you simply want to *give* some of your property to someone. This is simple enough in a cash sale. If Frank Jones wants to sell part of his farm to Frank, Jr., but wants to give him a "good deal," he can merely reduced the sales price below the market value.

If an installment sale is involved, the sale-gift combination may become more complex. You can simply lower the purchase price by means of a gift, thereby reducing the installment payments. For example, if the market value of a certain tract of Frank Jones' farm is $120,000, he could sell it to his son for $70,000. If the sales contract was for a ten-year period, Frank, Jr. would only have to pay $7,000 per year to retire the debt rather than the $12,000 required for a market value purchase. A variation of the sale-gift combination is an installment sale which involves cancellation of part or all of the payments as they become due. If Frank, Jr.'s annual payments were $12,000, his father may want to cancel $6,000 per year. If this option is chosen, you should be careful to maintain a record that already shows that the indebtedness has been cancelled. If this is not done and the seller-donor dies, the buyer may be responsible for the full payment.

If a gift is combined with a sale, there may be gift tax consequences involved as well as income taxes. With a bargain sale, the difference between the fair market value of the property and the sales price is considered to be a gift. Gift taxes may be required to be paid on this amount. However, since the "sale" transfers full title in the property to the transferee, the gift will qualify for the gift tax annual exclusion of $3,000.

Potential gift tax liability as the result of an installment sale can arise at the time of sale, at the time of forgiveness of either part or all of an installment, or at the time of a later transfer of the installment obligation. A gift of the installment obligation itself will cause potential gift tax liability since a taxable gift in the face amount of the obligation results. At the same time, such a disposition of the obligation causes recognition of the deferred gain for income tax purposes.

Sale transfers of property offer no major estate tax savings. While the value of the property sold is removed from the gross estate of the transferor, it is replaced by cash and, in the case of an installment obligation, the fair market value of the obligation. Only to the extent that cash already received has been expended and is no longer held by the transferor at the date of his death will estate tax savings result. If the sales price was less than the value of the property transferred and the transferor dies within three years after the transfer, the difference in value will be subject to estate tax. And if the transferor retains powers over the property, it may also be subject to estate tax. Thus, the major estate tax benefit of a sale is the conversion of a nonliquid asset into cash which can be expended for living expenses. To the extent that the cash is so used, the gross estate will have been reduced so that an indirect estate tax benefit will result.

Selling your property allows you to make sure that certain people receive your property. And, if you combine it with a gift, the price may not prevent some of your intended heirs from "purchasing" your property. While this may also be accomplished by outright gifts, a sale or a sale-gift combination allows you to arrange the transaction so that you can have a retirement income or money to take a long-anticipated vacation. In short, it allows you to convert your property to cash for the things you want to do. This is attractive for those of us who do not have enough property to simply give away.

A sale of some of your property provides the buyer, who may otherwise be one of your heirs, with immediate ownership of the property. If Frank Jones sells income-producing property such as a 40-acre tract of farmland to his son, it gives him an opportunity to see how Frank, Jr. will manage the land. He can also provide help to his son so as to make it more productive. And, it allows Frank, Jr. to be responsible for some property without being forced to manage the entire 400-acre farm. At the same time, a sale of 40 acres to Frank, Jr. relieves Frank Jones from the responsibility of managing that tract.

Perhaps the biggest disadvantage to a sale of assets as an estate planning tool is its inflexibility. While sales may be arranged in several different manners, once a sale is made, it is complete. If you transfer an asset, you can't later use it to meet an emergency or any other change in circumstances. Thus, it is a good idea to limit the use of sales as estate planning tools. It is not a good idea to sell so much of your property that you are no longer able to meet future, unforeseen changes in circumstances.

Being released from control and management of part of your property may not always be an advantage in favor of selling part of your property as an estate planning tool. Frustration could result if income-producing property is mismanaged by the purchaser or if he subsequently resells it. Frank Jones may want to have the final word in determining how the 40-acre tract is used.

Before you decide to sell some of your property you should carefully consider the tax consequences of such a sale. No matter how you arrange the sale, the gain will be subject to income taxation. The extent of this liability should be considered before you make any such arrangements. While the amount of taxes that you will be required to pay may not be great when compared to the sales price, you cannot ignore the fact that some income tax will be required to be paid.

While selling your assets may not strike you as an estate planning tool, if such sales are properly coordinated with the rest of your estate plan, they may be very useful tools. It is possible for you to use such lifetime transfers of your property to achieve your estate planning objectives. They allow you to direct the distribution of your property, provide for your retirement, and avoid death taxes and estate administration expenses. While you may prefer to "hang on" to your property in order to continue to enjoy the use of it and to have it available for future crises, the use of outright sales of part of your property should not be dismissed without consideration in light of your planning objectives.

F. Business Organization

Because estate planning is a part of a broader scheme of life and financial planning, it must involve business planning if you operate your own business. It is very important that you integrate your business plan and organization into your estate plan if it is to be successful. If you operate your own business, your business property probably constitutes a significant part of your estate. To fail to include this property in your estate plan could result in disastrous consequences.

An important aspect of this business planning is the type of business organization that you employ in conducting your business operation. There are several different business organizations that are available to you. We will examine the three most common forms: the individual proprietorship, the partnership, and the corporation. Exhibit 6 compares the features of these three business organizations. We will examine each of these in more detail and see how they fit into your coordinated estate plan. We will also discuss how various characteristics of the basic forms can be used so as to make your business form a more effective instrument of disposition.

1. Individual (Sole) Proprietorship

The individual or sole proprietorship is probably the simplest and most common form of business enterprise. And, of the three forms of doing business, it probably presents the most estate planning problems.

Exhibit 6. Comparison of Business Organizations

	Sole Proprietor	Partnership	Corporation
Nature of entity	Single individual	Aggregate of two or more individuals	Legal person separate from shareholder owners
Life of business	Terminates upon death	Agreed term; terminates upon death of partner	Perpetual or fixed term of years
Liability	Personally liable	Each partner liable for all partnership obligations	Shareholders not liable for corporate obligations
Source of capital	Personal investment; loans	Partner's contributions; loans	Contributions of shareholders for stock, sale of stock, bonds and other loans
Management decisions	Proprietor	Agreement of partners	Shareholders elect directors who manage business through officers elected by directors
Limits on business	Proprietor's discretion	Partnership agreement	Articles of incorporation and state corporation law
Transfer of interest	Terminates proprietorship	Dissolves partnership; new partnership may be formed if all agree	Transfer of stock does not affect continuity of business--may be transferred to outsiders if no restrictions
Effect of death	Liquidation	Liquidation or sale to surviving partners	No effect on corporation; stock passes by will or inheritance

Exhibit 6. *Comparison of Business Organizations, cont'd.*

	Sole Proprietor	Partnership	Corporation
Income taxes	Income taxed to individual; capital gains treatment available	Partnership files an information return but pays no tax; each partner reports share of income or loss, capital gains and losses as an individual	Regular corporation Corporation files a tax return and pays tax on income; salaries to shareholder employees deductible Capital gains offset by capital losses; no special capital gains treatment Rate: 22% on first $25,000, 48% on excess Shareholders taxed on dividends paid Tax option corporation Corporation files an information return but pays no tax. Each shareholder reports share of income, operating loss, and long-term capital gain.

The above table is taken from "The Farm Corporation," North Central Regional Extension Publication No. 11, 1977.

The sole proprietor is "the boss." If he needs assistance he may hire others as employees. If he needs more money, he may borrow from others. If he needs more land or equipment, he may rent from others. If there are profits, he does not have to share them unless he has agreed to do so in lieu of fixed wages, rent or interest. If there are losses, he must bear them alone, to the extent of all of his property. He bears unlimited personal liability for the contracts he enters and the wrongful acts committed by himself or his employees within the scope of their employment.

There are no formalities involved in organizing the individual proprietorship. Likewise, no expenses beyond the need for capital by the enterprise need be incurred. This makes a sole proprietorship attractive and suitable to small, one-man enterprises.

Ability to obtain credit for a sole proprietorship is limited by the credit status of the owner. On the other hand, he is not bothered by problems of management and control. Because there is only one owner, there are no problems of relations with co-owners. As far as tax considerations are concerned, the individual proprietor is like any other person and is so treated. His business income and other income are treated together. On the total taxable income, the owner pays his tax at the current individual rate: from 14 percent on anything in excess of $2,300 ($3,400 for a married individual filing a joint return) up to 70 percent on $108,300 or more,($215,400 if married and joint return) subject to a 50 percent maximum on earned income.

For tax purposes, the sale of an individual proprietorship is the sale of individual assets comprising the business. Gain or loss is figured on each asset. Although the owner is not treated as an employee of the business for purposes of deductions for employee benefit plans, there are some tax advantages for qualified retirement plans given to self-employed persons. A full deduction can be taken on contributions to retirement plans up to a maximum of $2,500 or 10 percent of gross annual earned income, whichever is less.

There is generally no continuity of existence in a sole proprietorship because on the death of the proprietor, his proprietorship obviously ends. Some continuity may be provided by proper estate planning. A proprietor may give authority to his personal representative to continue the business so that a beneficiary under his will may receive a going business. If a provision is not included in a proprietor's will, allowing the personal representative to continue the business, a formal court order is required if he will be required to operate the business for more than four months. To the extent that the business did not depend as a practical matter upon the personal efforts of the sole owner, the business might be carried on by another.

If there is no one who can continue the business after the proprietor's death, the alternatives are either liquidation or sale of the business as a going concern. A sale is preferable, since it is more likely to result in the realization of the full value of the business. However, a forced sale generally results in some shrinkage in value of the business.

A logical purchaser of a sole proprietorship is one of the employees. Such a plan serves a double purpose, since it assures the estate of receiving a fair value and it offers an incentive to the employee to remain with the business and build up a business which will eventually be theirs. The buy and sell plan should provide for the method of valuation of the proprietor's interest and payment. Such a plan may be funded by insurance covering the life of the proprietor purchased by the employee.

In some cases, a family member may be interested in continuing the business but may not be capable of doing so alone. It's possible to combine a buy and sell arrangement with a bequest of a partial interest to the family member. He will then continue the business with an employee after the death of the proprietor.

The sole proprietorship presents several estate planning problems. There is no way to separate the assets and liabilities of the business from other estate assets and liabilities. This may result in a forced sale of business assets to meet nonbusiness obligations. Liquid nonbusiness assets may be required to be used to meet business obligations with the result that the heirs of the proprietor are left with the business assets.

If a buyercannot be found and if there is no one among the proprietor's intended beneficiaries who is capable of operating the business, it may be forced to be liquidated. As mentioned above, liquidation sales do not often bring the full value of the business. Some of the business property may very well not be worth as much as it would be as part of an operating concern.

A final problem presented by the sole proprietorship may be encountered with any business organization. But, it may be more difficult in a sole proprietorship. Since the business is an important asset of the proprietor, it must be included in his estate for estate tax purposes. This requires valuing it. In a sole proprietor situation, where there are no formalities involved or observed, and where the records that are kept are often not crystal clear, there may be more room for disagreement and a better chance for the Internal Revenue Service to prevail.

The tax laws indicate that the fair market value of a business interest is the price which a willing purchaser would pay for the interest to a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. Though the law is simple, valuation is probably the source of more controversy than any other single issue. This is because the value of a business is pure speculation. Absent an actual sale between a willing buyer and willing seller, what a buyer would pay and a seller take is a question on which reasonable opinions may vary widely. Furthermore, it is a question to which a large number of factors are relevant.

Despite the estate planning problems that are presented by the sole proprietorship, it is a very common business form. Its simplicity, freedom and low cost make it especially attractive for the small business. However, it does require careful lifetime planning on the part of the proprietor to assure the continuance of the business under a new owner following his death. The partnership and the corporation address the problems of continuity and unlimited liability presented by the sole proprietorship. In addition, they present other features that make them more effective instruments of disposition.

2. Partnership

A partnership may be desirable in order to provide for the continuation of your business. As an estate planning device, the partnership is less complex and less costly to organize and maintain than a corporation. And, it provides for an easier transfer of ownership than a sole proprietorship.

According to Minnesota law, a partnership is defined as an association of two or more persons to carry on as co-owners a business for profit. In the absence of an agreement between the partners, the law prescribes various rules for determining whether a partnership exists. Sharing of gross returns does not, in itself, establish a partnership. But receipt of a share of the profits is strong evidence of the existence of a partnership. Joint ownership of property, either as joint tenants or tenants in common, does not of itself establish a partnership.

In general, anyone who has the capacity to make a contract (18 years old and of sound mind) may become a partner. It is possible for a corporation to be a partner and a partnership may be a partner in another firm.

Partnerships are of two basic types: the "general partnership" and the "limited partnership." A general partnership is made up of two or more partners, all of whom enjoy managerial control and unlimited liability, and may be formed with little or no formality. A limited partnership consists of at least one general partner and at least one limited partner, whose liability is limited to his investment in the business but who has no managerial control. Limited partnerships may be formed only by complying with requirements established by the law.

Generally, a partnership is not considered to be an entity apart from its members. There are, however, certain exceptions. A partnership may do business with a distinctive firm name. A partnership may acquire, hold and convey personal as well as real property in the partnership name. A partner may contract with his partnership. But no federal income tax is assessed on the profits of a partnership as the income of a business organization.

Because a general partnership is a voluntary, personal relationship, it may arise informally, the agreement being expressed or implied. Although it is not necessary, it is customary and better practice to define the rights and duties of the partner in a written instrument known as a "partnership agreement." The partnership agreement should specify in detail such things as the investment of each partner (whether it be capital or labor and management), any loans to the partnership, wages, management powers, purchase or sale of deceased or retiring partner's interest with method for determining value, accounting methods, profits and losses, etc. The partnership agreement is a very important document that should be prepared by someone who knows what is involved in such matters.

If there is no partnership agreement, or if an agreement does not address a particular issue, the law provides a detailed set of rules that govern the operation of the business. These are the rules that would control any partnership that may be present in the relationship between Frank Jones and his son. While it may appear that there is no partnership relationship between the two, they do share the profits from their joint farming operations. This may be enough to constitute an informal partnership in the event that a creditor of Frank's would want to reach some of Frank, Jr.'s assets to satisfy a claim. Thus, the arrangement between Frank and his son is in need of clarification by means of a partnership agreement.

A limited partnership may only be created in accordance with the formalities required by law. These include the filing of a sworn certificate stating the character of the business, the name of the partnership, the names of all partners, the contributions made by each, and various other information. In addition to the certificate, there frequently is a limited partnership agreement governing the relations among the members.

The general partnership is in the same position as the individual proprietor when it comes to the availability of credit. That is, the amount of credit available is limited by the personal credit status of the partners. The capital contributions of partners may vary considerably. In the case of Frank Jones and his son, Frank may contribute land and equipment as well as services, while Frank, Jr. contributes his services as well as his expertise in the area of farm management and record-keeping.

The admission of a limited partner is a means of attracting additional capital to the partnership. However, a partnership may not be a good investment for an investor even if his liability is limited to the amount he contributes to the business because he can't participate in the management of the business without subjecting himself to greater liability. As a practical matter, a limited partner must have great personal faith in the general partners before he will be willing to join the venture.

Absent agreement to the contrary, general partners have equal voice in the management and control of the partnership. The general and ordinary business of the partnership is conducted by majority vote. The act of every partner within the apparent scope of partnership business binds the partnership unless the person with whom a partner is dealing has knowledge of the fact that the partner with whom he is dealing has no authority to do the particular act. The partnership is liable for the wrongful acts of any of the partners acting in the ordinary course of business to the same extent as the partner who commits the act. Since one partner may bind all of his fellow partners by his acts, there is a duty to act in good faith. This relationship between the partners is called a "fiduciary relationship." It means, for example, that a partner must account to the partnership for any secret profits that he may make.

A limited partner may not take an active part in the control of the partnership business. If he takes on any managerial functions he may lose his limited liability. That is, he would be personally liable to the full extent of his resources for any claims against the partnership. Nonetheless, a limited partner does have the right to inspect the partnership books, to be kept informed of anything that may affect the partnership and to have an account of the partnership affairs.

If there is no agreement to the contrary, profits are shared equally by the partners regardless of differences in the amounts of their capital contributions, and losses are shared in the same proportion as profits. In practice, a partnership agreement is rarely silent on the question of sharing profits and losses and any arrangement may be made. In addition to profits, the partnership agreement may provide for the payment of salaries to the partners. If no provision for salaries is made in an agreement, the partners are not entitled to any. Each limited partner's share of the profits must be set forth in the filed certificate. Unless otherwise agreed, losses are shared in the same proportion.

General partners are subject to unlimited liability. They are jointly liable for nearly all partnership obligations. Such joint liability may be enforced by suing the partnership and one or more partners, and enforcing the judgment against the partnership assets and the individual assets of the partners sued. Generally, an incoming partner is not personally liable for existing partnership debts. A retiring partner generally remains personally liable for partnership debts incurred while he was a partner. The liability of a limited partner is limited to the amount of his capital contribution, provided he doesn't take part in the control of the business.

A partnership is ordinarily not a tax-paying unit but is merely a conduit for income, losses and certain deductions. As such, it must file an information return annually. All partnership income is treated as personal income of the partners, whether distributed or not. Each partner adds his share of the partnership capital gains, dividends, taxes, other deductions, losses and credits to his personal items for determining his individual income tax. A partner's share of each item is determined by the partnership agreement. When a partner transfers property to a partnership in exchange for an interest in the partnership, any gain or loss on the transfer is not subject to taxation. A partner's interest in the business is normally considered to be a capital asset, and the gain or loss on the sale of it is subject to the more favorable capital gains or losses tax treatment.

There are two characteristics of any business organization that have a great impact on their use in estate planning. Whether an owner's interest in a business is freely transferable and whether the business form continues after the death of an owner are important considerations when it comes to planning your estate. A partner's rights are generally not transferable. Because a person can't be made a partner without the consent of all the other partners, you can't sell your interest in the firm so as to force a new partner on your co-owners. A partner enjoys three types of property rights, two of which cannot be assigned except by all partners. The right to participate in the management of the partnership is not assignable. A partner's interest in the profits and surplus of the partnership business are, however, assignable. Upon the death of a general partner, his estate doesn't become a partner in the firm unless it is so provided in the partnership agreement.

Technically, a partnership is dissolved whenever a general partner withdraws, retires or dies. In addition, the partnership agreement may fix the term of the partnership. Thus, as in the case of a sole proprietorship, there is no perpetual life involved in the partnership form. Partnerships are born, they live, and they die. Nevertheless, some continuity of existence may be provided for in the partnership agreement. Partners can agree on one of several alternatives upon dissolution. They can liquidate the partnership, continue the business as a new partnership, or continue the business under a different organizational form.

If the firm is to be terminated following the death or withdrawal of a partner, it will continue in existence until the "winding up" of its affairs is completed. The process of winding up is rather carefully defined by law. It normally requires a liquidation of partnership assets and an accounting. The assets must be distributed according to a priority established by law. It is generally the duty of the surviving partner, and not the personal representative of a deceased partner, who has the duty to liquidate the partnership.

If liquidation is not desired, there are several alternatives available to you to provide for the continuation of the business. The partners may agree that on the death of one, his interest should continue and his capital remain with the partnership. The personal representative and later an heir is made a partner in the business. Aside from the problem presented if there is no heir who wants to enter the business, there is the problem that it is impossible to predict whether a partner's heir will be able to work together with the surviving partner.

Another way to assure the continuation of the business is by agreeing to give the surviving partner an option to purchase the deceased partner's interest in the partnership. The agreement should specify a fixed price or a method of determining the value of a partner's interest. Cross-purchase insurance plans may be used to finance the purchase. The chief difficulty with this arrangement is that it is a one-sided arrangement, because while the estate is contractually bound to sell, the partner is not required to buy.

A final and often preferred way to provide for the heirs of a partner and protect the surviving partner is a binding buy-and-sell agreement. You thereby assure that your estate will receive a fair value for your interest, and the survivor is assured of the continuance of the business. Both parties are bound by such agreements providing certainty for both. Again, insurance may be used to fund such an agreement. On the other hand, such an agreement does not allow either party to decide what is best following the death of a partner. It is an inflexible arrangement.

Any of these alternatives can provide for the continuation of your business. Whether your business should be liquidated or continued, and if continued, which arrangement should be used depends on your business and your estate planning goals. In the case of Frank Jones, an agreement with Frank, Jr. to continue the farm business through a buy-and-sell arrangement could be used to help achieve his goals of providing the farm to Frank, Jr., while at the same time not neglecting his daughter Sharon or his wife.

Thus, a partnership offers desirable features from an estate planning viewpoint. It is simple to organize and operate. It provides a logical purchaser of your interest in the business, since presumably a partner who worked to build up a business will not want it liquidated during his lifetime. A family partnership allows you to provide for your heirs and still provide for the continuation of the business that you have built up. However, it is important for you to seek qualified professional help if you establish a partnership. A partnership agreement is a complex and important document that should be carefully prepared with a full understanding of the consequences of each provision. Since your partnership interest may well represent a major portion of your estate, the document that governs its use and disposition following your death should not be taken lightly.

3. Corporation

The corporation, in terms of business and capital, is the most important form of business organization. Corporations range in size from one shareholder to millions of shareholders, from small businesses to the multibillion dollar giants like General Motors or American Telephone and Telegraph Company. Such corporations with thousands of owners across the country are known as "publicly owned" corporations. "Closely held" corporations, on the other hand, are owned by a small group of shareholders. Ordinarily, outsiders can't buy into such corporations.

We will discuss the nature of a corporation, the advantages and disadvantages of carrying on your business through a corporation, how corporations are taxed, how they are established, how they are operated, and how they may be integrated into your estate plan.

A corporation is different from the other business forms that we have discussed. A corporation is an artificial person with its own rights and duties created under state law by individuals or other corporations. It is a separate business entity distinct from its owners or shareholders. A corporation is a "person." This means that all of the rights the United States Constitution extends to a person apply to a corporation. A corporation may take, hold, and convey property in the corporate name. Contracts may be made in the corporate name. The corporation may sue and be sued in the corporate name.

A corporation is managed by its board of directors which is elected by the owners of the corporation, the shareholders. The board must consist of three directors unless there are fewer than three shareholders. The board determines policy matters and elects the officers, who are generally responsible for the ordinary operation of the business. The functions of the shareholders are to elect directors and to approve extraordinary corporate actions.

The separation of ownership from management is characteristic of the corporate form. In a sole proprietorship, the owner operates and manages the business. In a general partnership, the partners are the owners and managers. In a small, closely held corporation, however, the shareholders are frequently directors and officers. But, when a shareholder-officer acts for the corporation, he is technically acting as an officer, not as an owner. Thus, the separation of ownership and management always exists legally, even though the same people may be wearing two hats.

A corporation may be formed to carry on any lawful business, including farming. But Minnesota law restricts corporate farming to small, closely held corporations. In addition to the state laws that govern the establishment and operation of corporations, the corporation has its own set of "laws" which provide the rules for the operation of the corporation. The "articles of incorporation" set forth the general purposes and powers of the corporation. This document is filed with the state and must be approved by it. It is the formal charter of the business. The "bylaws" are the rules and regulations enacted by the corporation (generally by the shareholders) to govern the corporation, conduct its affairs, manage its property and business, and transfer its shares. No state approval is required for the bylaws.

Carrying on business as a corporation requires more formality than either a proprietorship or a partnership. Annual meetings of shareholders are required. Annual reports are required by the state. But day-to-day activities may not be much different.

There are several things that you stand to gain if you incorporate your business. On the other hand, there are costs involved in forming and operating a corporation. Whether incorporating is good for your business depends upon your individual objectives and business. We will discuss the pros and cons of incorporating, in general terms, so that you can get an idea of why it may be to your advantage to incorporate your business.

A corporation may effectively be used as a "tax shelter." There are two reasons for this. First, the corporation is a separate taxpaying entity. It pays federal income tax on its taxable income and is allowed to take most business deductions. Second, the corporate tax rates are more favorable than the individual tax rates. Married taxpayers filing joint returns pay income tax at a rate of 32 percent after their taxable income reaches $25,000. A corporation on the other hand, pays only 17% on the first $25,000 of taxable income.

Increased business deductions may be used to take full advantage of the corporation. Fair and reasonable salaries can be paid to shareholder-employees. The salary is taxable to the employee but deductible by the corporation. Lease payments on machinery, equipment or real estate leased to the corporation are also deductible. Interest payments on long-term debts may be deducted. The effect of these deductions is to lower the taxes paid by both the corporation and the shareholder-employee.

Exhibit 7 illustrates how the corporation may be used as a tax shelter. It shows the taxes paid by a married taxpayer filing a joint return and that same taxpayer after he incorporated his business and received a salary.

Exhibit 7. Tax advantages of the corporation*

	FEDERAL INCOME TAX PAID		
Taxable Income	Sole Proprietor	Corporation with $20,000 salary (Combined tax)	Corporation with $40,000 salary (Combined tax)
$ 25,000	$ 4,633	$ 4,075	$ --
50,000	14,778	8,475	11,926
75,000	27,778	13,975	16,476
100,000	41,998	19,975	22,476
125,000	57,528	32,275	30,976

* Using corporate tax rates for 1979 and years following.

Incorporating allows the admission of new owners to the business. This means new and increased capital for the business. Each owner can have a different amount of investment, depending upon the number of shares of stock owned. You can retain control of your business while, at the same time, admitting new owners. The number of shareholders and who may be a shareholder may be restricted by state law, however. If your business is a farm operation, only two types of corporations are allowed. In one, a "family farm corporation," a majority of the voting stock and the shareholders must be members of the same family. Further, one of the shareholders must live on the farm or operate the farm. In the other type, an "authorized farm corporation," there can be no more than five shareholders, a majority of whom are living on the farm or engaged in farming.

A second important characteristic of the corporation is the limited liability of the shareholders for acts or obligations of the corporation. This is because the corporation is a separate person which exists apart from its shareholders. What this means is that all a shareholder stands to lose is the amount of his investment. For the shareholders to have limited liability, however, the corporation must have adequate capital, be properly incorporated under state law and corporate formalities must be observed. The importance of limited liability will vary from one situation to another. For example, if Frank Jones transfers all his land and farm equipment to a family farm corporation, nearly all of his assets would be subject to corporation obligations. But, even in this case, Frank is afforded some protection since any property personally acquired after incorporation could not be reached to satisfy a corporation obligation.

Shares of stock provide a simple and convenient way to make lifetime and testamentary gifts. A share of stock may be sold, given away or transferred by will. This is much easier than transferring undivided interests in a business through gifts of particular assets. And it has the added advantage of not disrupting the operation of the business. This free transferability allows you to save federal estate and state inheritance taxes. Through a lifetime gift program, it is possible to transfer a substantial amount of your stock (and estate) to other members of your family. By taking advantage of the gift tax annual exclusion, it is possible to accomplish this without incurring any gift taxes. At the same time, gifts of stock result in a shift of ownership in the corporation. To see how this works, let's look at the case of Frank Jones. If he established a farm corporation, he would be able to significantly reduce the estate taxes that would be owed at his death, by making gifts of stock in the corporation. At the same time, Frank, Jr. would be given more ownership rights and control of the farm business. In this way, Frank would have less responsibility as he approached retirement. Such arrangements are very flexible. They may become very complex, particularly if more than one class of stock is involved. (It may be possible to have non-voting stock or preferred stock, or both. These classes of stock may be used to give preferential rights to a shareholder.) But for our purposes, it is important to note that the free transferability of ownership in a corporation is an important feature of the corporation that offers many possibilities for estate planning.

The importance of the corporation as an estate planning tool is further enhanced by the fact that it is the only form of business enterprise which theoretically may have a perpetual existence. A corporation exists as long as the shareholders desire. The life of a corporation is not dependent upon the life of an owner. As a practical matter, however, the loss of an important shareholder-employee may have serious consequences without adequate planning. But the continuity that the corporation offers provides a method of maintaining the business as a going concern. It avoids the problems that are presented by the death of a sole proprietor or the withdrawal of a general partner.

A corporation also avoids the problems that are presented by joint tenancy ownership. If you transfer an undivided interest in your business property to another person, you may create several problems. In addition to the estate tax problems discussed earlier, the other person can't be deprived of his interest in the property. This could create a problem in retaining control over the property as a unit for purposes of conducting the business. If you own shares of stock in your business, you can distribute part ownership and still control the operation.

After you have established a corporation, you may form a retirement plan for yourself and your co-owners. This is because you are an employee of your corporation. If such a plan meets the qualification of the Internal Revenue Service, you will not be taxed on the income from the plan until retirement. You may also be covered by workmen's compensation protection. Other benefits are available to shareholder-employees that are not available to self-employed persons.

While the corporation offers many features that are desirable, there are some disadvantages that must be considered in making a decision whether to incorporate your business. Double taxation may result from incorporation. The corporation must pay income tax on its profits and the shareholders must pay income tax on the dividends they receive. There are ways to avoid or minimize this double burden, however. Increased business deductions will minimize the double taxation because they are deductible from the corporation's gross income. Dividends are not. Thus salaries, lease payments and interest may be used to transfer corporate income to the shareholders while only being subject to income tax once. It must be noted, however, that such an approach requires careful planning both during the incorporation process and during the operational phase of the corporation.

The tax laws also permit a second method of avoiding double taxation. If a corporation has only one class of stock and ten or fewer shareholders, it may elect not to be taxed at the corporate level, but to have its income passed through and taxed to the shareholders as ordinary income. All shareholders must consent to the election to be taxed in this manner. Corporations making such an election are known as "Subchapter S corporations" or "tax-option corporations." The tax-option corporation does not lose its other corporate characteristics. While the basic idea of the tax-option corporation is simple, the operation of a tax-option corporation can become complex. And a tax-option corporation does not allow the corporation to be used as a tax shelter.

Formation of a corporation does not allow you to escape death or gift taxes. But the ease with which stock may be transferred may allow you to develop a tax-saving plan. Upon the death of a shareholder, his personal representative must pay estate tax on the value of his stock. The state inheritance tax is levied on the value. While this death and gift tax liability is not a problem unique to the corporate form, it is important to note that a shareholder of a corporation does not escape such taxes.

The formation of a corporation is not cheap. The fees and taxes involved in establishing a corporation are not presented by the other forms of business. There is a filing fee charged by the secretary of state. The secretary of state records the incorporating papers in his office and files copies of them in the county office of the register of deeds. An extra fee is charged for this. A federal stamp tax is imposed at the time of incorporation. This tax is ten cents on each $100 of the value of each share of stock. There are costs involved in the publication of a notice of incorporation in the county where the principal office of the corporation is to be located. Finally, there are attorney's fees. The amount will vary according to the prevailing cost levels in your community and the complexity of the particular corporation. Special arrangements require more time and add to the cost. Thus, incorporating your business will generally cost several hundred dollars.

Once the corporation is operating, there are many formalities that must be observed. This may be a disadvantage for your business if you prefer to operate it freely and informally. If these formalities are not observed, you run the risk of losing the limited liability protection discussed earlier. An annual meeting of shareholders is required by state law. Minutes of the meeting must be kept. Annual reports may also be required. For example, the Frank Jones corporation would be required to file an annual report including the names and addresses of shareholders and their interest in the corporation, the land used for agriculture, the officer and the products produced by the firm. The board of directors of a corporation must meet periodically and records kept of the meetings. Separate bank accounts must be kept for the corporation and for your personal purposes.

If, after weighing the pros and cons of incorporating, you decide to incorporate, you must follow the procedures established by law. After you have met with the people with whom you want to form the corporation, you should see your attorney. He can help you begin the incorporation procedures. A preincorporation agreement is often desirable, although it is not required by law. Such an agreement includes a pledge to incorporate and the number of shares each incorporator agrees to purchase. The prospective officers and directors are also frequently included, as well as their duties. A preliminary application may also be filed with the secretary of state.

The articles of incorporation must be prepared. The articles include the name of the corporation; the names and addresses of the incorporators; the registered office of the corporation; the purposes and powers of the corporation; the class, number and value of shares of stock, as well as any preferential rights; and the names and addresses of the first directors.

The articles must be filed with the secretary of state. If they are proper and if the fees are paid, the secretary issues a "certificate of incorporation." The corporation's existence then officially begins.

After the certificate of incorporation is issued, the corporation must publish a notice in the county where it has its registered office. This must state the corporation's name, the date of incorporation, the nature of business conducted, the address of the corporation, and the names and addresses of the incorporators.

The bylaws must be prepared. They can be made or altered by the shareholders. Or, the articles can give this power to the board of directors. No bylaw can be inconsistent with the law or the articles of incorporation. Generally, the bylaws provide for the meetings, including notice requirements for the corporation. They also provide for the election and qualification of officers and directors.

The shareholders must hold an organizational meeting to approve the bylaws and elect the directors. The directors must meet and choose the officers of the corporation. In a small corporation, these meetings will usually be attended by the same people, but they must take place if the corporation is to be recognized by the law.

Once the corporation is formed and the board of directors installed, you can transfer your property to the corporation. In exchange, you will receive stock certificates. Great care is required in transferring property to a corporation, since it is possible to incur income tax liability if you do not adequately plan. The services of an attorney are essential to ensure that the type of transfer that best suits your situation is made.

While a corporation may live forever, it can be dissolved. When two-thirds of the shares are voted in favor of dissolution, the corporation may be dissolved. Dissolution may be accomplished out of court by using a trustee. He functions in much the same way as an executor, by collecting all money owed to the corporation, paying all debts and distributing any remaining property. A court-supervised dissolution is also possible. When the affairs of the corporation are wound up, a certificate stating that the corporation is dissolved is filed with the secretary of state. The corporation ends as of that date.

There is no general answer to the question of whether you should incorporate your business. The advantages and disadvantages of incorporating depend on the nature and size of your business. An advantage to one businessman may be a disadvantage to another. A corporation may save death taxes if a gift pattern of shares is established. The use of two classes of stock may be valuable as an estate planning tool. You could keep the class that has voting rights and preferred dividends while your son could get stock with no voting rights, but with a right to extra earnings above a certain level. The variations are endless. On the other hand, you may prefer to operate your business in a less formal manner. Estate planning considerations should not be allowed to completely control more immediate business plans. In the last analysis, whether a corporation is for you depends upon a careful study of your business, your family and your business and estate planning goals. You will need the advice not only of an attorney, but an accountant, banker and farm agent.

G. Trusts

The trust is one of the most useful and flexible tools available to you in planning your estate. Yet it may be the least used tool. In its simplest terms, a trust is an arrangement by which the ownership of property is broken up into two or more parts and the benefits of these parts divided according to the wishes of the creator of the trust. Thus, a trust may be created to pay its income to one person, its principal to another, with management of the fund in a third person.

The trust is marked by a division of title with legal title in one person, the trustee, and the equitable interest in another, the beneficiary. The creator of the trust is called the settlor, grantor, or donor. The property which is held is the trust principal, *corpus*, or *res*. The person holding the property is the trustee and the recipients of the benefits from the property are the beneficiaries.

The beneficial interest of the beneficiaries may be divided in as many ways and among as many persons as is desired. The management powers may also be divided among the trustees in almost any manner. The ultimate disposition of the corpus may be divided by the settlor or made subject to the wishes of a beneficiary. It is this flexibility that makes a trust such an attractive estate planning tool.

1. Characteristics of Trusts

There are four basic characteristics common to all trusts. These four characteristics are: (1) a settlor, (2) a trustee, (3) a beneficiary, and (4) property.

(a) *The settlor.* A trust is an artificial being, something like a corporation, that is created. As a result, a trust can't exist without there having been a creator of the trust. An owner of property has the capacity to create a trust if he has the legal capacity to transfer the property. But if he is under a legal incapacity such as insanity or infancy (under 18), he can't create a trust.

A trust may be created in several ways. You can transfer property during your life to a trustee or you can transfer property by your will so as to establish a trust. You can simply declare that you hold property in trust for another. In addition, a trust may be created by exercising a power of appointment. As you recall, a power of appointment is a power created by one person in another, or reserved by himself, to determine who will receive certain property.

A trust is only created, however, if the settlor indicates an intention to create a trust. It is not enough that he secretly intends to create a trust; there must be an expression of his intention. Although a trust is created only if the settlor indicates an intention to create a trust, he need not know that he has done so. It is also not necessary for him to know the characteristics of a trust relationship. No particular form of words is necessary for the showing of intention to create a trust. In fact, it is possible to create a trust without using the word "trust" or "trustee." No trust is created, however, where the owner of property displays an intention to make an outright gift of property rather than a trust. And no trust is created if one owner of property merely declares that he will dispose of it for the benefit of another at some time in the future.

(b) *The trustee.* An essential requirement of a trust is a trustee. A person (or corporation) who has the legal capacity to take title to property and manage it for his own benefit may take title and hold it for the benefit of another. But even though a person named as trustee does not have the capacity to take title to the property and manage it for another, the intended trust will not ordinarily fail. A new trustee will generally be appointed to administer the trust. Thus, one of the basic principles of the law of trusts is that a trust does not fail for want of a trustee. There may be one trustee or two or more co-trustees.

Because the creation of a trust involves a separation of the legal and equitable interests in property, where a single individual has the whole legal interest and the whole beneficial interest, there is no trust. But where there are several trustees or several beneficiaries, the trust is valid even though one of the trustees is also a beneficiary.

A trust may be created not only by a transfer of property to another as trustee, but also by a declaration by the owner that he holds the property in trust for another. In this case, the settlor of the trust is also the trustee.

A trustee is held to a high standard of conduct. Like the relationship between partners, the relationship between a trustee and the beneficiaries of a trust is a fiduciary relationship. The duties and powers of a trustee may be controlled to a large degree by the settlor of the trust. But in cases where there is no provision in the trust instrument, the law provides certain rules that a trustee must follow.

If the trustee once accepts the appointment as trustee, he is under a duty to administer the trust as long as he continues as trustee. If he wants to give up his position as trustee, he can resign by court order or with the permission of all the beneficiaries, unless it is otherwise provided by the terms of the trust.

The most fundamental duty owed by the trustee to the beneficiaries is the duty of loyalty. This duty is imposed because of the relationship which arises from the creation of the trust. It requires the trustee to administer the trust solely in the interest of the beneficiaries. He is not permitted to benefit himself by acting contrary to the interests of the beneficiaries.

A trustee is under a duty to keep clear and accurate accounts and to give to the beneficiaries complete and accurate information as to the administration of the trust. A trustee is under a duty in administering the trust to exercise such care and skill as an ordinarily prudent man would exercise in dealing with his own property. If a trustee has greater skill than the ordinary prudent man, he is under a duty to exercise the skill he has. This makes the standard of skill required of a trust institution and a professional individual trustee higher than that of a person who does not make a business or profession of serving as trustee.

A trustee is also under duties to keep control of the trust property, preserve it and make it productive. Ordinarily, this means that a trustee can't neglect the trust property by leaving it with someone else. It also requires him to take reasonable steps to protect the property. Finally, a trustee must ordinarily invest trust funds so that they will be productive of income. Where the trust includes land, it may be the duty of the trustee to sell the land and invest the proceeds. But, if he is not empowered to sell it, he ordinarily has power to lease the land and thus make it productive. If the trustee is authorized to make it productive by managing it, he is not under a duty to lease it. In the case of personal property, a trustee is ordinarily under a duty to sell it and invest the proceeds, in the absence of a different term in the trust instrument.

Finally, a trustee is under a duty to deal impartially with the beneficiaries. This duty applies to two kinds of beneficiaries--co-beneficiaries (two or more beneficiaries who share income and principal) and successive beneficiaries (some entitled to the income, others to the principal). If the terms of the trust give the trustee discretion to favor one beneficiary over another, he will not be subject to control by a court except to prevent an abuse of discretion.

In addition to his duties, a trustee has several powers. Like the duties of a trustee, the powers of a trustee may be greatly expanded by the terms of the trust. The trustee can properly incur expenses which are necessary or appropriate to carry out the purposes of the trust. He can vote and exercise the other powers of holders of shares of stock. He can compromise, submit to arbitration or abandon claims affecting trust property provided that he exercises reasonable prudence in doing so. Whether a trustee has power to sell or mortgage property depends upon the intention of the settlor and the terms of the trust.

The extent of the powers and duties of a trustee may be controlled by you when you create your trust. In most cases the terms of a trust expressly impose duties and confer powers upon the trustee beyond the general rules discussed above. The terms of the trust control the trustee except so far as the performance of the duties or the exercise of the powers is impossible or illegal, or where there has been a change of circumstances so as to justify not following the terms of the trust. The rules imposed by law are applicable to a trust which does not include a provision dealing with a particular difficulty.

(c) *The beneficiary.* There cannot be a trust without a beneficiary, that is, a person for whose benefit the trust was created and exists. If you attempt to create a trust without naming a beneficiary, the trust fails. A trust can be created in favor of beneficiaries not specifically named in the trust instrument if there is such a description of the beneficiaries in the trust instrument that they can be identified. For example, a trust will be valid if the beneficiaries are referred to as partners of the settlor at the time of his death.

If the owner of the property declares himself trustee for persons to be selected by him, no trust is created and the settlor continues to hold the property for his own benefit. A trust will not be created unless and until he names the beneficiaries.

It is not essential that the beneficiaries of a trust should be in existence at the time of the creation of the trust. It is very common to provide for children who are not born or conceived at the time of the creation of the trust.

A trust can be created in favor of a single beneficiary or it can be created in favor of several beneficiaries. The most usual type of trust as an instrument of disposition is one in which there are two or more beneficiaries entitled to the enjoyment of the trust property in succession. The following diagram shows how a typical trust would operate:

FRANK JONES (Settlor)--gives $100,000 to...

FIRST NATIONAL BANK OF OWATONNA (Trustee) manager of the fund and required to pay the income to...

SHIRLEY JONES (Life beneficiary) during her life. When Shirley dies, the trustee starts paying income to...

FRANK JONES, III (Remainderman)

There are many variations and combinations available to you in creating a trust. This diagram merely shows you how one trust would work and how there may be several beneficiaries.

A person who has the legal capacity to take and hold the legal title to property has the capacity to be the beneficiary of a trust. An infant or insane person may be the beneficiary of a trust. If a corporation has the capacity to take and hold the legal title to property, it may be a beneficiary of a trust of such property. The United States, a state, a foreign country or a city may be the beneficiary of a trust.

(d) *The trust property.* Since a trust is a property arrangement, there cannot be a trust without property. The property which is subject to the trust is also called the trust *res* or *corpus.* Any property can be placed in trust. In general, a man's property includes whatever is included in his estate, his wealth, anything that he can give away while he lives or which passes by will or intestacy when he dies. While this seems very basic, the requirement of trust property is important when it comes to the proceeds of life insurance left with the insurance company. The subject matter of a trust is not necessarily such a tangible thing as land or farm equipment. It is frequently an intangible thing like a life insurance policy, a patent or a copyright.

2. Duration of a Trust

Theoretically, a trust could last forever. The Frank Jones trust that we diagrammed could simply provide that the income should be paid to one generation after another with the trust never terminating. The law does not allow this, however.

The "rule against perpetuities" was instituted so that "a dead hand cannot rule too long." If people could keep estates and trusts intact for limitless periods, a major portion of the wealth of the country would be permanently tied up within a short time. To prevent this, the law prevents you from tying up your property forever. If you want to provide for your beneficiaries through trusts, plan what you want in general, then consult your attorney to see whether your plan works within the rule against perpetuities.

3. Types of Trusts

There are basically two types of trusts. One type is a "*living trust*" or "*inter vivos trust.*" This type of trust is created and made operative during the lifetime of the creator. A "*testamentary trust*" is effective at the death of the settlor and is usually established by the settlor's will.

A living trust is generally established by a written instrument. This is not legally required of all trusts but is required of trusts of land. A written instrument is preferred since it allows the settlor to clearly spell out the powers and duties of the trustee and provide guidance for the trustee. An oral living trust for the benefit of the settlor is often attempted.

The settlor transfers property to a "trustee," relying upon his oral promise to convey the property back to the settlor. This often leads to problems, since the trustee does not fulfill his promise to transfer the property back to the settlor. To avoid such problems, it is much easier and wiser to create the trust by a written instrument.

There are two forms of living trusts--revocable and irrevocable. Under a revocable trust, the settlor retains the power to alter, amend or revoke the trust. This allows the settlor to change his mind and take back his property. In order to retain the power to revoke a trust, the settlor must reserve a power of revocation. If he fails to include such a power in the trust instrument, he can't revoke the trust.

There are several reasons for using a revocable living trust. First, it offers the settlor an opportunity to see how the program that he has established for managing and disposing of his estate will operate. At the same time, he does not lose control over his property since he can simply revoke the entire plan if he is not satisfied with its operation. Second, the property held in a revocable living trust is not included in the settlor's probate estate. It is thus not tied up in the probate process and avoids additional probate expenses. Third, because the revocable trust is free from the probate requirements of public inventory and accounting, it offers more privacy.

A revocable living trust does not lessen the taxes that will be owed at the death of the settlor. If the settlor retains the power to alter, amend or revoke a trust, the trust property is includible in his estate for tax purposes just as if he had not transferred the property to a trust. For some, this may be enough to outweigh the features that make a revocable living trust a useful tool.

The irrevocable living trust cannot be altered, amended or revoked by the settlor. While it offers many advantages, including avoidance of estate taxes, it is not often used. Not many persons of less than very substantial means are willing, or ought, to part with property irrevocably. An irrevocable trust must be created very carefully to avoid many tax consequences. To the extent that the transfer to the trust is irrevocable, there is a completed gift for gift tax purposes. But, if the settlor keeps any string attached to the property, he may be taxable on the income of the trust and find that the trust property is includible in his estate for estate tax purposes, even though he paid a gift tax when the trust was created. If created properly, however, an irrevocable trust offers both estate and income tax savings. But you should not be blinded by the tax savings possible and fail to consider that an irrevocable trust means exactly what it says. You cannot get your property back. Because of this inflexibility, an irrevocable trust should not be used without careful consideration.

Testamentary trusts are frequently used as estate planning tools. They are very effective in providing for your family and keeping your property together in a single unit. In addition, they are effective tax avoidance tools. Generally, if property is left in trust for the life of one person with a provision that upon his death it shall be paid over to his children, there is no second tax on the property upon the death of the life beneficiary. That means that Don Evans could leave his entire estate in trust for his wife for life with a remainder to his children and there will be no second tax on the property on her death. However, the same result could be achieved by leaving one-half of his estate to his wife outright (free from a trust).

Whether to establish a trust or leave property outright requires careful planning. It is not always desirable to tie up in a trust a wife's or child's share of an estate, and in spite of the tax savings possible, it may, under some circumstances, be better to leave an outright bequest. Leaving property in trust makes the trustee responsible for safekeeping, investment and management of the property of the estate and releases a surviving spouse from business and financial responsibilities. Since one of the basic duties of a trustee is to make the trust property productive, a trust may supply necessary income for the support of your beneficiaries. If one or more children require special treatment, principal and income, or both, may be used to provide such special care rather than equal treatment. A trust may be a good idea for thriftless beneficiaries to protect them from themselves.

On the other hand, outright gifts may be better for your estate plan. Certain assets may be better outside a trust. Nonincome-producing property, such as the family home and furnishings, may be more effectively disposed of by outright gifts. To a large extent, practical considerations of size may determine whether to use a trust or not. Small trusts are often a nuisance. The investment and management possibilities of such trusts are limited due to the simple lack of money.

A trustee is entitled to compensation for his services which may consume a larger portion of the income from small trusts than in the case of large trusts.

Ultimately, the decision whether to establish a trust comes down to a consideration of the pros and cons of using a trust in light of your estate, family and objectives. Many times, the desire of the testator to control his estate indefinitely after his death is responsible for creating a trust. This should not be the reason to establish a trust. A trust should not be used in your estate plan unless it serves a useful purpose and helps you achieve your goals.

4. Common Variations of Trusts

Both living and testamentary trusts may be tailor-made to fit your needs. But there are several variations of these basic types of trusts that are commonly used.

It is possible to establish a trust by depositing money in a savings account in your own name as trustee for another. Such trusts are called "Totten trusts." Under such an arrangement, the settlor of the trust, the depositor, has the use of the money during his lifetime unless he indicates that he wants to create an irrevocable trust. On the death of the trustee, any sum remaining on deposit belongs to the named beneficiary under the account. Because such accounts are considered revocable trusts (since the depositor may withdraw all the funds at any time), the balance of the account is included in the depositor's estate for estate tax. The income from such accounts is taxable to the depositor and if you irrevocably transfer money to such an account, the amount transferred is subject to gift tax.

Trusts are also useful tools if income taxes present a problem for you. The "Clifford trust" has become a favorite device for splitting income among the family. Such an arrangement is an irrevocable short-term trust. Property is transferred to a trust and income is paid to the beneficiary during the life of the trust. This allows you to take advantage of a lower tax rate of a beneficiary, since the trust income will be taxable to him. At the expiration of the trust, the property returns to the settlor or to whoever has been named to receive the property at that time.

There are several detailed requirements that must be met if a Clifford trust is to achieve its objective of limiting the income tax liability of the settlor. If the trust violates any of the requirements, the settlor is taxable on the trust income even though he does not actually receive it. If the settlor retains a reversion which may take effect within ten years, he is taxable on the income. A settlor may be taxable on the income if he retains the power to dispose of the trust income or corpus by altering, or amending the terms of the trust or revoking the entire arrangement. If trust income is used for the benefit of the settlor by such things as discharging his legal obligations, paying insurance premiums on the life of himself or his spouse or being used to support a dependent, he will be taxable on part or all of the trust income. Each of these requirements is subject to more complicated exceptions and modifications. But the important thing to remember is that a short-term must be drafted very carefully if you want to escape income taxation on the trust income.

With the increasing use of the revocable trust as an estate planning device has come the development of the "pour-over trust." Pouring over is an arrangement whereby assets of an estate or trust are directed to be transferred into an existing trust or estate. For example, Don Evans sets up a revocable living trust with his brother George as trustee. He transfers to George, as trustee, his stocks and bonds. He then executes a will devising the rest of his estate to George as trustee to hold under the terms of the living trust. The pour-over is a useful device where you want to establish a living trust of some of your assets, and want to merge your other assets, testamentary estate and insurance proceeds into a single trust to ease administration.

The presence of the "marital deduction" in the federal estate tax laws has led to the development of a common tax saving trust arrangement. The marital deduction allows one spouse to leave only roughly one-half of his/her property outright to the other spouse with his/her estate still entitled to a full marital deduction. The result is that only the remaining one-half of his property is taxed in his estate. The marital deduction can also be realized if a trust is desired. In a common arrangement, property with a value equal to the maximum marital deduction allowed by law is transferred to a trust for the benefit of the surviving spouse. The remainder of the estate passes to the children. The trust instrument uses a formula to ensure that only property valued at no more than the maximum marital deduction is given to the spouse. The result is that the largest possible deduction is obtained on the death of the first spouse. Only the children's portion is taxed at the time and is not taxed at the death of the surviving spouse. We will discuss this arrangement in more detail later. It is sufficient for now to note that a common use of a trust is to take full advantage of the marital deduction.

The use of "life insurance trusts" has been increasing in recent years, generally because of the flexibility that they offer. The settlement options available through insurance companies offer a fairly wide choice of methods of disposition of insurance proceeds. But an insurance company cannot be expected to exercise discretionary powers. An insurance trust is any living trust of which the trust property is wholly or partly life insurance policy contracts during the lifetime of the insured and insurance proceeds after the death of the insured.

Insurance trusts are either "unfunded" or "funded." An unfunded insurance trust is one in which the trustee is not charged with the duty of paying the premiums on the insurance. The insured or the creator of the trust continues to pay the premiums himself. A funded insurance trust is one in which the trustee is supplied funds with which to pay the premiums and is charged with the duty of paying them.

An insurance trust may be desirable under many different circumstances. If the proceeds of life insurance contracts are desired to be distributed according to need, a trust is indicated. If there are several policies, it's easier to arrange for the disposition of the proceeds, and the income from the proceeds, by using a trust rather than to have separate arrangements with many different companies. Greater income may be generated for the beneficiaries by an insurance trust. Finally, it is possible to coordinate the testamentary plan with the insurance trust and pour over from the estate to the trust.

A common device for protecting the beneficiary, so that while he may receive the benefits of a trust, his interest will be free from his creditors, is the so-called "spendthrift trust." It is in fact not a trust but a restriction on a trust. It is created by including a provision which prohibits voluntary assignment of the beneficiary's interest and declares that the beneficiary's creditors may not reach his interest. Unless there is an express provision in the instrument, the beneficiaries will not be prevented from assigning or pledging their interests as security for loans, and their creditors will be able to reach those interests. The settlor of a trust can't create a spendthrift trust for himself. This is because it is against public policy to allow a man to tie up his own property in such a way that he can still enjoy it but can prevent his creditors from reaching it.

It is possible to restrict the amount of income to which a beneficiary is entitled by giving the trustee uncontrolled discretion over payments of income. Such trusts are called "discretionary trusts." The beneficiary can't compel the trustee to pay him. If the beneficiary assigns his interest, the party to whom he assigns his interest likewise can't compel payment. Nor can the creditors of the beneficiary compel payment. This is true, however, only where the trust is purely discretionary; that is, where the trustee may withhold the income and principal altogether from the beneficiary. If the trustee merely has discretion to determine the manner or method of payment, the beneficiary can assign his interest and his creditors can reach it unless there are other restrictions.

Another provision that adds a great deal of flexibility to a trust is a "sprinkling" or "spray" provision. Such provisions are built-in spendthrift provisions and permit trust funds to be used according to need. A "sprinkling trust" may be created by Frank Jones. He could transfer property to a trustee under a trust instrument that allowed the trustee to accumulate or distribute the income to one or more members of a group consisting of his wife, his son and his daughter. How much income, if any, each person receives is up to the trustee. The trustee's powers may be limited by a standard if you don't want to give him too much discretion. An example of such a standard would direct the trustee to pay Frank's wife "such amounts as are necessary to support my wife in the style of living to which she has become accustomed."

There are many other types of trusts that are available to you in planning your estate. They may be formed for almost any purpose and may contain nearly any provision that you desire. This flexibility makes the trust one of the most useful tools available. There are, however, some disadvantages that must be considered. First, creation of a trust requires professional help. Trust instruments are frequently lengthy, complex documents. They require careful preparation with a clear understanding of each and every provision contained in them. Second, there will be additional expenses incurred during the administration of the trust. You may well prefer to have an experienced, professional manager administer and invest your trust property. Such people are entitled to compensation for their services. Third, since each trust is a separate entity for tax purposes, a tax return must be filed annually. Finally, many people simply do not like the idea of someone else managing their property or distributing money to them. However, if you carefully consider the features that a trust offers, these disadvantages may be overcome in your case. You may find that a trust will be an important component in your coordinated estate plan.

H. Gifts

A gift is a voluntary transfer of property by one person to another without compensation. It is distinguished from other lifetime transfers by its donative nature. There are two types of gifts that are recognized by the law. A lifetime or "inter vivos gift" is the ordinary, unconditional gift between living persons. Ordinarily, inter vivos gifts are absolute and can't be revoked by the "donor" (the person making the gift). Such gifts are generally immediately effective to transfer possession and enjoyment of the property which is the subject of the gift.

The second type of gift is the "gift causa mortis." This gift looks very much like the arrangement that normally requires a will in order to make it effective. Causa mortis gifts are made by the donor in contemplation of *immediate* approaching death. They are always conditional. That is, the donor may revoke the gift at any time before he dies and the gift is automatically revoked if the donor survives the specific possibility of death envisioned by him. For example, let's suppose that Don Evans requires a major operation. Fearing that he will not survive the surgery, he makes a gift of his golf clubs to one of his business friends. If Don survives the operation, he is entitled to a return of his golf clubs.

Because causa mortis gifts do not comply with the formalities for the execution of wills, they are not viewed favorably by the law. If a dispute arises over who is entitled to the property, a court will often subject the gift to close scrutiny. As a result, causa mortis gifts should not be relied upon as a substitute for a will. They may be ineffective.

There are three requirements for a valid gift: (1) intent of the donor to make a gift; (2) delivery of the subject of the gift; and (3) acceptance of the property by the "donee" (the recipient of the gift). For a gift to be effective, the donor must intend to transfer a present and unconditional interest in the property. He can't be forced to make a gift. Some sort of delivery is essential to all gifts. This is to protect the property of the donor against fraudulent claims. Also, delivery shows the donor's intent to give and it protects him from rash action. If the subject matter of the gift is capable of being bodily handed to the donee, such actual delivery is required. If, however, the nature of the property or the circumstances of the parties is such that actual delivery is inconvenient or impossible, symbolic or constructive delivery may suffice. Instead of the thing itself, some other object is given to the donee representing the subject of the gift (the key to a safe deposit box, for example). The important thing is that the donor must part with dominion or control over the subject matter of the gift. It is possible to delay enjoyment of the property on the part of the donee, but the donor must not reserve any rights to revoke the gift. This can be accomplished by delivering the property to a third person with instructions to give it to the donee later.

Delivery of certain property requires a change in the ownership certificate or compliance with transfer requirements established by law or contract. Thus, you must change the registration of such things as automobiles or securities. You must follow the transfer requirements of insurance companies to make a gift of insurance policies. If real property is the subject of the gift, there is a further requirement. No estate in land may be created or transferred except by an instrument in writing, signed by the grantor.

1. Reasons for Making Gifts

The major incentive for making lifetime gifts is the tax savings that are available through their use. Formerly, the federal gift tax rates were three-quarters of the estate tax rates at each corresponding rate bracket. And a lifetime exemption of $30,000 expired at death and was no longer available if it was not utilized during life. These advantages have now been eliminated. Notwithstanding these changes in the law, there are still several reasons for making lifetime gifts.

It is still possible to give a substantial amount of property over time without incurring any gift tax liability due to deductions and exclusions in the gift tax laws. You can give up to $3,000 per donee annually and not pay any gift tax. You may give up to $6,000 if your spouse joins in the gift. Thus, a married couple with three children can make gifts to their children of $18,000 annually without paying gift taxes. You may also give up to $100,000 to your spouse tax-free due to the gift tax marital deduction. However, if the gift tax marital deduction allowed is greater than 50 percent of the value of the gifts, the estate tax marital deduction will be adjusted. Of course, by making such gifts, your estate tax liability will be reduced, provided that you survive for three years after making the gift.

Even if you pay a gift tax on the transfer of property, you may save money by making a lifetime gift. If the property appreciates in value from the time of the gift until death, the increase in value will escape both the estate and gift tax. To illustrate, let's assume that Don Evans makes a gift of 100 shares of certain stock. At the time of the gift, the stock is worth $40 per share. Don dies four years later when the stock is worth $75 per share. By making the lifetime gift, Don has avoided paying any transfer tax on the increased value of the stock, $3,500.

It is possible to save income taxes by making gifts. So long as the transferor does not retain any strings on the property, the income from the transferred property will be taxed to the donee, presumably at a lower rate.

Finally, Minnesota's gift tax law has been repealed, effective January 1, 1980. Thus any property transferred by lifetime gift after December 31, 1979, will escape any Minnesota transfer tax if the transferor lives more than three years following the gift.

There are other practical non-tax reasons for making lifetime gifts. Property is removed from the probate estate which will not be subject to the delay and expenses of probate. Lifetime gifts are not as susceptible to attack as are testamentary gifts. The donor can be relieved of the cares of management of the property that is transferred by gift. Because probate is avoided, the transferred assets are removed from the view of the public. Finally, lifetime gifts may be used to create financial maturity and independence among the members of the family.

2. Dangers Inherent in Gifts

So many benefits may be derived from the use of lifetime gifts that the arguments in favor of their use sometimes appear overwhelming. Because of this, no gift for estate planning purposes should ever be made until all foreseeable results are considered.

Before any gift is made you must consider whether you can afford to reduce your security by giving away part of your property. Where there is any reasonable uncertainty as to the future, the gift should not be made. If later circumstances require a return of the gift, two gift taxes may have been needlessly incurred. And the loss of the property and the income from it may outweigh any tax savings.

You must also consider whether the estimated savings are real or illusory. This requires you to consider the possibility of increase or decrease in the value of the property given. The possibility of increase makes a gift more desirable while a decrease discourages the gift because the savings anticipated may become doubtful. That is, if the property increases in value after you transfer it, your savings are increased because you paid gift tax, if any, on the unappreciated value of the property. But if the value decreases substantially, it may have been cheaper to retain the property and pay death taxes on it.

The effect of the gift on family relations should be considered. If there is a strained marital situation or if the donee uses the property unwisely, creating resentment in the donor, the gift was not a good idea. A tax saving purchased at the cost of family harmony is too costly to consider.

3. Gifts to Minors

The gift of income-producing property to a child may produce difficulties because a minor is not capable in the eyes of the law to manage property. If the gift is small, a trust is too cumbersome and expensive to be used to manage, sell and reinvest the proceeds from such property.

To eliminate such problems, the law authorizes the establishment of a "custodianship" to manage the property until the minor reaches age 18, at which time control over the property is terminated. Unlike a trust, property cannot be held by the custodian beyond the age of majority. And once the gift is made, it is irrevocable.

Another difference between the custodianship and a trust is that the legal title to the property is vested in the minor, subject to the powers given the custodian by law. He has the duty to collect the property and to use so much or all of the custodial property as he feels advisable for the minor's support, maintenance, education and benefit.

While the custodian may be the donor, another adult or a trust company, the donor should not serve as custodian for tax reasons. If the donor manages the property, it may be included in his estate for estate tax purposes, and he may be taxable on the income generated by the property.

This custodianship arrangement provides a relatively simple and convenient means for making gifts of property to minors without a great deal of expense or complexity. However, it can be used for only four types of property--cash, securities, life insurance policies and annuity contracts. And while it is not available for testamentary gifts, it should be kept in mind that such a lifetime gift may often be a substitute for a provision in the donor's will.

Gifts are an effective way to dispose of some of your property. They offer several advantages and may result in substantial tax savings. However, you must be certain that you make legally effective gifts. This requires full compliance with the legal requirements discussed above. You must also carefully consider your present and future financial situations before you begin a gift program as part of your estate plan. Gifts are an inflexible estate planning tool because they are irrevocable. And no irrevocable transaction should be entered into unless the reasons for them are compelling and the results of them are analyzed and discounted.

VII. DEVELOPING YOUR PLAN

After you have reviewed the tools of estate planning, know what makes up your estate and realize your estate planning objectives, you are ready to develop your estate plan. To do this it will probably be necessary for you to consult a professional who works daily with these kinds of problems.

The advice that professional planners can offer will allow you to take advantage of the estate planning tools that we have discussed. The proper use of these tools is sufficiently complex to require an expert. Not every tool is suitable for every estate plan. And when more than one tool is available to satisfy your goals, the tax consequences of each tool must be understood.

A. Taxes and Tax Planning

The use of any estate planning tool necessarily involves tax consequences of some sort. The tax consequences and dangers of each tool must therefore be considered in developing your estate plan. But while no plan can be considered without analyzing its tax effects, tax considerations should not be controlling.

Because the tax aspects of estate planning are so important, any discussion of estate planning would be incomplete without some discussion of the tax structure as it affects your estate plan. Don't get the idea that the following discussion qualifies you to advise on tax issues. That is not our purpose. We aim only to acquaint you with the elements of the tax laws sufficiently to let you understand something about the tax aspects of estate planning.

Two other warnings are required: (1) Any statement about taxes may be obsolete before it can be printed. The tax laws are continually amended. You must therefore consult your attorney or accountant about any of the rules that we discuss; (2) In making a simplified statement, we must omit the qualifications and exceptions that are present in the tax laws. We are not trying to mislead you, but a characteristic of tax law is meticulous detail and any general statement can be misleading if you don't keep this basic fact in mind.

There are six different taxes that are involved in estate planning: (1) the federal income tax; (2) the Minnesota income tax; (3) the federal gift tax; (4) the Minnesota gift tax; (5) the federal estate tax; and (6) the Minnesota inheritance tax. We will concentrate on the federal taxes and merely point out the differences between them and the Minnesota taxes. This does not mean that state law may be ignored when planning your estate. But the state laws are often dependent upon the federal tax computations. And the federal tax rates are generally higher than the state tax rates.

As a result, the federal taxes take a larger bite out of your property or income and more planning is directed toward avoiding the federal taxes.

1. Income Taxes

As all of you are probably aware, there is a federal and state tax imposed on the net income of individuals. Because estate planning involves lifetime financial planning, the income taxes can't be ignored when developing your estate plan.

The federal tax laws prescribe four separate tables of progressive rates for the individual income tax: married persons filing joint returns; heads of households; unmarried persons; and married persons filing separate returns, estates and trusts. The rates in all the tables range from 14 percent to 70 percent, but the tax rate for a certain amount of income may be different in each table. The following table illustrates this:

Exhibit 8. Individual Income Tax Liability

Taxable income	Joint return	Head of household	Single person	Married, separate return
$10,000	$ 1,062	$ 1,312	$ 1,387	$ 1,613
$20,000	$ 3,225	$ 3,866	$ 4,177	$ 5,113
$40,000	$10,226	$11,799	$12,657	$15,239

To simplify the operation of the tax system, the tax rates are applied to an individual's "taxable income." Taxable income is determined by subtracting from "gross income" certain deductions and exemptions.

Generally, what you earn through your efforts and what is yielded by your investments comprise your gross income. Thus, salaries, wages, royalties, profits from running a business, rents, dividends and interest are all income. Gifts are not income. Thus, what someone leaves you in a will or gives you during his lifetime need not be included in your income tax return. Certain items look like gifts but are treated by the tax laws as income. Bonuses paid to employees at the end of the year are income. So are tips received by a waitress or taxi driver. Prizes and awards are generally income. Some compensation is exempt from income taxation. The most important tax-exempt income is the interest on state and municipal bonds.

You need not actually receive items of income for them to be included in your gross income. Broadly, if income is credited to your account for you, it will be included in your gross income unless its use is subject to substantial limitations. Thus, if you establish an irrevocable living trust, and the trust income is used to discharge a legal obligation of yours or your spouse's, you are taxable on the income.

As we discussed earlier, the gain that is subject to income taxation upon the sale of property is the difference between the sales price and your "basis" in the property. Generally, your basis in property is your cost. For example, if Don Evans purchased 3M stock at $45, his basis in each share of stock would be $45. If property is received as a gift, the donor's basis is carried over to the donee despite any appreciation in value. Inherited property will also generally receive a carryover basis. However, if the inherited property was held by the decedent on December 31, 1976, the basis of the inherited property is increased to the fair market value on that date. For assets other than marketable securities, the fair market value is increased to the fair market value on that date. For assets other than marketable securities, the fair market value is determined by formula.

There is no gain involved unless property has been sold or exchanged. If Don Evans sold the stock he bought for $45 for $70, he would realize a gain of $25. But if the stock went up on the market to $70 and he did not sell, no gain is realized. In other words, the income tax takes no account of paper gifts.

The sale of property may result in more favorable tax treatment as a "capital gain." Whatever capital gains treatment is available depends upon the asset and its use. Sixty percent of net capital gains is excluded from income, with the remaining forty percent being taxed at the applicable bracket rate, depending upon other income.

The gain realized on the sale of your personal residence may escape taxation if the proceeds of the sale are reinvested in another residence. Reinvestment must take place within 18 months before or after the sale of the old residence. In addition, if you are at least 55 years old on the date of the sale of your residence, you may elect to exclude the first $100,000 of gain from the sale of your residence.

Once your gross income is determined, you are ready to subtract certain items to determine your taxable income. Business expenses are deducted from the total receipts of a business which you conduct to determine the net profit. These expenses include reasonable wages and salaries of employees, cost of goods sold, and depreciation.

An exemption is allowed for the individual taxpayer. This is currently $1000 per year. If a joint return is filed by husband and wife, each is a taxpayer and is entitled to an exemption. Additional exemptions are available if a taxpayer or his spouse is over 65 or blind. Other exemptions are allowed for each dependent of the taxpayer. In order for a person to be a dependent of the taxpayer, he must receive over half his support from the taxpayer and be related to him.

Charitable contributions are deductible up to a maximum established by law. Interest paid on an indebtedness is usually deductible. Thus, if you buy a home and borrow a substantial part of the money to pay for it, you can deduct the interest paid each year on the loan. Certain taxes are deductible--for example, the real estate taxes upon property which you own.

Some people pay no taxes. That is because the sum of their exemptions and deductions exceeds their income. If your income exceeds your exemptions and deductions, you pay a tax on the difference--your taxable income. You make the computation of the tax on the basis of rates set forth in the rate tables with a maximum 50 percent rate on earned income.

There are a few special income tax problems that are presented in estate planning. A trust or estate is a tax-paying entity and must file income tax returns. The tax is imposed on the taxable income of the estate or trust at the rates applicable to married individuals filing separate returns. An estate receives a $600 personal exemption. Some trusts receive a personal exemption of $300 while others are only entitled to a $100 exemption, depending on the terms of the trust. If income is required to be distributed currently or is property distributed to a beneficiary, the estate or trust is treated as a mere conduit through which the income is deemed to flow from its original source to the beneficiary. The amount of such income is allowed as a deduction to the estate or trust and is taxed to the beneficiary. Expenses of administration of an estate are allowable income tax deductions. But, since they are also allowed as estate tax deductions, the executor must elect whether to take such items as estate tax or income tax deductions.

Income earned by a decedent prior to his death may be included in the gross income of the decedent's estate or of a beneficiary of the estate at the time that the estate or beneficiary collects the income. Such income is referred to as "income in respect of a decedent." Expenses incurred by the decedent prior to his death which would have been deductible by the decedent if they had been paid prior to his death may constitute deductions in respect of a decedent.

On the death of a decedent, his taxable year ends. The executor must file an income tax return for the short year of the decedent. If the decedent was survived by a spouse, the executor and the spouse are allowed to file a joint return for the taxable year in which the decedent died.

The Minnesota income tax is essentially the same as the federal income tax. In fact, in computing your state tax, you begin with your income as determined for the federal tax. While any federal tax refunds are includible in your Minnesota gross income, you are entitled to a deduction for federal taxes withheld. Similar deductions are allowed in computing your Minnesota income tax as are allowed for federal income tax purposes. However, the state income tax rates are much lower than the comparable federal rates.

2. Gift Tax

The federal gift tax is computed on a progressive schedule based on the cumulative amount of lifetime transfers. This rate schedule is the same rate schedule that applies to the estate tax. As you can see from Exhibit 9, the rates range from 18 percent on transfers under $10,000 to 70 percent on transfers exceeding $5,000,000.

The amount of gift tax payable is computed by applying the rate schedule to the accumulative lifetime transfers and then subtracting the taxes payable on the lifetime transfers for past taxable periods. For example, let's suppose that Don Evans' taxable gifts for 1979 total $50,000 and the total of all his taxable gifts in previous years is $50,000. The tax on $100,000 of taxable gifts is $23,800. You subtract from this the tax on $50,000, the sum of his taxable gifts for previous years, which is $10,600. The difference, $13,200, is the federal gift tax on Don's taxable gifts of $50,000 in 1979.

The donor is liable for paying the gift tax. If the donee is required by the terms of the transfer to pay the gift tax imposed on the transfer or if the tax is to be paid out of the transferred property, the amount transferred for gift tax purposes is the value of the donated property reduced by the amount of the gift tax.

Exhibit 9. Unified Estate and Gift Tax Rate Schedule

If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Not over $10,000	18 percent of such amount.
Over $10,000 but not over $20,000.	$1,800, plus 20 percent of the excess of such amount over $10,000.
Over $20,000 but not over $40,000.	$3,800, plus 22 percent of the excess of such amount over $20,000.
Over $40,000 but not over $60,000.	$8,200, plus 24 percent of the excess of such amount over $40,000.
Over $60,000 but not over $80,000.	$13,000, plus 26 percent of the excess of such amount over $60,000.
Over $80,000 but not over $100,000	$18,200, plus 28 percent of the excess of such amount over $80,000.
Over $100,000 but not over $150,000	$23,800, plus 30 percent of the excess of such amount over $100,000.
Over $150,000 but not over $250,000	$38,800, plus 32 percent of the excess of such amount over $150,000.
Over $250,000 but not over $500,000	$70,800, plus 34 percent of the excess of such amount over $250,000.
Over $500,000 but not over $750,000	$155,800, plus 37 percent of the excess of such amount over $500,000.
Over $750,000 but not over $1,000,000	$248,300, plus 39 percent of the excess of such amount over $750,000.
Over $1,000,000 but not over $1,250,000	$345,800, plus 41 percent of the excess of such amount over $1,000,000.
Over $1,250,000 but not over $1,500,000	$448,300, plus 43 percent of the excess of such amount over $1,250,000.
Over $1,500,000 but not over $2,000,000	$555,800, plus 45 percent of the excess of such amount over $1,500,000.
Over $2,000,000 but not over $2,500,000	$780,800, plus 49 percent of the excess of such amount over $2,000,000.
Over $2,500,000 but not over $3,000,000	$1,025,800, plus 53 percent of the excess of such amount over $2,500,000.
Over $3,000,000 but not over $3,500,000	$1,290,800, plus 57 percent of the excess of such amount over $3,000,000.
Over $3,500,000 but not over $4,000,000	$1,575,800, plus 61 percent of the excess of such amount over $3,500,000.
Over $4,000,000 but not over $4,500,000	$1,880,800, plus 65 percent of the excess of such amount over $4,000,000.
Over $4,500,000 but not over $5,000,000	$2,205,800, plus 69 percent of the excess of such amount over $4,500,000.
Over $5,000,000.	$2,550,800, plus 70 percent of the excess of such amount over $5,000,000.

There may be some income tax consequences to the donor, however, if the donee pays the gift tax.

It is possible to transfer property without incurring any gift tax. The first $3,000 in value of property, other than gifts of future interests, given by a donor to any donee in any calendar year is excluded in computing the donor's taxable gifts for that year. This "annual exclusion" means that you can give up to $3,000 worth of property each year to each of as many people as you like with no gift tax liability. Thus, in our above example, if Don's gifts in 1979 were to three separate people, his taxable gifts for that year would be $41,000 rather than $50,000. And the gift tax incurred as a result of these gifts would be $10,680 rather than the $13,200 we determined earlier.

In addition to this "annual exclusion," each taxpayer is allowed a "unified credit" that may be used to reduce any gift taxes owed. The maximum amount of the credit may be as much as $47,000. Since this provision was just recently added, however, it is being phased in over a period of years. The chart below shows how the credit is to be phased in:

FOR GIFTS MADE:	MAXIMUM CREDIT
From 7/1/77 to 12/31/77	$30,000
From 1/1/78 to 12/31/78	34,000
From 1/1/79 to 12/31/79	38,000
From 1/1/80 to 12/31/80	42,500

This credit is a single, unified credit for both gift and estate tax purposes. Thus, in general, any portion of the unified credit used against gift taxes will reduce the credit available to be used against the estate tax. For example, if Don Evans elected to use a portion of his unified credit to avoid paying gift taxes on his 1979 gifts, his credit for estate taxes would be only $29,300 ($42,500 - $13,200) if he died in 1980. This must be kept in mind when considering lifetime gifts.

If a married person makes a gift to someone other than his or her spouse, the gift may be considered as made one-half by his spouse. This is known as a "split gift." This special treatment is allowed even though only one of them owned the property given. But both spouses must elect to treat the gift as a split gift to qualify for the special treatment. In effect, gift splitting means that a married couple is entitled to a $6,000 annual exclusion for each beneficiary. Let's change our example one more time to see what effect this has. Let's assume that Don and Marilyn Evans elected to treat Don's 1979 gifts to the three beneficiaries as split gifts. This reduces the taxable gifts to $32,000 and the gift tax incurred to $8,160.

Gift splitting also allows a married couple to divide gift taxes among their individual unified credits. Thus, if Don and Marilyn Evans did not want to pay the gift tax of $8,160, they would each deduct one-half of it from their credits.

A gift from one spouse to another is also given special treatment. The first $100,000 of lifetime gifts between spouses that meet certain requirements escapes gift taxation. This is the gift tax "marital deduction." It is limited to 50 percent of the value of gifts in excess of $200,000.

Charitable gifts are not taxable as gifts, regardless of their amount. What gifts are "charitable" is a matter that is very carefully defined by the tax laws. The Red Cross, the United Fund, and similar organizations are charities. Gifts for educational or religious purposes are charitable as are gifts to a city, state, or the United States. A gift to a particular poor family whom you may happen to know about is not a charitable gift. A general line is drawn in favor of public charity and against private charity.

The gift tax is imposed on the transfer of property by gift. While the term "gift" is not expressly defined in the tax laws, any transfer of property for less than the fair market value is subject to the gift tax. The difference between the value of the property transferred and the amount received by the donor for the property constitutes a gift. Thus, for gift tax purposes, whether a gift was made is not dependent upon the motive of the donor, but on whether he received something of equal value for the property transferred.

Only gifts of property are subject to the gift tax. No gift tax is imposed on the contribution of services. But, if property is transferred in *any* manner, it is subject to the gift tax. Thus, indirect gifts are reached. For example, if Frank Jones forgives a debt owed him by his son, he may have made a gift of the amount of the debt. Transfers to a trust are subject to the gift tax. In general, the creation of a joint tenancy is subject to gift tax if only one party supplies the money for the property. The exercise or release of a power of appointment may be subject to the gift tax.

A transfer of property is not subject to the gift tax unless it is complete and irrevocable. If the donor retains the power to revoke the gift or change the beneficiaries, the transfer is not complete for gift tax purposes. But, where a donor retains a power-such as a power to revoke--preventing a transfer from constituting a completed gift, the subsequent surrender of that power by the grantor creates a gift at the date of surrender.

If the donor retains a reversion or a life estate in the transferred property, the transfer is subject to the gift tax. In this case, the value of the donor's retained interest must be deducted from the property transferred in order to determine the value of the gift.

Federal gift tax returns, shown as Exhibit 10, are filed on a calendar quarter basis. Except for charitable gifts, the gift tax return is to be filed on or before the 15th day of the second month following the close of the calendar quarter in which the gift was made. For example, if you make a gift in April, the return is not required until August 15. However, quarterly returns need not be filed on gifts made after 1976 unless taxable gifts for the quarter plus all other taxable gifts for the calendar year for which no return has been filed exceed $25,000. Pre-1977 gifts in excess of the annual exclusion still must be reported quarterly.

The State of Minnesota has repealed its gift tax, effective January 1, 1980.

Exhibit 10.

Form **709**
(Rev. June 1977)
Department of the Treasury
Internal Revenue Service

United States Quarterly Gift Tax Return

(Section 6019 of the Internal Revenue Code) (For gifts made after December 31, 1976)
Calendar quarter(s) ending (month and year) ▶..
For "Privacy Act" notification, see the Instructions for Form 1040.

Donor's first name and middle initial	Donor's last name	Social security number
Address (number and street)		Residence (domicile)
City, State, and ZIP code		Citizenship

	Yes	No
If you (the donor) filed a previous Form 709, has your address changed since the last Form 709 was filed?		
A Gifts by husband or wife to third parties.—Do you consent to have the gifts by you and by your spouse to third parties during the calendar quarter(s) considered as made one-half by each of you? (See instruction 8.) . . . . *(If the answer is "Yes," the following information must be furnished and the consent shown below signed by your spouse.)*		
1(a) Name of spouse — 1(b) Social security number		
2 If the consent is effective for gifts made in a previous quarter(s) of the calendar year and no return was filed for such previous quarter(s) (see instruction 1) and such gifts are being reported on this return (see instruction 10), write the previous quarter(s) ending (month and year) in addition to the current quarter ending (month and year).		
3 Were you married during the entire calendar quarter(s)?		
4 If the answer to 3 is "No," check whether ☐ married, ☐ divorced, or ☐ widowed, and give date ▶		
5 Will a gift tax return for this calendar quarter(s) be filed by your spouse?		

Consent of Spouse—I consent to have the gifts made by me and by my spouse to third parties during the calendar quarter(s) considered as made one-half by each of us. We are both aware of the joint and several liability for tax created by the execution of this consent.

Spouse's signature ▶ Date ▶

Computation of Tax

1 Enter the amount from Schedule A, line (j)	1	
2 Enter the amount from Schedule B, line (c)	2	
3 Total (add amounts on lines 1 and 2)	3	
4 Tax computed on amount on line 3 (See Table A in separate instructions.)	4	
5 Tax computed on amount on line 2 (See Table A in separate instructions.)	5	
6 Balance (subtract amount on line 5 from amount on line 4)	6	
7 Enter the amount of unified credit from Table B	7	
8 Enter the amount of unified credit against gift tax allowable for all prior quarters	8	
9 Balance (subtract amount on line 8 from amount on line 7)	9	
10 Enter 20% of the amount allowed as specific exemption after September 8, 1976	10	
11 Balance (subtract amount on line 10 from amount on line 9)	11	
12 Unified credit (enter the smaller of (i) amount on line 6 or (ii) amount on line 11)	12	
13 Credit for foreign gift taxes (see instruction 20)	13	
14 Total (add amounts on line 12 and line 13)	14	
15 Tax due (subtract amount on line 14 from amount on line 6)	15	

Please attach the necessary supplemental documents; see instruction 15.

Under penalties of perjury, I declare that I have examined this return, including any accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than donor) is based on all information of which preparer has any knowledge.

Donor's signature ▶ Date ▶

Preparer's signature (other than donor) ▶ Date ▶

Preparer's address (other than donor) ▶

Please attach Check or Money Order here

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Exhibit 10 (Continued).

Form 709 (Rev. 6-77) Page 2

Schedule A Computation of Taxable Gifts

Item number	Donee's name and address and description of gift. If the gift was made by means of a trust, attach a copy of the trust instrument	Donor's adjusted basis of gift	Date of gift	Value at date of gift
1				

(a) Total gifts of donor . . . . .

(b) One-half of items .... to .... attributable to spouse (see instruction 11) . . . . .

(c) Balance (subtract amount on line (b) from amount on line (a)) . . . . .

(d) Gifts of spouse to be included (from line (b) of spouse's return) (see instruction 11) . . . . .

(e) Total gifts (add amounts on lines (c) and (d)) . . . . .

(f) Total exclusions not exceeding $3,000 for the calendar year for each donee (except gifts of future interests) . .

(g) Total included amount of gifts (subtract amount on line (f) from amount on line (e)) . . . . .

(h) Deductions (see instructions 16 and 17):

(1)(a) Gift of qualified interests to spouse for this period (before annual exclusion, based on items .... to .... from Schedule A) . . . . .

(b) Annual exclusion attributable to gifts on line (h)(1)(a) . . . . .

(c) Net amount (subtract amount on line (h)(1)(b) from amount on line (h)(1)(a)) . .

(2)(a) First $100,000 marital deduction $100,000

(b) Marital deduction for prior periods after December 31, 1976 . . . . .

(c) Balance of first $100,000 marital deduction available (subtract amount on line (h)(2)(b) from amount on line (h)(2)(a) but not less than zero) . . . . .

(3)(a) Excess over first $100,000 marital deduction (if total of amount on line (h)(1)(c) plus amount on line (h)(2)(b) is $100,000 or less enter zero. Otherwise, enter amount on line (h)(1)(a) less amount on line (h)(2)(c)) . . . . .

(b) Excess over first $100,000 for prior periods (after December 31, 1976) . . . . .

(c) Total excess over first $100,000 (add amounts on lines (h)(3)(a) and (h)(3)(b)) . .

(4)(a) Second $100,000 . . . . . $100,000

(b) Gifts qualifying for additional marital deduction (subtract amount on line (h)(4)(a) from amount on line (h)(3)(c) but not less than zero) . . . . .

(5)(a) Enter 50% of amount on line (h)(4)(b) . . . . .

(b) Enter 50% of amount on line (h)(1)(a) but not more than amount on line (h)(1)(c) .

(c) Enter the lesser of the amount on line (h)(1)(c) or the amount on line (h)(2)(c) . .

(6) Marital deduction (if amount on line (h)(4)(b) is zero, enter amount on line (h)(5)(c). Otherwise, enter amount on line (h)(5)(c) plus the lesser of the amounts on line (h)(5)(a) or line (h)(5)(b)) . . . . .

(7) Charitable, public, and similar gifts (based on items .... to ...., less exclusions) . . . . .

(i) Total deductions (add amounts on lines (h)(6) and (h)(7)) . . . . .

(j) Amount of taxable gifts (subtract amount on line (i) from amount on line (g)) . . . . .

Schedule B Did you (the donor) file gift tax returns for prior periods? (If "Yes," follow instruction 19 in completing Schedule B below.) . ☐ Yes ☐ No

Calendar years (prior to 1971) and calendar quarters (1971 and subsequent years)	Internal Revenue office where prior return was filed	Amount of unified credit against gift tax for periods after December 31, 1976	Amount of specific exemption for prior periods ending before January 1, 1977	Amount of taxable gifts

(a) Totals for prior periods (without adjustment for reduced specific exemption) . . . . .

(b) Amount, if any, by which total specific exemption, line (a), exceeds $30,000 (see instruction 19) . . . . .

(c) Total amount of taxable gifts for prior periods (add amount, last column, line (a), and amount, if any, line (b)) .

(If more space is needed, attach additional sheets of same size.)

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3. Federal Estate Tax

The federal estate tax is levied on the estate of a decedent without reference to the persons who are to receive the property. The estate tax is a tax on the transfer of property at death, but it is not limited to property owned by the decedent at the time of his death. Property transferred by the decedent during his lifetime may be subject to the estate tax upon the decedent's death if the decedent retained certain interests in the property or powers over it or if the property was transferred within three years of death. The estate tax is imposed on the decedent's estate and generally is payable by the decedent's personal representative.

The estate tax is computed on the basis of the same rate schedule as the federal gift tax. There are essentially three steps in computing the federal estate tax: (1) determining the property to be included in a decedent's gross estate; (2) determining the amount of deductions permitted the decedent's estate; and (3) after the estate tax has been computed, deducting from the tax the credits allowed the estate.

(a) *The gross estate.* Property owned by the decedent at the time of his death must be included in his gross estate to the extent that it passes from the decedent to another party. If the decedent's interest in the property terminates at his death, it will not be included in his gross estate as property owned at his death. But, in certain situations, such property may be included in his gross estate due to other reasons.

Other property will be included in a decedent's gross estate even though he does not "own" it at his death. This is because the general aim of the federal estate tax is to tax real transfers of economic benefit, regardless of the form involved. Also, Congress, in the interest of preventing tax avoidance, has felt that certain lifetime transfers ought to be taxed, even though the economic benefit transferred at death is minimal.

Property transferred within the last three years of a decedent's life is included in his estate, except to the extent of the $3,000 annual exclusion allowed under the gift tax laws. Prior to the Tax Reform Act of 1976, one tax advantage of gifts was that the gift taxes paid reduced the gross estate remaining when the donor died. This is no longer true of gifts made within three years of death. Taxes on these gifts will be "grossed up" in the donor's gross estate for estate tax purposes. Gifts made before the three year period will not be "grossed up." Thus, any tax incentives for deathbed gifts in excess of $3,000 have been eliminated. In fact, if a gift made within three years of death exceeds $3,000, the entire value of the gift, not just that portion in excess of $3,000, is included in the gross estate. In addition, if a gift in the amount of $6,000 is made within three years of death and the gift is split with a spouse, the full $6,000 will be included.

Even though a gift was not made within three years of death, the transferred property may be included in the donor's gross estate if he retained certain powers or interests. Donated property is included in the donor's gross estate if he retained a life estate interest or the right to income, possession or enjoyment of the property or income from it. If the donor retained a power to alter, amend, revoke or terminate a transfer of property in such a way that the enjoyment of the property would be changed, the property is included in his estate. Transfers intended to take effect in possession or enjoyment at the death of the donor are includible. These rules are very complex, and the statements above do nothing but merely sketch them in broad outline. In general, if you want to save taxes at death by lifetime gifts, all connections with the property must be severed.

In general, any property held by the decedent at the time of his death as a joint tenant will be included in his gross estate unless it can be proved that the purchase money for the property was provided by another party. If part of the purchase money for the jointly-held property was provided by the decedent and part by his surviving co-owner, only that portion of the value of the property supplied by the decedent will be included. For example, if Frank Jones, the Owatonna farmer, and his son purchased land with Frank, Jr. contributing 25 percent of the purchase money, only 75 percent of the value of the land would be includible in Frank's estate at his death. If the land was worth $60,000, only $45,000 would be includible in his estate. If all of the money was provided by the surviving co-tenant, the entire property is excluded from the decedent's gross estate.

As between husbands and wives, the above rules no longer control how much of the joint interest is includible in the gross estate of the first joint tenant to die. The value included will be one-half of the value of the interest. There are several requirements which must be met for this special treatment to apply: (1) the joint interest must have been held by the decedent and his spouse as joint tenants; (2) either or both of the spouses must have created the joint interest; (3) the creation of the joint interest must have been subject to the federal gift tax; and (4) the joint interest must have been created after December 31,1976. However, this treatment is available if a gift tax return is filed in 1979.

Jointly held farm or business property is subject to a special rule if a surviving spouse "materially participated" in the operation of the farm or other business. A portion of the value of the jointly owned property may be excluded under a formula that takes into account the unrealized appreciation in the value of the property and the number of years in which the surviving spouse materially participated in the farm or business.

Property over which a decedent had a general power of appointment at the time of his death is included in his gross estate. A power of appointment is a general power of appointment if it could be exercised in favor of the decedent, his estate, his creditors, or creditors of his estate.

The gross estate includes the proceeds of insurance on the decedent's life if the decedent possessed at his death any of the "incidents of ownership" of the insurance policies, or if the proceeds of the insurance are payable to the decedent's estate. "Incidents of ownership" refers generally to the economic benefits of the policy such as the right to name the beneficiary of the policy, to surrender the policy or to borrow on its cash value. If a decedent possesses any one of the incidents of ownership in a policy on his life, it is sufficient to cause the proceeds of the policy to be included in his gross estate. Proceeds of insurance on the decedent's life that are payable to the decedent's personal representative or which can be used to pay estate obligations are included in his gross estate, whether or not the decedent retained any incidents of ownership in the insurance policy.

Generally, the value of property for estate tax purposes is the fair market value of the property. That is, the price at which a willing buyer would buy and a willing seller would sell. If certain conditions are met, real property used for farming, or in a closely held business, may be valued on the basis of its use rather than on the basis of another use. Unless the personal representative elects the alternate valuation date, property included in a decedent's gross estate (whether or not owned by him at the time of his death) will be valued at the date of his death. The personal representative may decide to use the value of the property six months after the decedent's death. This is the so-called "alternate valuation date." If the alternate valuation date is elected, each item of property included in the decedent's gross estate is valued at the later date. If any property is disposed of within the six-month period, it will be valued as of the date of disposition. The alternate valuation date allows the beneficiary of a decedent to escape the hardship that would result if some of the decedent's property substantially declined in value immediately after his death.

To illustrate this, let's assume that Don Evans owned 1,500 shares of 3M stock which was worth $60 per share when he died. Six months later, the stock was worth $40 per share. If a tax were due on the $90,000 value of the stock at Don's death, his beneficiaries would be hard pressed to pay it. Not only would the tax be greater, but they would have less money available to pay it. If the alternate valuation date is elected, only $60,000 would be included in Don's estate.

(b) *Deductions*. A decedent's estate may deduct the funeral expenses of the decedent and the expenses of administering property that was included in the decedent's gross estate. These expenses include those that are incurred in collecting and preserving the decedent's assets, paying estate debts, and distributing assets to the beneficiaries. Personal representative's fees, attorney's fees, appraiser's fees, and court costs are just some of the administrative expenses that are deductible. Some administrative expenses are also allowable income tax deductions, and the personal representative must elect whether to deduct such expenses as either income tax deductions or estate tax deductions. He cannot treat the same item as both an income tax and an estate tax deduction.

Outstanding debts of the decedent are deductible. This includes personal obligations of the decedent at the time of his death and interest accrued to the date of death. Mortgages and other liens against property included in the gross estate may be deductible. Unpaid taxes are deductible. This includes unpaid income taxes, gift taxes, and property taxes.

Casualty and theft losses are deductible if they were incurred during the period of settlement of the estate. The deduction is reduced if the loss is offset by insurance. The loss deduction may be deducted on the estate's income tax return or estate tax return, but not on both.

A bequest of property included in the decedent's gross estate to a qualified charity may entitle the decedent's estate to an estate tax deduction equal to the value of such property. Again, what constitutes a charity is carefully defined by the tax laws. Unless the possibility of the charity not taking form is so remote as to be negligible, a contingent charitable remainder is not deductible to any extent.

Property included in the gross estate of the decedent and passing to a surviving spouse of the decedent may qualify for a deduction from the decedent's gross estate. This is the "marital deduction." It is often the most important deduction available in estate planning and a great deal of planning is often done to ensure maximum use of it. The maximum amount deductible by a decedent's estate as a marital deduction is the greater of an amount equal to one-half of the decedent's "adjusted gross estate" (gross estate less expenses, debts, taxes, and losses) or $250,000. This is, with respect to adjusted gross estates of less than $500,000, up to $250,000 may be deducted despite the normal 50 percent limitation.

The qualification of a transfer to a spouse for a marital deduction is subject to a number of technical requirements. A property interest cannot qualify for the marital deduction unless the interest is included in the decedent's gross estate. Thus, insurance proceeds payable to the surviving spouse under a policy owned by her would not qualify for the marital deduction, since they would not be included in the decedent's gross estate. To be deductible, the property interest must "pass" from the decedent to his surviving spouse. The qualifying interest may pass to the surviving spouse either outright or in trust.

No deduction is allowed if the interest that the surviving spouse receives is a "terminable interest." A terminable interest is an interest that will terminate or fail due to a lapse of time or upon the occurrence of an event. The most common example of a terminable interest is a life estate. A life estate terminates when its holder dies (the occurrence of an event). The purpose of the terminable interest rule is to exclude from the marital deduction an interest that would not be includable in the surviving spouse's gross estate.

There are exceptions to the terminable interest rule. If the surviving spouse must survive the decedent for a period of time not greater than six months, the interest qualifies for the marital deduction, provided that the surviving spouse survives for the required period. (Clauses requiring this are common in order to prevent two probate administrations in the event that one spouse survives the other for a short period of time following a common disaster.) An interest will not be treated as a terminable interest if the surviving spouse is entitled for life to all the income from the interest and has a general power of appointment over the interest. This exception, as we will see, often provides the basis for many estate plans.

If a decedent is not survived by a spouse but leaves surviving minor children, a deduction is allowed for the value of property passing to such children. For purposes of this "orphan's exclusion" a minor child is defined as any child who is less than 21 years of age at the time of the decedent's death. The maximum deduction per child is $5,000, multiplied by the number by which

21 exceeds the child's age in years on the date of the decedent's death. If, for example, Don and Marilyn Evans were to die today, their estates would be entitled to deductions of $10,000 for property given to Rich, 19, $25,000 for property left to Kris, 16, and $55,000 for property given to Brian, 10.

When the allowable deductions have been determined, they are deducted from the gross estate. The difference is the "taxable estate." The tax rates are applied to the taxable estate to determine the tentative estate tax. But the computation of the tax is not yet finished.

(c) *Credits*. After the tentative estate tax on the decedent's taxable estate is computed, the tax is reduced by allowable credits. The portion of the decedent's unified credit that was not used to offset taxes on lifetime gifts is available to offset the estate tax. As you recall, the maximum credit will be $47,000 when fully implemented. It will be phased in according to the following schedule:

YEAR OF DECEDENT'S DEATH	AMOUNT OF CREDIT
1977	$30,000
1978	$34,000
1979	$38,000
1980	$42,500
1981	$47,000

A credit is allowed for any state inheritance or estate taxes. The maximum amount of credit is established by the federal estate tax laws. Minnesota imposes a death tax equal to the maximum credit allowable under the federal laws by imposing an inheritance tax and an estate tax equal to the amount by which the maximum allowable credit exceeds the state inheritance tax.

Before the estate and gift taxes were integrated into a single transfer tax with unified rates and credits, a credit was allowed for gift taxes paid on transfers of property that was subsequently included in the donor's estate. Under the new law, this credit is no longer available. But it is allowed for gifts made before December 31, 1976. It is limited to the lesser of the gift tax previously paid or the estate tax attributable to the doubly taxed property.

Where a decedent received property from another, prior to the decedent's death and where the other person died within a certain period of time before or after the decedent, the decedent's estate may be allowed a credit for all or part of the estate tax paid by the other person's estate on the property. This credit is for federal estate taxes imposed on transfers *to* the decedent. The amount of the credit is dependent upon the length of time from the death of the other person to the decedent's death. It is designed to give some protection against too rapid retaxation of the same property.

Finally, a credit is allowed for foreign death taxes paid on property located in a foreign country and included in the decedent's gross estate. When all the credits have been computed, they are subtracted from the tentative estate tax to determine the net estate tax payable.

The decedent's personal representative is required to file the estate tax return and pay the tax. A return must be filed if the gross estate of the decedent exceeds $120,000 in 1977. This amount will be increased as the unified credit increases. Returns are required if the gross estate exceeds $134,000 in 1978; $147,000 in 1979; $161,000 in 1980; and $175,000 in 1981 and following years.

The estate tax return, shown in Exhibit 11 , is due nine months after the decedent's death. The entire tax is due at the same time. Extensions are available under certain specific circumstances. For example, if more than 65 percent of a decedent's adjusted gross estate is an interest in a closely-held business, the personal representative may elect to pay all or part of the estate taxes in up to 10 equal annual installments for a period of up to five years. Interest is, of course, payable, but at a special 4 percent rate on the first $1,000,000 of the business property.

As a practical matter, the federal estate tax poses no obstacles to most estate plans. You must have a taxable estate of more than $150,000 before the unified credit of $47,000 is exhausted. And if a spouse survives, $250,000 may be left to her tax free. The estate tax is important, however, to some estate plans and it may become important at some point in the future for others.

Exhibit 11.

Form **706** (Rev. Jan. 1979) Department of the Treasury Internal Revenue Service

United States Estate Tax Return

Estate of citizen or resident of the United States (see separate instructions)

Decedent's first name and middle initial	Decedent's last name	Date of death
Domicile at time of death	Year domicile established	Decedent's social security number

Name of personal representative	Address (Number and street including apartment number or rural route, city, town or post office, State and ZIP code)

Name and location of court where will was probated or estate administered	Case number

If decedent died testate check here ► [ ] and attach a certified copy of the will.

Authorization to receive confidential tax information under 26 C.F.R. 601.502(c)(3)(ii) if return prepared by an attorney for the personal representative:

I declare that I am the attorney of record for the personal representative before the above court and prepared this return for the personal representative. I am not under suspension or disbarment from practice before the Internal Revenue Service and am qualified to practice in the State shown below—

Name of attorney	State	Address (Number and street, city, State and ZIP code)

Computation of Tax

1 Total gross estate (from Recapitulation, page 3, line 10)		1	
2 Total allowable deductions (from Recapitulation, page 3, line 29)		2	
3 Taxable estate (subtract the amount on line 2 from the amount on line 1)		3	
4 Adjusted taxable gifts (total amount of taxable gifts (within the meaning of section 2503) made by decedent after December 31, 1976, other than gifts which are includible in decedent's gross estate (section 2001(b))). See instructions		4	
5 Add the amount on line 3 and the amount on line 4		5	
6 Tentative tax on the amount on line 5 from Table A in the separate instructions		6	
7 Aggregate gift taxes payable with respect to gifts by decedent after December 31, 1976, including gift taxes paid by decedent's spouse for split gifts (section 2513) if decedent was the donor of such gifts and they are includible in decedent's gross estate. See instructions		7	
8 Gross estate tax. Subtract the amount on line 7 from the amount on line 6		8	
9 Unified credit against estate tax from Table B in the separate instructions	9		
10 Adjustment to unified credit. See instructions	10		
11 Allowable unified credit (subtract the amount on line 10 from the amount on line 9)		11	
12 Subtract the amount on line 11 from the amount on line 8 (but not less than zero)		12	
13 Credit for State death taxes not to exceed the amount on line 12; see Table C in the separate instructions and attach credit evidence		13	
14 Subtract the amount on line 13 from the amount on line 12		14	
15 Credit for Federal gift taxes (see section 2012 and attach computation)	15		
16 Credit for foreign death taxes (from Schedule P). (Form 706CE is required)	16		
17 Credit for tax on prior transfers (from Schedule Q)	17		
18 Total (add the amounts on lines 15, 16, and 17)		18	
19 Net estate tax. Subtract the amount on line 18 from the amount on line 14		19	
20 Prior payments. Explain in attached statement; see instruction 5	20		
21 United States Treasury bonds redeemed in payment of estate tax	21		
22 Total (add the amount on line 20 and the amount on line 21)		22	
23 Balance due (subtract the amount on line 22 from the amount on line 19)		23	

Note: *Please attach the necessary supplemental documents; see instruction 6.*

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer other than the personal representative is based on all information of which preparer has any knowledge.

Signature of personal representative .... Date

Signature of preparer other than personal representative .... Address (and ZIP code) .... Date

Exhibit 11 (continued)

Form 706 (Rev. 1-79)

Estate of:

General Information

1 Address of decedent at time of death (Number and street including apartment number or rural route, city, town or post office, State and ZIP code)

2 Place of death, if different than decedent's address (e.g., name of hospital)

3 Cause of death

4 Length of last illness

5 Decedent's physicians

Name	Address (Number and street, city, State, and ZIP code)

6 Date and place of birth

7 Decedent's business or occupation. If retired check here ▶ ☐ and state decedent's former business or occupation ▶..............

8 Marital status of decedent at time of death

☐ Married—Date of marriage to surviving spouse ▶ ....

—Domicile at time of marriage ▶ ....

☐ Widow or widower—Name and date of death of deceased spouse ▶..............

☐ Single

☐ Legally separated—Name of legally separated spouse ▶ ....

☐ Divorced—Date divorce decree became final ▶

	Please check the "Yes" or "No" box for each question	Yes	No
9 Did the personal representative make a diligent and careful search for property of every kind left by the decedent for whose estate this return is filed?			
10 Do you elect the alternate valuation explained in instruction 12?			
11 Do you elect the special valuation explained in instruction 13?			

If "Yes," attach to this return a statement that includes the following information:

(i) The relevant qualified use;

(ii) The items of real property shown on the estate tax return to be specially valued pursuant to the election (identified by schedule and item number);

(iii) The fair market value of the real property to be specially valued under section 2032A and its value based on its qualified use (both values determined without regard to the adjustments provided by section 2032A(b)(3)(B));

(iv) The adjusted value (as defined in section 2032A(b)(3)(B)) of all real property which is used in a qualified use and which passes from the decedent to a qualified heir;

(v) The items of personal property shown on the estate tax return that pass from the decedent to a qualified heir and are used in a qualified use under section 2032A (identified by schedule and item number) and the total value of such personal property adjusted as provided under section 2032(A)(b)(3)(B);

(vi) The adjusted value of the gross estate, as defined in section 2032A(b)(3)(A);

(vii) The method used in determining the special value based on use;

(viii) Copies of written appraisals;

(ix) The date on which the decedent (or a member of his or her family who held the property before the decedent) acquired the property and on which he or she or a member of his or her family commenced the qualified use (if different from the date of acquisition);

(x) Any periods following commencement of the qualified use during which the decedent or a member of his or her family did not own the property, use it in a qualified use, or materially participate in the operation of the farm or other business within the meaning of section 2032A(e)(6); and

(xi) The name, address, taxpayer identification number, and relationship to the decedent of each person taking an interest in each item of specially valued property, and the value of the property interests passing to each such person based on both fair market value and qualified use.

Also attach to this return an agreement to express consent to personal liability under section 2032A(c) in the event of certain early dispositions of the property or early cessation of the qualified use. The agreement must be executed by all parties receiving any interest in the property being valued based on its qualified use. The agreement is to be in a form that is binding on all parties under applicable local law. It must designate an agent for the parties for all dealings with the Internal Revenue Service on matters arising under section 2032A.

Include below, the name, identifying number, relationship, and address of all parties receiving any interest in the specially valued property. For "Privacy Act" notice, see the Form 1040 instructions.

Name	Identifying number	Relationship	Address

(If more space is needed, attach additional sheets of same size.)

Exhibit 11 (continued)

Form 706 (Rev. 1-79)

Estate of:

Recapitulation

Item number	Gross estate	Alternate value	Value at date of death
1	Schedule A—Real Estate		
2	Schedule B—Stocks and Bonds		
3	Schedule C—Mortgages, Notes, and Cash		
4	Schedule D—Insurance on Decedent's Life		
5	Schedule E—Jointly Owned Property		
6	Schedule F—Other Miscellaneous Property		
7	Schedule G—Transfers During Decedent's Life		
8	Schedule H—Powers of Appointment		
9	Schedule I—Annuities		
10	Total gross estate (add lines 1 through 9). Enter here and on page 1, line 1		

Item number	Deductions		Amount	
11	Schedule J—Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims			
12	Schedule K—Debts of Decedent			
13	Schedule K—Mortgages and Liens			
14	Total of Items 11 through 13			
15	Allowable amount of deductions from item 14 (see note [1])			
16	Schedule L—Net Losses During Administration			
17	Schedule L—Expenses Incurred in Administering Property Not Subject to Claims			
18	Total of items 15 through 17			
19	Schedule M—Bequests, etc., to Surviving Spouse			
20	Adjusted gross estate (see note [2])			
21	Greater of (i) $250,000 or (ii) one-half of amount on line 20 (see note [2])			
22	Aggregate of gift tax marital deduction allowed to decedent with respect to gifts made after December 31, 1976 (exclude any gift which is includible in the gross estate of the donor by reason of section 2035 (certain gifts within 3 years of death))			
23	Aggregate of gift tax marital deduction which would have been allowable to decedent with respect to gifts required to be included in a gift tax return made after December 31, 1976, if the amount deductible with respect to any gift were 50 percent of its value (exclude any gift which is includible in the gross estate of the donor by reason of section 2035 (certain gifts within 3 years of death))			
24	Balance (subtract the amount on line 23 from the amount on line 22)			
25	Balance (subtract the amount on line 24 from the amount on line 21 (but not less than zero))			
26	Amount of marital deduction (smaller of (i) amount on line 19 or (ii) amount on line 25)			
27	Schedule N—Orphans' Deduction			
28	Schedule O—Charitable, Public, and Similar Gifts and Bequests			
29	Total allowable deductions (add amounts on lines 18, 26, 27, and 28). Enter here and on page 1, line 2			

[1] Note.—See paragraph 1 of the Instructions for the Recapitulation in the separate instructions.

[2] Note.—Enter at item 20 the excess of item 10, Total gross estate, over item 18, if the decedent and surviving spouse at no time held property as community property. If property was ever held as community property, compute item 20, Adjusted gross estate, and the reduced $250,000 limitation at item 21 in accordance with the separate Instructions for the Recapitulation and attach an additional sheet showing such computation.

4. Minnesota Estate Tax

The Minnesota estate tax applies to nearly all property passing at the death of Minnesota residents or of residents of other states possessing certain property within Minnesota. It is a recent tax which was enacted by the 1979 Legislature and applies to the estates of persons dying after December 31, 1979. For persons dying prior to that date the Minnesota inheritance tax, which was repealed by the 1979 Leglislature, would apply.

In general, the estate tax reaches substantially the same property which is reached by the federal estate tax. There are, however, some differences. The proceeds of certain insurance policies issued by the United States, known as war risk insurance policies, and serviceman's life insurance are exempt from the Minnesota estate tax while they may be includible for purposes of the federal estate tax. Qualified employee benefits are exempted from the Minnesota estate tax to the extent that they are included in the federal gross estate.

Because the starting point for the calculation of the Minnesota taxable estate is the federal gross estate,the value of the decedent's assets will be substantially the same for the Minnesota estate tax as for the federal estate tax. As in the case of the federal estate tax, it may be possible to value real property used for farming or in a closely held business on the basis of its use value, e.g., farm income potential, rather than the highest and best use for the property.

As with the federal estate tax, several deductions are allowed in computing the Minnesota estate tax. Among them are deductions for funeral expenses, legal fees, administration expenses, expenses of last illness, valid claims against the decedent, debts of the decedent which were unpaid at death, federal estate taxes, real estate taxes due and payable prior to or in the year of the decedent's death, and liens and mortgages against the decedent's property. A marital deduction similar to the federal marital deduction is also allowed. However, it is allowed only to the extent that property passing to a surviving spouse is included in determining the decedent's Minnesota taxable estate. The Minnesota estate tax statute also provides for exemption of gifts "to or for the United States of America or any state or any political subdivision thereof for public purposes exclusively" and to or for the use of certain qualifying charities.

In computing the Minnesota estate tax,the first step is computing the Minnesota taxable estate. The Minnesota taxable estate consists of the decedent's federal gross estate less the sum of (1) the value of gifts of real property outside of Minnesota included in the federal gross estate by reason of the provision relating to gifts made within three years of death; (2) the value of property owned by a decedent at death which is deemed to be located outside Minnesota for tax purposes;

(3) the exemptions and deductions allowed under the Minnesota estate tax; and (4) the sum of $200,000.00. In a case of a non-resident decedent this amount is reduced by the proportion of the federal gross estate having its location for tax purposes outside of Minnesota.

The Minnesota estate tax imposed is computed by applying the following rates to the Minnesota taxable estate:

7% on the first $100,000.00
8% on the next $100,000.00 or part thereof;
9% on the next $100,000.00 or part thereof;
10% on the next $200,000.00 or part thereof;
11% on the next $500,000.00 or part thereof;
12% on the excess over $1,000,000.00

The tax imposed however will not be less than the maximum state death tax credit allowable for federal estate tax purposes with respect to the decedent's estate which is subject to the Minnesota estate tax.

As with the federal estate tax, the personal representative of the decedent's estate is responsible for filing the Minnesota Estate Tax Return. The return must be filed with the Commissioner of Revenue within nine months after the decedent's death. Any tax due is payable nine months after the decedent's death. However, where the tax due exceeds $5,000.00, an election may be made to pay the tax in five equal installments over a period not to exceed five years from the decedent's death. In certain cases it is possible to pay the tax in up to ten installments. Under this provision the first installment is due within five years of the payment due date. Succeeding installments are due on or before the same date of each succeeding year. However, there are several requirements for qualification for this special provision. The personal representative and the person to whom property which is subject to the Minnesota estate tax is transferred are personally liable for the payment of this tax until it is paid.

The Minnesota estate tax, though significant, does not affect everyone's estate. This is because a return is only required of resident decedents dying after December 31, 1979 and before January 1, 1981, with federal gross estate in excess of $161,000.00. For resident decedents dying after December 31, 1980, no return is required unless the decedent's federal gross estate is excess of $175,000.00. Thus a return will not be required to be filed in many estates.

B. Tax Planning

Tax saving is both legal and proper. You always have the right to arrange and manage your affairs to receive the benefit of all tax provisions and to minimize taxes honestly. This applies to income taxes, gift taxes, and death taxes.

As a property owner, you have a duty to bear your proper share of taxes, but you also owe a duty to your family and heirs to pay no more than is due. Thus, tax aspects become important considerations in planning your estate. However, you should not begin estate planning from the tax saving point of view. In discussing your estate and estate plan with your attorney, you must weigh carefully your personal desires concerning your plan. Plans that simply save taxes may not accomplish your other estate planning objectives. Remember that minimizing taxes is no more important than directing the distribution of your estate and providing lifetime security for yourself and your spouse. In short, you should consider various plans that accomplish your objectives and then choose a plan that saves taxes.

There are several methods available for saving federal and state estate taxes. We will discuss a few of the more common techniques.

1. Planning With Lifetime Gifts

Many of the tax incentives that were formerly presented by the estate and gift tax laws for lifetime gifts have been eliminated under recent tax laws. But some incentives remain and it is still possible to save on estates taxes by using lifetime gifts. In 1979, the Minnesota Legislature repealed the state gift tax effective January 1, 1980. Thereafter, the only gift tax of concern is the Federal gift tax. Because the $3,000 annual exclusion is still available, a gift program will allow you to transfer substantial amounts of property out of your estate without incurring any gift taxes. If you split the gifts, even more savings are possible. A second advantage of lifetime gifts is that any appreciation in the value of the donated property after the gift is made is free from any transfer tax. Thus, gifts of property that is likely to appreciate in value may result in estate tax savings. To illustrate this, let's assume that the value of farm land in Frank Jones' area is rapidly increasing in value. Realizing this, Frank makes a gift of 40 acres of his farm land when it is valued at $1,300 per acre. When he dies, four years later, it is worth $1,900 per acre. By making the gift, Frank is able to avoid the inclusion of an extra $24,000 ($600 x 40) in his gross estate. Whether there will be a savings will depend upon the size of your estate, since this affect the tax rates applicable to your estate. But this point should not be overlooked in tax planning. Gifts made more than three years prior to the donor's death are not "grossed up" in the donor's estate. This means that not only is the transferred property taken out of the donor's estate, but the gift tax paid is also removed from estate taxation. Finally, lifetime gifts may escape any Minnesota tax on the transfer of property to those who might otherwise be named as beneficiaries in a will.

While tax savings may be available by using lifetime gifts, not everyone should use this method. There are very few of us who can afford to take the personal and economic risk of disposing of a part of our estate in a manner that we cannot undo.

2. Marital Deduction Estate Planning

The marital deduction allows substantial estate tax savings. As you recall, under federal estate tax law you can transfer $250,000 or one-half of your federal adjusted gross estate, whichever is greater, to your spouse tax free. Prior to enactment in 1979 of the Minnesota estate tax statute, there was no marital deduction under the state law, although there was a marital exemption. Our state law now includes a marital deduction parallel to the federal deduction. The 1979 Minnesota estate tax provides for deduction from your federal gross estate of the value of any interest in property which you leave to your spouse, but only to the extent that the interest has a taxable situs in Minnesota and is included in your federal gross estate. The Minnesota marital deduction is limited to the greater of $250,000 or 50 percent of your federal adjusted gross estate. Since the federal and Minnesota calculations are now basically identical and since the federal law has the first and greater tax impact, the balance of this discussion will pertain primarily to federal law although any tax savings from use of the federal marital deduction means there can be a similarly determined state tax saving.

The property that passes tax free to the surviving spouse will be taxed in that estate at death. But under the estate tax laws, the tax on property divided into two piles is less than the tax would be on the property held by one owner in one lump. Also, each is entitled to the unified credit allowed against the estate tax.

At first glance, the marital deduction presents such impressive tax savings that it seems its use is an absolute necessity in all cases. However, it should not be blindly used. Use of the marital deduction may actually *increase* the taxes in the combined estates where the survivor has more assets. If the surviving spouse has much property, even though not more than the decedent, substantial tax savings are not available. Additional income taxes upon the marital deduction position may wipe out estate tax savings. But, if one spouse has substantial property and the other has none, it will be advantageous to take full advantage of the marital deduction.

Once it has been decided to use the marital deduction, the question then arises, to what extent should it be used. It is not an all or nothing device. Any amount *up to* $250,000 or one-half the adjusted gross estate may be given a spouse tax free. A husband, where there are no children, may wish to leave one-half of his property to his wife whether the tax is more or less. Generally, however, the result which will transmit the largest amount to the children determines to what extent the marital deduction will be employed.

The amount of property passing to a spouse will frequently be either the maximum allowable marital deduction (one-half of the adjusted gross estate or $250,000) or the amount that will result in no taxation at the death of the first spouse. Substantial savings at the death of the surviving spouse are available in this way since there is no property transferred to the spouse which will be taxed on the deaths of both spouses. The marital deduction property is taxed only at the death of the survivor. Exhibit 12 shows the tax savings that would be realized if Marilyn Evans was given only enough property to result in no taxation at Don's death.

The exhibit uses only the federal computations and assumes that (a) there would be no death tax credit available between the husband's death and the wife's death; (b) there would be no change in value of the estate between the husband's death and the wife's death; and (c) no consideration is given to the impact of the Minnesota estate tax. These assumptions are somewhat unrealistic but are made so that we can provide you with a simplified illustration of the effects of the marital deduction.

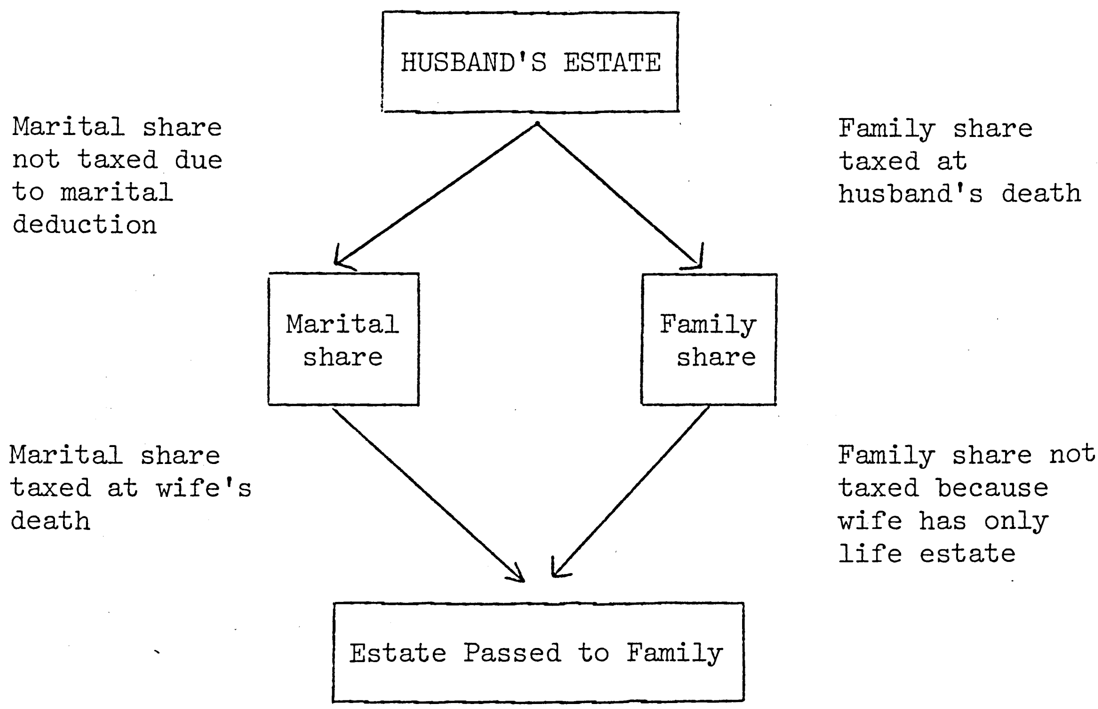
Exhibit 12. Tax Savings Resulting From Marital Deduction Planning.

	All property to wife	Minimum amount of property to wife
Husband's death:		
Don's gross estate	$376,000	$376,000
Debts and expenses	57,250	57,250
Adjusted gross estate	318,750	318,750
Marital deduction	250,000	143,150
Taxable estate	68,750	175,600
Tentative tax	15,275	47,000
Credit	47,000	47,000
Net tax payable	0	0
Wife's death:		
Marilyn's gross estate	$416,500	$241,150
Debts and expenses	20,800	13,000
Taxable estate	395,700	228,150
Tentative tax	120,338	63,808
Credit	47,000	47,000
Net tax payable	$ 73,338	$ 16,808
TAXES SAVED	$56,530.00	

Proper utilization of the marital deduction is central to a common estate plan, usually called a "marital deduction estate plan." In this plan, ownership of property is concentrated in one spouse (let's assume the husband). His will leaves the residue of his estate (whatever is left after specific gifts) to his wife in two parcels. The first part, commonly called the "marital share," is the amount that qualifies for the marital deduction. The remainder of the estate, the "family portion," goes to the children, but with a life estate reserved to the wife so that she has the use and income from it for as long as she lives. The marital portion is not taxed at the husband's death and the family portion is not taxed at the wife's death.

Exhibit 13 shows how a marital deduction estate plan operates:

Exhibit 13. Marital Deduction Estate Plan



For practical purposes, this plan allows the wife the income from the entire estate. But she is restricted in her use of the property itself. Because she merely possesses a life estate in the family part of her husband's estate, she can't sell it and invest the proceeds in more productive property. She could not sell part of that property to meet any emergencies. She can, however, dispose of the marital portion as she desires.

Trusts are frequently used under a marital deduction estate plan. This eliminates the problems presented by a legal life estate, and it allows the wife to enjoy the property without having to manage it. Under such a trust arrangement, the trustee of the marital trust is given just enough property to produce the proper marital deduction—. no more, no less. This avoids the extra taxes that are incurred if the wife receives more property than is necessary to avoid taxation at her husband's death or is allowed for the marital deduction.

To accomplish this, a "formula" gift is often used. Such a clause assures that the husband's estate will receive the proper marital deduction. They take into account property passing to the wife outside of the trust that qualifies for the marital deduction. This includes the house and tangible personal property devised outright to the wife, joint bank accounts, and so on. The remaining provisions of the marital trust give the wife a life income interest and a general power of appointment. In case the wife fails to exercise her power of appointment, a gift is made to her family trust which continues after the death of the wife.

The remainder of the residuary estate is settled in the family trust. Under this trust the wife is given a life income interest and a special power of appointment to distribute the remainder among the couple's descendents. The consequence is that the principal of the marital trust will be taxed in the wife's estate on her death, but the corpus of the family trust will not. Note that the use of powers of appointment is very complex and should be considered cautiously and judiciously. But they are an available alternate.

A marital deduction estate plan involves two assumptions for it to work properly: one spouse owns the property alone and dies first. But that spouse may not die first. If the other dies first, no tax savings will be available. In order to arrange this plan, resentment may result from transferring all the property to one spouse. Obviously, no estate plan is worth the price of a family dispute. If such transfers are completed, there may be gift tax consequences. This is particularly true if property was held in joint tenancy. The federal gift tax complexities of transfers between spouses are a consideration in realigning property to make maximum use of this plan.

3. Planning With Life Estates

Another means to provide for estate tax planning is the use of the life estate. If one generation, your wife's for example, is given a life estate followed by a remainder in the next, the children and your wife will be able to enjoy the use of the property without a tax on the property at her death. This skips the tax that would have been due if the property had been transferred again to the children. This method, however, will not allow the benefit of the marital deduction. As you recall, terminable interests such as life estates do not qualify for marital deduction treatment. And the tax savings available through some variations of this scheme have been limited by the Tax Reform Act of 1976.

The life estate is an important part of a second common estate plan. Under this plan, the amounts of property owned by the husband and wife are balanced to keep them as equal as possible. This can be done through separate ownership of different assets or through tenancies in common.

Under a balanced estate plan, the husband provides for the wife to receive a life estate in the property owned in his name. Thus, upon his death, property held in his name goes to the children but with a life estate to his wife. The death of the husband does not, therefore, increase the taxable estate of the wife, since life estates are not taxable in the estate of their holder. The plan deliberately avoids qualifying property for the marital deduction, but a marital deduction result is created by the way property is owned. Tax savings occur because half the total property goes through one estate, the other half through the other estate, rather than all property going through both estates.

To see how this plan saves taxes, let's look at Don and Marilyn Evans again. Let's assume that their property was held differently so that a balanced estate plan would be effective. Exhibit 14 shows the tax savings that would result.

Exhibit 14. Tax Savings Resulting From Balanced Estate Plan.

Don's Estate		Marilyn's Estate
$125,000	Don's securities	
115,000	Insurance	
	Marilyn's property	$ 98,000
	Real property	100,000
	Bank accounts	6,000
	Tangible personal property	30,000
$240,000	Gross estate	$234,000
28,000	Deductions	33,650
$212,000	Taxable estate	$200,350
58,640	Tentative tax	59,912
47,000	Credit	47,000
$ 11,640	Net tax	$ 7,912

TOTAL TAXES:	$19,552
TAXES UNDER CURRENT PLAN:	$73,338
TAXES SAVED:	$53,786

The biggest advantage that a balanced estate plan offers over a marital deduction estate plan is that the success of the plan does not depend upon the order of death. The property is split during life. The wills of both husband and wife are the same--they leave the property to the children but with a life estate reserved to the other spouse.

The reason a balanced estate plan isn't used as often as the marital deduction estate plan is that it is more difficult to arrange if you already own a substantial amount of property. Transferring property to your wife may be expensive as well. There may be transfer costs involved in getting stocks reregistered. And there may be gift taxes incurred. These costs may consume any estate tax savings that the balanced plan offers over the marital deduction plan. But for the younger couple who is just beginning to acquire their estate, a balanced estate plan offers substantial estate tax savings that are not dependent upon which spouse dies first.

C. Your Estate Plan

Your estate plan may be very different from either a marital deduction estate plan or a balanced estate plan. Your plan should be tailor-made to fit your objectives, family and estate. But even though your estate plan will differ from your neighbor's, there are certain characteristics that are common to all good estate plans.

1. Simplicity

The first general characteristic of a good estate plan is simplicity. Simplicity includes a variety of considerations. You should be able to understand and discuss the provisions of your estate plan. Your property should be easily transferrable to your beneficiaries. The tools that are used in your plan should not interfere unnecessarily with the enjoyment of the property by your beneficiaries.

Simplicity can't be viewed in a vacuum, however. Considerations of simplicity are not as important as achieving your planning goals. But when your goals can be accomplished by more than one tool, that tool which is simplest should be used.

2. Stability

The tools that are used in your estate plan should ensure that your plan is not altered or destroyed. Some estate planning tools are inherently unstable. For example, a joint tenancy can be partitioned by either party. If your estate is substantially reduced by the claims of creditors, your plan of disposition may be altered. Also, if creditors of your beneficiaries can reach the property passing to them, your objectives may not be achieved. Finally, the availability of liquid assets affects the stability of your estate plan. A liquidity problem is presented when there are not enough liquid assets to meet debts, taxes and administration expenses. If it is necessary to liquidate assets to meet such obligations, your plan may be changed. But by considering these problems, you can virtually eliminate them as threats to your plan.

3. Flexibility

The third characteristic of a good estate plan is flexibility. Your plan should be flexible enough to meet the demands of your family at your death regardless of who survives you. This typically means your plan should address three different situations. Only your spouse may survive you. Your plan should provide for the most effective means of transferring your property to your spouse. This may include provisions for managing as well as distributing your assets. Your children may survive you. In this case your plan must provide for the care of your children and for the management of the property they will receive. Finally, you may be survived by both your spouse and children. Your plan should address the disposition of your property at your spouse's death so that it reaches your children.

Flexibility also means that you should be able to modify your plan with little difficulty and cost. Similarly, flexibility allows your beneficiaries to modify your plan after your death. Of course, such changes should be as consistent as possible with your intent. But no plan is truly sound if it does not have enough flexibility to enable it to meet unexpected emergencies both before and after your death.

VIII. TYPICAL ESTATE PLANS

In this chapter we will present a series of typical family estate plans. They will be based on the typical Minnesotans that we introduced earlier and who have been used to illustrate various points throughout our discussion. The purpose of these plans is simply to indicate a *suggested solution* in the particular case. Suggested solution is emphasized because any plan is merely the method selected by the planner involved, which in his opinion is the best solution under the fact presented. This does not suggest that it is either the only solution or the best solution. It is only an opinion.

As we have stressed throughout our discussion of estate planning, none of the tools may be used blindly. Neither may any of the typical plans here be used blindly. Each estate presents a different set of problems. There are no set solutions applicable to all cases. It is not possible, therefore, to furnish you a formula to which you may apply the given facts and obtain the correct result.

A. The Nelsons

1. Facts

Jim is 25. His wife, Sue, is 23. They have one child, age two. Jim is employed and earns $14,000 a year. He will be entitled to substantial social security benefits and contributes $50 a month to his company's pension plan. He expects a pension of about $500 a month at retirement and has now paid in $1,500. As a veteran, Jim will be entitled to any Veteran's Administration benefits. He owns his own home, valued at $35,000 and subject to a $29,000 mortgage. It is held in joint tenancy with his wife. Jim's employer supplies a $10,000 term insurance policy payable to his wife, and he also has a decreasing term policy to pay up the mortgage. His household and personal effects are valued at $8,000, and the Nelsons' joint bank accounts total $1,500. Jim owes $4,000 on his car and household goods. Sue has no independent estate.

ASSETS		LIABILITIES	
Home	$35,000	Mortgage	$29,000
Personal property	8,000	Miscellaneous debts	4,000
Bank accounts	1,500	TOTAL LIABILITIES	$33,000
Pension fund	1,500		
Insurance	39,000	NET ESTATE:	$52,000
TOTAL ASSETS	$85,000		

2. Current Plan

Neither Jim nor Sue has a will. Under the joint tenancy arrangement, the house and the bank accounts will belong to the survivor at the death of the other. Jim's term insurance is payable to Sue. The Social Security and veteran's benefits available to Jim's family are also an important part of his current plan.

3. Planning Goals

Jim's biggest concern is to ensure that his family will be able to remain in the house they just bought. He would also hope to provide some income for his wife for at least a short period. He is also concerned about what would happen to his daughter if he and Sue should both die.

4. Possible Plan

(1) Will.
  a. Houshold and personal effects to wife.
  b. Nominate guardian for daughter.
  c. Debts and expenses paid from residue.

(2) Similar will for Sue.

(3) Purchase life insurance insuring wife to provide for daughter if wife should die shortly after Jim.

5. Comment

Jim has no tax problem at the moment, and it doesn't appear that taxes will present a problem for him for some time, if ever. His problem now is administration and family protection. The declining term insurance will pay up the mortgage and allow Sue to remain in the house. The Social Security benefits that will be available to Sue until their child is 18 will be quite substantial--probably about $700 per month. This will provide the income for Sue that Jim is concerned about. While he has not thought about it, many people in his position have given some thought to providing for their children's education through insurance. Additional insurance would also provide a larger fund that could be settled in a trust for the benefit of his daughter. At this moment, Jim's total estate is probably too small to profit by using a trust if he and his wife should both die. As a result, the more rigid guardianship will probably be required to administer their child's property.

B. Don and Marilyn Evans

1. Facts

Don Evans is 40 and works for Minnesota Mining and Manufacturing Company. His wife, Marilyn, is 37. They have three children, ages 19, 16, and 10. Their oldest child is in college and plans on attending medical school in the future. Their youngest child was born with cerebral palsy and will require therapy for quite some time. Don earns $60,000 per year.

The Evanses own their home, valued at $100,000 and owe about $42,000 on the mortgage. It is held in joint tenancy. Don has purchased stock that is currently worth $125,000 and it is also held in joint tenancy. He is covered by insurance policies that total $115,000. The proceeds are payable to Marilyn. The household and personal effects that Don owns are valued at $30,000. Don has also supplied about $6,000 of the $9,000 currently in joint bank accounts and certificates. He has current debts of about $2,500. He has made no gifts.

Marilyn owns a lake cabin that she inherited from her parents. It's worth about $40,000. She has invested in securities that are currently valued at $25,000. The face value of insurance policies insuring her is $30,000.

ASSETS	Don	Marilyn	LIABILITIES	
Real property	$100,000	$40,000	Mortgage	$ 42,000
Personal property	30,000		Debts	2,500
Securities	125,000	25,000	TOTAL LIABILITIES	$ 44,500
Insurance	115,000	30,000		
Bank accounts	6,000	3,000	NET ESTATE: (Don)	$331,500
TOTAL ASSETS	$376,000	$98,000	(Marilyn)	$ 98,000

2. Current Plan

Both Don and Marilyn have a will that leaves all their property to the other. The home, Don's stock and the bank accounts are all held in joint tenancy. The proceeds of their insurance policies are payable to each other. Marilyn will be eligible for Social Security benefits should Don die. The federal estate taxes that will be incurred under their current plan will total more than $70,000. State taxes and probate costs will add more to the cost of transferring their estates to their children.

3. Planning Goals

Don and Marilyn want to provide for their handicapped child's special needs, but they don't want to neglect providing for their other children. They want to help their oldest child through college and medical school. Don also wants to provide income for his family should he die. To accomplish these goals, he and Marilyn realize that it is important to save on the cost of transferring their property to their children.

4. Possible Plan

(1) Don's will should establish a marital deduction estate plan using a formula clause that will give Marilyn only that amount of property which will result in no taxation at Don's death. The family house, personal property and bank accounts will be given outright to Marilyn with the securities and insurance proceeds placed in a marital and family trust.

(2) Marilyn's will should leave her estate to the children. If Don predeceases her, the insurance proceeds and securities should be placed in the family trust established by Don's will. If she should die first, no trust is required since Don is available to manage the children's property until they reach 18.

5. Comment

Don's will takes full advantage of the marital deduction while Marilyn's avoids adding her assets to Don's estate should she predecease him.

Use of the two trusts provides added protection for Brian, the Evans' handicapped son. Special provisions may be added to the terms of the trust to provide for Brian's special needs. These provisions may provide for a larger share of the trust principal for Brian, for a later termination date for his share, or for a trust that will continue for Brian's lifetime. The possibilities are endless, but the trust will be an effective means of caring for Brian's needs.

C. The Frank Jones Estate

1. Facts

Frank Jones, 55, operates a 500-acre dairy farm with his son, Frank, Jr., 29. His wife Shirley is also 55. They have another adult child who works in Minneapolis. Frank's annual income is above $12,000.

The Jones' farmland is worth about $480,000. Frank inherited 320 acres and that portion is in his name alone. The other 80 acres are held in joint tenancy with his wife. The farm equipment, livestock, feed, seed, etc., are currently worth around $130,000. Aside from the farm, the Joneses have personal property worth $9,000 and joint bank accounts with $8,000 in them. Frank has a $10,000 life insurance policy covering himself which is payable to Shirley. Frank still owes about $60,000 on the 80 acres that he bought and about $20,000 on equipment loans. He and Shirley also have personal debts of around $2,500. Shirley does not have a separate estate and Frank has not made any gifts.

ASSETS	
Farmland--joint tenancy	$ 96,000
Farmland--Frank	384,000
Equipment, livestock, etc.	130,000
Personal effects	9,000
Bank accounts	8,000
Insurance	10,000
TOTAL ASSETS	$637,000

LIABILITIES	
Mortgage	$ 60,000
Equipment loans	20,000
Personal debts	2,500
TOTAL LIABILITIES	$ 82,500
NET ESTATE:	$544,500

2. Current Plan

Neither Frank nor Shirley have wills. The 80-acre part of the farm that is held in joint tenancy includes the homestead. The balances in their bank accounts will belong to the survivor. There is some insurance. Frank will be entitled to Social Security benefits upon retirement.

3. Planning Goals

Frank wants to ensure that Frank, Jr. will continue to operate the farm. But he doesn't want to neglect his daughter, and he wants to provide some income security for his wife. He plans on continuing in the farm business for at least five or ten years yet. Finally, he would like to provide something for his church.

4. Possible Plan

(1) Incorporate the farm business with non-voting and voting stock going to Frank and non-voting stock to Frank, Jr.

(2) Begin gift program of stock to Frank, Jr. and daughter.

(3) Sell voting stock to Frank, Jr. as funds are available.

(4) Frank's will.
   a. Personal effects pass to Shirley.
   b. Voting stock passes to Frank, Jr.
   c. Non-voting stock to Shirley.
   d. Outright gift to church.

(5) Shirley's will--estate divided between children.

(6) Purchase of life insurance by each spouse on the life of the other or by the corporation to provide cash for taxes.

5. Comment

The above plan assumes that incorporation is appropriate for the Jones farm. For estate planning purposes it is a good case for incorporation. But obviously the decision whether or not to incorporate depends on many additional considerations that are beyond the scope of our discussion here. The details of financing the establishment of the corporation are also omitted. Many variations are possible. For example, the land held in joint tenancy could be rented to the corporation. This would provide income security for Frank upon retirement and for Shirley after Frank's death. Rather than receive stock for property transferred to the corporation, Frank could sell assets to the corporation on an installment basis. Or debt instruments could be included in the capital structure at incorporation. Any of these alternatives would provide income security for Frank and Shirley.

The gift program will allow Frank to transfer a significant amount of stock to Frank, Jr. and his daughter without paying gift taxes. This stock will also escape estate and inheritance taxation. At the same time, Frank will be able to retain managerial control over the farm business by retaining voting stock. Some voting stock can be given or sold if funds are available to Frank, Jr.

At Frank's death, any voting stock should pass to Frank, Jr. to prevent managerial disputes in the future. Non-voting stock should be transferred to Shirley in order to provide for her income needs. Upon her death, this stock should pass to Frank, Jr. and Sharon.

Frank's estate suffers from a severe liquidity problem. The purchase of insurance, despite its cost at Frank's age, is required to pay taxes and estate administration expenses. The gift program will also help, since it will lower Frank's taxable estate.

The purpose of the examples given here is to illustrate some of the things that can be done to provide for the effective disposition of your estate. The variety of plans is limited only by the ingenuity of the planner. But estate planning without an understanding of the pitfalls, without a complete knowledge of all the facts, may do irreparable harm to you and your family. The consequences of each provision of your estate plan must be considered. The effect of each device on you and your family, as well as the gift tax, estate tax and income tax effect, must be weighed. Only with such planning, may the result be properly called your estate plan.

IX. PERIODIC REEVALUATION

Your estate plan, and all of its details, should be reviewed frequently. Your will speaks from the date of your death and so does most of the rest of your planning. Therefore, it must meet the circumstances which you anticipate will exist when you die, not those that you face today.

Those circumstances may be drastically different than your current situation. Your estate may change in size and composition. You may purchase some land or begin an investment program. You may inherit property. At the same time your estate changes, your planning goals may also change. When your children become financially independent, you may no longer be concerned with providing for their education. Taxes may become a planning obstacle. Your family may change by births, deaths, marriages, matrimonial troubles, and so on.

Many of these changes are so dramatic that you can't avoid appreciating their significance. But some take place so gradually that you will not realize that radical change has taken place unless you take periodic stock. Today is not much different from yesterday, and yesterday was not that much different from the day before. But today may be far different from the same day two years ago. It is important to check your estate plan every year or two to assess whether or not your estate planning objectives should be addressed with a new or modified plan.

In short, nothing is certain but change. You change, your estate changes, your goals change, the professionals who assist you change. New techniques are continually being developed to meet changes in the law and the tax structures. Problems in administration and planning come before the courts, and difficulties that were never before considered are met and avoided. Estate planning is an on-going process. Once you have a will, you are not necessarily fixed for life.

CONCLUSION

Estate planning is an important yet difficult process. It involves an inventory of your estate, an evaluation of your current plan, a study of the goals you wish to satisfy, a review of the tools available to you, developing a plan with competent help and a reevaluation of your plan over time. It is something that you should do now, rather than a year from now.

This estate planning seminar and bulletin will help you in the process. It will not, however, make you an estate planning expert. It was designed to review some of the important points to consider, the problems and the tools available in estate planning. We have indicated some of the pitfalls and complexities involved in estate planning. But because of the breadth of the area and the complexities involved, it was necessary to omit many details and summarize.

The more thought you give to planning your estate before consulting your attorney, the more satisfactory the plan you will have. By now you should appreciate the importance of proper planning. Above all, you should be aware that estate planning is sufficiently complex that you will need help. With the information obtained through this seminar and bulletin, you should be able to discuss estate planning and management more competently with your attorney. The basic objective, of course, is to develop a plan designed to accomplish *your* goals, now and in the foreseeable future.

GLOSSARY OF ESTATE PLANNING TERMS

annuity: A fixed sum payable periodically, usually for life.

attestation clause: The paragraph appended to a will, indicating that the witnesses to a will have heard the testator declare the instrument to be his will and have witnessed his signing of the will.

beneficiary: One for whose benefit a trust is created. The person to whom a policy of insurance is payable.

bequest: Formerly, a gift by will of personal property as distinguished from a gift of real estate.

codicil: A supplement or addition to an existing will to effect some revision, change, or modification of that will.

corpus: The property subject to a trust. Also called the "principal" or "res."

decedent: A deceased person who has left property.

devise: A gift of real or personal property under a will. The person to whom real property is given by will is a "devisee." Devises are classified, generally speaking, as "specific" or "general." A specific devise is a gift of a particular specified class or kind of property as, for example, a gift of the testator's diamond ring to a named individual or a gift of designated stock in a corporation. A general devise is one which may be satisfied from the general assets of the estate as, for example, a bequest of a sum of money without reference to any particular fund from which it is to be paid or a devise of a certain number of shares of stock where the testator owns a larger number of such shares.

donee: The recipient of a gift.

donor: A person who makes a gift.

escheat: Reversion of property to the state due to a lack of any individual to inherit.

estate: An interest in land. The assets and liabilities, real and personal property left by a decedent when taken together.

fee simple: An estate in land in which the owner is entitled to the entire property, with unconditional power of disposition during his life, and passing to his heirs upon his death.

fiduciary: A person having a duty to act primarily for another's benefit. A "fiduciary relationship" is a relationship between parties founded upon trust and confidence and requiring complete good faith.

gift: A voluntary transfer of property without compensation.

gift causa mortis: A gift of property made in expectation of imminent death on an essential condition that the property will belong to the donee if the donor dies as anticipated.

gift inter vivos: A gift between living persons that is absolute during the lifetime of the donor and donee.

infant: A person under the age of eighteen.

intestate: Without making a will. A person who dies without a will. The intestate succession laws are those which provide for the disposition of estates of persons who die without disposing of their estates by will.

joint tenancy: An estate held by two or more persons in which the entire estate belongs to the survivors on the death of another owner. The co-owners are called "joint tenants."

legacy: Formerly, a gift of personal property by will. The person who receives a legacy is a "legatee."

life beneficiary: The person who receives income from a trust during the period of his life.

life estate: An estate in land or interest in a trust whose duration is limited to the life of the person holding it or of some other person. The holder of a life estate is called a "life tenant."

personal property: All property other than real estate and the improvements thereon.

personal representative: An individual or corporation who settles the decedent's estate. A personal representative may either be named in the decedent's will or appointed by the probate court if the decedent died intestate.

power of appointment: A power or authority conferred by one person upon another, or retained by a person, to select and nominate the person or persons who are to receive and enjoy property or the income therefrom after the death of the person upon whom the power is conferred or after the termination of a certain period of time. A "general power of appointment" places no restrictions on the power. A "limited power of appointment" restricts the use of the power.

probate: Technically, the legal process by which a will, after the death of the testator, is proved or established as his valid will. Also used to mean the process of settling a decedent's estate.

real property: Real estate or land and the improvements thereon.

remainder: An estate that will give its holder the right to possession or enjoyment at some future time when prior estates terminate. A "vested remainder" is a remainder held by an identifiable person and not subject to a condition other than the natural expiration of the prior estate. A "contingent remainder" is a remainder held by an unascertainable person or subject to a condition so that it may never take effect.

remainderman: The holder of a remainder. The person who eventually gets the principal of a trust.

residuary estate: The remaining part of a testator's estate, after payment of debts and devises. Wills usually contain a clause disposing of the residue of the estate which the testator has not otherwise devised.

reversion: A future estate left in the transferor of property which takes effect in possession at the termination of a prior estate.

settlor: The person who creates a trust. Also called the "grantor" or "donor."

statutory share: The provision made by state law to protect a spouse against disinheritance.

tenancy in common: An estate under which two or more persons own undivided portions of a common piece of property without any element of survivorship.

testate: With a valid will. One who dies with a valid will is a "testator" or "testatrix."

trust: An arrangement by which management, control and legal title to property are placed in the hands of one person for the benefit of specified beneficiaries. A "living trust" is created by an agreement with the trustee and is operative during the settlor's life. A "testamentary trust" is created by the settlor's will.

trustee: The person, bank or trust company that manages a trust.

will: A revocable instrument by which a person makes a disposition of his property to take effect after his death.