1. What is estate planning?

Estate planning is the accumulation, the preservation, and the distribution of your assets. It is accomplishing your personal family goals and easing the management of your estate, as well as minimizing taxes.

2. What will happen to my property if I die without a will or trust?

If you die without a will or trust, the state determines who will be your ultimate heirs. This distribution plan can be found in the intestacy statute of each state. The applicable state can be either the location of your legal residence (personal property), or the state in which your assets are located (real property).

3. How is my property transferred if I die intestate?

If you die intestate, the transfer of your property is accomplished through a court-supervised proceeding called probate that generally takes a minimum of six months, typically a year or more. These proceedings generally are expensive and time-consuming and tie up your property for several months. Probate can be avoided with proper estate planning.

4. What is probate?

Probate is the court procedure used to change title to assets from the name of an individual who has passed away into the name of the living beneficiaries. It is also where all creditors of a decedent file claims to collect their debts and where interested parties who have a complaint regarding the deceased can file their complaint (a will contest). Even without a contest, probate can be costly and time-consuming. Probate is a public proceeding.

5. Can probate be avoided?

Probate can be avoided with careful planning. There are a number of different techniques for doing so which can be used alone or in combination.

6. How large of an estate can pass federal estate tax free?

The government allows every individual a credit against estate taxes. In the year 2009, the Unified Credit is equal to $1,455,800, which equals an Applicable Exclusion Amount from estate taxes of $3,500,000 in assets. This means that, in 2009, estate taxes will not be owed at the time of an individual's death unless the net value of the estate exceeds $3,500,000.

7. What is the marital deduction?

The Internal Revenue Service allows an individual to leave any amount of assets to his or her spouse without taxation. At the death of the surviving spouse, however, all

assets in the estate over $3,500,000 will be included in the survivor's taxable estate; estate taxes on assets above $3,500,000 are taxed at a rate of up to 45 percent.

8. How can I leave my estate to my spouse tax-free?

An outright gift at death qualifies for the unlimited marital deduction for estate taxes and, therefore, there will be no tax paid on the amount left to the surviving spouse. However, the $3,500,000 Applicable Exclusion Amount on the estate of the first deceased spouse is lost when the second spouse dies.

9. Should I use my $1,000,000 Applicable Gift Tax Exclusion Amount during my lifetime?

This is a complex question. The answer depends upon individual family circumstances and the size of your estate.

10. What is joint tenancy with rights of survivorship?

When property is held in joint tenancy with rights of survivorship by two or more people, upon the death of one of the owners, all of his or her interest in the property is transferred immediately to the surviving owners.

11. Can a married couple use joint tenancy until one spouse dies, then set up a trust for the survivor?

Yes, but this unfortunately has several problems associated with it. There is no guarantee that the surviving spouse will have time to set up a trust after the first spouse dies, or, more to the point, will actually get around to setting up a trust, regardless of the amount of time available. This method also loses the $3,500,000 Applicable Exclusion Amount tax advantage, because, like an outright gift, joint tenancy lumps all the assets in one spouse's estate. In addition, the survivor will not see the increase in basis for the survivor's interest as would happen in a community property state.

12. What if I create a joint tenancy with my child?

This is a disadvantageous way to plan an estate. The problem with putting your child's name on the title to your property as a joint tenant is that while it will avoid probate, creditors of the child will be able to reach the joint tenancy property. It may also create a taxable gift when none is expected, and may not be consistent with your ultimately desired distribution.

13. What is a power of attorney?

A power of attorney is a document authorizing someone else (your agent) to act on your behalf (the principal). The purpose of giving someone such a power is to enable the agent to act on your behalf when you cannot act for yourself.

14. Who can create a power of attorney?

Generally, any individual can create a power of attorney if over 18 years of age, a resident of the state in which it is created, and legally competent. This, however, varies from state to state.

15. Who may act as an agent under a power of attorney?

In general, an agent may be anyone who is legally competent and over the age of 18. Usually, it is a family member such as a spouse or a child. More than one person can be named as an agent. However, sometimes naming two or more individuals to act together can prove inconvenient, particularly if a power of attorney must be exercised promptly. A better course is to name one individual as agent and then another as a backup.

16. What is the difference between a general and a limited power of attorney?

A general power of attorney authorizes your agent to do almost everything on your behalf which you could do for yourself. A limited power of attorney authorizes your agent to perform only certain acts specifically listed in the document.

17. How does an agent use a power of attorney?

Your agent presents the power to the other party involved in the transaction and signs any necessary documents needed for such transactions on your behalf. Your agent normally signs his or her own name, adding thereafter "Attorney in Fact for Mary Smith".

18. What are the formalities of signing a power of attorney?

Requirements vary from state to state, but generally a simple notarization or signing the power in the presence of witnesses is necessary.

19. When does a power of attorney become effective?

This depends upon what the power says. It can be made effective at the time of signing or it can become effective at the time of your incapacity.

20. How does a power of attorney terminate?

Death revokes a power of attorney. You may also cancel your power of attorney by signing a revocation. The best way to revoke a power of attorney is to destroy all copies. If the power is a non-durable power of attorney it will terminate upon your incapacity, while a durable power of attorney survives your incapacity.

21. What is the annual gift tax exclusion?

The annual gift tax exclusion is an amount that can be given away annually without resulting in gift tax on the transfer. In the year 2009, the annual gift tax exclusion amount is $13,000 per recipient. There is no limit on the number of recipients to which qualifying gifts can be made.

22. Under a power of attorney, can my agent make a gift on my behalf?

Yes, but your power of attorney must specifically authorize your agent to make annual exclusion gifts from your assets to persons whom you would likely make gifts.

23. Must third parties honor a power of attorney?

There is no way to force a third party to accept the power. Many banks will require you to complete their own forms to authorize your agent to write checks on your account, so it is advisable to inquire as to whether your banking institution requires such forms that can be completed in conjunction with executing a power of attorney. In addition, the IRS generally will not honor any power of attorney that does not specify the tax matter and the tax year at issue.

24. What are the disadvantages of a power of attorney?

First, third parties may not recognize your power of attorney. Second, it can be difficult to revoke a power of attorney, especially if your agent has given copies to third parties that have honored it. Third, the agent can reach your assets without court approval or supervision. Therefore, it is imperative that you select an agent with great care and have tremendous confidence in that individual.

25. Are there alternatives for managing property when a person becomes incapacitated?

There are several. One is using a durable power of attorney. Another is a court-supervised proceeding referred to as a guardianship or conservatorship. Another alternative is the use of a living trust where assets are funded into the living trust.

26. What makes a durable power of attorney durable?

A durable power of attorney remains effective even if you become incapacitated. Generally, unless the power specifically indicates it is durable, it is not durable and will terminate upon your incapacity.

27. Should I have a durable power of attorney?

Yes. The durable power of attorney for property is often used in conjunction with a trust to enable your agent to transfer your assets into your trust in the event you become disabled. A durable power of attorney can be made effective immediately

upon being signed or can become effective at the time of your incapacity, which is also called a "springing" power of attorney.

28. What are the advantages of a durable power of attorney for property?

A durable power of attorney can be a better way to deal with incapacity than a guardianship or conservatorship. It avoids the court proceeding that a guardianship or conservatorship requires.

29. Should I have a durable power of attorney for health care?

Yes, it is important to have a durable health care power of attorney, sometimes called a health care proxy. It allows your agent to make a number of health care decisions on your behalf. Often this is accompanied with a living will or a physician's directive that can cover the issue of remaining on life support systems under varying circumstances.

30. What is a living will?

A living will, or sometimes called a physician's directive, is a document in which you give directions for life sustaining treatment should you become unable to communicate your wishes.

31. What is a guardianship or conservatorship?

This is a court-supervised proceeding which names an individual or entity to manage the affairs of an incapacitated person. A guardianship may also include the duty to care for the incapacitated person.

32. What is the nomination of a guardian?

The nomination of a guardian occurs when an individual seeks court approval to act on behalf of someone who is incapacitated. This is avoided through the creation of a power of attorney that can be used to name a guardian in the event one is needed.

33. What are the disadvantages and advantages of a guardianship?

A primary disadvantage to a guardianship is that it is a public proceeding, thereby exposing the incapacitated individual to embarrassment as the details of their incapacity are discussed at length. It is also expensive, and is a restrictive procedure. In addition, there is no guarantee that the end result will be in accordance with the incapacitated person's wishes, and someone unacceptable to the incapacitated person could be placed in charge of his or her affairs. A major advantage to a guardianship is that the courts watch every move the guardian makes in relation to the assets. Some feel this provides increased protection as well as establishing the authority of a guardian as third parties must deal with the guardian due to the court's supervision.

34. Why is a Living Trust generally better than a power of attorney?

A Living trust is often recommended to clients as the key document in their estate plan. One reason for this is that the living trust is normally the best method for managing assets during incapacity. A major advantage of the living trust over the power of attorney is that a trustee has actual title to the assets and therefore third parties must deal with the trustee as the owner. An agent does not have title and hence third parties may refuse to deal with the agent. This is particularly true if the power of attorney is more than a few years old.

35. Why should I consider a Living Trust?

Not only does a Living Trust provide for the disposition of your property (like a Will), but it also offers other benefits.

36. Will I still have control over my property if I establish a Living Trust?

Absolutely! While you are alive and mentally competent, you have complete control over your property. You can buy, sell, improve, spend, change investments, or give away property just as you would without a trust. The trust can be modified in any manner you desire or it can be completely revoked. Upon your death, the trust becomes irrevocable so that no one can change your testamentary wishes. Upon your incapacity, your durable power of attorney comes into effect. For married couples, the surviving spouse still has total control over his or her share of property after its transfer to the survivor's trust, and the trust becomes irrevocable only as to the deceased spouse's share.

37. Who is the trustee of my Living Trust?

While you are alive, you act as trustee. For married couples, either one or both spouses may act as trustee or co-trustees. The successor trustee is an individual whom you designate to be in charge of your trust in the event of disability or upon death.

38. Who should be designated as successor trustee of my RLT?

You will need to designate one or more successor trustees. These can be individuals, such as family members, trusted friends, trusted professionals, or you could designate an institution, such as a bank or professional trust company. Individuals may predecease you, while an institution will (most likely) still exist at the time of your death. Institutions provide the benefit of experience in money management and trust administration, while family members and close friends are more "personal" and have first-hand knowledge of your desires. If you choose an individual, the individual should have some business sense, or you might wish to name an individual and an institution as co-trustees. The downside to co-trustees is the possibility of disagreements.

39. Can you be the trustee of my living trust?

Technically a law firm or an attorney at a law firm is permitted to be the trustee. However, at our law firm, we generally decline to act as trustee for our clients. We think it is inappropriate.

40. Will my income taxes change if I create a trust?

A revocable Living Trust does not change your income tax liability. The Internal Revenue Service does not require any additional income tax filings when you create a Living Trust, and the same annual 1040 tax return is filed as long as a married couple files jointly and the trust holds no foreign property.

41. Do property taxes change if I create a trust?

Generally, property taxes remain the same when real estate is transferred into a Living Trust, although laws vary from state to state and county to county. Applicable state law is determined by the location of the real property, and needs to be reviewed before any transfer is made.

42. What is the annual fee for a trust?

There is no annual fee associated with maintaining a trust. Fees are involved when an amendment to the trust is made which involves changing the terms of the trust. When a spouse or Trustee passes away, fees will be charged in order to handle the Trust Administration to take advantage of certain tax benefits, if applicable, and to follow the terms of the trust.

43. How do I fund my trust?

Funding a trust entails transferring assets you own as an individual into the name of your trust. For some assets, our law firm makes the transfers and prepares the documents for you to sign, for example, real estate. For other assets that our law firm is unable to change for you, we will give you instructions as to how title is changed, and will provide you with the necessary paperwork. For example, to fund your trust with bank accounts, a letter is prepared for you to take to the bank to change title of your accounts. You will have to go to the bank in person to sign a new signature card as trustee of your trust.

44. What assets are left outside of my trust?

Although there's nothing wrong with having your checking account in the name of your trust, some individuals like to have just their name on the checks. You can do so even if the account is in the trust, or you can simply choose to leave a small checking account outside of the trust. Other assets which are not generally funded into the trust are IRAs and pension plans, since these contain assets that are already in trust. What's important is to coordinate the appropriate beneficiary designation

with your overall estate plan. This is a complex area of planning and must be based on each person's individual family circumstances and size of estate.

45. How is out-of-state property funded into my trust?

Out-of-state property is transferred into the trust by using a local attorney in that state working with our law firm. We are a member of the American Academy of Estate Planning Attorneys, a national organization with members coast to coast. Therefore, we can contact another member attorney in the state where your property is located to have it transferred to your trust with a minimum of delay.

46. How are timeshares funded into a trust?

Timeshares are transferred based upon the type of ownership you have. Some time shares are a contract and are transferred to the trust by an assignment of the contract. Other time shares are a fee-simple, which means you have absolute ownership. Therefore, it is transferred by deeding it to the trust.

47. If I transfer real estate to my trust can the bank call my loan?

Enacted as part of the Garn-St. Germain Depository Institutions Act of 1982 (P.L. 97-320; 96 Stat 1501) a due-on-sale clause can not be enforced on a "transfer into an inter vivos trust on which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property." This exemption applies to residential real property containing less than five dwelling units {12 USC Sec. 1701j-3(d)}. The regulations list that the borrower in this type of situation must remain the beneficiary and occupant of the property {12 CFR 591.5(b)(vi)}. However, "occupancy" is not defined. Therefore, prudence suggests notifying the lending institution before the transfer.

48. Does a Revocable Living Trust provide asset protection?

During the lifetime of both spouses there is no asset protection provided by a revocable living trust. However, there may be some protection for the survivor after the first spouse dies. The trust can also be created to provide creditor protection for other beneficiaries of the trust.

49. How do I know if my estate has enough liquidity?

Liquidity planning is part of estate planning. Generally, it is necessary to look at the estate and see if there is enough cash to pay taxes, administrative expenses, and support dependent family members. There are generally two ways to deal with the liquidity issue, either by reducing taxes and expenses which require cash, or by increasing the cash and liquidity of the estate. Techniques which reduce taxes include fully using the $3,500,000 Applicable Exclusion Amount at death (for the year 2009), making annual gifts, and using planning techniques such as GRITs and QPRTs. Other techniques which reduce expenses include avoiding probate and

using a Living Trust. Of course, increasing the liquidity of the estate can be done through conversion of assets as well as life insurance.

50. Why do I need a Pour Over Will if I have a Living Trust?

A Pour Over Will is used first to name a guardian for minor children. Second, it protects against intestacy in the event any assets have not been transferred into the trust at the death of the Trustor/Owner. Its function is to "pour" any assets left out of the trust into it so they are ultimately distributed according to the terms of the trust.

51. How do I change my trust?

An actual change to the terms of a trust is called an amendment to the trust. An example would be changing the distribution from two children to just one child. A trust can also be changed by a total restatement of the trust if multiple changes are involved.

52. Will my trust need to be changed when I buy or sell assets?

Buying or selling assets does not change the trust terms. It merely changes the assets in the trust. So think of buying and selling assets as assets going in and out of the trust without changing the terms of the trust.

53. Do I have to come to your law firm to change the trust?

There is nothing that requires you to work with the attorney or the law firm that originally prepared your estate planning documents. Any qualified attorney can amend the trust. We, of course, hope that you will return to our firm to do any work in the estate planning area, based upon our philosophy of being of service to our clients and being there when we are needed.

54. What are the fees to change my trust?

Call our office and we would be happy to discuss the fees associated with your particular estate planning needs.

55. When does a trust end or terminate?

A trust will end or terminate when the distribution of all assets is made pursuant to the trust document.

56. How do I revoke my trust?

Trusts are rarely revoked. Most of the time, once a trust is set up, no one wants to revoke it. However, there are situations where it does occur, primarily in the case of divorce. A brief written agreement is prepared, indicating that the trust is now revoked. The assets are removed and put in the name of the individuals, who are free to establish new trusts if they so desire.

57. Can someone contest a trust like breaking or contesting a will?

Anyone can hire an attorney to question how legal affairs have been arranged. So, in theory, anyone can attempt to contest a trust. In practice, however, it is much more difficult than contesting a will. As all wills must be probated, any interested party can easily join the routine probate court proceedings and contest the will at that time. In contrast, someone who wants to contest a trust must take the initiative to begin his or her own lawsuit, complete with court and attorney fees.

58. What happens to a living trust when one spouse dies?

When one spouse passes away, at that time, the surviving spouse should contact our office so that we can set up a meeting. At that meeting we explain what needs to be done in order to follow the terms of the trust. We need to inventory all assets so that we know what is in the trust in order to divide the assets into the A trust and the B trust -- the survivor's trust and the family trust, if applicable. There are tremendous tax benefits associated with the A/B type of trust, which is why a snapshot is taken of the assets at the date of death of the spouse.

59. What is the cost when one spouse dies?

Call our office and we would be happy to discuss the fees associated with your particular estate planning needs

60. What happens if I am single when I die?

When a single individual passes away, whoever is named as successor trustee usually contacts our office. In most cases, the trustee is instructed that assets need to be collected, debts need to be paid and then ultimately the distribution of assets will be made pursuant to the terms of the trust. In essence, the terms of the trust are carried out.

61. What happens if the tax law changes? Is my trust still valid?

In the event of a tax law change, the trust is still valid. However, amendments to the trust may be needed to comply with the new law.

62. What is a step-up in basis?

A step-up -- or step-down -- in basis is an adjustment for tax purposes to an asset's fair market value at the date of the death of the owner of the asset. For example, if you bought a share of stock for $100 that increased in value to $500 at the time of your death, your tax basis was $100 but increases to $500 at the time of death. This increase is known as a step-up in basis. If you bought the stock for $500 and it was worth $100 at the time of your death, it would be a step-down in basis.

63. Do my assets get a step-up in basis if they're in my trust when I die?

Your share of the assets held in the trust does get a step-up -- or step-down -- in basis upon your death. There will be another step up-- or step-down -- in basis of your spouse's share of the trust assets at the death of your spouse.

64. When is an estate tax return due?

An estate tax return is due nine months after the date of death and may be extended for six months. A return is required if assets are in excess of $3,500,000 (in the year 2009), even if the net estate is less than $3,500,000. However, filing may be recommended even if the estate is less than $3,500,000, to start the statute of limitations running.

65. How long does it take to set up a trust?

Generally, we like to complete the work within two to three weeks of our first client meeting, but in most cases we can work around your needs if it is required sooner.

66. Do I work with you or a paralegal?

The first step in the estate planning process is for you to come in for your initial consultation. At that time, you will meet with me and we will go over your wants and concerns with your estate. We will work with you and, of course, draft all of the documentation to implement your estate plan. We do also have specially trained paralegals in our law firm, who do specific jobs such as asset collection and funding and things of that nature, as well as the notarization of the appropriate documents. You will meet them as your estate plan takes shape.

67. What is the trust name?

Your trust name will likely be "(your name) as trustee of the (your last name) living trust dated (date), and any amendments thereto." An example would be "Bill and Mary Smith as co-trustees of the Smith Living Trust dated January 1, 1999, and any amendments thereto."

68. Does your law firm do wills?

At our firm our main goal is to educate clients about their options in estate planning. We then give our clients our judgment as to what is best for them. If it is appropriate a will may be prepared.

69. Does your law firm do probates?

Whatever your estate planning needs, from start to finish, we are here to help. We handle trust administrations and probates. It is often in these circumstances, when a family comes to us distraught over the loss of a loved one, that they find our probate

services so very important. We can help them through the difficult and often time-consuming process of probate.

70. What happens to my trust if you or your firm is gone?

The benefit of working with our firm is that we have several attorneys who do estate planning. Therefore, in the unlikely event that the firm is not around, I am sure that we will have joined with another firm in order to carry on the business and to be able to serve our clients. If there are changes in the firm, we will in all likelihood contact you to let you know about them and how to contact us in the future.

71. What is a "C Trust" or "QTIP Trust"?

A "C Trust" or "QTIP Trust" (QTIP stands for Qualified Terminable Interest Property) is a control trust. This is where one spouse owns more than $1,000,000 worth of assets and wants to control that additional amount of money after he or she passes away, yet also defer the tax on the amount above $3,500,000. By putting the amount above $3,500,000 into a QTIP trust, estate taxes are deferred until the surviving spouse passes away. An important issue, often overlooked, is who pays the estate tax on the QTIP assets (the surviving spouse). A QTIP trust is also used in connection with maximizing what is called the generation-skipping transfer tax exclusion amount.

72. What is the generation-skipping tax?

This is a tax levied on assets that are given to individuals who are more than one generation away from the donor. An example would be a grandparent giving an asset to a grandchild either during the grandparent's life or at death. Each donor has a $3,500,000 exemption in the year 2009 from the generation-skipping transfer tax.

73. What is the Uniform Transfers to Minors Act?

This is a law that establishes a custodianship for holding the property of a minor. Property is given to the custodian who manages it and uses it for the benefit of the minor.

74. What is a QDOT trust?

A QDOT trust (QDOT stands for Qualified Domestic Trust) is a special trust set up when a non-citizen spouse is the surviving spouse. The tax law generally does not allow an individual to obtain the marital deduction when leaving assets to a non-citizen spouse. The marital deduction is obtained if the property is held in a QDOT trust.

75. What is a Charitable Remainder Trust?

A Charitable Remainder Trust permits a donor to defer the income tax consequences on the sale of a capital gain property and make a charitable gift. The

donor transfers property to the trust, retaining the right to receive a stream of annual payments for a term chosen by the donor. At the donor's death the remaining assets go to the charity. Two common types are Charitable Remainder Annuity Trusts and Charitable Remainder Unitrusts.

76. What is a Family Limited Partnership?

A Family Limited Partnership is a partnership made up of family members and is used in many cases to facilitate asset management, tax planning and gifting. Generally, the parents are the general partners, controlling the partnership and making all decisions. The limited partners are often children or grandchildren who receive gifts of partnership interests. This is a very popular and effective estate planning tool.

77. What is a Crummey power?

A Crummey power is a special power regarding gifts in trust. It was named for a court case some years ago. In order for a gift in trust to qualify for the annual gift tax exclusion, the individual recipient must have a right to withdraw the money for some certain period of time. The right to take the gift from the trust during the period of time indicated is known as the Crummey power.

78. What is an ILIT?

ILIT stands for Irrevocable Life Insurance Trust. This is an estate planning technique, often used to ensure that life insurance proceeds will not be subject to federal estate tax. It can be used effectively to reduce the size of the taxable estate and to provide a source of tax-free funds that may be used to pay any death taxes due at the death of the insured.

79. What is a Grantor Retained Annuity Trust or GRAT?

This is a trust into which an individual transfers property and retains the right to receive annual payments from the trust for a term of years. This is a tax planning technique to reduce the size of an estate and the amount of the resulting estate tax.

80. What is a Qualified Personal Residence Trust?

This is an irrevocable trust into which a personal residence is transferred. The individual or couple who created the trust retains the right to use the property for the term of the trust. This is a tax planning technique to remove the asset from the estate of the individual making the trust. If the grantor survives the term of the trust, then the asset is not part of the estate.