CONTENTS

What is an Estate Plan? 1

Why this Planning Guide? 1

What is the Process? 1

Step 1: Determine the Priority of Your Estate Plan 2
- First, do the will of God 2
- Second, avoid family conflicts and promote spiritual growth 3
- Third, transfer your property efficiently and economically 4

Step 2: Be Aware of Problems That Need to Be Avoided 4
- Too much too soon 4
- Family conflict 5
- Probate 6
- Estate taxes 7
- Lifetime gifts 8
- Joint ownership 9
- Failure to coordinate ownership and beneficiary provisions 9
- Disability or incapacity 10

Step 3: Discover How the Problems of Estate Planning Can Be Solved with the Tools and Techniques of Estate Planning 11
- Last Will and Testament 11
- Revocable Living Trust 12
- Durable Power of Attorney 16
- Health Care Advance Directives 16
- Credit Shelter Trust 17
- Life Insurance Trust 18
- Charitable Lead Trust 19
- Other Charitable Instruments that provide current income tax deductions 20
- Charitable Remainder Unitrust 21
- Charitable Remainder Annuity Trust 21
- Life Estate Agreement 22
- Charitable Gift Annuity 22
- Special Situation Trusts 23
- Qualified Terminal Interest Property (“QTIP”) Trust 23
- Generation Skipping Trust 24

Step 4: Complete the Confidential Estate Questionnaire 24
- People Section 25
- Property Section 25
- Plans Section 27
- Personal Representatives Section 28

Step 5: Have an Estate Analysis and Plan Prepared 29

Step 6: Have the Legal Documents Prepared by an Experienced Estate Planning Attorney 30

Step 7: Carry Through to Completion All Aspects of Your Estate Plan 31

Conclusion 32

Glossary of Estate Planning Terms 34

WHAT IS AN ESTATE PLAN?

An estate plan consists of two distinct parts:

1. During life, it is a program for creating, conserving, and utilizing resources to secure the maximum benefit now, during disability, and at retirement.

2. At death, it is a program to pass the estate to family members and other beneficiaries with minimum shrinkage caused by expenses and taxes.

For the Christian, however, there is another dimension. We recognize God's ownership and our responsibility as stewards. Therefore, we must ask, "What is God's will for our estate?"

WHY THIS PLANNING GUIDE?

In counseling with Christians concerning estate planning, we have found a great deal of misunderstanding and a tremendous need for help, guidance, and instruction in plain, easy-to-understand language. Over one-half of American adults have no estate plan. Others have plans that are inadequate. This lack of planning or lack of good planning is true for several reasons:

1. Many people just assume that at their death what they have accumulated will automatically pass to their loved ones. According to John Barnes in his book, *Who Will Get Your Money?,* "Nothing could be further from the truth." Many people have little idea of the spiritual, financial, and emotional problems that can come to their families as a result of their failure to plan properly.

2. Many do not understand the estate planning process and, therefore, do not do it. The technical language involved can make it seem complex and difficult.

3. We are all prone to procrastinate. Even if we recognize that estate planning is important, we seldom think of it as urgent until it is too late.

We have attempted, therefore, to provide a guide and a process that will lead you step by step until you have your estate planned just the way you want it with all the necessary documents prepared and in place. If you already have an estate plan, this guide will provide a means for reviewing and evaluating your existing plan.

WHAT IS THE PROCESS?

Briefly stated, your estate plan may be completed in the following seven steps:

1. Determine the priorities of your estate plan.

2. Become aware of the problems that need to be avoided.

3. Discover how problems of estate planning can be solved with the tools and techniques of estate planning.

4. Complete the Confidential Estate Questionnaire.

5. Have an Estate Analysis and Plan prepared.

6. Have the documents prepared by an experienced estate planning attorney.

7. Carry through to completion all aspects of your estate plan.

STEP 1: DETERMINE THE PRIORITIES OF YOUR ESTATE PLAN

The FIRST PRIORITY for the Christian is to do the will of God. Estate planning is part of our total stewardship, for stewardship is more than just giving. Biblical stewardship is a servant relationship to God that requires us to ask, "What would He have us do with everything He has placed under our management?" Stewardship involves everything we do with everything we have, including our estates. Simply stated: Stewardship is using God-given abilities to manage God-owned property to accomplish God-directed results.

Stewardship includes what we use for our families as well as what we give to Christian ministries. I Timothy 5:8 states: "If anyone does not provide for his relatives, and especially for his immediate family, he has denied the faith, and is worse than an unbeliever." This strong language requires us to plan our estates so that our dependents will be provided for. Making sure that we provide for minor children and all who depend on us must be a high priority of estate planning. To be good stewards in this regard, we must plan diligently, carefully, and wisely.

But there is more to provide for our dependents than just money. God has ordained that man should earn his bread by the sweat of his brow. Experience teaches us that most people are not helped by wealth they have not created or earned. "I have given you much so that you can give much," provides insight as to what God would have us do with the bounty He has provided.

Proverbs 13:22 tells us, **"A good man leaves an inheritance to his children's children."** I Peter 1: 4 speaks of an inheritance that can never perish, spoil, or fade that is kept in heaven for us. The greatest inheritance we can leave to our children's children and the greatest inheritance we can leave to a hurting, lost, and dying world is:

1. A strong spiritual heritage based on Scripture and confirmed by our own Christian example.
2. A strong church in which to worship, learn, grow, and serve.
3. A Christian educational system that teaches not only how to earn a living, but how to live.
4. Christian ministries of all kinds that carry out Christ's commission to win the lost, edify the brethren, lift up the fallen, and bind up the wounded.

The Scriptures tell us that given sufficient time, moth and rust will creep in and destroy any other inheritance. But this is an inheritance that will not fade away.

A Christian estate plan, then, is one that recognizes God as the owner of the property and sets it up so that after death that property will continue to be utilized according to His will. Since it is God's property that He was entrusted to us as a steward (or as a trustee), He is not going to be pleased if we turn it over to someone who is going to ignore His will.

An estate plan allows you to exercise your stewardship responsibility over your property by determining how that property will be used and distributed after your death. Without any estate plan, you hand over the stewardship of your property to the laws of your State that will dictate who will get your property. The mandates of the State may not match the desires of your heart, but more importantly, they may be contrary to the will of God.

Think how you would feel if you took your money down to the bank, gave it to a trust officer to invest and use for your family, and if he then just ignored your instructions. Suppose he used it for himself or to promote beliefs and lifestyles totally contrary to all that you stand for. You would soon change trustees, wouldn't you? Is God any more pleased when we turn His property over to those who ignore His will regarding its use?

How can we know God's will for our estates? No one can tell us how much should go to family or how much to Christian ministries. God has given us many principles in the Bible, however, that will guide us, and He has promised to answer our prayers for wisdom. James 1:5 tells us, **"If any of you lacks wisdom, he should ask God, who gives generously to all without finding fault, and it will be given to him."** God is faithful and true. So if we ask sincerely with obedient faith and genuinely seek guidance from Scripture, He certainly will lead us to formulate a plan that will be worthy of, "Well done, good and faithful servant," and, at the same time, be best for our families.

The SECOND PRIORITY of estate planning is to be as helpful as possible to your beneficiaries and to avoid personal conflicts among them.

People are more important than dollars. Yet in our concern to avoid unnecessary expenses and save taxes, we often neglect an even more important aspect of estate planning. We must also seek to avoid family conflicts and to ease the tensions, frustrations, difficulties of adjustment, and emotional strains of our beneficiaries. **Our love is demonstrated by a thoughtfulness that makes their tasks easier at a difficult time.**

By these final acts of love and by words of a personal nature to your heirs in the will or a letter of instructions, you may leave them a legacy that will promote their spiritual growth and eternal salvation. Of all gifts, the most valuable to your heirs are those that edify (or build them up). An estate plan, therefore, that avoids conflicts and promotes a closer walk with Christ may itself be your greatest gift.

Later in this Guide we will discuss how conflicts can be avoided, how gifts can be made most beneficially, how adjustment difficulties may be lessened, and how even the eternal destiny of

your heirs may be affected by your estate plan. For now, let it simply be established that this should be the second priority of your estate plan. **People ARE more important than dollars.**

The THIRD PRIORITY of estate planning is to transfer your property in the most efficient and economic manner. This efficient and economic manner involves the avoidance of unnecessary delays and shrinkage of the estate from legal expenses and taxes. Efficiency and economy is part of good stewardship, too, for a steward is a manager who handles the property of another prudently and effectively.

Much of this Estate Planning Guide will cover the tools and techniques that best accomplish this transfer of your property. We will continually emphasize the importance of doing estate planning in the best way possible. But do not forget the order of our priorities as Christians:

1. *Determine God's will for your estate;*
2. *Avoid family conflicts and promote spiritual growth; and*
3. *Transfer your property in the most efficient and economic manner.*

Fixing these priorities in mind is Step 1 in the estate planning process.

STEP 2: BECOME AWARE OF PROBLEMS THAT NEED TO BE AVOIDED

The danger that personal problems will result from an inheritance is real. The parable of the prodigal son (Luke 15:11-21) provides valuable insights into some of these problems.

The FIRST PROBLEM is that of too much money all at once and at too young an age. In the parable, it was the younger son who asked for his share of the inheritance, and his father gave it to him all at once. The younger son was immature, did not recognize his stewardship responsibility, and wasted his inheritance in wild living. The money, that had taken his father a lifetime to accumulate, was soon gone, and he was left in a deplorable condition.

The same scene plays out over and over again today. Most inheritances that come at a young age do not result in a closer walk with Christ and are squandered within a few years. In most states, the legal age for inheritance is 18 years. How many young people at that age are ready for the great stewardship responsibility of a large sum of money? Eighteen is the age of a college freshman and the time of the first serious romance: with members of the opposite sex, with sports cars, or with the latest technological gizmo. The young heir, that you wanted to get through college, into a first job, and into a first house, might get his hands on his inheritance and drop out of school, get married, or buy a truckload of stuff that seems important at that age.

For this reason, it is important to establish a trust in which the property is maintained for the benefit of dependents, at least until the youngest child reaches an age of maturity, perhaps at age 25, for example. If any child has mental or physical disabilities, the trust should continue to be maintained for the benefit of the disabled child. If there are no disabilities or no children under age 25, a trust is still beneficial because the trustee can be directed to distribute the estate to the

heirs in a series of payments over a predetermined schedule. If a child is known to be a spendthrift, an income stream over, say, five-year intervals might be better than any lump-sum distribution all at once.

The SECOND PROBLEM is the possibility of conflicts between family members. Many of us feel that conflicts would never occur in our families. Remember from the parable, though, it was the older son, who stayed home and never disobeyed his father, that split the family right down the middle with his concerns about fairness. Even though the father was still alive and assured his older son that his inheritance was still intact, family relationships were strained. And what caused the problem? A coat, a calf, a pair of sandals, a ring, and a party. **Small things still can cause big conflicts between family members today.**

How, then, do you keep conflicts from happening in your family? The avoidance of family conflicts is one of the primary purposes of this Estate Planning Guide and is dealt with throughout, but here are a few techniques available to you:

1. **You can name a financial institution's trust department (or a person who is not a beneficiary and has no vested interest) to serve as personal representative of your estate or trustee of any trust after your death or disability.** Many conflicts come about because a family member, placed in a position of responsibility, has to make decisions that are not acceptable to, or popular with, other family members. The sale of the family home, the continuation of the family business, and the interpretation of the will that conflicts with what mom or dad had said to another family member all are areas that may be better handled by someone who does not have a vested interest in the estate. Family members are often appointed in order to save executor or trustee fees, but, remember, "People are more important than dollars."

2. If you prefer to name family members (or other beneficiaries) as personal representatives or successor trustees, **you can give those individuals the instructions and authority to appoint a financial institution as agent or co-trustee if there are any conflicts or problems.** In that case, the personal representative or successor trustee can just let the financial institution resolve the problem. You can also give your successor trustees the authority to remove the financial institution if it is no longer needed or if it does not handle the situation well. This arrangement allows family members to settle the estate quickly and easily if there are no problems, but gives them an alternative if there are problems of any kind.

3. If there is a need for a guardian of a minor child, **you can name an institution or someone else as trustee of the property to be used for the child's benefit.** To the child, money takes on a different complexion at the death of a parent. While a parent is alive, a child has no difficulty understanding that the money belongs to mom and dad and is used for his or her benefit in the way chosen by mom and dad. At the death of the parents, that money, at least in the mind of the child, becomes the child's money even though it may be held in trust. If the guardian is also the trustee and refuses the child's request for an expensive, brand new car at age 16, that

arrangement causes additional conflict where there already may be difficulty adjusting to new roles. A trust department or some individual other than the guardian may be a better choice for trustee in such cases.

4. **You can prepare a letter of instructions that expresses as clearly as possible how you want to distribute certain items of personal property.** Mentioning this letter in your trust or your will as your way of distributing certain items of personal property is acceptable in most states. Cash can be divided equally among any number of people. It's extremely difficult to divide some items of sentimental value, such as an antique table that was a wedding present from a favorite aunt. A personal letter of instructions leaves the least room for family conflicts because not only can you distribute the items, you can explain your reasons for doing so. The letter can be added to or changed if your desires (or items) change without amending your trust or will. A clause in the trust or will should also state general desires for distribution of household items and personal property in case no such letter if prepared or found. The letter of instructions should be kept with the other estate documents.

5. **You can use the letter of instructions to speak personally to your beneficiaries regarding your faith and your concerns for the spiritual well-being of your family.** A will can also be used for these messages. Whether in one place or the other, do not miss this opportunity to speak to loved ones when their hearts may be most receptive. You may speak frankly that love, family, and souls are far more important than any material possession. You may talk about the brevity of this life, the eternal joys you anticipate, and your concern for their happiness now and in the life to come. A letter such as this will help reduce family conflicts, but it can also do so much more. Composing these precious personal messages will require time and prayer, but the rewards will be eternal.

The THIRD PROBLEM to be aware of is the problem of probate. The word probate means "to prove," and it describes the process of proving before a competent judicial authority that a document offered for official recognition and registration as the last will and testament of a deceased person is genuine. The probate court then authorizes and oversees the distribution of property done in accordance with that valid will. While this legal procedure has been a relatively good one for preventing fraud and theft of an estate, it also has several drawbacks:

1. **The time needed to complete probate can be quite lengthy.** Nationwide estimates are that the average length of time needed to complete probate is approximately 18 months. During this time the heirs have only limited access to estate resources. This delay can have detrimental results for estate values and for the very heirs the deceased had wanted to benefit.

2. **The cost of probate averages 5% to 10% of the value of the estate** and can be much higher for small or contested estates.

3. **The public nature of probate allows unscrupulous people to prey on heirs who have new "found" money and are not experienced in protecting it.** When a will is

filed for probate, it becomes a public document and anyone can go in off the street and get a copy of the will and any documents filed in association with it. This public filing gives news reporters, business competitors, and potential thieves a tremendous advantage.

4. When there is real estate owned outside the state of residence and distribution is made through a will, **an ancillary administration must be filed** and a personal representative appointed in each state where real estate is owned. These multiple processes add to the cost and problem of probate.

5. If a trust is established through a will, the probate court may require and appoint an **instate trustee** even though you had wanted someone out-of-state to serve in that capacity. Furthermore, even a trustee you have appointed will have to get approval from the court for some actions on your behalf and will be required to make **continuous reports** to the court as long as the trust exists. This requirement is an added burden to the trustee and an added expense to the trust.

The FOURTH PROBLEM to be aware of is the problem of estate taxes. Federal estate taxes will be less of a problem now that the personal exemption has been increased, but they still need to be considered. Even those who would not need to worry about taxes if death occurred now may have a sizeable tax liability in the future due to increases in estate value caused by investment growth or inflation.

The federal estate tax is a tax imposed on the transfer of assets from the estate of a deceased person. A certain amount of each estate is excluded from taxation by the federal government.

Current federal law allows a **$5 million exemption** per person indexed for inflation. That means that for people who die in 2013, the basic federal estate tax exclusion amount is $5,250,000.

There is also an unlimited marital deduction for transfers between spouses. That means that the federal estate tax consequence is usually postponed until the death of the surviving spouse. Federal law allows the surviving spouse to add any unused portion of the estate tax exclusion of the first spouse to his or her exemption. This effectively allows married couples to pass up to **$10.5 million** to their heirs without any estate tax consequences.

The utilization of this unused portion is not automatic; an estate tax return must be filed when the first spouse dies even if no estate tax is due. If the return isn't filed, the surviving spouse will lose the right to their spouse's unused exclusion. Thus, even if an estate is well below the exclusion level, a return should be filed at the death of the first spouse because one never knows how the remaining assets may grow in the future.

The tax on the excess over the exclusion level (any estate assets above $5.25 million for an individual or up to $10.5 million for surviving spouses) is between **18-40%** depending on the size of the excess over the exclusion amount. At the $5 million exclusion level it is estimated that 99.5% of all Americans will not be subject to the federal estate tax. If your estate is of

sufficient size, however, your failure to plan for the estate tax could cost your family a significant amount of money.

The FIFTH PROBLEM involves lifetime gifts. Although lifetime gifts can be an excellent technique of estate planning in some situations, it is important to recognize the possible problems also. Some have attempted to avoid the problems of probate by giving large portions of their estates to a son or daughter who has promised to care for mom or dad as long as they live. Relying on lifetime gifts as the basis of an estate plan can be a terrible mistake due to the "four D's of life":

1. **Death.** Suppose you give your estate to your daughter who is going to take care of you. She then dies first and you are not one of her heirs.

2. **Disaster.** Your son has a thriving, growing business. He's putting everything into it (including the money you give him to care for you in your later years), and the return is fabulous. But then there is an oil crisis, a terrorist attack, or a technical innovation that causes him to go bankrupt. Your money is lost, and he doesn't even have enough money to care for his own family.

3. **Divorce.** Your son has an exciting marriage and a lovely family, and you think nothing could ever go wrong. But we live in a society where divorce occurs every day, and there is a costly settlement. Your son remarries and has two families to support.

4. **Desertion.** This is perhaps the ugliest "D" of all, but it happens, sometimes in the best of families. Large sums of money are often a prime catalyst for desertion of responsibilities.

Here's the best rule to remember when it comes to lifetime gifts: Never give away anything that you may need at any time in the future.

The SIXTH PROBLEM involves joint ownership. Like lifetime gifts, joint ownership is sometimes advocated as a great way to avoid probate and to eliminate the need for a will. There are at least four situations, though, that prevent joint ownership from being the best estate plan for everyone:

1. If the joint owners die at about the same time (and if there are no contingent beneficiary arrangements), the estate is right back into probate.

2. Mrs. White has been told she can avoid probate and even provide for the management of her assets during any disability by putting everything in joint ownership with her children. She wants everything to go to her children anyway after her death, so that arrangement sounds good. Her son is a missionary in Africa and one daughter lives in California. Adding their names as joint owners would be difficult due to distance issues. Another daughter lives in the same town with Mrs. White, so she puts everything in joint ownership with that daughter. When Mrs. White dies, her

missionary son and her California daughter receive nothing because the hometown daughter is the sole surviving owner.

3. If there is a possibility of an estate tax liability at the death of the last survivor, joint ownership is an especially bad plan. Joint ownership eliminates the possibility using tax-saving estate planning tools such as credit shelter trusts, life insurance trusts, and charitable lead trusts.

4. Joint ownership may leave the estate with insufficient funds to pay debts, burial expenses, and income or estate tax liabilities.

As a method of avoiding probate, the use of a revocable living trust is almost always more desirable than relying on joint ownership or lifetime gifts. The revocable living trust is described and explained in Step 3.

The SEVENTH PROBLEM involves the failure to coordinate property ownership and beneficiary designations with the legal documents of the estate plan. Even if wills and trusts are properly drawn and executed, some estate plans can still fail to accomplish what was desired. Those plans fail because the ownership of assets and the beneficiary designations of life insurance and retirement plans were not coordinated with the total estate plan. Ownership and beneficiary designations always take effect over a will or a trust. Three examples demonstrate this fact:

EXAMPLE: Mrs. Smith wants her estate divided 1/3 to her children, 1/3 to her grandchildren, and 1/3 to certain Christian ministries. She contacts an attorney and has her will drafted accordingly. She is also concerned about who will manage her property in case she has to be confined to a nursing home, or becomes incapacitated. To alleviate that concern, Mrs. Smith places her daughter's name on all her property as a joint owner. When Mrs. Smith passed away, all her property then belonged to her daughter. Her other children, her grandchildren, and her named Christian ministries receive nothing.

EXAMPLE: Mr. and Mrs. Jones have minor children, so they establish a trust for their children's benefit. The trust provides for the children's living expenses and educational needs, but protects them from receiving too much money too soon by postponing the principal distribution from the trust until their youngest child reaches age 25. The bulk of Mr. Jones' estate is made up of life insurance. The beneficiary of his life insurance policies is his wife and the contingent beneficiaries are his children. A disaster occurs that takes the lives of both Mr. and Mrs. Jones. Because of the beneficiary arrangements, the children then inherit the proceeds of the insurance policies in full at age 18. Even though the trust was in place, failure to coordinate beneficiary arrangements meant the Jones' desires were not accomplished.

EXAMPLE: Mr. and Mrs. Lee have been successful in the accumulation of their estate. When their attorney drafted their trust, he included a sophisticated device that avoided federal estate taxes. Mr. Lee, though, continued to hold his property with his wife as joint tenants with right of survivorship. At Mr. Lee's death, all of his property was

> transferred to his wife by operation of law, and there was nothing to fund the tax avoidance (credit shelter) trust that his attorney had skillfully designed. When Mrs. Lee died, therefore, a part of their estate became subject to the estate tax.

It is impossible to overemphasize the importance of coordinating property ownership and beneficiary designations with the legal instruments of the estate plan. A person's will only has the power to distribute property that is owned by that person as an individual or that is received by his or her estate. Generally, a trust only has the power to manage and distribute property that (i) is titled in the name of the trust, or (ii) is received by the trust as a beneficiary of a will, another trust, life insurance, or retirement plans. Not all assets must necessarily pass through a will or a trust, but everything must be coordinated so that your desires for your estate plan are actually accomplished.

The EIGHTH PROBLEM is that of disability or incapacity. Even those who have planned well for the distribution of property after their death sometimes fail to plan for these two possibilities. While being unable to handle your own affairs is not a pleasant thought, the realities of life make them important problems to consider and important arrangements to make.

If we fail to make these arrangements, friends or relatives may have the unpleasant and often difficult task of having us declared incompetent and having a legal guardian appointed for us. Many times this process results in family conflicts that could have been avoided if we, ourselves, had selected someone to be in charge of our affairs. As will be explained later, the revocable living trust, the durable limited power of attorney, and the power of attorney for health care are excellent tools to solve this problem.

STEP 3: DISCOVER HOW THE PROBLEMS OF ESTATE PLANNING CAN BE SOLVED WITH THE TOOLS AND TECHNIQUES OF ESTATE PLANNING

The well-equipped tool box contains the right tool for the right job. There are many different tools available for estate planning and several are described in this section. We will describe the purpose, advantages, operation, and importance of each tool. In order to accomplish your desires for your estate you may only need only a few of these tools, or you may need several. The purpose of this discussion is not to make you an expert, but to let you know what is available to avoid the problems listed in Step 2 and to accomplish your desires.

LAST WILL AND TESTAMENT

A Last Will and Testament is needed in almost every estate plan. Basically, a Will is a legal document made while you are of sound mind for the purpose of distributing your property after your death. A Will can do many other things as well:

1. It can name the person (or persons) you wish to serve as guardian for your minor children or for any other person for whom you have custodial responsibility. If you

have children under 18, the appointment of a guardian is your most urgent need for an estate plan. In the event of the death of both parents, no decision is more important.

2. It names the personal representative (formerly known as the "executor") who is responsible for (i) entering the will into probate and (ii) distributing your property according to your instructions in the Will.

3. It can authorize:
   (i) the disposition of property;
   (ii) the continued operation of a business interest;
   (iii) the payment of all debts and any expenses related to your final illness; and
   (iv) the payment of taxes.

4. It can establish trusts for the benefit of minor children or others for whom you have financial responsibility. Trusts established by a will are known as "testamentary trusts" and remain under the supervision of the probate court for the life of the trust.

5. It can waive the requirement that the personal representative must secure a performance bond.

6. It can revoke all previous wills and codicils you have made.

7. It provides an opportunity for you to give a final testimony of your Christian faith and to speak directly to your loved ones about their walk with the Lord.

There are some problems that a Will cannot solve, however. **A Will does not avoid any of the problems of probate.** In fact, it invites those problems. Furthermore, a Will cannot provide for the management of your property and the needs of your dependents if you become disabled or incapacitated. **A Will only takes effect when you die.** It has no force and effect as long as you are still breathing.

Because of these limitations, the Revocable Living Trust is a better tool to serve as the basis of most estate plans. The Revocable Living Trust would not eliminate the need for a Will, but would relegate it to a lesser role as a "Pour-Over" Will. The Trust would make the actual distributions of property, but the Will would serve as a back-up by putting (i.e., pouring-over) into the Trust anything that was not put into the Trust before death or any asset coming to the estate after death.

REVOCABLE LIVING TRUST

The Revocable Living Trust is similar to a Will in a several respects. A Revocable Living Trust is established while you are alive and of sound mind, and it can distribute your property after your death. During your life you can serve as your own trustee of your Trust and, thus, continue to manage, use, dispose of, add to, or subtract from your property just as if it had never been placed in trust. While you are alive you can amend the Trust document or revoke it altogether. At your death, the Revocable Living Trust becomes irrevocable, and the successor trustee (the

person or institution you appoint) must follow the instructions exactly as you specified in the Trust instrument, just like a personal representative must do with your Will.

The Revocable Living Trust, though, can solve many problems that a Will cannot and has **many advantages** as described below.

1. **It reduces the delay of probate.** Trust property is not subject to probate because the Trust doesn't die when you die. The successor trustee needs only your death certificate to activate the Trust's provisions for the benefit of your heirs. This greatly reduced timeframe can be extremely important to a family beset by the uncertainties and financial problems resulting from the death of the breadwinner.

2. **It reduces the cost of probate.** Since property in the Trust is not subject to probate, the trustee fees and other expenses of a Trust should be significantly less than the probate expense for a Will. While some legal expenses may be incurred regardless of the vehicle used to transfer property, the cost will, in most circumstances, be much lower with a Revocable Living Trust.

3. **It eliminates the public nature of probate.** Properties placed into trust and then distributed from the Trust at the time of death are not a matter of public record as is the case of a Will admitted for probate. This confidentiality can be an important protection to heirs who might otherwise be the target of unscrupulous people.

4. **It reduces the uncertainty of probate.** When a Revocable Living Trust is established and funded during your lifetime, it is difficult to contend at your death that the Trust does not express your desires. To invalidate a Trust, it would have to be proved faulty or fraudulent. Since you saw the Trust in operation and had the opportunity to change it during your lifetime, a challenge to a Trust is nearly impossible to prevail. On the other hand, a Will is not valid for distribution until the court says so. The validation of a Will takes place after death when an individual has no other opportunity to confirm his desires. It is much easier, therefore, for a disgruntled person to successfully contest a will than a properly drawn and executed Trust.

5. **It eliminates ancillary estate administration.** When real estate is held in trust, the successor trustee can take over immediately and follow your instructions in the Trust, regardless of where the property is located. No additional personal representative would be appointed by the court, no ancillary administration would be filed, and no probate of any kind would be required for real estate or other property held in trust regardless of its location.

6. **It eliminates the continuous accountability and reporting to the court.** Testamentary trusts (those trusts created by a Will) must be continuously accountable and report to the probate court for the life of the trust. That is not the case for Revocable Living Trusts. When a trustee is carefully chosen, being continuously subject to a court over a period of many years might be a needless bother and

expense. Of course, if a successor trustee of a Revocable Living Trust fails to obey the law or follow the terms of the Trust, that trustee can always be taken to court.

7. **It allows you to name an out-of-state trustee and is less trouble if you move.** Rather than being governed by State laws (like Wills), trusts are governed by federal constitutional provisions and common law. With trusts, you don't have to change trustees when you or a successor trustee moves to different state, and your Trust won't need to be updated to comply with each state's unique statutes. This greater flexibility can be important in certain situations.

8. **It can solve the problem of caring for you and your dependents in the event of disability or incapacitation.** A Revocable Living Trust can provide for the successor trustee to take over on whatever ground you specify. The Trust might only require a letter from a doctor, minister, or trusted friend to allow the successor trustee to step in and provide for your needs. A Trust prepared while your mind is clear and before any problems arise will save your friends and loved ones the unpleasant experience of having you declared incompetent.

9. **It simplifies the will and any probate procedure.** Since trust property is not subject to probate, only property that was not in the Trust and remained in the name of the deceased as an individual would be subject to probate administration. With a Trust, any property left in your name as an individual or any property coming to your estate after your death can simply be "poured-over" into the Trust by your Will. Then that property could be managed and distributed along with the other trust property according to the terms of the Trust. Since the Trust was already in existence, it would not be subject to the continuing supervision of the probate court as would trusts created by wills. Not having to deal with a multitude of distribution provisions, your Will could be a relatively short and simple document.

10. **It can provide unified administration of life insurance proceeds.** An attractive feature of a Revocable Living Trust is that it can be named as beneficiary of all life insurance proceeds. At death, then, the insurance companies pay all proceeds to the Trust which prescribes the distribution method. The Trust can also be the beneficiary or contingent beneficiary of IRA's, company pension plans, and time-certain annuities. In most cases, naming the Trust as beneficiary will provide an easier and coordinated way for a person to provide for his or her heirs exactly the way she or she wants to provide for them.

11. **It is easy to change.** Family and financial circumstances may change in the future. To the extent that those changed circumstances require revised distribution plans, different trustees, etc., you can add amendments to Revocable Living Trusts whenever you want and as often as you want, generally with little cost or trouble.

The provisions and operation of a joint Revocable Living Trust (i.e., a trust established by a husband and wife as initial co-trustees) can be summarized as follows:

> "We hold these assets in trust. While we are alive and able, we will be our own co-trustees, and we can do anything we want with these assets just as if there were no trust. If we become incapacitated so that neither of us can manage our financial affairs, however, then the successor trustee(s), whom we have named, will manage our trust assets, pay our bills, and provide for our financial needs as long as either of us lives."
>
> "When the last one of us is deceased, then the successor trustee will distribute the remaining trust assets to the beneficiaries we have named in the manner we have stated in our trust document."

To spell out all the provisions of the Trust and to do so in a correct and legal manner will usually require at least 10 pages of text. Many details and contingencies will need to be covered beyond those stated in the summary above. A good Trust is drafted to meet the specific needs and desires of each family and client.

Some **possible disadvantages** of the Revocable Living Trust are listed below:

1. **Initial Cost.** The initial costs of preparing all the legal documents for thorough trust planning is usually more than the cost for a simple will. A better gauge to measure trusts vs. wills is the total cost rather than just the preparation cost. With trusts, the large expenses are at the front end for document preparation. The settlement costs are greatly reduced with no probate expenses and minimized legal costs. Wills are just the opposite. The front end costs are small, but the back end costs for settlement can be substantial.

   Lincoln Christian University does estate planning not as a business, but as a ministry, and has an estate planning attorney on staff. Because of this, if clients choose to utilize the school's attorney, this disadvantage of initial trust costs can be greatly reduced. Please understand that there is no obligation to use LCU's attorney, nor are these comments a solicitation of legal business on the attorney's behalf.

2. **Paperwork and time requirements.** The paperwork and time required to change the titles of assets to the Trust name and to name the Trust as the beneficiary of insurance and retirement plans can be extensive for estates with many titled (or registered) assets. Once this process is complete, however, handling your financial affairs is a Trust is generally just as easy as it is in your individual or joint names.

3. **Finding an experienced attorney.** Because of the intricacies of law and the increased specialization of attorneys, it is not always easy to find a local attorney skilled in the area of Revocable Living Trusts. As you will see in Step 6, Lincoln Christian University has an attorney who can, if you choose, alleviate this problem.

4. **Lack of understanding.** People who do not understand the various kinds of trusts occasionally delay the transfer of their property. For example, some trusts require a separate tax identification number for the trust. This is not true for a Revocable Living Trust as long as a Settlor of the Trust (i.e., one who set up the Trust) also

serves as Trustee. Federal tax regulations say that you should use your own social security number and report income as if it is paid to the Settlor, not the Trust.

5. **Claims cut-off date.** Under probate administration there is a date after which claims against the estate will not be honored. This date, called the claims cut-off date, is usually six months after death. The claims cut-off date does not apply to a Revocable Living Trust. Not having a claims cut-off date is not a problem for most people because they want all their just debts paid. If anyone feels that not having the cut-off date is a problem, there can be a "dry-probate" of the Pour-over Will. Doing so would prevent someone from causing trouble with a false claim after the six month claim period.

6. **Tenancy by the Entirety.** Tenancy by the entirety is a form of co-ownership that applies only to a husband and wife while they are married. As long as they are still married and their residence is held in tenancy by the entirety, the property is exempt as an asset that creditors may levy or foreclose upon. Thus, tenancy by the entirety has one advantage over a Revocable Living Trust. If one spouse is sued (and the other spouse is not included as a defendant in the suit), the couple is not in danger of losing their home in the lawsuit. Tenancy by the entirety, however, has all the disadvantages of joint ownership listed earlier on pages 8 and 9.

Beyond these disadvantages, there are some things that a Revocable Living Trust cannot do. It cannot manage property or assets that are not in the Trust. Your Trust can lay out elaborate plans for caring for you during a disability or distributing your assets after you are gone, but if accounts and property and other resources are not placed in the Trust, it has no assets to manage. Also, a Revocable Living Trust, by itself, does not avoid estate taxes. Therefore, on subsequent pages we will consider several additional estate planning tools that can be used in conjunction with a Revocable Living Trust to solve these shortcomings as well.

DURABLE POWER OF ATTORNEY

A durable power of attorney empowers the person you assign to act in your stead to manage your property in order to provide for your needs in the event of your physical or mental disability. In most states it will eliminate the necessity of having you declared incompetent or of setting up a court-appointed guardianship. In some states, a regular power of attorney is nullified by law when a person becomes incompetent. A durable power of attorney, however, clearly states that it is to remain in effect during incompetency.

A Durable *Limited* Power of Attorney for Assets is another tool that works well in conjunction with a Revocable Living Trust. Since a Trust can only manage the property that is in the Trust, a Durable Limited Power of Attorney authorizes the assigned person to place into the Trust any property that was not in the Trust prior to incapacity or any asset that comes to the person while he or she is incapacitated. Once done, the trustee can manage that property according to the instructions in the Trust agreement. The person assigned to hold this Durable Limited Power of Attorney may be the same person named as successor trustee of the Revocable Living Trust, or it may be some other individual or institution.

If you decide to not establish a Revocable Living Trust and rely instead on a Will, a Durable *General* Power of Attorney would be needed to provide for property management and for meeting the financial needs of you and your dependents during any disability or incapacity.

The realities of life indicate that planning for a possible incapacity is a vitally important, but often overlooked, part of estate planning. No estate plan is complete without it. Relying on family members or friends to act on your behalf with or without court-appointed guardianship usually is not wise. The Durable Power of Attorney is a relatively simple and inexpensive document, but it can do much to avoid family conflicts and the unnecessary costs and restrictions that may be imposed by a court.

HEALTH CARE ADVANCE DIRECTIVES

A health care advance directive is a general term for a signed and witnessed document that provides specific instructions for healthcare treatment or decision-making in the event an individual is unable to make those decisions at the time they are needed. There are two main types of advance directives: Power of Attorney for Health Care and Living Wills.

The Power of Attorney for Health Care (sometimes called an Appointment of Representative for Health Care) authorizes those you trust most to make health care decisions for you in the event you are unable to make those decisions yourself. The authority that you delegate to another person through this document can be as broad or as narrow as you choose. In most cases the documents authorize the selection of a doctor, the choice of treatment location, determination of courses of treatment, authorization for surgery, and all other ordinary and customary health care decisions. You can also include authorization for your selected agent to direct that artificial life support systems be withheld or withdrawn and that only medication and medical procedures be administered for providing comfort and care to alleviate pain.

In the Power of Attorney for Health Care document you can name your first choice, second choice, third choice, etc., to serve as your agent in making these decisions for you. Those you select would serve consecutively (not jointly) in the order named. Since you can't know who will be available when a decision is needed, it is advisable to appoint at least three or four agents for this purpose in the even your first choices are not available when needed.

Living Wills allow you to request what kind of life-prolonging procedures may be used or withdrawn in the event you are terminally ill and unable to make decisions. Unlike the Power of Attorney for Health Care, the Living Will does not give any rights to any designated agent (for example, family members or friends) to participate in or direct the type of medical treatment that may be given. Likewise, the effect of a Living Will is not as flexible or comprehensive as the Power of Attorney for Health Care. In Illinois, for example, a Living Will is effective to terminate treatment only if the patient is suffering from "an incurable and irreversible condition which is such that death is imminent and the application of death-delaying procedures serves only to prolong the dying process."

Health Care Powers of Attorney and Living Wills may be cancelled or changed at any time. If you sign either kind of document, it is important that you discuss your thoughts and wishes with

family members and with any other individual you may designate as your agent so that your thought process is clearly understood and your desires can be carried out.

CREDIT SHELTER TRUST

Prior to the passage of the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010," and the "American Taxpayer Relief Act of 2012," Credit Shelter Trusts were generally established at the death of the first settlor in order to avoid or reduce federal estate taxes when the surviving settlor dies. The federal legislation makes it unnecessary to use a Credit Shelter Trust to preserve the federal exemption amount of the deceased spouse. Such trusts may still be useful in three instances: 1) in states that have their own estate taxes, 2) to shelter the appreciation of assets, and 3) to use assets to benefit children from a previous marriage.

Credit Shelter Trusts are established with special provisions in a joint Revocable Living Trust prepared and executed before the death of the first settlor. The Credit Shelter Trust is then funded from the deceased settlor's share of the assets in the original Revocable Living Trust and generally only by an amount that will not exceed the equivalent of the deceased settlor's then-available estate tax credit at the time of death.

With the funding of a Credit Shelter Trust at the death of the first settlor:

1. There would be no estate tax on assets that remain in the Revocable Living Trust.

2. There would be no estate tax on the assets transferred to the irrevocable Credit Shelter Trust so long as the amount transferred did not exceed the then-available exemption equivalent.

3. The surviving settlor would have unlimited access to and control over the assets remaining in the original Revocable Living Trust.

4. The surviving settlor would be entitled to all the income from the Credit Shelter Trust. Furthermore, the trustee would be given the power and instruction to invade the principal of the Credit Shelter Trust if it is needed to maintain the previous standard of living of the surviving settlor.

5. When the Credit Shelter Trust is established, a tax identification number must be secured, a separate accounting of its assets, income, and expenses must be kept, and a separate tax return must be filed each year so long as the Credit Shelter Trust exists.

At the death of the surviving settlor:

1. There would be no estate tax on the original Revocable Living Trust unless its remaining assets (after expenses, charitable gifts, etc.) exceeded the then-available exemption equivalent.

2. There would be no estate tax on the Credit Shelter Trust even if it exceeded the then-available exemption equivalent. Why? Because whatever remained in the Credit Shelter Trust would not be considered a part of the surviving settlor's estate. Those assets already belonged to the ultimate beneficiaries; they just did not have access to them while the surviving settlor was alive.

3. The Revocable Living Trust and the Credit Shelter Trust could be combined for distribution to the ultimate beneficiaries if the distribution provisions had remained the same for both trusts.

Again, the Credit Shelter Trust must be established while both spouses are living and can only be funded after the death of the first settlor.

LIFE INSURANCE TRUST

The Life Insurance Trust is also an excellent tool for estate tax savings. Federal estate tax on life insurance can be avoided on a large taxable estate by transferring ownership of life insurance to an irrevocable trust in which no evidence of individual ownership is maintained. Providing the transfer of ownership of the policies to the Life Insurance Trust has occurred at least three years prior to the death of the insured, the death benefit will not be taxed in the estate of the insured nor in the estate of the surviving spouse.

In addition to being the owner of the policy(ies), the Life Insurance Trust would need to be named beneficiary. Income from the proceeds of the insurance (as well as principal, if needed) can be paid to the surviving spouse for life and then the remaining principal paid to the ultimate beneficiaries.

The Life Insurance Trust needs to be carefully drafted. The Trust should be authorized to loan to the estate, or to purchase sufficient property from the estate, in order to provide the needed liquidity at death. To retain some control, the ultimate beneficiaries or a third party may be given the right to change trustees. Furthermore, the Trust should grant the ultimate beneficiaries some current withdrawal power so that premiums payable on the policies will not be taxable gifts.

Consideration also must be given to the cash value of any life insurance transferred to the Trust. It may be necessary to borrow the cash value from the policies prior to the transfer in order to avoid taxable gifts that are not eligible for the annual exclusion. Term insurance is an excellent candidate for transfer to a Life Insurance Trust since it has no asset value until death.

Thus, the Life Insurance Trust can totally eliminate any estate tax on a large block of estate resources, namely life insurance policies.

CHARITABLE LEAD TRUST

The Charitable Lead Trust is an attractive tool, especially for larger estates, to avoid federal estate taxes on yet another block of assets. In fact, whatever part of the estate that would remain subject to the tax at the death of the surviving spouse can be placed into a Charitable Lead Trust.

A Charitable Lead Trust is an irrevocable trust that gives the Trust's current income interest to a charity and leaves the trust principal (at the end of the term of the trust) to the beneficiaries named by the donor. By first paying interest income to a charity, the property in a Charitable Lead Trust can then be transferred to family members or other beneficiaries at reduced taxes or perhaps even tax-free.

The present value of the income from a qualified Charitable Lead Trust that will be paid to the charity (or charities) constitutes a charitable contribution that is fully deductible from the estate or gift tax. That present value depends on how long income is paid to the charity and the amount of that annual income payment.

For large estates, it often has taken a large amount of insurance or other liquid assets just to pay the estate taxes. With that tax greatly reduced by a Life Insurance Trust and a Charitable Lead Trust, these liquid assets can be used to produce income for the family. Usually this family income will replace most of the income given to ministry by a Charitable Lead Trust. Thus, for the term of years selected, a large amount of interest can be used to support a Christian ministry, often with little or no loss to the family.

OTHER CHARITABLE INSTRUMENTS

A summary of additional charitable instruments is needed at this point. The tools in this group are available for estate planning purposes because they can be used to distribute assets as well as avoid probate and estate taxes. But they also do something that none of the previous tools did: they provide current income tax savings. The tools in this group are the Charitable Remainder Unitrusts, Charitable Remainder Annuity Trusts, Life Estate Agreements, and Charitable Gift Annuities.

The government allows a current income tax deduction for these instruments because they irrevocably guarantee a gift to charity at some future date. They provide a method of giving today so that the gift is guaranteed, but not distributed to the charity until after your death or even after the deaths of other beneficiaries you have named. Depending on the arrangement, you or your named beneficiaries may have the right to income from an asset or the right to use that asset (or property) for the remainder of your life.

Since these special estate planning tools have both individual beneficiaries (you and/or others you name) and charitable beneficiaries, the charitable deduction from your income tax is a percentage of the total value of the asset placed in the arrangement. Government tables determine what percent of the arrangement is income to beneficiaries and what percent will actually be a gift to the charity. Shorter income payment periods and lower payments to individual beneficiaries increase the size of the charitable deduction. Long income payment

periods (such as over the life of a child) and higher payments to individual beneficiaries decrease the charitable deduction.

If you have decided that it is God's will that part of your estate eventually be transferred to a Christian ministry, you may want to utilize one of these instruments. It could be important purely for income tax savings. What you save from income taxes can multiply to replace that gift for the family or for an additional gift to charity at the time of death. Of course, you could also simply give the tax savings to the Lord's work now, if you feel that is God's will.

These instruments can provide more actual income, avoidance of capital gains taxes, avoidance of estate taxes, avoidance of probate, and tax-free growth of principal and income. By using these instruments, you can often make large gifts to the Lord's work *and* leave more for your family than if you relied on a Will and left nothing to charity. Which of these instruments are best for you depends on your needs, your property, your age, your beneficiaries, and other details of your particular situation. For this reason, the estate analysis we provide (and that will be explained later) can be of great value to you.

CHARITABLE REMAINDER UNITRUST

A Charitable Remainder Unitrust is an irrevocable trust that pays a fixed percentage value of the Trust's assets as income to the named beneficiaries and leaves the trust principal (at the end of the term of the trust) to the charity(ies) named by the donor. The Charitable Remainder Unitrust is probably the most flexible instrument in this group. The donor selects the percentage payout, the trustee, the type of unitrust (there are three types), the income recipients, the charitable remainderman (the charity or charities that will receive the remainder of the Trust at the end of its term), and the assets that are to be used to fund the Trust.

The income that is paid out to beneficiaries is calculated as a percentage of the Trust assets as valued annually. If the income percentage selected is less than the actual earnings, the Trust value will grow as will future income. Since the earnings retained in the Trust grow tax-free, the growth will be more rapid than similar investments held in taxable arrangements.

The unitrust provides a wide range of tax benefits. If appreciated property is placed in the Trust, it can then be sold without capital gains tax. Thus, the total proceeds (rather than the proceeds minus capital gains taxes) can be invested to produce more income for family beneficiaries.

The size of the charitable deduction depends on the income percentage selected and the life expectancy of the income beneficiary(ies). By selecting a smaller percentage, the donor receives a larger charitable deduction and benefits from greater tax-free growth. The longer the probable term of the Trust, the more advantageous it is to select a lower percentage. Those donors who have a greater need for income now than they anticipate for the future, though, may want to select a higher income percentage.

The taxability of income received by the individual beneficiaries retains the character of the earnings of the Trust. If the Trust has different types of earnings, the law requires that unitrust payments be taken first from ordinary income, then from capital gains, then from tax-exempt

income, and finally from the principal. For those in high income tax brackets, it might be wise to invest the Trust assets entirely in municipal bonds that produce only tax-free income.

CHARITABLE REMAINDER ANNUITY TRUST

The Charitable Remainder Annuity Trust is similar to the unitrust. The individual beneficiaries receive income from the Trust for life or for a selected period of years not to exceed 20. At the death of the income beneficiaries or at the end of the selected term, the remainder value then goes to the charity(ies) you have named. The tax rules and benefits also are similar.

An Annuity Trust is different from a unitrust in other ways, however. The income payments from an Annuity Trust are fixed based upon a percentage of the initial value of the contribution. With an Annuity Trust, the annuity must be paid out of the principal if the trust income is not sufficient to provide the fixed payment. Also, once an Annuity Trust is established, there can be no further contributions to it (unlike a unitrust where additional contributions may be made during a donor's life or in estate plans).

LIFE ESTATE AGREEMENTS

Charitable Life Estate Agreements, also called retained life estates, are limited to a personal residence or farm. This arrangement allows a person to deed such property to charity, but reserve the right to live in it or use it for the rest of the donor's life (and the donor's spouse's life, if applicable). Just recording a real estate deed in this manner completes the irrevocable arrangement without the need for setting up a trust. At the death of the surviving donor(s), the property belongs to the charity named on the deed.

The government allows a current income tax charitable deduction based on the value of the interest the charity receives. The property is not subject to probate or to the estate tax at the death of either spouse.

During the life of the donor(s), the property cannot be sold except by the consent of the holders of both the life interest (the donors) and the remainder interest (the charity). If sold, the proceeds would then be divided, based on the value of each interest as determined by government tables and the age of the holders of the life interest.

CHARITABLE GIFT ANNUITY

The Charitable Gift Annuity is a contract between a donor and a charitable organization. The donor transfers cash or property to the charity and the charity agrees to make lifetime payments to one or two people named by the donors. If the donor names two income beneficiaries, the donor may also choose to have payments made jointly to both of them from the beginning or paid first to one and then to the survivor.

If a Gift Annuity is purchased during life, the donor is entitled to an income tax charitable deduction in the year of the purchase. For an older donor in a high tax bracket, this deduction can mean a substantial income tax savings. Furthermore, a portion of the annual income is tax-

free, some of the income may be treated as capital gains (if appreciated property has been traded for the annuity), and the remainder will be taxable as ordinary income.

The Charitable Gift Annuity is different from the three preceding charitable instruments in several ways:

1. Part of the income from the annuity is nontaxable, regardless of the type of gift used to fund the Annuity.

2. The rate of the Annuity can be set by agreement between the donor and the charity, but most charities (including Lincoln Christian University) follow the Uniform Gift Annuity rates set by the American Council on Gift Annuities.

3. There can be no more than two income beneficiaries.

4. When appreciated property is transferred to the charity, a portion of the capital gains is subject to taxation (spread over the income recipient's life expectancy).

Because the Uniform Gift Annuity rates are based on the age of the income recipient(s), Charitable Gift Annuities are most beneficial to older donors. For those who are younger, Annuity payments may be deferred after a gift is made. In the case of Deferred Annuities, the amount of income will be based on the annuitant's (i.e., income recipient's) age when the payments begin and on the amount of time the charity has use of the money (for investment purposes) before payments start. Deferral of income payments increases the Annuity rate, but can result in a higher percentage of ordinary (taxable) income and a lower percentage of tax-free income than a regular Gift Annuity

SPECIAL SITUATION TRUSTS

There are two types of special situation trusts to consider. The first is used when a settlor wishes to protect certain beneficiaries at the death of the surviving spouse. The second is used when the settlor wants to reduce the tax burden on the estates of first generation beneficiaries.

QUALIFIED TERMINAL INTEREST PROPERTY ("QTIP") TRUST

A Qualified Terminal Interest Property Trust irrevocably names the ultimate beneficiaries who will receive the Trust's assets at the death of the surviving spouse, yet it is set up in such a way that, at the death of the settlor, property in the Trust can qualify for the estate tax marital deduction. To do this, the surviving spouse must have the lifetime right to all income from the Trust. No part of the income or principal may be assigned or distributed to anyone else so long as the surviving spouse lives. At the settlor's death, the personal representative of the estate elects whether to have the Trust assets taxed in the settlor's estate or later in the estate of the surviving spouse.

The primary accomplishments of a QTIP Trust are threefold:

1. It allows the settlor to irrevocably name the ultimate beneficiaries who will receive the Trust assets after the death of the surviving spouse.

2. It provides lifetime income and protection for the surviving spouse from the Trust assets.

3. The Trust assets qualify for the estate tax marital deduction at the settlor's death if the personal representative so elects.

A QTIP Trust will often be used when the settlor wants to provide protection for his or her chosen beneficiaries in one of the following situations:

- In the event of the surviving spouse's subsequent marriage;

- If the settlor or the surviving spouse have children from a previous marriage.

- If the settlor simply wants to choose the ultimate beneficiaries of the Trust assets rather than leaving this decision to the surviving spouse.

Without a QTIP Trust, it could be possible for the settlor's children to be left out of the surviving spouse's estate entirely. With this Trust, the settlor can use the same assets to provide income protection for the surviving spouse and certainty for the ultimate beneficiaries.

GENERATION SKIPPING TRUST

The Generation Skipping Trust is designed to keep the Trust's assets from being taxed in the estates of first generation beneficiaries. It allows settlors to pass property to their grandchildren and to provide for the property's management and distribution to them by the trustees. While subject to gift taxes (or to estate taxes at the death of the settlor), the assets in a Generation Skipping Trust would not be taxed in a child's estate.

This generation skipping provision applies to nieces, nephews, grandnieces, grandnephews, and beneficiaries other than family members in addition to grandchildren. Anyone born within 12 years of the settlor's birth is part of the settlor's generation. A person born between 12 and 37 years after the settlor is part of the next generation. Each succeeding 25 years is another generation.

The generation-skipping transfer ("GST") tax is another form of wealth transfer tax, like the estate tax and the gift tax. The purpose of the GST tax is to ensure that property is taxed at least once at each generational level. Every individual has available an exemption from the generation-skipping transfer taxes that can be used to shelter gifts during life or at death. The exemption amount for the GST tax matches that in effect for the estate tax (see chart on page 7). In addition, there is no GST tax on gifts to a second generation when the intervening generation member is deceased.

We have now considered 13 different legal instruments used in estate planning. This list is not exhaustive, but we trust it has been sufficient to acquaint you with various possibilities and stimulate your thinking about your own estate plan.

STEP 4: COMPLETE THE CONFIDENTIAL ESTATE QUESTIONNAIRE

A Confidential Estate Questionnaire accompanies this Estate Planning Guide. The Questionnaire is designed to assist you in gathering the necessary information and in making the decisions upon which your estate plan will be based. By completing this Questionnaire, you'll conserve valuable time and reduce the expense of your professional counsel. Furthermore, by completing the Questionnaire in a calm, unhurried manner in the privacy of your own home, you'll be more accurate and make better decisions. Accuracy and good decisions result in better estate plans. It is important, however, not to put it off or wait until you have everything to your satisfaction. There will be opportunities as the process continues to modify and improve your plan.

The Questionnaire consists of four sections:

PEOPLE SECTION (Pages 1-2)

The People Section needs to be complete. It is important to list even family members who will not be included in your distribution plans. Otherwise, your plans may later be contested (for example, you failed to record their names due to an oversight or incompetency). It is also important to give complete information about each person listed, especially regarding health problems, dependency, etc. This additional information can be footnoted at the bottom of the page or detailed on an attached sheet of paper.

Grandchildren should be listed on the right hand side of the line that lists their parent's name. If, for example, your daughter has three children ages 5, 3, and 2 months, the number and ages of your grandchildren can be denoted as follows: "3 (5, 3, 2 mo.)". Please detail any special situations on a separate sheet. Great grandchildren can be listed on that additional sheet as well.

Clearly indicate children by a former marriage of the husband with an "(H)" or of the wife with a "(W)". If such children have been adopted by the present spouse or if there is any possibility of misunderstanding, please clarify that information in a footnote.

On page 2, "Others to be considered" could include dependent parents, brothers, sisters, nieces, nephews, trusted friends, business associates, and so on. Listing them here does not indicate you have decided to include them in your estate plan, but is designed to prevent an oversight. Should you later decide to include someone mentioned here, the necessary information about them will be provided.

Under "Charitable Organizations," you should list charitable organizations and Christian ministries you presently support or would like to support. The city and state of each organization should be provided. As above, simply listing an organization here does not automatically include it in your estate plan. It is designed as a tool to prevent unintentional oversights.

PROPERTY SECTION (Pages 2-5)

The Property Section needs special care and accuracy. The recommendations your estate planner provides to you will only be as accurate as the information you supply. Without complete information, a planner cannot give proper advice about taxes, probate, avoiding family conflicts, and making the best use of property and situations.

Under the various ownership columns it is necessary to know not only who owns the property, but also how it is owned. If you do not have the title, deed, certificate, account, or policy in front of you, you may want to check it out rather than assume you can remember it correctly. The five most common types of ownership and the abbreviation you should use for each in the Questionnaire are listed below.

- Individual ownership ("Ind."), individual ownership by husband ("H as Ind."), or individual ownership by wife ("W as Ind.")
- Joint Tenants with right of survivorship ("JTWROS")
- Tenants in Common ("H & W Ten. In Com.")
- Tenants by the Entirety ("Ten. By Ent.")
- Community Property in the name of the husband ("H Com. Prop.") or in the name of the wife ("W Com. Prop.")

Other ownership arrangements would include trusts, payable on death provisions, and retained life estates.

The type of ownership impacts what happens to the property when you die and how much of it will be in your taxable estate. For example, only property that is titled in your name alone with no restrictions (i.e., not in trust, no joint owner, no payable on death arrangements, etc.) can be distributed 100% by your Will. A Will or a Trust that states your desires for the distribution of your property will have no effect whatsoever if the property is not titled properly.

The cost basis and current values also are important in some cases. It would not be practical to have professional appraisals of all your property done at this time, but reasonable estimates should be made as to current values. The cost basis of an asset can be determined by taking the original cost, or the "as of" value of inherited property, adding the cost of improvements and deducting the depreciation. Knowing which property has appreciated value and the extent of that appreciation may offer exciting tax saving possibilities. If there are some questions that cannot be answered exactly at this time, provide as much information as possible along with your best estimates.

At the top of page 5 you are asked to list values for various categories of Miscellaneous Assets. The value you should assign to these assets is not their replacement value, but rather an estimate of their fair market value (what you would expect them to bring if they had to be sold). Consider

each category carefully as you work through the list (for example, don't overlook the possibility of a contract sale or a personal loan as Notes Receivable). You don't need to have a detailed inventory and a professional appraisal of all your miscellaneous assets, just a good solid estimate of what you have.

At the bottom of page 5 you are asked to estimate any Future Inheritances that you anticipate receiving. Anything you may receive affects the size of your estate, your possible tax liability, and what you, in turn, can do for your beneficiaries. Even a modest inheritance will need to be considered in your estate plan, so it is important to estimate and give as much information as possible concerning this likelihood.

PLANS SECTION (Pages 6-7)

The Plans Section expresses your priorities and desires. This Section should not be begun without prayer for wisdom that God's will be done, that your beneficiaries truly be blessed by your decisions, and that your actions honor Christ and receive His praise. Christ Himself left us an example that we should follow in His steps. The question, therefore, "What would Jesus do?" is an appropriate guide for every decision.

There are three reasons why people give to others. The first reason is **dependency**. I Timothy 5:8 states, "If anyone does not provide for his relatives, and especially for his immediate family, he has denied the faith, and is worse than an unbeliever." This verse is talking about providing for the needs of those dependent upon us for financial support, including spouses, minor children, aged parents, and any disabled family member. Note that scripture says nothing about making these individuals wealthy, nor does it refer to those no longer dependent. It does pronounce strong condemnation, though, if we don't plan for our dependents.

There is a class of dependents that are often forgotten in estate plans. The Christian ministries and other charitable organizations we support during our lives are dependent on us for our financial support. They also should be considered in light of what Jesus would have us do.

The second reason people give is **love**. There are those you will include in your estate plan because you love them, even though they are not dependents of yours. This reason, too, is scriptural. "For God so loved the world that He gave…" (John 3:16). Love is another reason to list Christian ministries among your beneficiaries. We love the people who are doing God's work here on earth. Just as Jesus loved and wept over Jerusalem, we love the lost, hurting, and dying world these ministries are seeking to save.

The third reason why people give is **tradition**. But blindly following tradition is not a good reason to give. Neither the scriptures nor the laws of our government say that we must distribute property to relatives just because they are related to us. If they don't qualify as dependents or because of our special love for them, we may need to reconsider God's will for our estates.

Another scriptural guide for estate planning is found in Proverbs 20:21: "An inheritance quickly gained at the beginning will not be blessed in the end." Giving people too much all at once can often do more harm than good. Therefore, distribution over a period of years or an income for

life may be more beneficial. Such a method would be especially advisable where you want to provide for a person's needs, but you are not confident of (a) their ability to handle large sums of money, or (b) their ability to exercise proper stewardship over what you give them. In such a case, you may want to choose one of the charitable instruments described earlier that provides lifetime income, but makes the ultimate distribution to a Christian ministry.

If you have an existing estate plan, it is important to note that on page 6 of the Questionnaire and to provide copies of any wills, codicils, trusts, power of attorney forms, pre-nuptial agreements, charitable gift agreements, etc. If any reportable gifts have been made, complete details of these gifts should be furnished. What is a reportable gift? Gifts of the following size are reportable under the gift tax: (gifts made to spouses have an unlimited deduction after 1981)

> Over $3,000 per year, per donee from 1976 to 1982;
> Over $10,000 per year, per donee from 1982 to 2001; and
> Over $11,000 per year, per donee in 2002 and after.

In completing this Plans Section, particularly page 7, you do not need to worry about the legal language or the specific names of the legal instruments you want to use. Generally, it is good to first think about how you would want your property divided and used if you were to die tonight. Then, look forward to probable future changes in your financial holdings and the needs of your beneficiaries. How would you want your property divided and used after these changes have occurred? Describe your decisions as well as you can in your own words.
If you would like assistance in completing this or any Section of the Questionnaire, or if you want to know more about the various options available, what contingencies to plan for, and what instructions work best in what situations, the Estate Planning Department at Lincoln Christian University is glad to help. Our purpose is not to persuade, twist your arm, or tell you what to do, but to explain various alternatives and methods so that your desires will be accomplished.

PERSONAL REPRESENTATIVES SECTION (Page 8)

The Personal Representative Section allows you to choose those you trust most for various responsibilities in carrying out your desires. Here you will name those you want to have the responsibility of carrying out the terms of your Revocable Living Trust, your Pour-Over Will, your Durable Limited Power of Attorney for Assets, and your Power of Attorney for Health Care. For each responsibility you will want to name one or more alternates (or successors) to those you appoint in order to provide for the possibility of their death, disability, or unavailability to serve when needed.

You can be the trustee (or co-trustees) of your Revocable Living Trust as long as you (or either of you) are able. If you have a surviving spouse, he or she will often be your first choice as personal representative (or executor) of your Pour-Over Will, holder of your Power of Attorney for Assets, and your Health Care Representative. In selecting alternates and successors for these responsibilities, you should simply choose those you trust most. In selecting people to serve in financial positions (such as successor trustees for your Trust, executors for your Will, and holders of Power of Attorney for Assets) you may wish to consider the person's business experience, common sense, and record-keeping and reporting ability. Distance, age, time

pressure, health, and availability are also considerations. Even personality can be important in avoiding family conflicts.

Trust departments at financial institutions often are excellent choices as successor trustees. Trust officers are professionally trained, know what to do, and do it on a regular basis. If more family involvement is desired, a family member might be named as co-trustees with the institution. Or you may simply give family members the power to change the institutional trustee by naming a different institution as trustee. If individuals, instead of an institution, are named as successor trustees, they can be given the power to appoint a financial institution as agent or as co-trustee if a problem arises in the management of the Trust.

When you have a Revocable Living Trust, less skills are needed by the executors of your Will and the holders of your Power of Attorney for Assets. Their duties (if any) are limited since these instruments would be used only if there is something in your estate (or coming to your estate) that would not already be in your Trust. They often are the same persons as your successor trustees, but they need not be.

Your Health Care Representatives do not need the business sense or the record-keeping skills of a trustee. In addition to being those you trust, your Health Care Representatives need qualities such as compassion, common sense, and availability. Medical knowledge may be helpful, but it is not necessary. Health care professionals who may be providing your care may not be named unless they are also members of your family.

If you have minor children in your family, the selection of guardians is the most important decision you will make. Surely the uppermost consideration for Christian parents would be to select guardians where your children will have the opportunity to continue to grow spiritually. If you fail to choose the people to care for, guide, and nurture your children, that decision will be made by the probate court.

When you have settled on the best guardians, you should discuss with them their willingness to serve. It is important to name alternate guardians in the event your first choice is unable to serve.

It is also important to make certain that your children will not be a financial burden on their new family. Financial strains caused by new family members can add to the resentment of the natural children of the guardians. This resentment, in turn, is felt by your children, and their whole lives can be adversely affected. If your present estate is not sufficient to definitely prevent this tragedy, then life insurance can be an answer. Annual, renewable term insurance can be purchased at low cost, so there generally is little excuse for running this risk.

STEP 5: HAVE AN ESTATE ANALYSIS AND PLAN PREPARED

Having completed the applicable portions of the Confidential Estate Questionnaire and having answered the LCU representative's more detailed questions, you are ready to proceed with Step 5. From the information gathered, Lincoln Christian University will prepare a detailed analysis and plan letter free of charge and without obligation. This letter does several things.

First, the analysis and plan letter will **summarize and organize** your information, priorities, and desires. This review of your information will give you an opportunity to check it for accuracy, to make any changes you desire, and to prepare a list of questions you want to ask the attorney.

Second, the analysis and plan letter will **present options** and possible methods for accomplishing your desires. A good estate planner will help you and your heirs avoid problems that are difficult to foresee, but that others have experienced in similar circumstances. Some suggestions may include simple ideas on how to avoid a family conflict, how to be of greatest help to those you love, and how to help yourself in the process.

Third, the analysis and plan letter will **describe the various legal instruments** that will implement your estate plan. The letter will explain how they work and list the advantages they may have for your particular situation. Some of the tax avoidance instruments summarized in this Guide have ramifications far beyond what could be detailed here. When one of these instruments is being considered, a more elaborate explanation will be provided.

After reviewing the letter you can correct any misunderstandings or errors, make additional decisions regarding the possibilities presented, or change it in any way you want. The estate planning representatives from LCU will be happy to answer any questions or provide further information if needed. When you have completed the corrections, changes, additions, and deletions, you will have your estate plan in writing and in a professional, organized format to review with your legal counsel.

If you are searching for an attorney to complete your estate plan, having most of your questions answered and your estate information and desires in an orderly format should save any attorney a great deal of time. With your estate analysis and plan letter available, an attorney can tell you in advance whether or not he or she is comfortable preparing the documents as well as the cost for those documents. You then can make the decision on having that attorney prepare your estate documents.

STEP 6: HAVE THE LEGAL DOCUMENTS PREPARED BY AN EXPERIENCED ESTATE PLANNING ATTORNEY

Estate planning is NOT a do-it-yourself project. Will and trust kits purchased over the internet or through the mail are generally a disservice that can result in terrible and costly mistakes. Even an attorney who does not concentrate in estate planning may not be competent to meet your specific needs. Since the legal profession is so broad, most attorneys concentrate their work primarily in a few areas. Lincoln Christian University has an attorney on staff who focuses on preparing good, easy to understand estate documents. Because estate planning is viewed as a ministry by LCU, because the attorney is thoroughly familiar with our format and procedure, and because the attorney handles estate planning issues every day, LCU's attorney can do it better and at much lower fees than a typical private attorney would charge for such excellent documents.

Since the attorney is associated with Lincoln Christian University, there may be a possible conflict of interest in the minds of some individuals. If you choose to use the school's attorney, therefore, you will need to sign a waiver acknowledging that this possible conflict has been disclosed to you, that the attorney promised to represent your interests only in preparing your documents, and that you authorized the attorney to do the work. You are under no obligation, however, to use the school's attorney. You may use any attorney you desire.

Working with your attorney to complete all aspects of your estate plan is an important key to the success or failure of that plan. Unless you continue to work with your attorney until every document is completed and properly executed, the finest plan in the world will be absolutely worthless. It does take some time and effort, but no one ever said stewardship would be easy. The rewards, though, are worth it: for your family, for your stewardship, and for your own peace of mind.

STEP 7: CARRY THROUGH TO COMPLETION ALL ASPECTS OF YOUR ESTATE PLAN

When Lincoln Christian University's attorney has prepared the legal documents to implement your estate plan, those documents will be sent to you for your review. You should check the documents thoroughly to make sure that they express your exact desires. Read through each document word by word. Be sure to double check names (individuals and organizations) and distribution plans (amounts, percentages, schedules, etc.) to make sure they are correct. If corrections are needed, contact the attorney and have the changes made before the final execution of the documents.

When you are satisfied with your documents in every way, you will have a final appointment with the LCU attorney when your documents will be dated, signed, witnessed, and notarized. Once your documents have been finalized, you then must coordinate your asset ownership and any beneficiary designations with your total estate plan.

Remember, a Revocable Living Trust can only manage the assets that it holds, so it is of no value if your assets are not transferred to the Trust. Bank accounts and C.D.'s need to be titled in the name of the Trust. If your home is owned jointly, your estate plan documents will include a deed to transfer title from yourselves as joint owners to yourselves as co-trustees of your Trust. That need will need to be recorded in the county where the real estate is located. Untitled assets can be placed in the Trust by virtue of legal transfer language that can be included in your Trust.

Any titled or registered asset, though, must be titled or registered in the name of the Trust or they will not be in the Trust. Your Trust may state your intention to transfer those assets into the Trust (and they may be listed as initial trust assets in the Appendix to the Trust), but the actual title has priority and rules over what a Will or Trust may say.

Failure to carry through in changing the titles and registrations on such assets can be disastrous to your estate plan. Yet it is an exceedingly common failure that often causes estates to go through probate administration even though a Revocable Living Trust was established. Failure

to coordinate ownership/beneficiary provisions is the leading cause for estate plans not accomplishing what was intended.

If you complete your estate plan through Lincoln Christian University, the analysis and plan letter you will receive will list the assets that must be changed after your Trust is prepared and signed. (That is one of the reasons why it is so important to list all titled or registered assets in your Confidential Estate Questionnaire.) These titled assets would include real estate, bank accounts, C.D.'s, stocks, bonds, mutual funds, notes you hold, automobiles, recreational vehicles, boats, and so on. Other assets that will need to be changed are the beneficiary designations on your life insurance and any retirement plans that may have lump sum benefits after your death. Stay on top of the paperwork until everything is complete.

When you have completed your asset title changes, you should notify your auto and home insurance agents that you now hold title to your real estate, vehicles, etc., as trustee (or co-trustees) of your Revocable Living Trust. When you buy a different house or trade cars, you will not need to change your Trust, but you will need to make sure that new asset is titled to the Trust from the beginning.

Once your estate plan is complete, it is a good practice to pull it out and review it every three to five years. Even well developed estate plans should be reviewed if life situations, conditions, needs, or desires necessitate changes or revisions to your plan. Your estate plan can be easily amended as conditions warrant, but only you can do it.

CONCLUSION

Christian stewardship is the recognition that everything we have comes from God, belongs to God, and is to be used according to His will. James 1:17 tells us: "Every good and perfect gift is from above." In Deuteronomy 8:18, Moses said to "remember the Lord your God, for it is He who gives you the ability to produce wealth." In Ecclesiastes 5:19, Solomon said: "Moreover, when God gives any man wealth and possessions, and enables him to enjoy them, to accept his lot and be happy in his work - this is a gift of God."

The trouble is that **we tend to forget that what God entrusts to us, He entrusts to us as stewards.** As Christians, we are not owners to do whatever we please with our possessions. We have recognized the Lordship of Christ, that we are bought with a price, and that everything we have is to be used to accomplish His purposes. What we have includes what we use for ourselves, for our families, for others, and what we give to Christian ministries.

A steward is someone who manages the property that belongs to another. Jesus illustrates this concept in Matthew 25 with the Parable of the Talents. Before going on a journey, a man gave five talents of money to one servant, two talents of money to another servant, and one talent to another, each according to his ability. The master was gone for a long time, but one day he returned and called his servants to give an account of their stewardship. To those who were good stewards, the master said, "You are good and faithful servants. I left you in charge of only a little, but now I will put you in charge of much more. Come and share in my happiness!" But to

the one who was not a good steward, the master said, "You are a worthless servant, and you will be thrown out into the dark where people will cry and grit their teeth in pain."

We, too, one day will have to account for our stewardship, and that stewardship will include what we do with our estates. Some people feel that it won't matter what they do because their estates are small. It was the one talent servant, though, who was condemned; not because he had only one talent, but because he failed to be a good manager of what he had. Christians today don't dig holes and hide their money in the ground, but many of us fail to recognize God as the owner and fail to believe we'll really be held accountable.

If you believe that God is the owner and that you will be held accountable, you must ask yourself, "What would He have me do?" And then do it immediately! When we stand before the Master, it will be too late to change: too late for us, too late for our families, and too late for a lost world. **Don't delay what you know needs to be done.** Procrastination is absolutely catastrophic in estate planning. Begin Step 1 today and don't stop until Step 7 is complete!

GLOSSARY OF ESTATE PLANNING TERMS

ACTUARIAL: Statistical calculation, especially of life expectancy

ADJUSTED BASIS: The cost or value of property in the hands of the owner plus additions and minus deductions required by statute for various types of expenditures, transactions, or recoveries of capital.

ADJUSTED GROSS ESTATE: Arrived at by deducting estate settlement costs from the gross estate, also known as the taxable estate.

ADMINISTRATION: The management of a decedent's estate.

ADMINISTRATOR: An individual appointed by a court to settle the financial and legal affairs of a person who dies without a will.

> *Ancillary:* One who is appointed to take charge of that portion of an estate which exists in a state or country other than the deceased person's residence.
>
> *Temporary:* A person or agency appointed to initiate the management of an estate until a regular appointee is named.
>
> *Of Undistributed Assets (de bonis non):* The person or agency named by the court to replace a Personal Representative or Administrator who has not completed the settlement of an estate due to incapacitation, death, or removal by the court.
>
> *With the Will Annexed (cum testamento annexo):* One who is appointed to settle an estate when the original Personal Representative failed to qualify, or if the court refused to approve the one nominated in the will.

AFFIDAVIT: A statement in writing sworn to or affirmed before an official (usually a notary public) who has authority to administer an oath or affirmation.

AFTER-BORN CHILDREN: Those born after a will has been executed.

ALTERNATE VALUATION DATE: Six months after death; date may be used for determining value of estate assets.

ANCILLARY ADMINISTRATION: Administration of a decedent's estate in a state where the deceased had property other than the state of residence.

ANNUITY: The right to receive a series of payments on a yearly basis or at other regular intervals for a certain or uncertain period.

ANNUITY TRUST: A charitable remainder trust naming one or more charitable organizations as the eventual beneficiary. It is qualified for a charitable contribution deduction and provides that income is a fixed amount based on a fixed percentage of the fair market value of the assets originally transferred (must be at least 5% of the original sum placed in trust).

ANTE-NUPTIAL AGREEMENT: Contract or agreement between a man and a woman before marriage, but in contemplation and generally in consideration of marriage, whereby the property rights and interests of either the prospective husband or wife, or both of them, are determined, or where property is secured to either or both of them, or to their children. Also referred to as a pre-nuptial agreement.

APPRECIATED PROPERTY: Capital assets increased in value in the hands of the owner over the cost at which the owner procured them or their adjusted basis.

ASSESSED VALUATION: The valuation placed upon land for purposes of taxation. This valuation does not necessarily correspond to the market valuation.

ATTESTATION CLAUSE: That clause in a will in which the witnesses certify that the will has been signed before them and describes how all parties signed the will.

BENEFICIARY: One named in a will or trust to receive a bequest, devise, legacy, or the use of estate assets.

BEQUEST: A transfer of personal property by will. Distinguished from a devise which is a transfer of real property by will.

BOND: An insurance agreement under which one party becomes surety to pay, within stated limits, financial loss caused to another by specified acts or defaults of a third party. Or, an interest bearing security evidencing a long-term debt issued by a government or corporation, and sometimes secured by a lien on property.

CAPITAL GAIN: A gain from the sale of an investment. The increase in the value of property over original acquisition price plus improvements, etc., minus depreciation, and subject to special treatment under the income tax.

CHARITABLE ANNUITY: A transfer of property to a charitable institution, part of which is payment for an annuity and the balance of which is a charitable gift, also known as a gift annuity.

CHARITABLE DEDUCTION: Deduction allowed for a gift to a charitable institution.

CHARITABLE LEAD TRUST: An irrevocable trust that gives an asset's current income interest to a charity and leaves the trust principal at the end of the trust term to the beneficiary(ies) named by the donor. Lead Trusts can take one of two forms. Charitable Lead Annuity Trusts (CLAT's) pay a fixed dollar amount. Charitable Lead Unitrusts (CLUT's) pay a fixed percentage value of the principal.

CHARITABLE REMAINDER: The trust property given to a charity upon the termination of the trust.

CHARITABLE REMAINDER TRUST: An irrevocable trust that gives an asset's current income interest to the donor and leaves the trust principal at the end of the trust term (either a number of years or the life of the donor) to the charity(ies) named by the donor. Charitable Remainder Annuity Trusts (CRAT's) pay a fixed dollar amount. Charitable Remainder Unitrusts (CRUT's) pay a fixed percentage value of the principal.

CODICIL: The only legal document that can change a will. It is a supplement to a will, adding, taking from, or altering the will's provisions. It must be executed with the same formalities as a will.

COMMON DISASTER: When two or more persons (usually husband and wife) die as a result of the same accident, when the death of each follows in a relatively short period of time.

COMMON DISASTER CLAUSE: A clause under a will that prescribes the order of death as between two or more people who die at the same time.

COMMON TRUST FUND: A group of securities managed by the same trustee on behalf of a number of trusts, usually for the purpose of diversifying the investments of the trust.

COMMUNITY PROPERTY: In some states, property that is acquired by the efforts of either husband or wife constitutes a common fund in which each has an equal interest.

COMPETENT: Legally qualified, mentally and physically, to execute a document, such as a will.

CONSERVATOR: One who is appointed by the court to protect the interests of an incompetent person, such as a minor, insane person, convict, etc.

CORPORATE FIDUCIARY: A bank or trust company exercising fiduciary powers under statutory authorization.

CORPUS (PRINCIPAL): A capital fund from which income is derived.

CORPUS OF THE TRUST: Property held by the trustees of a trust upon which the trust instrument places income and ultimate ownership rights.

COST BASIS: The acquisition price of a security or property plus expenses for improvements, etc., less depreciation.

CO-TRUSTEE: A joint trustee to whom specific duties are assigned.

CREDIT ESTATE TAX: State death tax added to basic levies to bring state taxes up to the total maximum credit available under federal tax law.

CURTESY: A husband's life estate in the property of his deceased wife. By statute in most states, it is a life estate in one-third of the land she owned during their marriage. Curtesy has been abolished by statute in some states.

CUSTODIAN: One named to manage, invest, and re-invest gift property without court approval. Custodian is empowered to pay or apply income and principal for the support, benefit, maintenance, and education of the minor.

DEATH TAX: Tax arising on the transmission of property after the owner's death. Levied by individual states.

DECEDENT: A person who has died.

DEDUCTION: A legislatively-granted privilege to subtract from a taxpayer's income the value of gift, loss, expense incurred, etc., for certain events or transactions.

DEVISE: A testamentary disposition of real property.

DISTRIBUTEE: Any person entitled to take or share in whole or in part, any property of someone who dies without a will. At common law, distributee was applied to one who inherited personal property. Distributees should be distinguished from heirs which at common law technically denoted those who would inherit real estate when someone died without a will.

DOMICILE: The location of a person's home or principal residence although he or she may also have living quarters in another location.

DONOR (SETTLOR): In estates or trusts, the person who creates, grants, or donates the trust.

DOWER: An estate for life to which a married woman by statute is entitled on the death of her husband. In most states, it is a life estate of one-third of the value of all land that the husband owned during their marriage. Dower has been abolished by statute in some states. The reason for requiring a wife's joining in the deed of any land by her husband is the release of her dower right.

DURABLE POWER OF ATTORNEY: An instrument in writing by which one person authorizes another to act for him or her in specific actions described in the instrument, with authority extended to periods of disability and incompetency.

ESTATE: The fair market value at the time of death of the deceased's interest in all property, real or personal, tangible or intangible, wherever situated.

ESTATE ADMINISTRATION: Includes paying all debts and claims, satisfaction of specific legacies, ascertainment of individual shares in residuary estate and distribution of those shares.

ESTATE PLAN: An arrangement for the management and disposition of a person's property during his or her lifetime and at death. This can be accomplished by a will, one or more trusts, gifts made during life, or a combination of these.

ESTATE TAX: Tax on the property and interests in property left by a decedent or in the transfer of such property as a result of death.

EXCLUSION, ANNUAL: The continuing right of a donor to make a tax-free gift of up to $11,000 to any number of donees in any year; applies only to gifts of present interest.

EXECUTOR: A person or agency named in a will to administer the estate of a deceased person. Also referred to as personal representative.

EXEMPTION, LIFETIME: The amount allowed to be given tax-free to a person or persons, once during lifetime.

FAIR MARKET VALUE: The price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

FIDUCIARY: A person charged with taking certain actions on behalf of another person (a beneficiary). In a trust case, the fiduciary is the trustee who manages the trust property, distributes income, and makes final disposition of the trust property.

GENERAL POWER OF APPOINTMENT: A power given to a person to dispose of property he or she doesn't own to any person, estate, or creditors.

GIFT: A voluntary transfer of property from one person to another without money or other consideration. There are four essential elements to a gift: (1) intention to give; (2) renunciation of the right of ownership by the donor, without the power to revoke it; (3) delivery of possession by the donor to the donee; and (4) appropriate mental capacity of the donor at the time the gift is made.

GIFT ANNUITY: A transfer of property to a charitable institution, part of which is payment for an annuity and the balance of which is a charitable gift.

GIFT TAX (FEDERAL): Tax on the gift of property, securities, cash, or other value by the donor to the donee. Paid by the donor.

GRANTOR: The person who establishes a trust, either while alive (inter vivos trust) or through a will on death (testamentary trust). Also referred to as a Settlor or Trustor.

GROSS ESTATE: All assets that a decedent owned at death or made a transfer of before death which the estate tax laws require to be included in the donor's taxable estate prior to deductions and exemptions.

GUARDIAN: A person who has the legal duty and power to take care of the person and property of another who because of some disability (usually age or incompetence) is considered incapable of administering his or her own affairs.

HEIRS AND NEXT OF KIN: Individuals entitled to the estate of a person dying intestate under the laws of descent and distribution.

HOLOGRAPHIC WILL: One which is written entirely in the maker's own handwriting, not attested by subscribing witnesses.

INCIDENT OF OWNERSHIP: Pertaining to ownership of insurance; the retention of an interest by the decedent of more than 5% of the policy.

INCOME BENEFICIARY: A beneficiary whose interest is limited to income earned.

INCOMPETENT: A person judicially declared to be incapable of managing his or her affairs. May include a person, who by reason of old age, disease, weakness of mind, or other cause is unable, unassisted, to properly manage his or her property.

INHERITANCE: The receiving of property from a deceased person's estate, by right of succession rather than by devise.

INHERITANCE TAX: A tax levied on the right to receive property from a deceased person. This tax is distinguished from the estate tax that is a tax levied on the right to transmit property, not on the right to receive it.

INSURANCE TRUST: A living trust of which the property is entirely or partially life insurance contracts or proceeds.

INTANGIBLE PROPERTY: That property that does not have physical substance.

IN TERROREM CLAUSE: A provision incorporated in some wills or trusts whereby a person who contests the instrument shall forfeit his or her legacy. Also known as a knock-out clause.

INTER VIVOS: Term used in law to describe agreements made while living. An intervivos trust indicates a trust established by a living person.

INTESTATE: Death without leaving a valid will.

INVASION OF TRUST: A provision that permits a beneficiary to withdraw a portion of the corpus (principal) of a trust for the support and maintenance of the beneficiary.

IRREVOCABLE GIFT: A transfer of property without consideration that cannot be changed.

IRREVOCABLE TRUST: A trust that is not subject to amendment, change, modification, or revocation.

ISSUE: All persons who have descended from a common ancestor. May include adopted children, according to intent.

JOINT AND SURVIVOR: In life income gifts, the ownership rights by two (or more) people together for the period of their joint lives and then the income owned by the survivor during his or her life.

JOINT TENANCY: Where two or more persons own property, either real or personal, according to a separate agreement entered into between or among the parties, whereby the property does not pass to heirs, cannot be disposed of by will, but can go only to a survivor (or survivors) of the tenancy.

JOINT WILL: A single document that is executed by husband and wife making it the will of both. It is probated after the death of each of them.

LEGACY (BEQUEST): A gift of personal property by will.

> *Demonstrative:* A gift of a definite amount to be paid from a specific fund or source.
>
> *General:* Not a particular kind, but definite amount.
>
> *Pecuniary:* A gift of money.
>
> *Specific:* A particular item.

LETTER OF ADMINISTRATION: A certificate of authority granted by a court having probate jurisdiction to show that the authority of the office of duty of an administrator has been given to the person named in the letter.

LIFE ESTATE: An estate or interest that someone has in property that lasts only during his or her lifetime, or the lifetime of some other person or persons. The life tenant has no ownership rights to transfer the interests after the life estate runs out.

LIFE INCOME AGREEMENT: See annuity trust, pooled income fund, or unitrust.

LIVING TRUST: A trust created and in effect during the lifetime of the maker.

MARITAL DEDUCTION: A provision under the federal gift and estate tax laws whereby an unlimited amount may be transferred to a spouse, exempt from gift and estate tax.

MINOR: An infant or person who is under that age which is accorded full legal rights. The age of majority varies from 18 to 21, and may vary within a state, depending on the purpose.

MUTUAL WILLS (RECIPROCAL): Two documents that have exactly the same provisions but are executed separately by husband and wife.

NUNCUPATIVE WILL: A will that is given orally, in the presence of witnesses, usually during one's last illness under circumstances that make it impossible to prepare a written will.

PER CAPITA DISTRIBUTION: Distribution of property among descendants as individuals and not by right of representation.

PER STIRPES DISTRIBUTION: Where the children of a decedent receive only that share of property that the parent would have received if living.

PERSONAL PROPERTY: All movable property not fixed to land. Includes money, stocks and bonds, and other types of tangible assets of value.

PERSONAL REPRESENTATIVE: A person or agency named in a will to administer the estate of a deceased person. Also referred to as an executor.

POOLED INCOME FUND: A transfer of property to a charitable institution in exchange for a contract stipulating that the donor will receive the average earnings of the institution's investment fund as applied to the amount of his or her gift each year for the rest of his or her life and that the institution will be the owner of property with no obligations after the donor's death.

POUR-OVER TRUST: A trust that exists separately and independently of the will and is designated to serve as a custodian of property that it receives from the will.

POUR-OVER WILL: A will that authorizes the personal representative to place into a trust (i.e., "pour-over") any asset that was not placed in the trust prior to death or any asset that comes to the estate after death.

POWER OF APPOINTMENT: The right to designate either by will or by deed, the persons who are to receive certain property that came from the estate of a prior decedent. Usually this power is vested in a person who receives the income from the property for his or her lifetime.

PRE-NUPTIAL AGREEMENT: See ante-nuptial agreement.

PROBATE: The action of proving before a competent judicial authority that a document offered for official recognition and registration as the last will and testament of a deceased person is genuine.

PROPERTY: Anything that may be the subject of ownership, real and personal, tangible and intangible. It is that which belongs exclusively to a person, with full rights to enjoy and dispose of it. *Real property* is any land, or any estate in land. It is generally construed to include whatever is erected or growing upon the land. It may be defined to include anything which is immovable. *Personal property* is all property other than real property. It generally refers to property which is movable or personal.

PRUDENT-PERSON RULE: An obligation to make all investments as a prudent person would make if it were his or her own property, keeping primarily in mind the preservation of the estate

and the amount and regularity of the income from the investments. Also known as the Prudent-Man Rule.

QUALIFIED TERMINABLE INTEREST PROPERTY: Property which passes to the surviving spouse who is entitled to all the income during life, but whose interest terminates at death. This property qualifies for the marital deduction and is taxable in the estate of the surviving spouse.

QUITCLAIM: A deed which transfers whatever interest the maker of the deed may have in the particular parcel of land.

REAL PROPERTY: Land and buildings permanently affixed to land.

REMAINDER INTEREST: An interest or estate in land in a person other than the grantor in which the right of possession and enjoyment of the land is postponed until the termination of some other interest or estate in that land.

REMAINDERMAN: The beneficiary who is to receive the property upon the termination of the trust.

RESIDUUM (RESIDUARY ESTATE): That portion that is left over after the payment of debts, expenses, taxes, and the distribution of all other legacies and devises.

REVOCABLE TRUST: A trust that may be rescinded or changed by the maker during his or her lifetime.

RIGHT OF ELECTION: The right of a surviving spouse (under applicable state laws) to elect to take a share of the decedent's estate instead of what was left by will.

RULE AGAINST PERPETUITIES: The regulation that prevents testators and donors from restricting their gifts in order that the property may be retained in the same ownership for a longer period of time than is regarded as reasonable.

SETTLOR OF A TRUST: A person who creates a trust and furnishes the property subject to the trust conditions. Also referred to as grantor or trustor.

STATUTES: Laws enacted by the legislative branch of government.

SUCCESSOR TRUSTEE: A trustee who follows the original or prior trustee. Generally, the appointment of a successor trustee is provided for in the trust instruments. If it isn't, and if the trust is still in existence when the original or prior trustee failed to qualify or ceased to act, then a person will be appointed by the court to act.

TANGIBLE PROPERTY: That which has physical substance, that can be felt or seen.

TAXABLE ESTATE: The gross estate minus allowable exemptions and deductions. The amount on which estate taxes are to be levied.

TAX CREDIT: Amounts that a taxpayer may deduct from the tax itself.

TENANCY: The holding of or possession of real property.

> *At sufferance:* An estate in land whereby the tenant retains possession beyond the duration of his or her rightful tenancy.
>
> *By the entirety:* Limited to property procured by husband and wife jointly after marriage. Upon the death of either husband or wife, the survivor receives the property.
>
> *In common:* An undivided estate, owned by two or more person, the property passing to the heirs of devisees rather than to the co-owners.
>
> *Joint tenancy:* Property passes to the co-owners, upon the death of a joint tenant, not to the heirs or devisees as in tenancies in common.

TESTAMENTARY: Created or ordered by a decedent's will.

TESTATE: Having created and executed a will, effective at one's death.

TESTATOR: The one who makes a written will.

TRUST: A legal relationship when one party (the trustee) holds legal title to property usually for the benefit of another (the beneficiary). To create a valid trust, the grantor must transfer property (the corpus or principal) to the trustee, but this may be to him or herself as trustee if it is a revocable living trust.

> *Charitable:* Created for the benefit of a legal charitable organization.
>
> *Corporate:* Created by a corporation for the purpose of securing its own bonds, notes, etc.
>
> *Discretionary:* A provision that allows the trustee to pay income and principal to a beneficiary, as the trustee shall determine. Under this plan, the beneficiary cannot assign his or her interest in the trust nor can his or her creditors collect from it until the beneficiary has actually received the funds
>
> *Inter vivos (living):* Created and in effect during the lifetime of the creator.
>
> *Irrevocable:* Not subject to amendment, change, modification, or revocation.
>
> *Pour-over:* Existing separately and independently of the will, and designated to serve as a custodian of the property that it receives from the will.
>
> *Revocable:* May be changed or terminated by the maker.

Spendthrift: A provision that protects the beneficiaries against claims of creditors and prevents the beneficiaries from selling, assigning, or transferring their interest in the trust.

Sprinkling: A provision whereby a group of persons may be designated as beneficiaries.

Testamentary: Created by giving a definite amount of money or other property, through a will, usually to save a second tax on the death of a primary beneficiary.

TRUSTEE: A person holding a right or power and property on behalf of another person (the beneficiary).

TWO-TRUST WILL: The drafting of a trust to give the spouse income for life, then a "family trust" for the benefit of the children, thus saving estate tax upon the spouse's death.

UNDUE INFLUENCE: A will that is made under pressure or coercion, thus making it invalid.

UNITRUST: Donor transfers cash or securities to a charitable remainder trust naming one or more charitable organizations as the eventual beneficiary. Is qualified for a charitable contribution deduction, and provides that income paid is a fixed percentage of the fair market value of the assets as determined annually (must be at least 5%).

VESTED: An immediate and fixed right to present or future enjoyment of a property interest.

WARDS: Persons for whom guardians are appointed, usually minors or incompetent persons.

WIDOW'S ALLOWANCE: The amount allowed by court order to be paid a decedent's widow and family from estate assets during administration.

WILL: A legal declaration that makes provisions for the distribution of property at death.

WITNESS: One who, being present, personally sees or perceives a thing; a beholder, spectator, or eyewitness. One who testifies to what he or she has seen, heard, or otherwise observed or learned.