Planning the Legacy Gift

Matthew S. Brysacz

Cox Smith Matthews Incorporated

112 East Pecan Street, Suite 1800

San Antonio, Texas 78205-1521

(210) 554-5500

Stewardship Conference

Episcopal Diocese of West Texas

Church of the Good Shepherd – Corpus Christi (August 21, 2010)

St. Mark’s – San Antonio (August 28, 2010)

Failing to Plan

- Who said:

  “Failing to Plan is Like Planning to Fail”

  a. Winston Churchill
  b. Mike Murdoch
  c. Benjamin Franklin
  d. Alan Lakein

AGENDA

- Importance of Planning
- A Few Words About Estate Taxes
- Charitable Giving Techniques
- A Plan for a Plan

Why Do We Fail to Plan

- Time
- Priorities
- Money
- Difficulty of dealing with death or incapacity
- Failure to Communicate – Hank and Myrtle

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Issues After Death

1) Funeral
2) Decedent’s Ongoing and Final Expenses/Debts
3) Collection of Life Insurance
4) Distribution of Retirement Plans
5) Distribution of Estate Assets
6) Ongoing Care of Loved Ones
7) Taxes
    a) Final Income Tax Return
    b) Estate Tax Return
    c) Income Tax Return for the Estate

Why You Can Do With a Will

- Appoint an “Independent” Executor:
  - Offer Will to Probate
  - Notify Will Beneficiaries
  - Gather and safeguard estate property
  - Pay debts
  - File tax returns and pay taxes
  - Distribute property to will beneficiaries
  - All with mininum Court supervision and expense

What You Can Do With a Will

- Appoint Guardian(s) for Minor Children:
  - Will care for minor children if no parent survives
  - Cannot override rights of ex-spouse who is parent
  - Guardian can be same/different from Trustee
    - Distinction between Guardian of Person and Guardian of the Estate

What You Can Do With a Will

- Direct Disposition of Remains
- Direct Payment of Expenses/Debts
- Fulfill Lifetime Pledges

What You Can Do With a Will

- Who Gets What Stuff!
  - Any person, organization or entity (not your attorney)
  - Class gifts
    - “All my children then living”
    - “My Descendants, per stirpes”
  - Conditional Gifts
    - “To Mary, if she is still in my eploy at my death”
  - In Trust
    - “To my trustee for the benefit of my wife/children”

What Is NOT controlled by your Will?

- Joint Tenant With Rights of Survivorship (JTWROS) accounts
  - Joint accounts – More than one owner may withdraw
  - Right of Survivorship
    - On death of one joint owner, property is owned by surviving joint owner(s)
- Payable on Death (P.O.D.) accounts
  - Account Owned by Single Owner
  - On death, account is payable to one or more third parties

What Is NOT controlled by Your Will?

- Life Insurance proceeds
- Retirement Plan assets
- Individual Retirement Accounts
- Property owned by a Trust
  - Created by someone else for your benefit
  - Created by you during your life ("revocable living trust")

What If You Don't Have a Will

- Court Decides Who Manages Your Estate
  - Surviving spouse
  - Ex-spouse
  - Drug-addicted child
  - Creditor
  - Attorney

- Texas Legislature Decides Who Gets Your Stuff

No Surviving Spouse

- To Your Kids
- If None, to Your Parents
- If Only One Parent, ½ to Parent, ½ to Siblings
- If No Parents, 100% to Siblings

Surviving Spouse

- Surviving Children
  - S.S. – 1/3 of personal property
  - Children – 2/3 of personal property
  - S.S. – Life Estate in 1/3 of the land
  - Children – Remainder of Land
- No Surviving Children
  - S.S. – All personal property
  - S.S. – ½ of the land
  - Father/Mother/Siblings – Other ½ of land

Surviving Second Spouse and Adult Children From Prior Marriage

THEIR ATTORNEYS!

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Handwritten Wills

- Texas Allows Holographic Wills
  - Entirely in Testator’s Handwriting
  - Signed by Testator
  - No need for date, witnesses, any particular form or words
- RIPE for Abuse and Confusion

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A FEW WORDS ABOUT ESTATE TAXES AND CHARITABLE GIVING

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Estate Tax Overview

- Estate Tax is a tax on the transfer of assets at death
- No Texas State Estate Tax, Federal level only
- Current Federal Law is in Flux
- Estate Tax Reductions
  - Marital Deduction
  - Charitable Deduction
  - Unified Credit
- Lifetime Giving Exemption - $1M

Historical Estate Tax Exemptions

Applicable Exclusion

- $1.0 million: 2002-03
- $1.5 million: 2004-05
- $2.0 million: 2006-08
- $3.5 million: 2009
- No Tax: 2010
- $1.0 million: 2011+

Maximum Tax Rate

- 50%: 2002
- 49%: 2003
- 48%: 2004
- 47%: 2005
- 46%: 2006
- 45%: 2007-09
- 0%: 2010***
- 55%: 2011+

*** - No Estate Tax; but May Create Capital Gains Tax problems

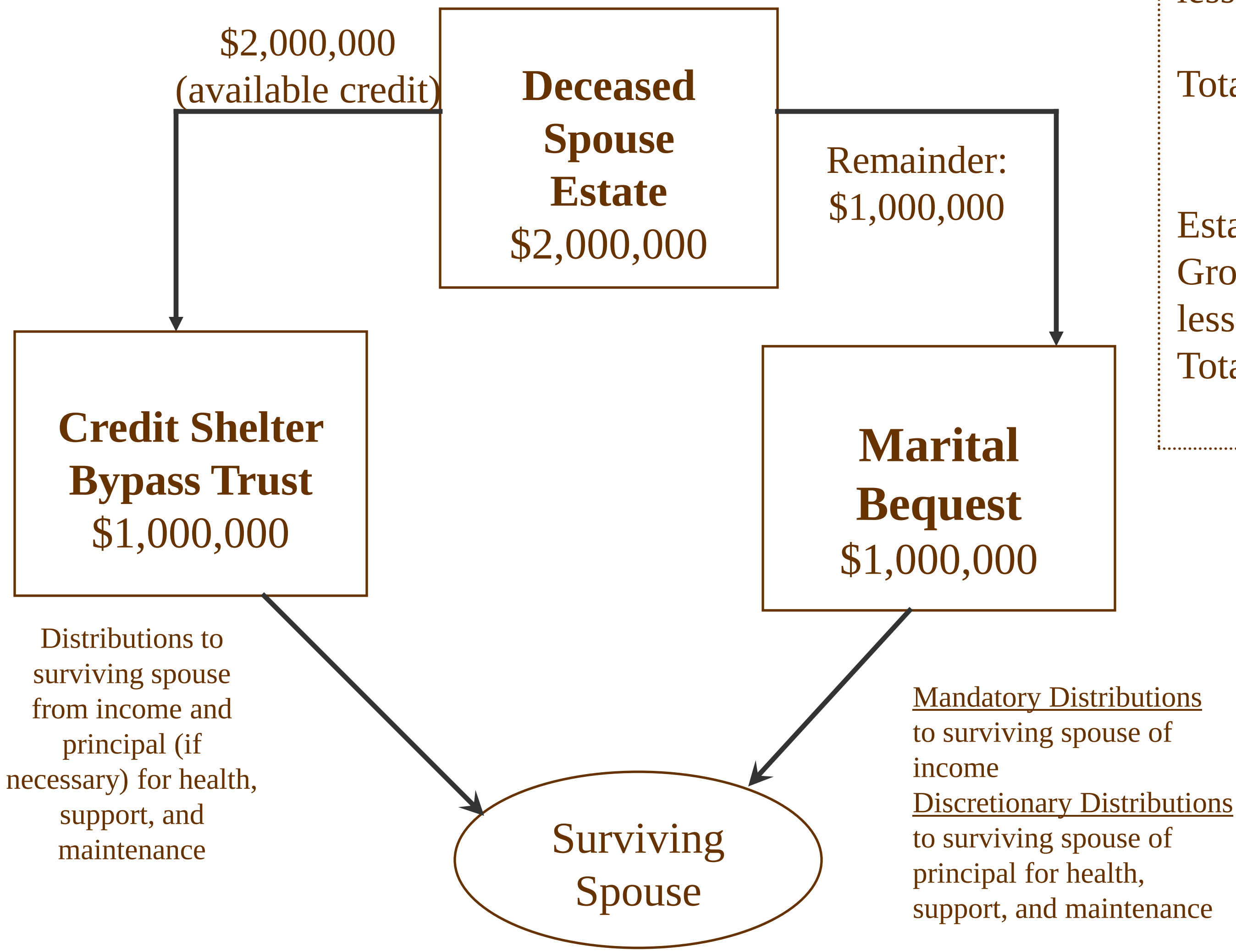
"Credit Shelter Trust"

- The "I Love You" Will
  - Everything to Spouse
  - If Spouse Dies, Everything to Kids (or to contingent trusts for minors)
  - No Tax at First Spouse's Death because of Unlimited Marital Estate Tax Deduction
  - However, all property taxed at death of surviving spouse
- Problem
  - If Exemption = $1M and Joint Estate = $2M
  - Surviving Spouse will owe Estate Taxes on $1M at death
- Solution
  - Credit Shelter Trust

Credit Shelter Planning

- Credit Shelter (Bypass) Trust
  - Funded at death with the first spouse's available applicable exclusion amount
  - Trust "bypasses" the surviving spouse's estate, but may provide spouse with lifetime benefits
- $2M Estate; $1M Exemption
  - At First Spouse Death - $1M to Survivor; $1M to Trust
  - Surviving Spouse can be trustee and has access to Trust for Health, Education, Maintenance, Support
  - At Surviving Spouse's Death, Only $1M in Estate – No Estate Tax Due

Tax Planned Will Example



Estate Tax at First Death	
Gross Estate	$2,000,000
less: credit	$1,000,000
marital	$1,000,000
Total	$0
	No Tax

Estate Tax at Second Death	
Gross Estate	$1,000,000
less: credit	$1,000,000
Total	<$0
	No Tax

Charitable Giving to Reduce Taxes

- Strategy #1 – The Pragmatist
  - Death of 1st Spouse:
    - Credit Shelter Trust to Surviving Spouse
    - Everything Outright to S.S.
  - Death of Surviving Spouse:
    - Credit Shelter Trust Passes to Kids
    - Estate Tax Exemption Amount to Kids
    - Everything Else (or Portion) to Charity

Charitable Giving to Reduce Taxes

- Strategy #2 - The Philanthropist
  - Don't Want to Delay Charitable Funding
  - Give Generously Now to Reduce Size of Estate
  - Death of 1st Spouse:
    - Credit Shelter Trust to Surviving Spouse
    - Outright to S.S. who gives generously to Charity
  - Death of Surviving Spouse:
    - Credit Shelter Trust and Estate Exemption Amount to Kids
    - Everything Else (or Portion) to Charity

Charitable Giving to Reduce Taxes

- Strategy #3 - The Pragmatic Philanthropist
  - (or "The Philanthropic Pragmatist")
  - Charitable Remainder Trusts
    - Lifetime Transfer of cash or property in trust in exchange for annuity interest payable over a term
    - Assets remaining in trust after expiration of annuity interest pass to charity
  - Charitable Lead Trusts
    - Transfer property to trust which pays annuity to charity during the term
    - Assets remaining in trust after expiration returned to you or given to your beneficiaries

Example of CRAT

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Contributes $1,000,000 in assets (often highly appreciated stock) at no gift or capital gain tax cost, and receives an income tax deduction

GRANTOR – 70 Years Old

CHARITABLE REMAINDER TRUST
Assets are sold by the trustee without capital gains tax
Proceeds can be reinvested in a diversified portfolio

CRT pays $50,000 (5%) a year for donor's lifetime and donor gets a charitable income tax deduction of $474,795

At termination of CRT, remainder of assets pass to charity (13 yr life expectancy at 7% asset growth rate = $1,402,000)

CHARITY

Example of CLAT

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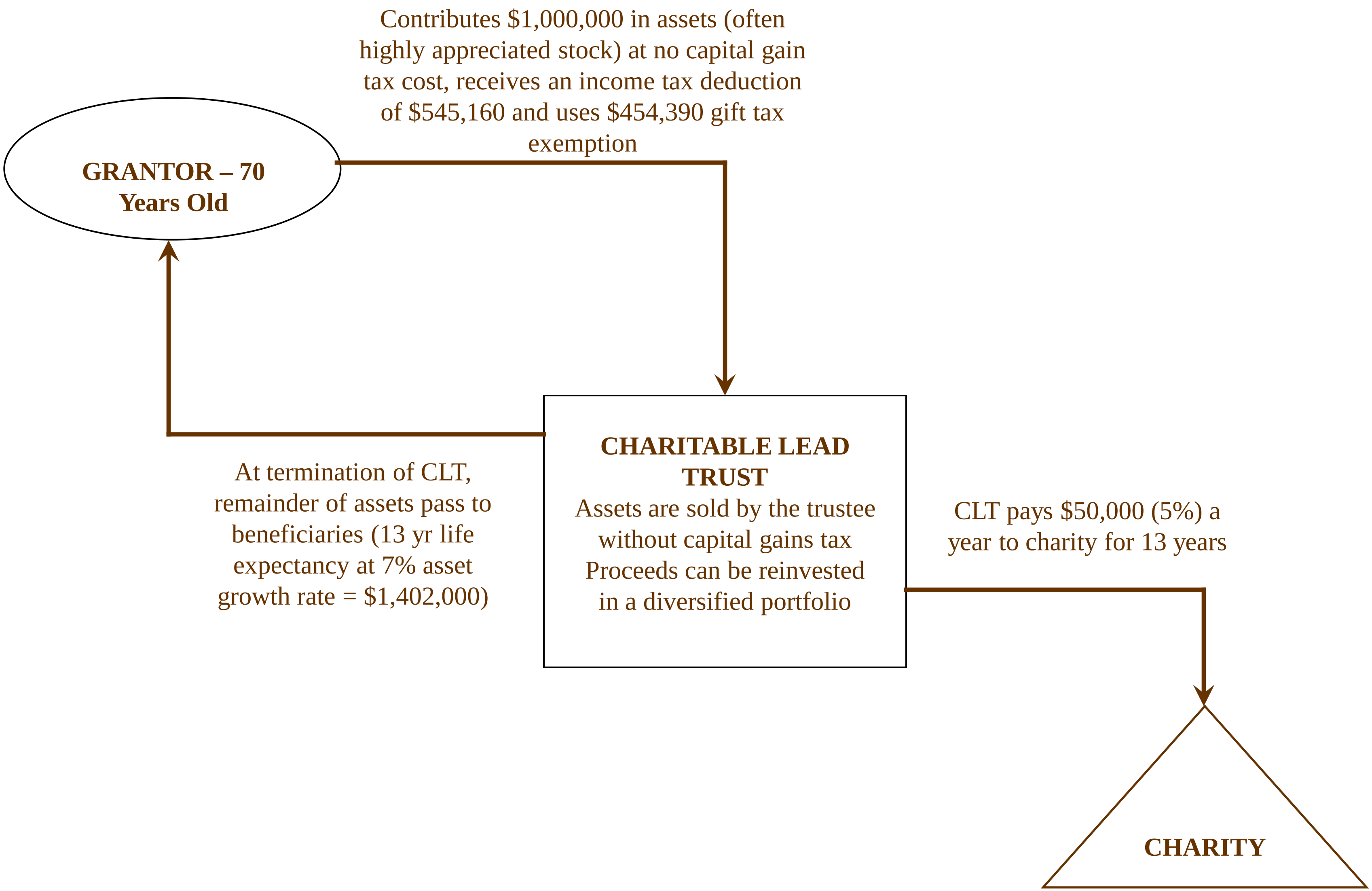

Summary

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- Charitable Trusts Advantages
  - Current charitable income tax deduction = present value of remainder interest (CRT) or annuity payments (CLT) to charity
  - Portfolio diversification with no cap gains
  - Convert nonproductive property to income-producing
  - CRT - Donor retains cash flow
  - Significant, planned, future gift to charity (CRT) or beneficiaries (CLT)

OTHER IMPORTANT ESTATE PLAN DOCUMENTS

- Designation of Guardian
- Durable Power of Attorney
- Medical Power of Attorney
- Directive to Physicians
- Revocable Trusts

Designation of Guardian

- Designates who should serve as a person’s guardian if future need arises
  - Names one or more trusted persons to Serve as Guardian for Person and/or Estate
  - Can designate those you do not want to serve
  - Provides disincentive for relative who may attempt to use a guardianship proceeding to intervene in your affairs
- Guardianship is Still Court-Supervised

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Durable Power of Attorney

- Appoints an agent who will have the power to conduct your business while you are alive
  - Powers can be broad or limited
  - Powers can be made effective at all times, or only after you become disabled
- Appoints an alternate agent in case the first agent is not available
- Can avoid a Court-Supervised Guradianship

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Court-Supervised Guardianship

- Requires filing of Application and Court Appointment
  - May be contested
  - Remains in effect until recovery or death
  - Guardian must obtain Court approval for everyday transactions:
    - Must file an Application with Court
    - Must appear before Judge to obtain Order
  - Annual accounting to Court is Required
- In short is very Expensive and Cumbersome

Medical Power of Attorney

- Appoints an agent to make medical decisions in case you are unable to speak for yourself
- Power can be limited i.e. can specify treatment that you do not want to receive
- Can Appoint alternate agents in case your first choice is not available or able to seve
- Can be made a part of your Medical Records

Directive to Physicians

- Commonly called a “Living Will”
- Gives instructions to your doctor to administer, withhold, or withdraw life-sustaining treatment in case your attending physican certifies that you have:
  - A “Terminal Condition” or
  - An “Irreversable Condition”
- Physician shall make the fact of the existence of Directive part of Declarant’s medical records

Revocable Trusts

- Often called by trade names (e.g. “Revocable Living Trust”)
- Reasons NOT to Use a Revocable Trust:
  - Avoid Probate
  - Avoid estate taxes

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Independent Administration in Texas

- Executor files Application to Admit Will to Probate
- Court Issues Order Admitting Will and Letters Testamentary
- Executor:
  - Opens Estate Bank Account
  - Notifies Beneficiaries and Secured Creditors
  - Publishes Notice to Unsecured Creditors
  - Collects Assets
  - Files Inventory with Court
  - Pays Administration Expenses
  - Distributed Assets to Beneficiaries

Revocable Trusts

- Reasons TO Use a Revocable Trust:
  - Avoid probate in states with no independent administation
  - Privacy
  - Avoid ancillary administration
  - Clarify and maintain character of separate or community property

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A PLAN FOR A PLAN

- Discuss Plan with Spouse
- Consider Lifetime Charitable Giving
  - Tax and Non-Tax Reasons
- Put an Attorney-Prepared Will in Place
  - Avoid Handwritten Wills
- Review Beneficiary Designations
- Consider Additional Planning Documents

WHEN TO REVIEW PLAN

- Changes in Family
  - Divorce
  - Births
  - Adoptions
  - Deaths
  - In-laws become Outlaws
  - Addictions
  - Disabilities

WHEN TO REVIEW PLAN

- Changes in Assets
  - Do Assets Go Around Will
  - Have Assets Changed
    - Moving house
    - Moving jobs
    - Retirement
  - Business Successions

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THANK YOU!