



Estate Planning





Estate Planning

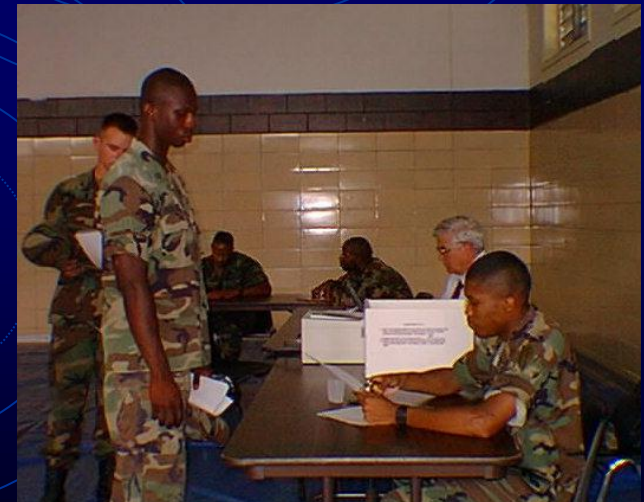
A continuing process of arranging for the use, conservation, and transfer of one's property/wealth during life and upon death.





DoD Policy

- Although not every person needs a will or MTI, all military personnel shall consider the advisability of making either. Whether necessary or desirable, depends on the individual. (DoD Dir 1350.4, para 4.1.1.)
- All commanding officers shall urge military personnel to seek legal counsel regarding an estate plan *before* mobilization, deployment, or similar activities. (DoD Dir 1350.4, para 4.1.3.) (Emphasis added.)





Estate Plan



May include one or more of these:

- Will/military testamentary instrument
- Trust
- Life insurance
- Advance Medical Directive/”Living Will”
- Health Care Power of Attorney
- Durable Power of Attorney
- IRA/TSP/529 Plan beneficiary designation(s)
- Anatomical gift designation





Estate Planning *Goals*



- **Taking Care of the Family/Avoid Family Strife**
 - Ensure Minor (& college-age) children are provided for
 - Avoid disinheritance Blended families
- **Disability/Incapacity/End-of-Life planning**
 - Powers of attorney
 - Advance Medical Directive
 - Providing for assisted living
- **Avoiding/Postponing Estate Taxes**
 - Taking advantage of the Gift Tax exclusion
 - “Bypass” or “Disclaimer” Trust
 - Leveraging the marital deduction – the QTIP Trust
 - Irrevocable Life Insurance Trust- ILIT
- **Appointing Fiduciaries** - Guardians, personal representatives, executors, trustees, and lawyers

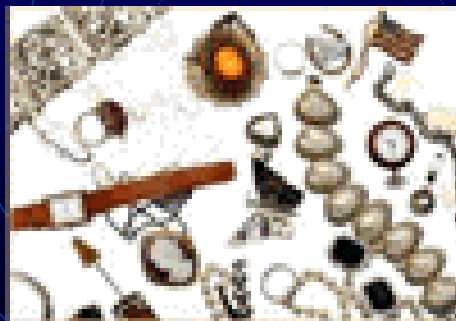


What Is “*My Estate*”?



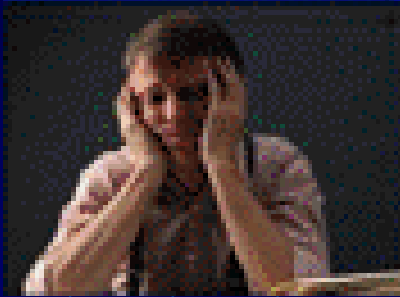
Everything I own

- collectibles, personal belongings, my home, other real estate, bank accounts, investments, retirement benefits, IRAs, TSPs, but SGLI/ life insurance is not

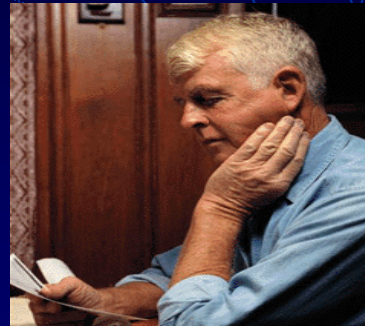




Methods of Transfer



Intestacy



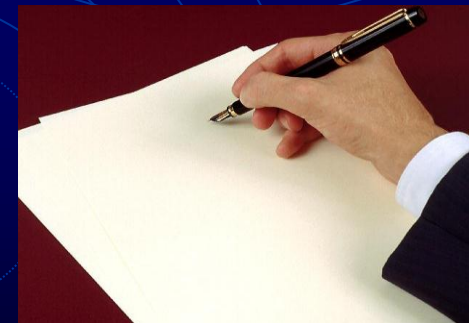
Will



Joint
Ownership
“By Law”



Contractual
Transfers



Inter
VivosTrust



Die Without a Will?



PROCRASTINATION

HARD WORK OFTEN PAYS OFF AFTER TIME,
BUT LAZINESS ALWAYS PAYS OFF NOW.

- State law determines
 - property distribution
 - guardian for minor children
- Estate Administration
 - Estate eaten by lawyer's fees



Joint Ownership with Right of Survivorship



- Surviving joint owner gets ownership
- Common plan - family home
- Automatic transfer - no probate for property jointly owned with right of survivorship (JTROS)



Property Ownership Methods



- Tenants in Common
- Joint Tenancy with Right of Survivorship
 - Tenancy by the Entirety
- Community Property





JTROS Summarized



1. Transfer “By Deed” or “By Title”
2. Postpones probate (first spouse) or Avoids probate (second spouse).
3. Asset title documentation changed to reflect new ownership.
4. Unintentional disinheriting possible.
5. Survivor Pays Capital Gains Tax.
6. Creditor’s reach.

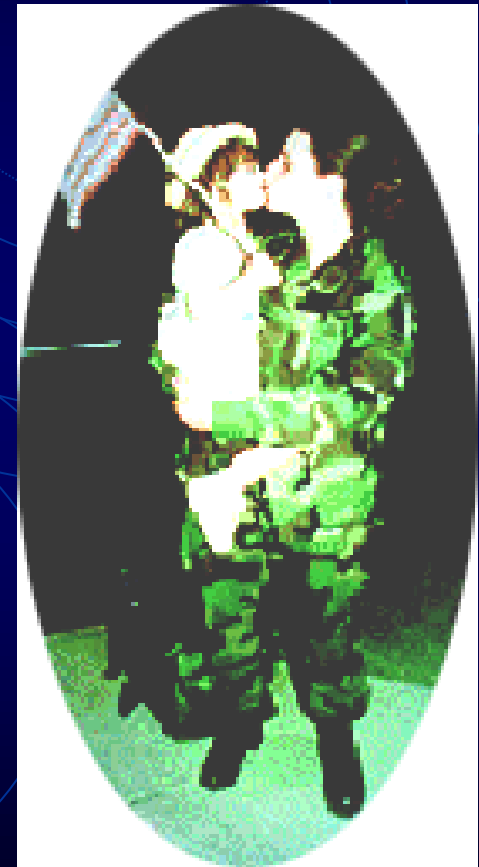


Contractual Transfers

(e.g., IRAs, TSPs, 529 Plans)



- Contract (Beneficiary form)
- Court involvement *if* beneficiary
 - Incapacitated
 - Dies first or at same time then to then secondary beneficiary
 - “*My estate*” then passes with will
 - Guardian or UTMA Custodian receives for Minor

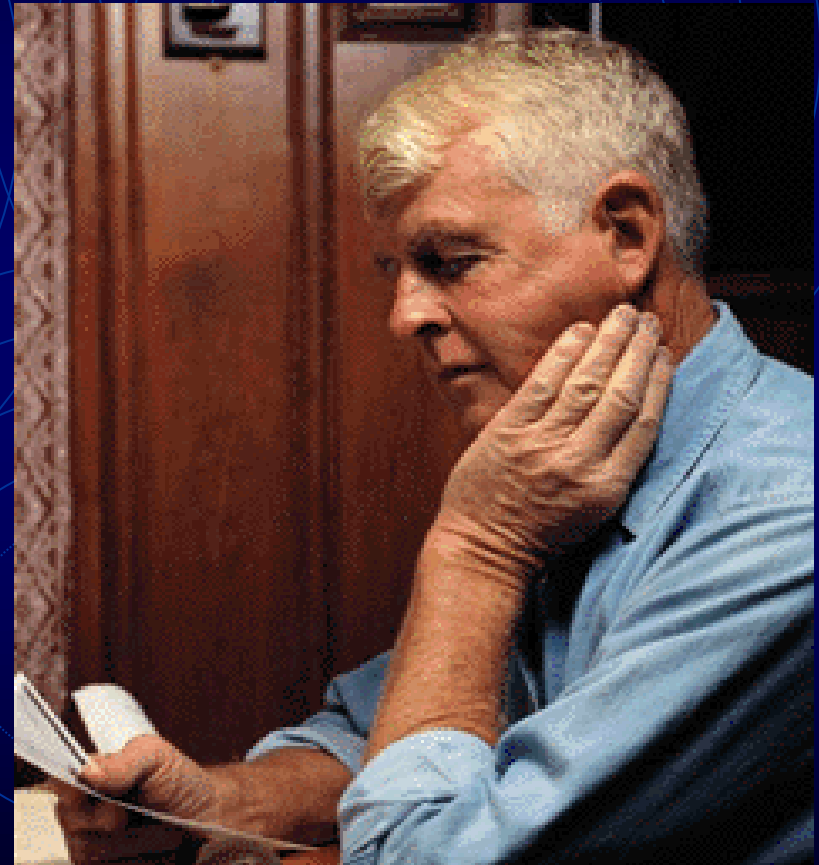




Make a Will



- Directs to whom your property is transferred at death (Controls only assets in your name owned as tenant in common)
- Probate court enforces
- Designates guardian





Wills



- Usual estate plan foundation
- What You Can Do in a Will:
 - Provide for Minor Children
 - Designate Distribution of Property/Name Beneficiaries
 - Establish a testamentary trust
 - Tax Planning (credit shelter trust)
 - Appoint Who Will Carry Out Your Estate Plan & Wishes
- State Law Governs Validity, Execution, Meaning of Terms
- Process of Applying Will Instructions is called Probate
- Safe Keeping and Review





Fiduciaries



- Executors, personal representatives
 - Represent estate for probate, tax purposes, certain elections
 - Extremely broad latitude in most cases, minimal court supervision
 - Whole lotta work! Potential for conflict
 - Some elections (renunciation, QTIP, QDOT) financially crucial
- Trustees
 - Administer trusts, invest, distribute income and corpus, as appropriate, prepare and file necessary legal and tax documents,
- Guardians, conservators, attorneys-in-fact



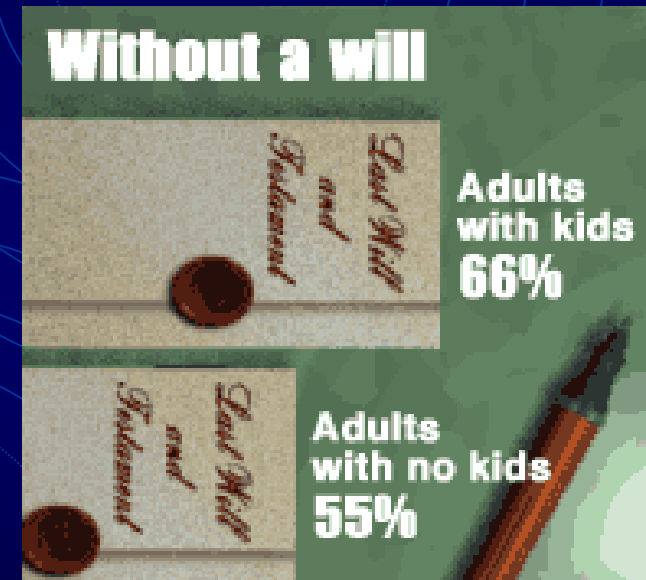
Your Fiduciaries

- Select the right person or institution for the job
 - *It is not an honor!*
 - Institutional trustees cost money, but may be worth it in preserving family harmony
 - Beware of multiple fiduciaries—legal gridlock
 - Provide for alternate selection, replacement
- Ensure designated fiduciary knows, understands your wishes, and consents



Do I Need a Will?

- Everyone should have will.
- Many people do need a will, especially those with children or who may have children.
- State provides will = Intestate succession law.





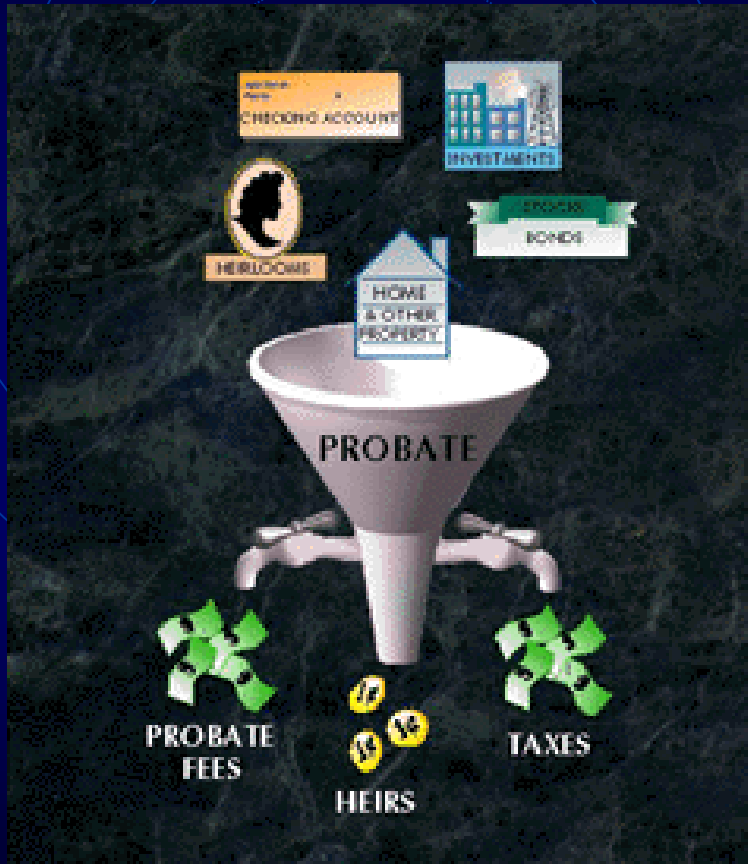
Wills & Minor Children



- Naming Child Means
 - Court Appoints guardian
 - Court Controls finances
 - Child takes over at legal age
- Use of UTMA designation
 - Legal Age is 21
- Trust (created by Will)
 - Need substantial Amount
 - Person to act as Trustee
 - You name legal age (30?)



Probate



- Legal process
 - Will validated
 - Debts/claims paid
 - Assets distributed IAW your will (or state intestacy law if no will)
- Legal way to change title
- Court controls

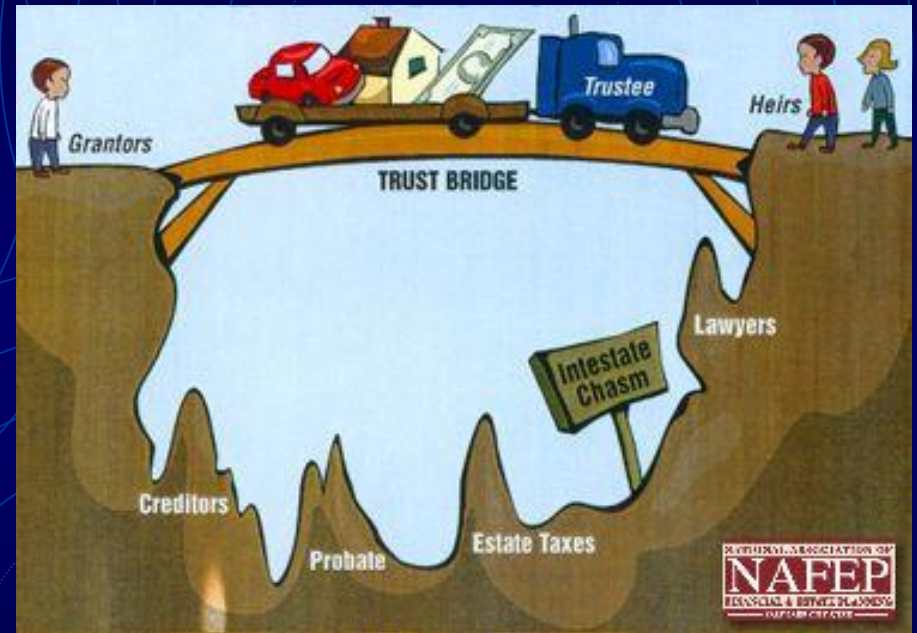


Trustee



“A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.”

- Benjamin Cardozo, *Meinhard v. Salmon*, (Ct. App. NY, 1928)

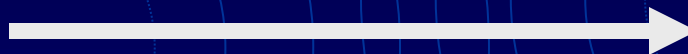




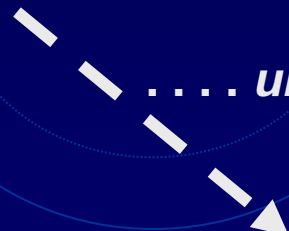
Testamentary Trust for Minor Children



DECEDENT



SPOUSE



... unless spouse predeceases or disclaims

TRUSTEE

ALL INCOME

To children for
health, education,
maintenance, and
welfare

PRINCIPAL

To children equally
when youngest
reaches age set in
trust



Estate Taxes

- An Estate is subject to two kinds of taxes: Federal and State Estate Tax and State Death (Inheritance) Tax. MD repealed its inheritance tax.
- Federal Estate Applies to Estates larger than \$5,000,000 (until end of 2012)
 - Tax rate is 35%!
- Maryland's separate estate tax applies to estates larger than \$1,000,000 (MD decoupled from federal scheme in 2004.)





Estate Taxes



- Basics
 - Taxable estate/unified system/rates
- Estate Tax Minimization
- Tools & tactics to minimize taxes
 - Marital deduction
 - Unified credit
 - Gift tax annual exclusion
 - Income tax issues





Gross Estate for Estate Tax Purposes



What Is “My Estate”?



Everything I own

- my home, other real estate, bank accounts, investments, retirement benefits, IRAs, SGLI/ life insurance, collectibles, personal belongings



“Gross Estate”
All property you own at your death plus life insurance.



Economic and Tax Relief Reconciliation Act of 2001 (EGTRRA)

Expires at end of 2010 unless
renewed by new legislation.



Taxable Estate = Amount Above Exemption

2011 CREDIT

\$1,750,000

=

EXEMPTION

\$5,000,000

Taxable Rate = 35%





EGTRRA

Estate Tax Exemption

Calendar Year	Applicable Unified Credit Equivalent	Highest Estate and Gift Tax Rates
2002	\$1,000,000	50%
2003	\$1,000,000	49%
2004	\$1,500,000	48%
2005	\$1,500,000	47%
2006	\$2,000,000	46%
2007	\$2,000,000	45%
2008	\$2,000,000	45%
2009	\$3,500,000	45%
2010	Repealed	None



Estate & Gift Tax Rates after 2011



41% on estates over \$1,000,000
RISING TO
50% at \$3,000,000+



<u>Estate Size</u>	<u>Gross Tax</u>	<u>Credit</u>	<u>Tax Owed*</u>
\$1,000,000	345,800	345,800	0
\$1,500,000	555,800	345,800	210,000

* Surviving spouse's unlimited marital deduction delays tax on all property passing to surviving spouse.



Valuing Your Estate

• House (equity in home)	\$150,000
• Life Insurance	
• SGLI	\$400,000
• Spouse SGLI	\$100,000
• Commercial	\$ 100,000
• Investments (e.g., stocks, mutual funds)	\$50,000
• Bank account	\$50,000
• Personal property (e.g., car, collections)	\$40,000
• Retirement benefits (e.g., IRA(s))	\$100,000
Possible inheritance	<u>\$100,000</u>

Total: \$1,090,000 *conservative*



Tools & Tactics to Minimize Estate Tax



- Taking advantage of the Gift Tax exclusion
 - “Bypass” or “Disclaimer” Trust
- Leveraging the marital deduction – the QTIP Trust
- Irrevocable Life Insurance Trust- ILIT
- Irrevocable Charitable Trusts
- Lifetime gifts





Estate & Gift Tax Exclusions/Reductions



- Marital deduction
- Unified credit
- Gift tax annual exclusion





Marital Deduction

- Unlimited tax free transfers to a spouse
 - If spouse is U.S. Citizen
 - Lifetime gifts & transfers at death
- Non-U.S. Citizen spouse
 - No unlimited marital deduction
 - Establish qualified domestic trust (QDOT)
 - Gift tax annual exclusion of \$110,000 for gifts to spouse who is not a U.S. Citizen



Gift Tax Annual Exclusion

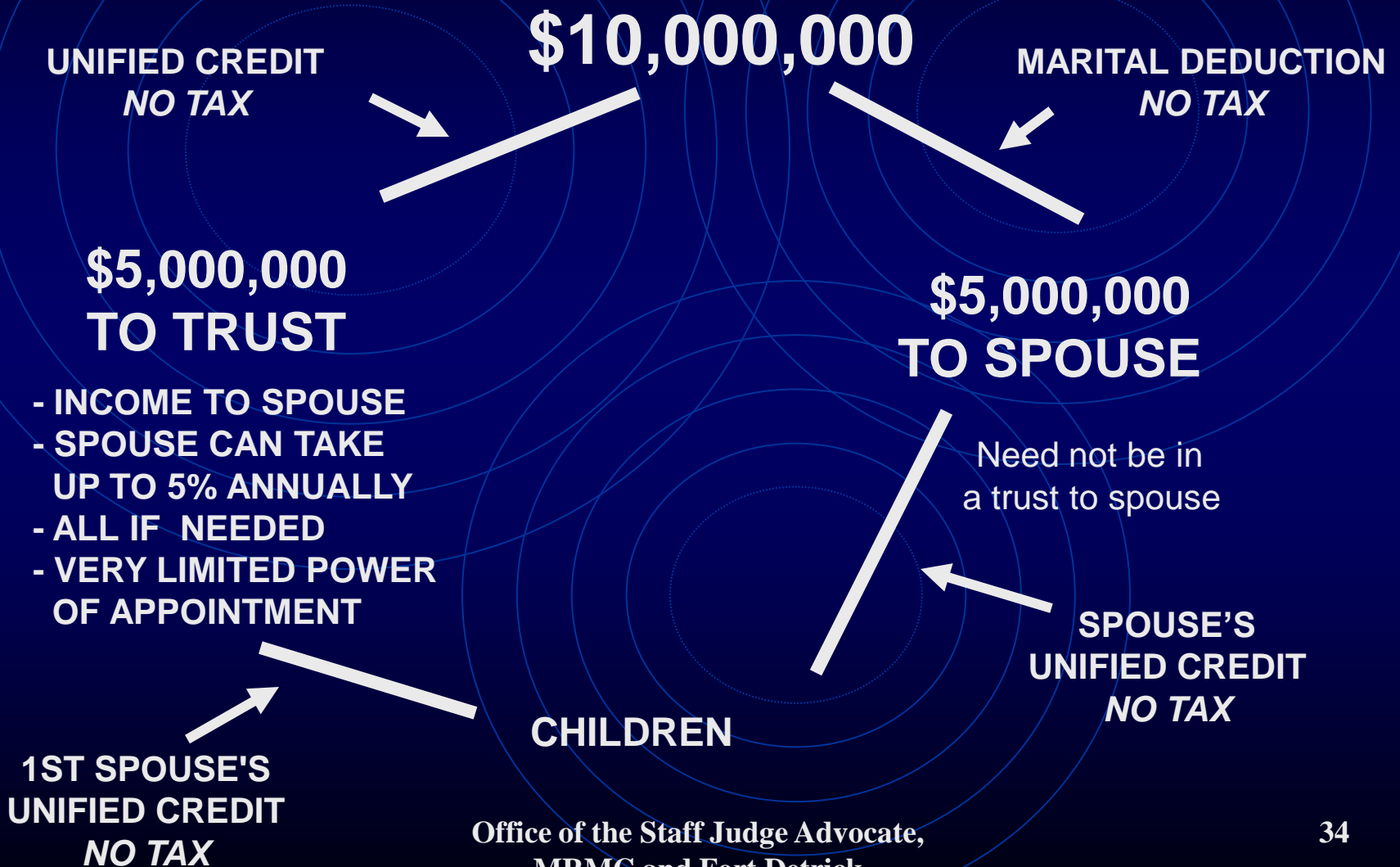


- Recipient must receive present ownership interest
- Donor can exclude \$13,000 per recipient per year (\$26,000 split gift)
 - Excess uses unified credit (or is taxed after unified credit exceeded)
 - Indexed for inflation (rounded to next lowest \$1000)





Unified Credit Shelter Trust





Using Disclaimer Credit Shelter Trust in Will

Testator



To spouse

No federal estate tax on Testator's death - *unlimited marital deduction.*

Creates a trust - *just in case* - preserves Testator's unified credit

Disclaims



No federal estate tax on trust contents. Trust res passes by law.

Beneficiaries
(usually children)

Federal estate tax on surviving spouse's death on all in that estate above the exemption equivalent (\$5,000,000 in 2011).



Using By-Pass Credit Shelter Trust in Will

\$2,250,000 Combined Estate

Husband Dies

**Rest to Spouse.
\$1,250,000
No estate tax at
Testator's death.**

**\$1,000,000
to Trust**

**\$1,000,000
Tax Free
By will**

**\$250,000 taxed
at 41%**

No federal estate tax on trust contents.
Trust contents passes according to will.

Beneficiaries

**Total Inheritance
\$2,147,500**

**Estate Tax
\$102,500**



Gifting



- Loss of control
- New owner on transfer
- Can't "take" asset back
- Useful tool for large estates to remove items from the taxable estate



What if Combined Estate is Greater than Exemption X 2?*

(\$10,000,000 in 2013)

- Create Irrevocable Life Insurance Trust (ILIT)
- Charitable Remainder Trust
- Gifting plan

*Beyond scope of resources and expertise of
Army legal assistance offices



Coordinated Essentials



- Your will
- Durable power of attorney
- Advance medical directive
- Letter of instruction
- Testamentary and Bypass Trust*
- Life insurance*
- Contract beneficiary designations*
- Anatomical gift/organ donation*

* As applicable





Durable Power of Attorney



- Survives creator's incapacity
- Allows for asset management of affairs without court supervision
- Springing or non-springing





Health Care Power of Attorney



- Empowers your agent to make health care decisions in event of your incapacity
- State law governs
- Avoids necessity of court proceedings
- Legal effect
 - Holds health care provider harmless
 - Leverages your desires with living advocate
- *Always springing*





Advance Medical Directive



- Control over desired medical treatment
- Directive to physician
- Complements durable power of attorney for health care





“Living Will”

- *Not* a will at all, but directive for end-of-life care
- State law governs enforceability
- As a *general* rule, may direct:
 - *Withholding of life support, heroic measures*
 - *No resuscitation*
 - *Withholding of hydration, nourishment*
 - *Organ donation*
 - *Palliative medicine*



Do You Need Both?

LIVING WILL

Directive

Incapacity Required

Terminal Condition

DURABLE POA

Agency

Incapacity Required

Any Medical Condition

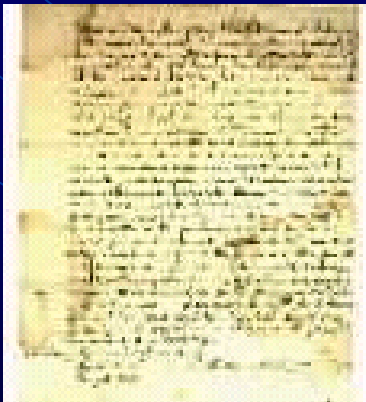
Answer: ***ABSOLUTELY***



Letter of Instruction



Compendium of
information for your
executor/survivors



Contents -

- Contacts/notify at death
- Funeral instructions
- Asset inventory & location(s)
- Anatomical gifts (if not on driver's license)
- Non-binding
- Not a will



Insurance



<http://www.insure.com>

insure.comSM
The Insurance Guide

Consumer Professional

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Warning

You may be spending too much on your auto, life or health insurance. Click OK now to obtain instant quotes from 300 leading companies!

In the News

Alarming report details teen-drinking epidemic
With kids ages 12 to 20 reportedly consuming 25 percent of all the alcohol in the U.S., parents' liability rises.

Louisiana restricts mold coverage from home and business insurance policies
Louisiana looks at the mold problem in Texas and takes action.

Special Report

Health insurance and transplants: How much of John Q is true?
Health insurers are Hollywood's hottest new villains, but do they deserve the reputation?

Feature

How special-risk advocates find life insurance for people with medical problems
Your agent may be barking up the wrong trees trying to get you a life

- **Life**

- Do you need it?
- How much?
- What type?

- **Liability**

- You do need it!
- Economic decision – how much?



Life Insurance



- Buy to protect *financial* security of survivors
- Proceeds exempt from federal income tax
- Not in your estate *if* someone else owns policy (e.g., spouse, trust)

Get **FREE** online quotes from the Internet's original and most accurate insurance comparison and purchasing system.

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Shop, Compare and Save

- 1 answer a few questions
- 2 receive the 10 lowest quotes
- 3

Instant Term Life Quotes

State of Residence:

Date of Birth (MM/DD/YY):

Sex: Male Female

Have you used any tobacco products in the last 12 months? No Yes

Coverage Amount:

How long do you need the life insurance?

Submit Request

RATED #1

"ReliaQuote, which placed first in our rankings, is top-notch."
- SmartMoney.com

"ReliaQuote is setting the standard for insurance services on the Web today."
- Forbes Magazine



Life Insurance

- **Assets & Income Protection**
- **Liquidity**
- **Tax Treatment:**
 - **Income Tax – Generally None**
 - **Estate Tax – Included in Owner's Taxable Estate**
 - **SGLI**
 - **SBP**





Do I Need Life Insurance?



- Two purposes of life insurance
 - Protecting family (resource replacement)
 - Liquidity – need cash now!
- **NOT** for investment, please!

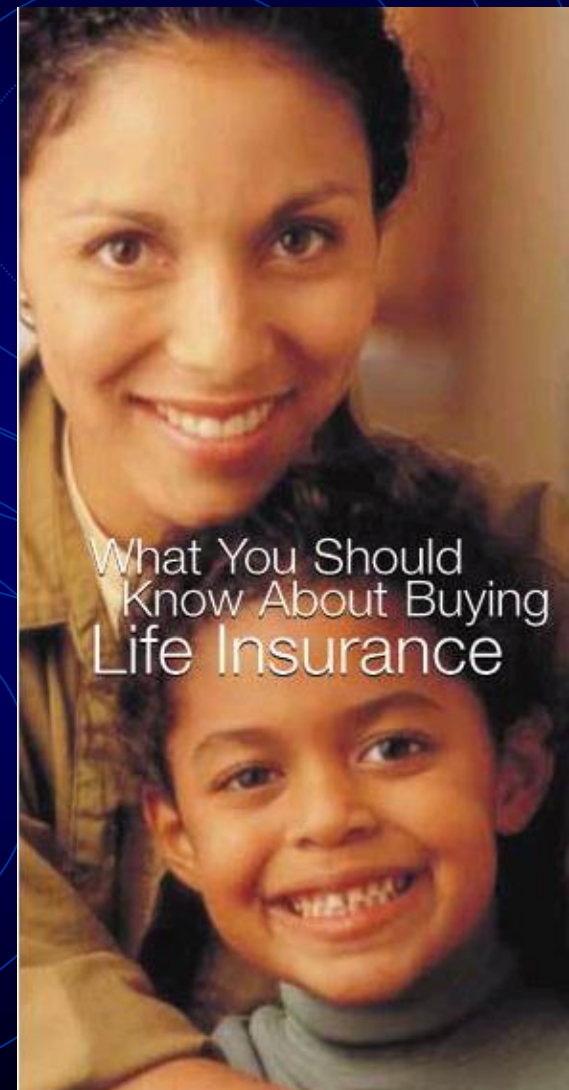




Life Insurance Types



- Life
 - Term-pure insurance
 - Hybrid-insurance + forced savings
 - Whole life-guaranteed rate of return
 - Universal life-variety of investments
- *“Buy term, invest the difference”*
 - Assumes discipline





Liability Insurance Limits



- Buy to meet need
- If you want to save, save on comprehensive, collision deductibles
- Umbrella liability policy

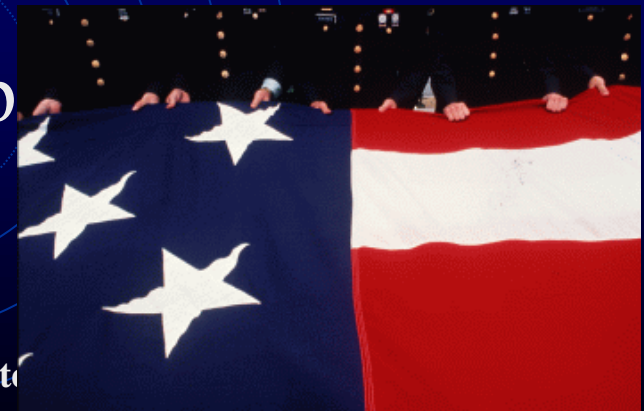




Funeral Arrangements



- Instructions:
 - What you want – military?
TROA publishes *Taps – A Guide to Military Oriented Burials*
(<http://www.troa.org/Booklets/TAPS.asp>)
 - What you are willing to pay.
- Pre-Need Arrangements/ Prep





Estate Plan Action Steps



- ✓ Review our questionnaire
- ✓ Discuss with spouse
- ✓ Define your estate plan goals
- ✓ Complete the questionnaire & assemble related documents –
“*estate notebook*”
- ✓ Obtain professional advice