



Estate Planning in Uncertain Times: Divorce, Death, and Taxes

Presented by

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Circular 230 Disclosure

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The purpose of these educational materials is to provide you with information. These materials are not legal advice. The impact of federal and state estate, gift, and generation-skipping transfer (GST) tax laws as well as state law tax and family law considerations must be weighed to determine an appropriate solution.

A qualified estate planning attorney / family law attorney should advise you regarding all of the issues raised in these materials and to draft appropriate documents. A portion of these materials are derived from materials previously co-authored by Christopher Burns with other authors.

I. HYPOTHETICAL

- A. Couple has \$10,000,000 net worth.
- B. Asset composition.
- C. Married 10 years.
- D. At time of marriage:
 - 1. Husband net worth \$1,000,000
 - 2. Wife net worth \$4,000,000
- E. From an estate planning perspective, any general recommendations?

I. HYPOTHETICAL (Ctd.)

- A. Discuss marital / non marital property
- B. Potential unintended consequences of asset re-titling
- C. Family law recommendations
- D. Estate planning recommendations

II. Creative Alternatives for Couples

- A. Entering relationship
 - 1. Antenuptial agreements
 - 2. Cohabitation agreements
- B. Exiting relationship
 - 1. Postnuptial agreements
 - 2. Separation agreements
 - 3. Divorce

III. Antenuptial (Prenuptial) Agreements

- A. Overview
 - 1. Family law considerations
 - 2. Estate planning considerations
- B. Suggesting concept of antenuptial agreement, etc.
 - 1. Recommendations
 - 2. First marriages
 - 3. Subsequent marriages

III. Antenuptial (Prenuptial) Agreements (ctd.)

- A. Question: May the agreement be signed on the wedding day?
- B. Procedural fairness
 - 1. Full disclosure of:
 - Assets
 - Liabilities
 - Income
 - 2. Timing
 - 3. Counsel

III. Antenuptial (Prenuptial) Agreements (ctd.)

A. Question

1. If agreement says: “What’s mine is mine and what’s yours is yours”
2. No maintenance (alimony)
3. No child support
4. Enforceable

B. Substantive fairness

1. At time of execution
2. At time of enforcement

IV. Cohabitation Agreements

- A. Definition
- B. Compare / Contrast with Antenuptial Agreements / Postnuptial Agreements

V. Postnuptial Agreements / Separation Agreements

- A. Definitions
- B. Compare / Contrast

VI. Marital Dissolution

- A. Marital dissolution
- B. Marital / Non-marital property
- C. Hypothetical

VII. Humpty Dumpty

- A. Putting together the pieces
- B. Estate planning documents
- C. Beneficiary designations
- D. Life insurance - ILITs

VIII. Post Dissolution - Effective Estate Planning

- A. Coordinating / Implementing Decree
 - 1. Retirement beneficiary designations
 - 2. Life Insurance beneficiary designations
- B. Working with clients to update out of date plans
 - “Irrational Exuberance” / Panic
 - Ostrich / Do nothing approach

VIII. Post Dissolution - Effective Estate Planning (ctd.)

- A. Wills
- B. Trust agreements
- C. Powers of attorney
- D. Health Care Directives

IX. Estate Taxes - Historical Federal Estate Tax Information

<u>Year</u>	<u>Exemption</u>	<u>Top Tax Rate*</u>
2002	\$1,000,000	50%
2004	\$1,500,000	47%
2006	\$2,000,000	46%
2009	\$3,500,000	45%
2010	“Repeal”	“Repeal”

X. Estate Taxes - Current Federal Estate Tax Information

<u>Year</u>	<u>Exemption</u>	<u>Top Tax Rate</u>
2009	\$3,500,000	45%
2010*	\$5,000,000	35%
2011-2012	\$5,120,000	35%
2013	\$1,000,000	55%

*For deaths incurring in 2010 an election was available to elect estate tax repeal and carryover basis

XI. Minnesota's Estate Tax

- A. Minnesota continues to impose an estate tax on the estates of individuals exceeding \$1,000,000.
- B. Changes to exemption amount appear unlikely.

XII. Effectively Working with a Estate Planning-Family Law Attorneys

- A. Appreciate attorney/client privilege issues
- B. Foster team atmosphere with professionals
- C. Communicate regularly
- D. Work to create an environment that encourages dialogue among professionals



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