

ESTATE PLANNING
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Retirement Planning Seminar

BY

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Joseph T. Ducanis, Jr. is Board Certified by The Florida Bar in Wills, Trusts and Estates Law. He is a graduate of the Wharton School of the University of Pennsylvania (B.S., Economics, cum laude, 1983) and received his law degree from the University of Florida (J.D., magna cum laude, 1990). He is a member of the Florida Bar and is AV rated by the Martindale Hubbell peer review (highest possible attorney rating).

Mr. Ducanis concentrates his practice in the areas of estate planning, estate and gift tax planning, probate administration, trust administration, beneficiary representation and corporate and partnership transactions. His estate planning practice includes the preparation of Wills, Revocable Trusts, Irrevocable Trusts, Durable Powers of Attorney, Advanced Health Care Directives and the implementation of a wide variety of techniques designed to minimize taxes and provide asset protection. The probate and trust administration practice focuses on the representation of Personal Representatives (also know as Executors) and Trustees in the carrying out of their various duties, including but not limited to, reporting to the IRS and state taxing authorities, marshalling of assets, handling of beneficiary or creditor disputes and assisting in business transactions involving the estate or trust.

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A. Understanding The Estate Tax.

1. What is Your Taxable Estate? Essentially, this means the world-wide existence of all assets of any kind that have your name on them (jointly or individually). For example:
 - a. Real estate.
 - b. Bank accounts and CD's
 - c. Stocks, bonds and mutual fund investments.
 - d. IRA's and 401k's
 - e. The face amount of life insurance (ie the death benefit) on your life if you owned the policy. (often overlooked)
 - f. Jewelry, collectibles and precious metals

2. Estate Tax Applicable Exclusion Amount. For 2009, the applicable exclusion amount (formerly known as the "unified credit") is \$3,500,000, which is the amount of taxable estate that you can pass at death without there being an estate tax.

** You can use up to \$1,000,000 of your applicable exclusion during life. Any gifts in excess of that will be taxed.

3. Estate and Gift Tax Rates. The maximum estate and gift tax rate is currently at 45%.

4. Marital Deduction. For any assets passing to a surviving spouse, there is an unlimited marital deduction for estate tax purposes (ie. no tax regardless of amount).

5. The "Repeal" of the Estate Tax. If anyone dies in 2010, there will be no estate tax (regardless of amount of estate) under the current law. However, because of the federal sunset laws, if you live until 2011, we revert back to the rules as they existed in 2001 (ie. only a \$1,000,000 death exclusion).

"THE" ISSUE **Will President and Congress deal with this problem before we have mass confusion?

- B. Basic Estate Tax Planning – Don't Waste Your Exclusion Amount. – This requires having more than a simple will.

- C. Avoiding Probate and Guardianship – Use of Revocable Trusts.
 - 1. What is the difference between revocable and irrevocable trusts?
 - 2. Does the revocable trust replace the Will?
 - 3. Why should we try to avoid probate or guardianship?
 - 4. What are the additional costs of setting up a revocable trust?
- D. Durable Powers of Attorney, Living Wills and Health Care Surrogates. Everyone should consider having these.
- E. Use the Annual Gift Exclusion. Currently, any individual can give away up to \$13,000 per year to as many other individuals as they desire, without using up any of their \$1,000,000 gift exclusion amount. (\$26,000 for married donors).
- F. Use the Unlimited Gift Exclusion For Tuition and Medical Expenses. If paid directly to the school or medical provider, these gifts can be unlimited and will not use up any of the \$1,000,000 gift exclusion amount.
- G. What about Life Insurance? – Often overlooked and taxed unnecessarily in the estate (use Irrevocable Trusts to avoid estate tax).
- H. Using Generation-Skipping Exemption Properly. – Avoiding Estate Tax in Children’s Estates.
- I. Advanced Estate Tax Planning.
 - 1. Qualified Personal Residence Trusts.
 - 2. Limited Partnerships/Discount Planning.
 - a. Gifts
 - b. Sales
 - 2. Charitable Split Interest Trusts.
 - 4. Grantor Retained Annuity Trusts.
- J. Basic Asset Protection in Florida.
 - 1. Florida Constitutional and Statutory Protections.
 - a. Homestead Property – Florida Constitution, Article X, Section 4.

- b. Life Insurance Proceeds – Florida Statutes §222.13.
- c. Cash Surrender Value of Insurance and Annuities – Florida Statutes §222.14.
- d. Pension, Profit Sharing, IRA's – Florida Statutes §222.21
- e. Wage Accounts – Six (6) months of earnings can be accumulated at a financial institution if funds can be traced. - Florida Statutes §222.11.

2. Tenancy By The Entireties – Between Husband and Wife. Florida Common Law.

K. Other Asset Protection Considerations.

1. Transfers From Upper Level Generations.

- a. Use of lifetime trusts for bequests coming from parents or grandparents to insulate from other assets owned.
- b. Avoiding estate taxes by use of parents' or grandparents' generation-skipping exemption.

2. Transfers To Future Generations.

- a. Gifts to Irrevocable Trusts
- b. Asset Sales
- c. Special Needs Trusts

3. Family Limited Partnerships.

- a. Who is in control as general partner?
- b. Who are the limited partners?
- c. The "charging lien" concept.
- d. Estate/Gift Tax benefits.