

## OVERVIEW OF ESTATE PLANNING (330-1)

### Obj 1-1. THE THREE PURPOSES OF AN ESTATE PLAN:

1. Accumulation--to protect and increase assets,
2. Conservation--to provide financial security during retirement, *and*
3. Distribution--to give clear instructions on the distribution of assets at death.

THE MAIN OBJECTIVE OF ESTATE PLANNING is to create a plan that improves and preserves the financial security of clients and their families, consistent with the client's goals.

The best plan meets the client's wants and needs. Minimizing taxes is important *only* to the extent that it increases the funds available to accomplish the client's goals.

### The four types of transfer taxes:

1. Gift tax--is a tax imposed on the right to transfer property.  
*[Federal gift taxation will be discussed in Chapter 7.]*
2. Estate tax--is a tax on the right to transfer property at death.  
*[Federal estate taxation will be discussed in Chapters 12 and 13.]*
3. Generation-skipping transfer tax (GSTT)--discourages large transfers of wealth to remote family members by taxing those transfers at the highest current federal estate tax rate.  
*[The GSTT will be discussed in Chapter 21.]*
4. Qualified domestic trust (QDOT) tax--is imposed when a decedent uses a QDOT to transfer assets to a surviving resident-alien spouse.  
*[The use of QDOTs is beyond the scope of this course, but their role in estate planning will be discussed in Chapter 15.]*

Obj 1-2. THE HISTORY OF ESTATE PLANNING dates back to the Fourth Egyptian Dynasty (2900-2750 BC). The Code of Hammurabi (1750 BC) provided for intestate (without a valid will) succession. Early Greeks and Romans allowed individuals to disinherit children by will. The Roman System evolved to impose forced heirship so dependents would not become a burden to the state. The Roman System and the Napoleonic code form the basis of the civil-law system that still prevails in Louisiana. Early English common law stated that all land belonged to the king, who then granted various partial interests in it, but never full (fee simple) ownership. The Statute of Wills (1540 AD) gave testamentary right of property distribution and became the basis for American estate law (except in Louisiana).

### TWO EVENTS OF MAJOR IMPACT ON ESTATE PLANNING were the passage of

1. state inheritance tax laws beginning in the late 1800s *and*
2. federal laws taxing gratuitous transfers of property (property passing at death (1915) and gifts during life (1932)).

### Obj 1-3. NINE BARRIERS TO A WELL-PLANNED ESTATE:

1. Failure to plan at all--Intestacy statutes are based on spousal relationships and consanguinity (blood relationship).  
Intestacy statutes ignore the deceased's possible wish to leave property to a non-relative or charity. If there are no relatives, the property is taken by the state by escheat (the state's right to property when a person without relatives dies intestate).  
**A will displaces intestate succession statutes *except*, in *some* cases, where minor children and spouses are willed less than some minimum portion of the estate.**
2. Failure to update--Births, illnesses, disabilities, deaths, changed relationships, and changed tax laws could affect an existing plan.  
A legally competent person can amend his will at any time by completely rewriting the will or by using a codicil (written amendment).

3. **Overlooked provisions**--Estate plans sometimes overlook **guardianships** (of minors *and* disabled persons), simultaneous death, **tax apportionment** (taxes must be paid either by the estate or by heirs), **residuary estate** (what's left after debts and bequests), **contingent beneficiaries** (if the primary beneficiary dies, becomes incapacitated, or refuses the inheritance), and inflation resulting in **tax bracket creep** (increased taxes resulting from higher asset valuations).
4. **Improper tax planning**--Use of the **unlimited marital deduction** (allows entire estate to pass free of federal estate and gift taxes to the surviving spouse) on the estate tax return of the first spouse to die could so increase the tax on the estate of the second spouse to die such that the combined tax on both estates would be greater than if the unlimited deduction had not been used.
5. **Improper ownership of assets**--Life insurance and jointly-owned property with **right of survivorship** (property passing by operation of law, not by provisions of will) could increase the tax liability of an estate (life insurance), deny assets to the estate to meet its tax liability, or subject the co-owner to higher estate taxes (jointly-owned property with right of survivorship).
6. **Failure to plan for disability or illness**--Lack of disability income and medical expense insurance can drain the estate of its assets.
7. **Failure to allow for inflation**--Asset valuations, projected income needs, tax liabilities, and amounts of life insurance in constant dollars must be adjusted regularly for inflation.
8. **Lack of liquidity**--The ability to pay debts and taxes of the estate depends on the types of assets in the estate (on their liquidity--ability to be sold in a short time period within a small price range). A closely-held business may have to be sold quickly at a reduced price to pay taxes, medical bills, or spousal living expenses.  
**Four factors determine an estate's liquidity needs:** the amount and types of debt owed by the decedent; the estimated estate tax liability; the type of assets in the estate; *and* the short-term needs of spouses and dependents.
9. **Psychological barriers**--Denial of death and anxiety over the enormity of the task cause many people to delay effective estate planning.

*[Everyone has an estate plan, since all states have intestacy succession statutes.]*

Obj 1-4. **THE FIVE STEPS IN THE ESTATE PLANNING PROCESS:**

1. **Gather facts**--Obtain all information on property ownership (both assets and liabilities), expected gifts, potential inheritances, relatives, friends, divorce, and other issues important to the individual *and spouse*.
2. **Review the existing plan**--Review the current will, trust, and other legal documents.
3. **Interview the client face-to-face**--to establish rapport, gain confidence, and explain options. Use a **fact-finder** (a form for methodically gathering data--The American College publishes an excellent fact-finder.) during the client interview to avoid omitting critical information.
4. **Design and implement the plan**--Inform the client of problem areas and possible solutions. Prepare the documents and present them to the client for approval. *[Note: Only an attorney can draft legal documents, such as wills, trusts, buy-sell agreements, etc. See Objectives 1-5 and 1-6.]*  
**Execute** (sign, date, and witness) the documents. Transfer property as indicated by the plan.
5. **Review the plan**--Ensure that changed circumstances are appropriately addressed both at fixed intervals *and* when circumstances clearly change (death, divorce, birth).

Obj 1-5. **THE ESTATE PLANNING TEAM** includes all the professionals who work together to provide a comprehensive plan that meets the client's wants and needs.

Each estate planning professional offers specific skills essential to creating a well-planned estate.

1. **The financial planner**--can be independent or affiliated with an investment, insurance, or other company. The financial planner offers a wide range of financial services and products, either on a commission or a fee basis.
2. **The accountant**--offers tax preparation, tax planning, and asset valuation services. The accountant is the professional most likely to have annual contact with the client.

3. **The insurance specialist**--offers insurance to meet the cash needs of the estate and the survivors.
4. **The trust officer**--usually works for a bank.  
As executor or trustee of the estate, the trust officer is responsible for settling the estate, investing estate assets during the administration period, and making necessary distributions to the estate or trust beneficiaries. (An executor or trustee does *not* have to be a bank trust officer.  
*Any* responsible adult can be designated by the client to act in those capacities.)
5. **The attorney**--drafts the necessary documents (wills, trusts, buy-sell agreements, etc.) and assures the client's intentions will be realized through legally enforceable documents.

Obj 1-6. **THE UNAUTHORIZED PRACTICE OF LAW** can easily become a problem for the non-attorney members of the estate-planning team.

This issue is complicated because each state defines what constitutes the practice of law within its borders differently.

**There is usually *no* problem *if*** the advice deals with broad principles of a proposal or technique (especially within the estate planning team member's area of expertise such as taxes done by a CPA) or if the advice is on a settled area of law that is a matter of common knowledge in the estate planning field.

Drafting legal documents is *always* considered the practice of law.