ESTATE PLANNING AND TAX PLANNING TECHNIQUES

Following is a summary of the estate planning and financial planning process, and a discussion of some tax planning techniques. Obviously, the process will vary from individual to individual according to particular needs.

Estate Planning

1. Will. Everyone should have a Will. Your Will generally covers the disposition of your property at death by making specific gifts of cash or property, directing the division and distribution of the remainder of your estate, designating the person who is to carry out your wishes (the Executor), and setting forth trust provisions if a trust will be established (i) to hold property for a child (or grandchild) or (ii) to protect property from a beneficiary's creditors, divorce, incompetency, and other similar events. A Will is also used to name a guardian for minor children.

This is the most basic part of the estate planning process, and it is generally necessary to review the following information:

(a) your assets (for example, a financial statement);

(b) your family situation (including names and ages of children, whether a parent or other individual is supported, and the like); and

(c) the nature of your property - whether it is separate or community property, and the type of property, whether it is real estate, securities, property held in joint tenancy with right of survivorship, life insurance, pension benefits, etc.

After you have met with an attorney and reviewed this information, you generally outline a plan for dividing and distributing all of your property, and decide whether trusts will be established for certain individuals.

2. Living Trust. The majority of the terms of your estate plan could be contained in a Living Trust, which would work in conjunction with your Will. There are several advantages to establishing your estate plan in the form of a Will and a Living Trust. Use of a Living Trust should protect against the establishment of a court-supervised guardianship for you. Generally speaking, if you become incapacitated, your spouse may continue to manage your assets. However, if your spouse also becomes incapacitated, it may be necessary to have a guardian appointed to manage your assets. Instead, if you establish a Living Trust, then the assets held in the Trust will be managed by the successor Trustee, and it will not be necessary for a guardianship to be established to manage those assets.

Also, if all of the provisions for distribution of your estate are in your Will, they will become a matter of public record when your Will is probated. If these provisions are included in a Trust, the disposition of your estate will remain private. Further, any assets you transfer to the Trust during your lifetimes would not become part of your probate estate and will not become a matter of public record.

A Living Trust is typically executed at the same time that the Will is executed, and once established, you can go ahead and transfer assets to it during your life in order to assist you in managing and investing your property. In particular, if you own (or buy) any real property outside Texas, I typically suggest that your Trust take title to the property to avoid probate in the state where the property is located.

3. Taxes. Under current law, you are entitled to give away $1,500,000 at death without any federal estate tax (this amount will increase to $2,000,000 in 2006 and $3,500,000 in 2009); every individual is entitled to give away $1,000,000 during life without any federal gift tax, and such lifetime gifts also reduce the estate tax exemption. Texas, and most states, have inheritance taxes which are imposed only if there is a federal estate tax. Thus, a married couple who live in Texas and whose property is located in Texas will generally not be concerned about death taxes unless their combined estates exceed $1,500,000. However, in order to take full advantage of both $1,500,000 exemptions, it is imperative that the Wills be prepared in proper form.

Also, you may leave any amount of property to your surviving spouse without imposition of taxes, whether the estate is $100,000 or $10,000,000. However, when your surviving spouse dies, the surviving spouse's entire estate, less his or her $1,500,000 exemption, will be subject to tax. This permits a deferral of death taxes until both spouses die. Again, to take advantage of this tax deferral (known as the unlimited marital deduction), it is necessary that the Wills be prepared in proper form.

Property which is inherited is not generally subject to income tax. There are some exceptions for items which would have been taxable income to you if you had received them during your lifetime (such as pension benefits, deferred compensation, last paycheck, and certain installment obligations). Except for these items which are subject to income tax, all of your property receives a new income tax basis on death. Thus, if you own stock which has a basis of $10 and a fair market value of $100, on your death, your beneficiaries will receive the stock with a $100 basis. We have a particular advantage in Texas, because Texas is a community property state, and the tax laws provide a new income tax basis not only for your one-half community property, but also for your surviving spouse's one-half of community property. However, if your surviving spouse has any separate property, that property does not receive a new basis until that spouse dies.

4. Insurance. An important part of the estate planning process is a review of all types of insurance, including life insurance, disability insurance, personal liability insurance, and health insurance. Generally, this will focus on life insurance and disability insurance. It is important not only to plan for death, but also for the possibility that you will become disabled and will no longer have the same level of income.

Life insurance is generally carried for one of two reasons - to build an estate in order to provide for a surviving spouse and/or children, or to provide liquidity in the event the estate includes valuable assets which are illiquid, such as real estate or a closely held business. Once a possible need for additional insurance has been identified, it is generally advisable to consult with an insurance specialist to determine the best product to satisfy that need. In the event additional life insurance is to be obtained, it may be advisable to establish a separate life insurance trust to hold title to the policies in order to reduce estate taxes.

It is important to review all types of insurance, both insurance provided by an employer, and also insurance which is individually owned. It is also important to consider when insurance provided by an employer will be lost, such as retirement, disability, termination of employment, or change of control of the corporation.

5. Health Care. Another important aspect of estate planning is planning for future health care needs. Many individuals wish to sign a Living Will (or Directive to Physicians). This document includes a statement that the person signing it does not wish to be kept alive by artificial means. Also, you may execute a Power of Attorney for Health Care to name the individual or individuals who will be authorized to make health care decisions if you are incapacitated or unconscious. Finally, you may execute a Statutory Durable Power of Attorney which will allow you to name the individual or individuals who will be able to manage your property and make financial decisions for you if you are incapacitated or unconscious.

6. Retirement Planning. It is not only important to plan for division and distribution of property upon death, but also to plan for your family's needs upon earlier disability or retirement. This involves a review of the estate, income (both with and without salary and other compensation), and retirement plans. It is important to review all retirement benefits promised by an employer, including benefits under qualified pension and profit sharing plans and benefits promised under non-qualified deferred compensation arrangements. It is important to keep in mind that non-qualified deferred compensation arrangements can be changed, and benefits may be forfeited. Beneficiary designations under all of these plans and the circumstances under which the benefits would be paid should be reviewed. By reviewing your assets and all benefit plans and disability programs, it is possible to prepare a cash-flow spread sheet showing what you and your family can expect over a period of time.

7. Financial Planning. After going through the above analysis, it may be apparent that your estate is either insufficient to provide for expected needs (such as education of children, retirement, disability, etc.) or that your estate should be diversified to provide additional safety. This involves qualified financial planners and investment advisors. Part of this process may involve imposing greater discipline to save and invest in order to build an estate. Or, it may merely involve a redeployment of assets to increase income or to increase growth. Generally, attorneys are not qualified to implement this part of the process, but attorneys may provide referrals.

Tax Planning

1. Taxable Gifts. One of the most effective methods of transferring wealth to children and grandchildren at the lowest transfer tax cost is to make lifetime gifts. Annual gifts of $11,000 ($22,000 for a married couple) can be made without any gift or estate tax consequences; this $11,000 amount is indexed to inflation and will increase in future years in increments of $1,000. In addition, you may maximize the use of your estate and gift tax exemption by making lifetime gifts. If you make gifts of limited partnership interests, stock in a closely held business, or other types of discounted assets, your annual exclusions and lifetime $1,000,000 exemption can be effectively used to transfer significant property to children. In addition, trusts for children can provide for continuation after the children die, so that the assets in the trusts will be available to your grandchildren without reduction for estate or gift taxes; to do this, you will be required to apply a portion of your $1,500,000 generation-skipping transfer tax exemption to the gifts at the time the property is transferred.

If you decide to make gifts in excess of your $1,000,000 gift tax exemption now, a gift tax will be payable. The gift tax rates are as follows for gifts in excess of your $1,000,000 exemption:

$1,000,000 to $1,250,000 -	41%
$1,250,000 to $1,500,000 -	43%
$1,500,000 to $2,000,000 -	45%
over $2,000,000	47%*

* In 2006, the maximum rate will be 46%, then 45% in 2007 and future years.

There are two primary advantages to making taxable gifts: (1) all future appreciation and income from the property will be received by children, and will not continue to increase your estate (to be later taxed at rates up to 47%*); and (2) the effective tax rate on gifts is significantly lower than the effective tax rate on an estate at the time of death. A large taxable gift is a simple transaction, which is another advantage when compared to some of the other techniques for reducing or minimizing estate and gift tax.

The disadvantages are: (1) you lose control over the property you have given away (except to the extent you and your spouse retain control through a partnership or other entity); (2) you will pay gift tax on April 15 after the year in which the gift is made, while estate tax would not be payable until 9 months after both you and your spouse die; and (3) if you give away property which has an income tax basis lower than its fair market value, your children will receive the property with the same income tax basis (increased by a portion of the gift tax paid), so that they may be subjected to capital gains tax upon sale.

The best property to give away is high-basis appreciating property. If you make a gift of property with an income tax basis which is lower than its fair market value, the basis in the hands of your children would be your basis plus a portion of the gift tax paid on the gift; the basis is increased by the portion of the gift tax attributable to the "appreciation" in the property (the difference between its basis and fair market value). For example, if you made a gift of property with a fair market value of $1,000,000 which had a basis of $200,000, and you paid $450,000 of gift tax, the children would receive the property with a basis of $200,000 plus $360,000 ($450,000 x 80%), so that they would still have a built-in capital gain.

The reason the effective tax rate on gifts is lower than the effective tax rate on an estate is the manner in which the two taxes are calculated. The tax on a gift is calculated on the amount actually received by the donee, while estate tax is calculated on the total amount of the estate (not on the amount that is ultimately distributed to beneficiaries). For example, if your estate is in the 47% marginal bracket, you could make a gift of $1,360,500 to your children and pay a gift tax of $639,435 (47% of the amount actually given to your children). However, if you held the $2,000,000 until your death, the 47% tax would apply to the entire $2,000,000, resulting in $940,000 of tax and distribution of only $1,060,000 to your children. It is important to note, however, that this advantage is obtained only if you live for at least 3 years after the gift; if you die within 3 years, gift taxes paid are added back to the estate which has a result of taxing the gift at the same rate as if the property had been held until death.

Obviously, if you pay the gift tax, your family will lose the use of the cash paid to the government much sooner than if you were to retain the property and pay tax only after both you and your spouse die. Nevertheless, an analysis of substantial gifts to children during life versus

retention of the property to death shows that a greater amount will be available to beneficiaries after your death if you make substantial gifts during your lifetime, even though you do pay an immediate gift tax. The advantage to beneficiaries increases dramatically with the increase in the rate of appreciation in the property after the date of gift. A current gift of $2,000,000 to your children could ultimately result in their receiving between $500,000 and $1,000,000 more than if retained in your estate, even if the yield on the gifted funds is approximately equal to the yield on property you retain in your estate.

2. Family Limited Partnership. A family limited partnership may be used as a means of reducing the value of some of the assets in your estate. In general terms, you would transfer property to a partnership, as a separate entity, then make gifts of partnership interests several months later, so that at your death you only own an interest in a partnership, rather than holding title to the assets. In some cases, this can generate significant discounts. In particular, a partnership works well for real estate, oil and gas, and other business-type assets.

If implemented properly, use of a limited partnership may have significant benefits at the time of your death. It may be possible to apply additional discounts to the value of the assets held in the partnership. For example, if the initial assets of the partnership have a fair market value of $3,000,000 at the time of your death and you have retained a 20% interest (1% general and 19% limited) your estate's interest in the partnership may have a value not of $600,000, but rather of $350,000 or $400,000. As you can see, if successful, this technique can be very beneficial. However, it is also possible that Congress will amend the Code to further restrict the use of these types of partnerships. In that event, the maximum benefit may be obtained by making gifts of partnership interests now. Thus, to maximize the benefit of the partnership, it is usually advisable to make gifts of limited partnership interests fairly soon after establishing the entity.

3. Qualified Personal Residence Trust. Another useful technique is known as a qualified personal residence trust or "QPRT." This technique involves the transfer of your primary residence or a second residence, or both, to a trust which will continue for a term of years, and then will terminate and be distributed to your children (it does not work for grandchildren because of the generation-skipping tax). While the trust is in existence, you and your spouse would continue to have the right to live in the property and to use it as you wish. However, at the termination of the trust, the property itself is distributed to your children. These types of trusts can be established with the intention that you would rent the property from the trust after it terminates. In addition, while the trust holds the house, you should continue to be eligible for such benefits as deduction of property taxes, deduction of interest on mortgages, roll-over of primary residence under Section 1034, and special rules for capital gains on the sale of a primary residence.

The amount of the gift for estate and gift tax purposes is based on IRS tables, and will depend on the length of the trust and your life expectancy. For example, with respect to a home worth $700,000, a QPRT established by a 50 year old person for a 15 year term at current interest rates would result in a taxable gift of less than $200,000. As interest rates rise, the amount of the gift declines. Also, the value of the gift declines with your age and with the increase in the length of the trust. If the trust runs for 10 years, instead of 15, the amount of the gift would be significantly higher.

If you die during the term of the trust, the house comes back into your estate for estate tax purposes, so that nothing has been accomplished except to reduce your estate by attorney's and accountant's fees for establishing and maintaining the arrangement. Also, if the house is

community property, it is advisable for you and your spouse to each set up a separate QPRT for your community interest in the house. You or your spouse (or a child, friend, or other person or bank) can be Trustee of one of these trusts.

4. Short-Term Grantor Retained Annuity Trust. A short-term grantor retained annuity trust ("GRAT") can be used to transfer income/appreciation in your investments to your children at a low gift tax cost. A short-term GRAT has the following characteristics: (1) the trust would have a stated term of two to four years; (2) while the trust is in existence, the trust would have an obligation to pay you a specified annual amount (the "retained annuity"); (3) when the trust terminates, any property remaining in the trust would be distributed to your children free of any gift or estate tax; and (4) if you die before the trust terminates, the trust would not result in any benefit to your estate, because the remaining property in the trust would be included in your estate for estate tax purposes.

The purpose of this type of trust is to allow your children to receive, on a virtually tax-free basis, the investment returns on property in excess of a stated Internal Revenue Service interest rate. In recent years, that interest rate has fluctuated between 4% and 7%. Thus, if the funds in the trust generate a total return in excess of the IRS rate, your children would receive that excess return. On the other hand, if the property does not generate a return of at least the stated IRS rate over the course of the trust, then all of the trust assets will ultimately be repaid to you, and your children would receive nothing from the trust, but they would not have suffered any loss either.

If you made a gift of the property to your children and the property declined in value, then you would have paid gift tax on the property at a value higher than is ultimately received by your children. The same is true if you were to loan money to your children and they either had losses or did not achieve a return equal to the minimum IRS rate (approximately 3-6% for short-term loans), because they would still owe you the principal amount of the debt. In this regard, the GRAT is essentially a risk-free technique.

For example, if you transfer $1,000,000 of assets to a two-year GRAT and your children invest those funds and receive an annual return of 12%, at the end of two years your children would receive a tax-free gift of approximately $110,000. You would transfer $1,000,000 of cash to the trust and the trust promises to pay you approximately $540,000 at the end of the first year, and an additional $540,000 at the end of the second year. These annual payments constitute your "retained annuity;" by paying you this amount, there is a very small taxable gift at the time the trust is established. If the trust promised to pay you a smaller amount, then there would be a significant gift at the time the trust is established. If the trust earns 12% in the first year, the net value of the trust at the end of the first year would be $1,120,000. At that time, the trust pays you $540,000 in cash or other property. The trust then invests the remaining $580,000 for another twelve month period and earns a 12% return equal to $69,600. At the end of the second year, the trust has $649,600, and it owes you the second annuity payment of $540,000. Thus, at the end of the second year, the trust has a net amount of almost $110,000, which is paid to your children.

The reason to keep the term of the trust short is to avoid offsetting gains in early years against losses in later years. For example, if a trust had a six year term and experienced 12% gains in the first two years, then had a loss in years three and four, then had significant gains again in years five and six, the bad years would offset the good years, reducing the amount ultimately payable to your children. However, if you established a two-year trust and then established a new two-year trust each time a distribution is made, you would better capture the

gains in the good years, and, as noted above, if the trust experiences a loss (or does not earn at least the minimum Internal Revenue Code stated interest) your children do not have to make up the loss -- the trust merely transfers all of its assets back to you in full settlement. Having a short-term trust also minimizes the risk that you would die during the term of the trust, eliminating any benefit which might have previously accrued under that trust. On the other hand, if interest rates rise, then each new two-year trust will be required to make larger annuity payments, reducing the net returns to your children.

Because of the nature of a GRAT, it is generally advisable for either you or your spouse to establish a trust, or you could each establish a separate trust, but you should not establish one trust together with community property. Thus, it may be necessary for you to partition community property so that you can establish the trust with separate property. This is not a problem with cash, but it might have adverse consequences if you use property which has a low income tax basis. If you were to partition community property with a low income tax basis, you would then each hold that property as separate property, and if one of you dies, the other spouse's one-half of the property would not receive a new income tax basis on death (thereby forfeiting one of the advantages of community property).

5. Charitable Lead Trust. A "charitable lead trust" includes a charity as a beneficiary, but is the reverse of a charitable remainder trust. Briefly, under a charitable lead trust, you would make a gift of property to a trust which would provide for payment of a specified amount each year to one or more charitable institutions; at the end of a stated period of time (for example, 5, 10, or 15 years), the trust would terminate and the property remaining in the trust would be distributed to your children or to a trust for their benefit. You would not be entitled to any income tax deduction at the time the trust is established.

The charitable lead trust is not a grantor trust for income tax purposes, and it will be taxable on its income, including capital gains. However, when the annual amounts are paid to the charity(ies), you will receive an indirect benefit because the payments will be deductible by the trust. The trust can provide that the payments to charity are first made out of ordinary income, then out of capital gains, in order to minimize the income tax payable by the trust; this will be important because your children will receive the trust, including accumulated income, at the termination of the trust.

The real benefit to a charitable lead trust is your ability to transfer a significant amount of property to your children at a reduced gift tax cost. This would work particularly well for someone who has indicated an interest in continuing to make charitable gifts.

For example, if you were to make a gift of $1,000,000 to a charitable lead trust which provides for a payment of $70,000 each year to one or more specified charities, and the trust will terminate at the end of 15 years with remaining assets distributed to your children, the results would be as follows: (1) you would file a gift tax return showing that you have made a taxable gift of approximately $275,000, which results in a gift tax of $132,000 (if you have used up your $1,000,000 exemption and are in the 47% marginal estate tax bracket); (2) the charity or charities receive $70,000 a year for 15 years, for a total of $1,050,000; (3) the trust is taxed on any income or capital gains generated by the trust in excess of the amount paid to the charities; (4) any after-tax income or appreciation in the property in excess of the $70,000 payment will accumulate and remain in the trust, for ultimate distribution to your children. If the trust merely earns 7% per year for 15 years and the value of the trust assets at the end of that period of time is $1,000,000, your children would receive the $1,000,000 at the end of the 15-year term without any further gift

or estate tax consequences, but if the trust earns 10% per year, the additional 3% each year would accumulate and would ultimately be distributed to your children free of any further gift or estate tax. If you were to keep the $1,000,000 in your estate, it generated an annual return of 10%, and you made an annual gift of $70,000 to a charity, at the end of 15 years the charity would have received the same amount, but you may or may not have been able to fully utilize the income tax deduction from those gifts and the $1,000,000 would have grown to at least $1,500,000 which would cost $720,000 of gift tax to give to your children. In other words, you could put your children and a charity in approximately in same position by payment of $132,000 of gift tax now instead of $720,000 fifteen years from now.

There are some limitations to these trusts. Unlike a charitable remainder trust, appreciated assets transferred to the trust cannot be sold without capital gains tax. Since this is a taxable trust, if appreciated assets are sold and the gain and ordinary income of the trust during that year exceeds the amount distributable to the charity, the trust will be taxed. Also, the annual payment to charity cannot be made to a private foundation which you and/or your spouse control as officers or directors, and you cannot be the trustee of the charitable lead trust if the trustee has the power to change the charitable beneficiary. However, one or more of your children could act as trustee with the power to change beneficiaries, or a foundation controlled by your children could be the beneficiary of the charitable lead trust.

6. Charitable Remainder Trust. A Charitable Remainder Trust is exempt from income tax (including capital gains) and gifts to the Trust can generate charitable income tax deductions. If you transfer appreciated securities to the Trust, those securities could generally be sold without incurring capital gains tax. The Trust provides for a specified payment each year to the donor so long as he is alive. Payments you would receive from the Trust will have the same income tax character as the income generated by the Trust. Thus, if the Trust receives interest and taxable dividends, then the payments you receive would be taxed as ordinary income, at least to the extent of the taxable income generated by the Trust. If a portion of the Trust was invested in tax-free municipal bonds, then a portion of the annual payment to you received from the Trust could be tax-free if your annual payment exceeds the trust's ordinary income and capital gains. In addition, if the income of the Trust (both taxable and tax-free) is less than the payment to you in any particular year, then a portion of the payment you receive in that year would be principal.

Since a charity will ultimately receive some property from this Trust, you will be entitled to a charitable income tax deduction at the time the Trust is established. The amount of that deduction is based upon the value of the charity's presumed remainder interest in the Trust. Since you will have a lifetime interest in the Trust, the value of the charitable remainder will be directly related to the amount of the annual payments (the interest rate) and the length of the Trust. If the retained interest is 8% or higher, and the Trust will continue for more than 10 years, the charitable remainder (and therefore the income tax deduction) will have a relatively small value, perhaps 10% - 20% of the value of the property initially transferred to the Trust.

Lifetime Beneficiaries. As the name indicates, a charitable remainder trust provides for payment of the remaining trust assets to a charity after all of the individual beneficiaries have died. For example, if this Trust was just for you, then after you die, any assets remaining in the Trust would be paid to a specified charity or charities. The Trust could be designed so that it continues for your spouse, and then is distributed to charity.

Annual Distribution. A Remainder Trust can provide for payment of a "unitrust amount" equal to a specified percentage of the fair market value of the Trust, as determined each year. For

example, if the unitrust amount is 8% of the fair market value of the Trust assets, and the Trust is initially funded with $1,000,000, then the payment to the donor for the first year would be $80,000. If the Trust increases in value at a rate greater than 8% per year, then the Trust value will increase each year and your annual payment will also increase. Thus, if the Trust is worth $2,000,000 in year 10, you will be receiving annual payments of $160,000. By the same token, if the Trust decreases in value, your annual payment will decrease proportionately. A Remainder Trust can also be designed as a charitable remainder "annuity" trust, which provides for a specified payment each year, without regard to the annual fluctuations in value of the Trust. With an annuity trust, if the payment is to be 8% and the initial value of the Trust is $1,000,000, then the annual payment each year will remain at $80,000, regardless whether the Trust increases or decreases in value.

7. Defective Grantor Trust. If you make a gift to a trust for your children called a "defective grantor trust," the income earned by the trust may be taxed to you directly, so that you are paying the income tax out of your estate while the children receive the gross income. In effect, your children receive a tax-free gift of the amount of income taxes that would otherwise be payable on trust income. There is some concern that the Internal Revenue Service may assert that your payment of the tax is an additional gift. While there is no precedent to date for this position, the Service has been aggressive in recent years in attacking family transactions which they believe represent a transfer of wealth, such as interest-free loans and debt guarantees. On the other hand, if the Service were successful in attacking defective grantor trusts, the only consequence would be subjecting the amount of income taxes you have paid to additional gift tax.

8. Interest-Free Loans. The current minimum interest rate for short-term intra-family loans is approximately 2-3% (but these short-term rates have been over 6% in recent years). You can make short-term loans (up to 3 years) to your children at this interest rate without any gift tax consequences. You will be taxable on the interest you receive, and they will be entitled to deduct the interest paid, assuming it is either business interest or investment interest (and if investment interest, assuming they have sufficient offsetting investment income). However, if you were to make the loans on an interest-free basis, your children would ultimately receive a larger benefit from the loans because they are not paying the interest to you and you are treated as having made a gift of the amount of interest foregone which would subject you to a gift tax (further depleting your estate). The net effect of the children receiving the full benefit of the investment returns on the borrowed funds together with your payment of income tax (as if you had received the interest payments) and gift tax (on the foregone interest) ultimately results in your children receiving more from your estate than if you had continued with the traditional minimum interest debt. On the other hand, an outright gift of the funds, rather than a loan, would result in even greater benefit for the children. However, you may wish to make certain specific gifts and then loan funds on an as-needed basis to your children for particular investments and ventures, with the intention that they would pay back those loans. In that event, you might consider utilizing interest-free loans.

Interest-free loans can also be made to a defective grantor trust. If your children were not able to utilize the deductions from interest payable on a loan (whether interest-free or interest-paying), then loans could be made to a defective grantor trust, in which event the trust would not receive any deduction and you would not be required to recognize any income; however, if it is made on an interest-free basis, you would still have gift tax payable on the amount of foregone interest.

9. Bequest Of 401(k) Account To Family Foundation. If you designate a family foundation as the beneficiary of your qualified plan account after both you and your spouse die, the funds in that account could remain available for both of you while you are living, and your spouse could roll the account over to an IRA if you die first and avoid estate tax and income tax. Then, the remaining assets could be transferred to the Foundation free of estate tax and income tax. This would enable you to ensure that most of those funds can be managed and directed by your children, rather than being paid to the Federal government. The Foundation could receive 100% of the funds in your account; alternatively, if the account is distributed to your children after you both die, they would only receive a net amount of as little as 30% of the funds.

10. Gift In Will To Foundation. You could also make a substantial gift of other assets from your estate to a family foundation after both you and your spouse die, and replace some or all of those funds with a second-to-die insurance policy. The purpose of this type of transaction is to permit your children to control 100% of those assets through the Foundation, while "replacing" those assets at a somewhat reduced cost through the purchase of second-to-die insurance. The insurance would be held in an irrevocable life insurance trust. That trust could also be a generation-skipping trust which could continue for several generations without ever being subject to estate tax.

11. Parents' Estates. You might suggest that your parents' Wills be revised so that their estates would be held in a generation-skipping trust for your benefit and the benefit of your children, or their estates could completely skip you and go straight to your children in trust.

12. Other Ideas. You may also have heard about installment sales, self-canceling installment notes, and sales for private annuities. These techniques have one thing in common, they are used to transfer property from a parent to a child while the parent retains some right to future payments. The purpose of these techniques is to avoid a present gift, but let all future appreciation move to the younger generation. They are not as effective as outright gifts, and they are much more complicated. Also, they are most often used by people who have rapidly appreciating assets that they would like to move to the younger generation, but who need to receive payments from their children because they do not have other assets to support them.