



ANAHEIM
2009

The Annual Conference of the Financial Planning Community

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| TRACK: | TAX & ESTATE PLANNING |
| SESSION: 979047 | ESTATE PLANNING IN THE FINANCIAL PLANNING PROCESS |
| | MONDAY, OCTOBER 12, 2009 |
| | 10:00 AM - 11:45 AM |
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Rich Rojeck is the Managing Director of the Pacific Southwest Regional Planning Group of Sagemark Consulting. He joined the firm in 1980 after serving six years as a Naval Officer. Rich advises high net worth individuals in the areas of estate and business succession planning as well as investment management. He has been included in Worth magazine's listing of the 250 Best Financial advisors, 1999, 2002. Rich is a CFP® designee and holds a B.S. degree in Business Administration from Oregon State University and an MBA from San Diego State University. He is a member of the Financial Planning Association (FPA) and served on the board of the International Association for Financial Planning from 1993 to 1999, including as President and Chairman. Rich serves on the gift planning advisory board of the University of California, San Diego, the San Diego Foundation Professional Advisory Council and the Planned Giving Advisory Council for the Burnham Institute for Medical Research. Rich often serves as an expert resource to the media – in print as well as radio and television. He also speaks frequently to both industry and public groups. Rich is married, and resides with his wife and three children in Rancho Santa Fe, California.

**The Annual Conference of the
Financial Planning Association**

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**Estate Planning
In the
Financial Planning Process**

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Estate Planning
In the
Financial Planning Process

by
By Richard P. Rojeck, CFP®, MBA

I. Introduction

- A. The “six step process” is well known to those who practice financial planning.
- B. Armed with this process, financial planners are uniquely positioned to assist clients in developing an estate plan that is reflective of their values, supportive of their goals and integrated into their overall financial plan.
- C. In this workshop, we will discuss estate planning in the context of the “six step process” and, more specifically, address the following:
 - 1. Reconciling the often competing objectives of reducing taxes by asset transfer, maintaining financial security and fostering responsible and productive heirs.
 - 2. How to uncover and link client objectives with estate planning policy to avoid unintended outcomes of wealth transfer
 - 3. The role of financial modeling in establishing a basis for asset transfer
 - 4. A methodology for selecting amongst such popular techniques as partnerships, assets sales, trusts (including choice of situs), charitable giving and insurance.
 - 5. Techniques to help your clients teach their heirs to become excellent stewards of family wealth

II. Establishing and Defining the Client-Planner Relationship - Step 1

A. A Definition

- 1. Estate planning is the proper arrangement of ones affairs to insure that assets pass to whom and when they are wanted, while minimizing the potential costs and delays involved.

- B. Is estate planning to be included within the engagement? “The Six Don’ts”:
1. Don’t assume “the work has been done” (often expressed as “I already have an attorney”).
 2. Don’t assume it’s no longer relevant due to the increased applicable exclusion.
 3. Don’t forget that the greater the services, the closer and more enduring the relationship.
 4. Don’t discount the impact on your revenue (e.g., our model is to separate planning fee of 10 to 15 basis points of net worth from implementation which is 65% asset management and 35% risk management. This results in 40%-50% more revenue than a fee only/invest only practice).
 5. Don’t walk from clients with no/or little money to invest:
 - Business owners
 - Real estate developers
 - Executives with employer-sponsored retirement and stock purchase plans
 6. Don’t try to do it all yourself: use professional firm model – areas of specialty (or joint venture).

III. Gathering Client Data, Including Goals - Step 2

- A. Goals/objectives by and large, must be developed. Seldom does a client know what they want to do since they are ignorant of the problems and the solutions. We use a graphic to help them understand the issues and develop objectives.



B. Essentially, we're looking to understand:

1. Who are the players?
2. What do they have to play with?
3. What games do they want to play?

Estate / Business Planning Case Development Template

| | |
|--------|---|
| Step 1 | <p>“Who Are the Players?”</p> <ul style="list-style-type: none">• Family record (client(s), spouse(s), children, in-laws, grandchildren, etc.)• First/Second/Nth Marriage (divorce/death of previous spouse)• Relationship with child(ren) (from prior marriages, “black sheep”, etc.)• Family members in business (roles)• Health (clients/children - special needs, etc.) |
| Step 2 | <p>“What Do They Have to Play With?”</p> <ul style="list-style-type: none">• Asset listing• Asset titling• Asset category (cash, fixed income, domestic, international, etc.)• Asset assumptions (income/growth %, acquisitions/liquidations, etc.)• Life/Disability Insurance listing (insured, owner, beneficiary, face, premium, etc.) |
| Step 3 | <p>“What Games Do They Want to Play?”</p> <ul style="list-style-type: none">• Reasons for engagement• Questionnaire• Objectives |
| Step 4 | <p>If Business Owner</p> <ul style="list-style-type: none">• Questions about business (background, activities, outlook, valuation, personnel)• Income/Exit Strategies• Disposition at Death (“What happens if you die tomorrow?)• Retirement Plan• Group Insurance |

| | |
|--------|--|
| Step 5 | Financial Condition Model |
| Step 6 | <p>Document Debrief</p> <ul style="list-style-type: none"> • Wills/Trusts <ul style="list-style-type: none"> ▪ Income/Principal/Disposition ▪ Disclaimer/Generation Skipping Transfer Tax Language • Buy/Sell <ul style="list-style-type: none"> ▪ Parties, Type (e.g., 302, cross-purchase, wait & see, etc.) ▪ Purchase Price, Terms • Tax Returns <ul style="list-style-type: none"> ▪ 1040, 540, 1120, etc. ▪ Salary, charitable contributions, Sch C/E income, Net Operating Loss, etc. • Financial Statements <ul style="list-style-type: none"> ▪ Book Value, Earnings (business valuations) |
| Step 7 | <p>Estate Tax Reduction</p> <ul style="list-style-type: none"> • Calculate Estate Settlement Costs (ESC) • Determine discretionary income • Penalty in Not Repositioning / Gain in Repositioning • Repositioning Assets <ul style="list-style-type: none"> ▪ Annual Exclusion (\$13,000 (indexed for inflation) per donee per year) ▪ Exemption Equivalent (Currently \$1,000,000 per person) ▪ Taxable Gifts • Additional Strategies <ul style="list-style-type: none"> ▪ Valuation discounts (FLP, LLC) ▪ Term/Remainder Interests (QPRT, GRAT) ▪ Sale Strategies (SCIN, IDIT, Private Annuity) ▪ Charitable Strategies (CRT, CLT, Private Foundation) |
| Step 8 | <p>Estate Tax Payment</p> <ul style="list-style-type: none"> • Four Ways to Pay • Economics of Life Insurance • Life Insurance as Property (i.e., an “asset class”) • Life Insurance Policy Design |
| Step 9 | <p>List/Outline</p> <ul style="list-style-type: none"> • Objectives • Observations • Recommendations |

**C. Ask the right questions – see following sample Estate Planning Data
questionnaire**

Estate Considerations

| | | | |
|--|-------------------------------|--|-------------------------------------|
| Tell me about yourself... – Where did you grow up? – Where did you go to school? – How did you get into your business/profession? | | | |
| What have been life's key experiences and lessons for you? Which of those have you tried to impart to your children & grandchildren? | | | |
| What's important to you about having wealth? – Financial Independence? – To benefit family? – To benefit society? | | | |
| Share with me your vision of your legacy. That is, share with me what you would like to leave your heirs and other beneficiaries – financially and philosophically. | | | |
| How would you like to distribute your assets (considering transfers during lifetime and at death)? – Family _____% – Charity _____% – Government _____% | | | |
| What Estate Planning Documents do you & your spouse currently have in place? | | | |
| | Client | Client #2 | When was it last reviewed? |
| Last Will & Testament | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| AB Credit Shelter Trust | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| Durable Power of Attorney | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| Healthcare Power of Attorney | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| Living Will | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| Life Insurance Trust | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| Other | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| How important is it to you to leave an inheritance for your heirs? | | | |
| Children | <input type="checkbox"/> Very | <input type="checkbox"/> Somewhat | <input type="checkbox"/> Not at All |
| Grandchildren | <input type="checkbox"/> Very | <input type="checkbox"/> Somewhat | <input type="checkbox"/> Not at All |
| Others | <input type="checkbox"/> Very | <input type="checkbox"/> Somewhat | <input type="checkbox"/> Not at All |
| | | | How much _____% or \$ _____ |
| | | | How much _____% or \$ _____ |
| | | | How much _____% or \$ _____ |
| Are you concerned about reducing estate taxes? <input type="checkbox"/> Yes <input type="checkbox"/> No | | | |
| Where will the money come from to pay for income and estate taxes? Do you know what your estate taxes and related costs would be if both you and your spouse passed away now? \$ _____ | | What have you done to provide for the payment of these expenses? | |
| Prioritize the importance of these goals and objectives: | | | |
| What have you done so far to achieve these objectives? | | | |
| How concerned are you about your children's ability to manage wealth? | | | |
| What is your opinion regarding whether to discuss family financial resources including an estate plan and potential inheritance with children or other heirs? | | | |

What are you doing on a proactive basis to ensure that your children will be excellent stewards of your wealth?

Gifts

In order to achieve the objectives for your family/children/grandchildren, how would you feel about giving some of your assets for meeting that objective?

Have you made gifts in the past? Yes No

If so, how much and when? \$ _____

Was the gift tax return filed?
 Yes No

By whom?

When?

Do you make charitable contributions?
 Yes No

Do you plan to continue charitable donations? (*death/life*)
 Yes No

If you could shift tax dollars to charitable dollars would you be interested in exploring other options such as foundations or charitable trust?
 Yes No

Favorite Charities

- 1.
- 2.
- 3.

Have you ever considered using life insurance for charitable gifting?

Yes No

D. If a couple, be alert to differing objectives and the need to reconcile

E. How much wealth is “enough?”

1. We use both Monte Carlo and cash flow approach

2. Example if based on simple “spend down” approach at 4%

| <i>Desired Annual Income</i> | <i>= Capital Needed*</i> | <i>+ Personal Use Assets**</i> | <i>= “Enough”</i> |
|------------------------------|--------------------------|--------------------------------|-------------------|
| \$100,000 | \$2,500,000 | \$500,000 | \$3,000,000 |
| \$250,000 | \$6,000,000 | \$1,200,000 | \$7,500,000 |
| \$500,000 | \$12,000,000 | \$2,400,000 | \$15,000,000 |
| \$1,000,000 | \$25,000,000 | \$5,000,000 | \$30,000,000 |

*Based upon a “safe” spend down of approximately 4%

**Estimated at 20% of capital needed

IV. Analyzing and Evaluating - Step 3

A. Debrief current documents and evaluate current plan of distribution

1. Issues generally revolve around the following:

- probate – unnecessary costs, delays and publicity
- loss of control
- no creditor protection
- lack of professional management
- outright (including early) distribution to heirs
- don't reflect dispositive intent (who is to get what)
- no health care directive – Terry Shiavo
- unnecessary estate taxes (at each generation)

2. See sample Trust Debrief documents – a key tool for identifying issues and developing objectives!

B. Financial Condition Model helps to evaluate and communicate – see sample

C. Stewardship issues – “What are you doing on a pro-active basis to ensure that your children will be excellent stewards of your estate? (e.g., “I grew up in The Great Depression...the one my parents created for me!”)

V. Developing and Presenting Financial Planning Recommendations - Step 4

A. Format

1. Estate distribution
2. Estate tax reduction
3. Estate tax payment

B. The opportunity

1. Assets out of the transfer tax system
 - Tax savings
 - Creditor protection
 - Professional management

Financial Condition Model

Sample Plan
Current Situation

Aug, 2009

| Mr.'s/Mrs.'s Age Year Ending | 70/60 2009 | 71/61 2010 | 72/62 2011 | 73/63 2012 | 74/64 2013 |
|---------------------------------|---------------|---------------|---------------|---------------|---------------|
|---------------------------------|---------------|---------------|---------------|---------------|---------------|

Assets

| | | | | | |
|----------------------------------|----------|----------|----------|----------|----------|
| Discretionary Account | 0 | 0 | 0 | 0 | 0 |
| Cash and Equivalents | 0 | 0 | 0 | 0 | 0 |
| Investment Grade Bonds | 0 | 0 | 0 | 0 | 0 |
| High Yield / International Bonds | 0 | 0 | 0 | 0 | 0 |
| Large Cap Equity | 0 | 0 | 0 | 0 | 0 |
| Small / Mid Cap Equity | 0 | 0 | 0 | 0 | 0 |
| International Equity | 0 | 0 | 0 | 0 | 0 |
| Emerging Markets Equity | 0 | 0 | 0 | 0 | 0 |
| Other | 0 | 0 | 0 | 0 | 0 |
| Qualified Plan Assets | 0 | 0 | 0 | 0 | 0 |
| Net Investable Assets | 0 | 0 | 0 | 0 | 0 |
| Net Personal Use Assets | 0 | 0 | 0 | 0 | 0 |
| Net Business Use Assets | 0 | 0 | 0 | 0 | 0 |
| Net Assets | 0 | 0 | 0 | 0 | 0 |

Annual Income Sources

| | | | | | |
|-----------------------------|----------|----------|----------|----------|----------|
| Earned Income | 0 | 0 | 0 | 0 | 0 |
| Investment Income | 0 | 0 | 0 | 0 | 0 |
| Q Plan/IRA/Annuity Income | 0 | 0 | 0 | 0 | 0 |
| Pension Annuity Benefit | 0 | 0 | 0 | 0 | 0 |
| Social Security Benefit | 0 | 0 | 0 | 0 | 0 |
| Cash Flow Adjustments | 0 | 0 | 0 | 0 | 0 |
| Total Income Sources | 0 | 0 | 0 | 0 | 0 |

Annual Income Uses

| | | | | | |
|-----------------------------|----------|----------|----------|----------|----------|
| Income Taxes | (0) | (0) | (0) | (0) | (0) |
| Living Expenses | (0) | (0) | (0) | (0) | (0) |
| Gifts to Trust | 0 | 0 | 0 | 0 | 0 |
| Specific Objectives | 0 | 0 | 0 | 0 | 0 |
| Cash Flow Adjustments | 0 | 0 | 0 | 0 | 0 |
| Total Uses of Income | 0 | 0 | 0 | 0 | 0 |
| Discretionary Income | 0 | 0 | 0 | 0 | 0 |
| Total Net Worth | 0 | 0 | 0 | 0 | 0 |
| Trust Assets | 0 | 0 | 0 | 0 | 0 |

Estate Distribution

| | | | | | |
|-------------------------------|------------|------------|------------|------------|------------|
| Life Insurance in the Estate | 0 | 0 | 0 | 0 | 0 |
| Total Estate * | 0 | 0 | 0 | 0 | 0 |
| Estate Taxes | 0 | 0 | 0 | 0 | 0 |
| Administrative Expenses | (0) | (0) | (0) | (0) | (0) |
| SubTotal ESCs | (0) | (0) | (0) | (0) | (0) |
| Income Taxes | 0 | 0 | 0 | 0 | 0 |
| Total Taxes | 0 | 0 | 0 | 0 | 0 |
| Net Estate After Taxes | 0 | 0 | 0 | 0 | 0 |
| Trust Proceeds | 0 | 0 | 0 | 0 | 0 |
| Charitable Bequests | (0) | (0) | (0) | (0) | (0) |
| Net to Family | 0 | 0 | 0 | 0 | 0 |

2. The Folly of Outright Distribution

Assumption:

- \$7.0 million dollar gift/bequest
- 5% annual investment return
- 25 years between generations
- 50% estate tax rate

| | Tax Un-Protected | Tax Protected |
|-------------------------------|-------------------------|----------------------|
| Children | | |
| Year 1 | \$7,000,000 | \$7,000,000 |
| Year 25 | \$23,705,000 | \$23,705,000 |
| FET | \$11,852,000 | -0- |
| Grandchildren | | |
| Year 25 | \$11,852,000 | \$23,705,000 |
| Year 50 | \$40,136,000 | \$80,274,000 |
| FET | \$20,068,000 | -0- |
| Great Grandchildren | | |
| Year 50 | \$20,068,000 | \$80,274,000 |
| Year 75 | \$67,957,000 | \$271,835,000 |
| FET | \$33,979,000 | -0- |
| Results after 75 years | | |
| Total Tax Paid | \$65,899,000 | -0- |
| Net Distribution | \$33,979,000 | \$271,836,000 |
| P.V. @ 5% | \$875,010 | \$7,000,000 |

Note: Above analysis excludes additional benefit of creditor protection on tax-protected assets.

Tax-protected assets maintained in a trust sited in state without rule against perpetuities.

- C. “Pot” vs. individual trusts – The Foundation Analogy
- D. Perpetual vs. liquidating trusts – The Rule Against Perpetuities
- E. Unique opportunities now:
 - 1. History of AFR rates:

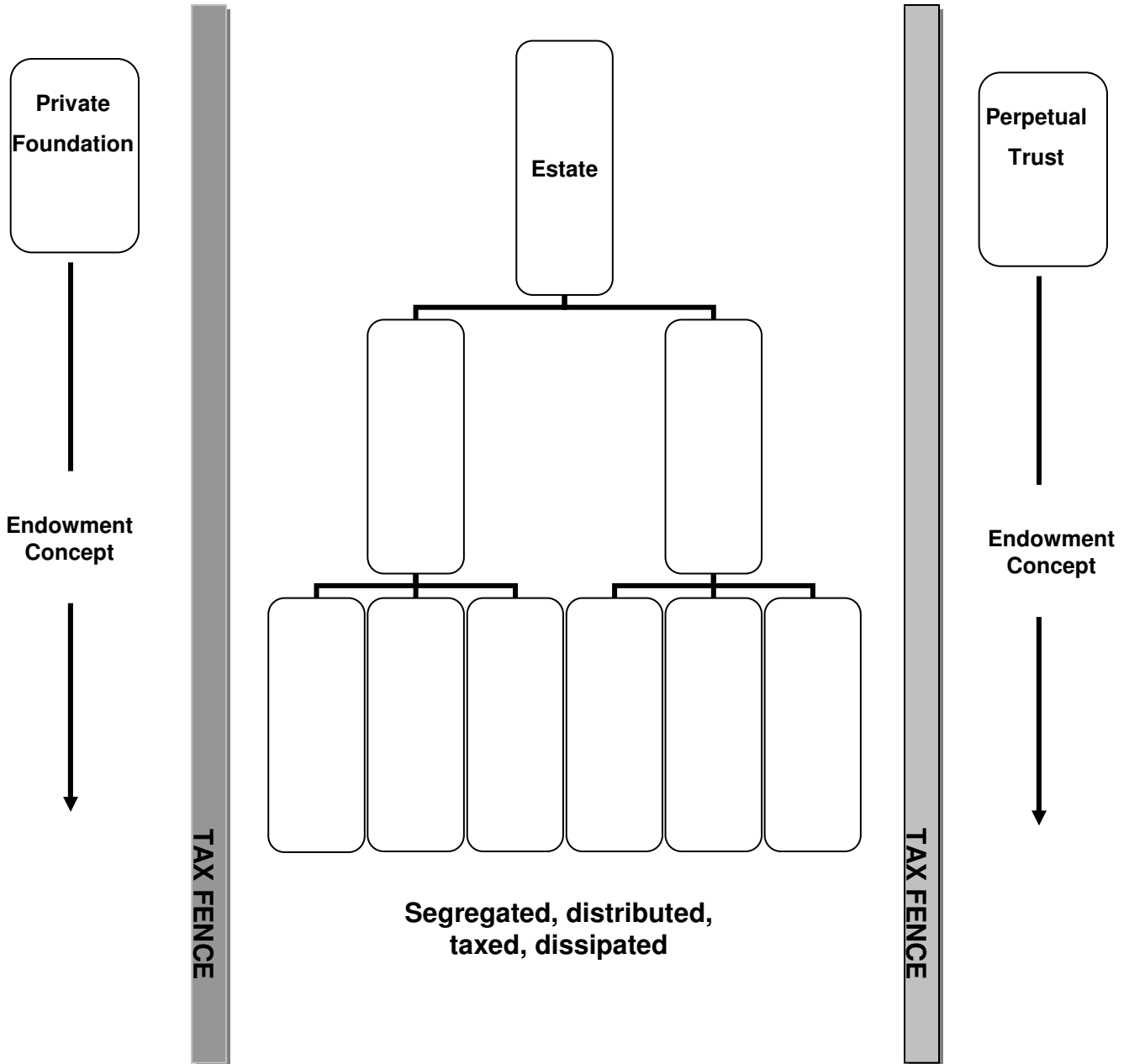
| | <i>September 2006</i> | <i>September 2009</i> |
|-----------------|---------------------------|---------------------------|
| “7520 rate” | 6% | 3.4% |
| Short-term rate | 5.13% | 0.84% |

- 2. Low property values
 - 3. Potential of elimination of valuation discounts
 - 4. Potential elimination of short-term GRAT’s
 - 5. Rising income tax rates – affect family asset sales (unless if to defective grantor trusts)
- F. Role of life insurance
 - 1. Four ways to pay
 - 2. Economics of life insurance
- G. Involvement of other advisors

VI. Long Term Wealth Preservation as a Question of Family Governance – Excerpt from “Family Wealth – Keeping It In the Family,” James E. Hughes Jr.

- A. The Question: Can a family successfully preserve its wealth for more than one hundred years or for at least four generations?
 - 1. Families attempting long-term wealth preservation often don’t understand that they *are* businesses and that the techniques of long-term succession planning practiced by all other businesses are available to them as well.
 - 2. If a family thinks it is in business to enhance the lives of its individual family members, it discovers the most powerful form of preservation thinking.
- B. The Problem: The history of long-term wealth preservation in families is epitomized by the proverb “Shirtsleeves to shirtsleeves in three generations.”

“Pot” vs. Individual Trusts – The Foundation Analogy



Four Ways to Pay Estate Taxes

Prepared for Mr. and Mrs. Sample

| | | | |
|-------------|----|------------------------|--------------|
| Client Age: | 70 | Adjusted Gross Estate: | \$75,000,000 |
| Spouse Age: | 60 | Estate Tax: | \$25,000,000 |

Methods of Payment

Cost Per Dollar of Estate Tax

Cash

| | | |
|---------------------|------------|--------|
| Assets Needed | 25,000,000 | |
| Total Transfer Cost | 25,000,000 | \$1.00 |

Sale of Assets (80% of Market Value)

| | | |
|--|------------|--------|
| Assets Needed - Forced Sale ^(a) | 31,250,000 | |
| Total Transfer Cost | 31,250,000 | \$1.25 |

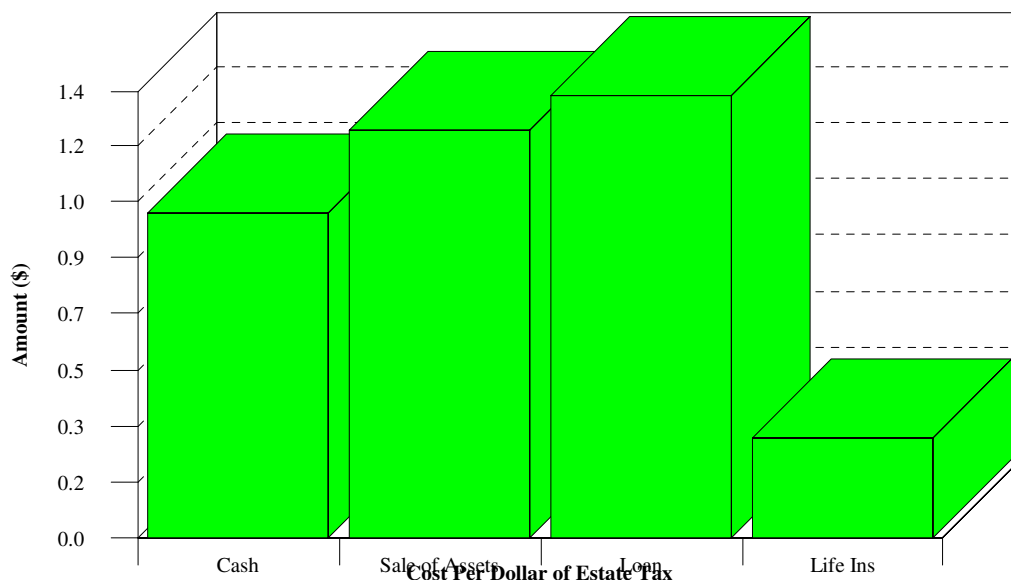
Loan

| | | |
|---------------------|------------|--------|
| Annual Loan Payment | 3,396,699 | |
| Loan Rate | 6% | |
| Loan Period (Years) | 10 | |
| Total Cash Outlay | 33,966,989 | \$1.36 |

Life Insurance

| | | |
|---------------------------------------|------------|--------|
| Total Cash Outlay (Planned Premiums): | 7,720,440 | |
| Initial Death Benefit: | 25,000,000 | \$0.31 |

Cost per Dollar of Estate Tax



(a) Assumes sale does not affect estate taxes due

This hypothetical presentation is for educational purposes only, and is intended to show the benefits of using life insurance to pay estate taxes. This presentation does not account for the time value of money. It is not intended to reflect or project a specific product or policy. Policy values shown are representative of those from a typical AM Best highly rated company, based on the ages shown above. The benefits and values are not guaranteed. The assumptions used are subject to change and the actual results may be more or less favorable. Not to be construed as legal or tax advice. Please consult with your own accountant or attorney for specific advice.

CRN0001-0165

The Economics of Life Insurance

Investment Out of Estate

Prepared for Mr. and Mrs. Sample

August, 2009

| | | | |
|-------------|----|----------------------------|-------|
| Client Age: | 70 | Effective Income Tax Rate: | 0.0% |
| Spouse Age: | 60 | Effective Estate Tax Rate: | 45.0% |
| | | Pre-Tax Investment ROR: | 4.00% |

| Year | Annual Outlay | Balance Forward | After Tax Earnings | End Of Year Investment Out of Estate | Death Benefit Out of Estate |
|------|---------------|-----------------|--------------------|--------------------------------------|-----------------------------|
| 1 | 257,348 | 257,348 | 10,294 | 267,642 | 25,000,000 |
| 2 | 257,348 | 524,990 | 21,000 | 545,990 | 25,000,000 |
| 3 | 257,348 | 803,338 | 32,133 | 835,471 | 25,000,000 |
| 4 | 257,348 | 1,092,819 | 43,713 | 1,136,532 | 25,000,000 |
| 5 | 257,348 | 1,393,880 | 55,755 | 1,449,635 | 25,000,000 |
| 6 | 257,348 | 1,706,983 | 68,279 | 1,775,262 | 25,000,000 |
| 7 | 257,348 | 2,032,610 | 81,304 | 2,113,915 | 25,000,000 |
| 8 | 257,348 | 2,371,263 | 94,851 | 2,466,113 | 25,000,000 |
| 9 | 257,348 | 2,723,461 | 108,938 | 2,832,400 | 25,000,000 |
| 10 | 257,348 | 3,089,748 | 123,590 | 3,213,338 | 25,000,000 |
| 11 | 257,348 | 3,470,686 | 138,827 | 3,609,513 | 25,000,000 |
| 12 | 257,348 | 3,866,861 | 154,674 | 4,021,535 | 25,000,000 |
| 13 | 257,348 | 4,278,883 | 171,155 | 4,450,039 | 25,000,000 |
| 14 | 257,348 | 4,707,387 | 188,295 | 4,895,682 | 25,000,000 |
| 15 | 257,348 | 5,153,030 | 206,121 | 5,359,151 | 25,000,000 |
| 16 | 257,348 | 5,616,499 | 224,660 | 5,841,159 | 25,000,000 |
| 17 | 257,348 | 6,098,507 | 243,940 | 6,342,448 | 25,000,000 |
| 18 | 257,348 | 6,599,796 | 263,992 | 6,863,787 | 25,000,000 |
| 19 | 257,348 | 7,121,135 | 284,845 | 7,405,981 | 25,000,000 |
| 20 | 257,348 | 7,663,329 | 306,533 | 7,969,862 | 25,000,000 |
| 21 | 257,348 | 8,227,210 | 329,088 | 8,556,298 | 25,000,000 |
| 22 | 257,348 | 8,813,646 | 352,546 | 9,166,192 | 25,000,000 |
| 23 | 257,348 | 9,423,540 | 376,942 | 9,800,482 | 25,000,000 |
| 24 | 257,348 | 10,057,830 | 402,313 | 10,460,143 | 25,000,000 |
| 25 | 257,348 | 10,717,491 | 428,700 | 11,146,191 | 25,000,000 |
| 26 | 257,348 | 11,403,539 | 456,142 | 11,859,680 | 25,000,000 |
| 27 | 257,348 | 12,117,028 | 484,681 | 12,601,709 | 25,000,000 |
| 28 | 257,348 | 12,859,057 | 514,362 | 13,373,420 | 25,000,000 |
| 29 | 257,348 | 13,630,768 | 545,231 | 14,175,998 | 25,000,000 |
| 30 | 257,348 | 14,433,346 | 577,334 | 15,010,680 | 25,000,000 |

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1. The shirtsleeves proverb describes a three-stage process: creation, stasis, and dissipation.
2. The issue for families is whether they can extend the period of creativity through many generations, and thus postpone the periods of stasis and chaos for as long as possible.
3. Failure of a family to preserve its wealth is most often due to concentration on the family's financial capital to the exclusion of its human and intellectual capital.
4. Must balance dual functions of creating new human and intellectual capital, while exercising excellence in its stewardship of the financial capital brought into being by the financial wealth creator. It is through such an understanding that every generation can, in practice, function as a new first generation of wealth creators.

C. The Theory

1. Wealth preservation is a dynamic process of group activity, or governance, that must be successfully re-energized in each successive generation to overcome the threat of entropy.
2. The wealth of a family consists of the human and intellectual capital of its members. A family's financial capital is a tool to support the growth of the family's human and intellectual capital.

D. The Practice: Families should employ multiple quantitative and, more importantly, qualitative techniques to enable them, over a long period of time, to make slightly more positive than negative decisions regarding the employment of their human, intellectual, and financial capital.

What are some of the things a family can do to maximize the return on its human, intellectual, and financial capital?

1. With respect to its human capital, a family should consider implementing the following ideas:
 - Stretch the physical capacities of each family member to achieve each member's maximum well-being. This includes providing the best possible medical care to every family member whose pursuit of happiness is blocked by addiction or physical or mental illness.

- Ensure that every family member's basic requirements for food, shelter, and clothing are met, and for members who experience a life emergency, that those needs are met at a level adequate to allow them to regain the capacity for the pursuit of individual happiness.
- Ensure that every family member understands, at the highest educational limit possible for that member, the workings of the family governance system and her or his role in it.
- Emphasize the importance of the dignity of work to an individual's sense of self-worth and assist each family member in finding the work that most enhances that individual's pursuit of happiness. All such work is of equal value to the growth of the family's human capital, regardless of its financial reward.
- Encourage the geographic diversification of human assets.
- Encourage the recognition and practice of the family's spiritual values.

2. With respect to its intellectual capital, a family should consider implementing the following ideas:

- Provide a means for the collection and dissemination of the accumulated knowledge of all family members.
- Provide clear information on all family governance matters to all family members at the highest level of each individual's ability to understand and seek feedback.
- Provide incentives for the family's highest achievers to take representative and leadership roles within the family governance structure.
- Provide tools to younger members to learn the family stories and prepare for later roles in family governance.
- Stretch the intellectual capacity of each member to achieve each member's maximum level of learning.

3. With respect to its financial capital, a family must remember above all, to measure its growth over twenty-, fifty-, and one-hundred year periods, and to take risks commensurate with such long-term planning periods.

E. Other Important Considerations

1. The family mission statement, which might include such things as:
 - purpose
 - vision
 - values
 - history
 - form of governance
 - roles & responsibilities
2. Observe “rituals”
 - coming of age
 - new elder
 - arrival of a new member
 - death of a member
 - introductions of new outside members
3. Investor Allocation – for non-trust owned assets:
 - Older generation purchase income oriented assets
 - Younger generation invests in growth assets (perhaps with funds loaned from elder)
4. Family Philanthropy
 - Consider having grandparents mentor grandchildren
 - Constitute a Grants Committee
 - At specified age, have grandchildren research and present grant proposals
 - Additional responsibilities for investment management as appropriate
5. Family Bank Concept
 - The borrower prepares a business plan and a loan application equivalent to that required by any commercial lender.
 - The borrower discusses the project’s feasibility with the family bank’s board and advisors.

- When a loan is granted, the borrower provides proper business reports on the investment.
- The borrower ultimately repays the loan.

6. Use of a Trust Protector

- Change trust situs
- Intervene on behalf of beneficiaries
- Remove/replace trustees

7. Peer Review

- Similar to concept in use in academic institutions or professions
- Included in governing document(s) (e.g., trust)
- Should occur every five years
- Select outsiders with appropriate expertise
- Cover all aspects of operations with access to all relevant documents

VII. **Implementing the Financial Planning Recommendations - Step 5**

“\$7 million - \$70 million - \$700 million...it’s just zeros”

A Case Study

Background

- George is age 55, Angie is 40. Married seven years; first marriage for both. Have one son, Brant, age 3.
- Both are U.S. citizens and California residents. Assets are his sole and separate property
- Client develops property for his own portfolio. No partners.
- Net worth is in excess of \$700 million.
- Has funded living trust but had done no other estate planning.

Planning Objectives

- You wish to maintain your current lifestyle of at least \$10 million annually after inflation, excluding your investments and fine art.
- You wish to provide for Angie as long as you are married and are satisfied with your current bequest under your trust, should you predecease her.

- You wish to preserve your estate for Brant, in trust.
- You wish to eliminate estate tax if possible.

Observations

- Your current estate distribution plan is as indicated in the following diagram. Federal estate tax will be due at your death (assuming Angie survives you) and at Angie's subsequent death in an amount approaching \$300 million combined. As your estate grows, so, of course, will the estate tax liability.
- On the basis of our discussion and review of the documents you provided, we note that there are substantial planning opportunities to enable you to accomplish your stated objectives.

Lifetime Transfers

- These take the form of the Annual Exclusion, Lifetime Exemption, Opportunity Shifting, and intra-family sales. Angie can participate in some of these strategies utilizing her own exclusions and exemptions through "gift splitting." Properly structured, these strategies can remove assets from the transfer tax system, not just shift the tax burden liability down a generation.
- Currently you are not taking advantage of any of these strategies.

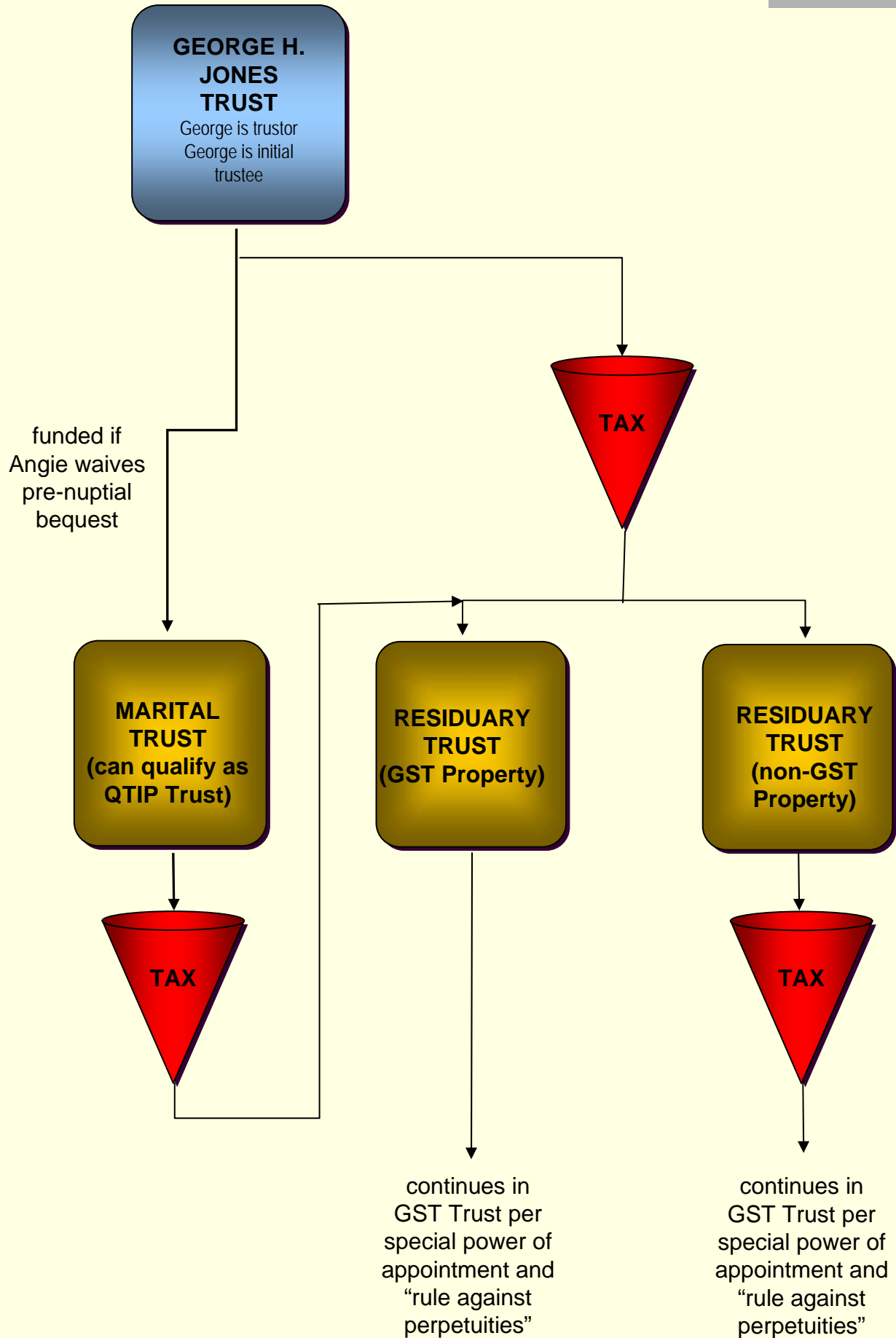
Valuation Discounts

- Because of the structure of your assets, it appears your estate will not be positioned to take the fullest advantage of minority interest and marketability discounts which could otherwise result in substantial estate tax savings.

Charitable Giving

- Through the use of charitable strategies, both during lifetime as well as at death, income and estate tax benefits could be obtained while preserving family control.
- Currently no such structures have been incorporated into your planning.

George H. Jones Estate Flow Diagram



Recommendations

- You and Angie (as a “split-gift”) should take advantage of your \$13,000 annual exclusions by making gifts to Brant into the “Jones Health Care and Education Trust.” Brant (or parent/legal guardian while a minor) must be notified when gifts are made and allowed to withdraw the gift.
- You and Angie should create a second trust for Brant “The Jones Business Opportunities Trust” utilizing your \$1 million lifetime exemptions (as a “split-gift”). This trust would be designed as a “dynasty trust,” situated in a state without a rule against perpetuities, such as Delaware.
- In addition to asset gifts, you should consider selling assets to Brant’s Business Opportunities Trust. One strategy would be to sell a 50% share of your general partnership interests in order to place yourself in a non-controlling position. As a result, your estate should be able to claim a discount for lack of marketability and lack of control. You should also sell some of the limited partnership interests to the trust as well.
- Transfer additional assets into a GRAT(s), retaining an income interest for the period of time necessary to “zero out” the gift tax (approximately 10 years). Upon termination of the GRAT(s), the assets will pass to the Business Opportunities Trust #2. This trust will be similar to the “BOT #1,” but will be a non-perpetual California trust.
- Future projects should be undertaken, to the maximum extent possible, with the Business Opportunities Trust, as a partnership or with the trust taking the equity position and you acting as the lender. This would limit your return to the note interest, with the development profits and future growth inuring to Brant’s trust.
- Trust may purchase life insurance on life of trustor(s) to hedge against death during GRAT period and maximize trust value.
- Create a charitable organization, structured as a private foundation.
- In order to shift future appreciation of your estate, beyond those assets sold as previously described, you should consider a freeze transition. A new entity, “Jones Properties,” can be created, structured as a limited liability company. BOT #1 can contribute its assets in exchange for growth units and BOT #2 can contribute its assets in exchange for frozen units. Asset returns, in excess of the required dividend paid to BOT #2 shall enure to BOT #1 which is estate tax exempt.

(See excerpt of Business Opportunities Trusts)

BUSINESS OPPORTUNITIES TRUST
(Sample Language - Excerpt only)

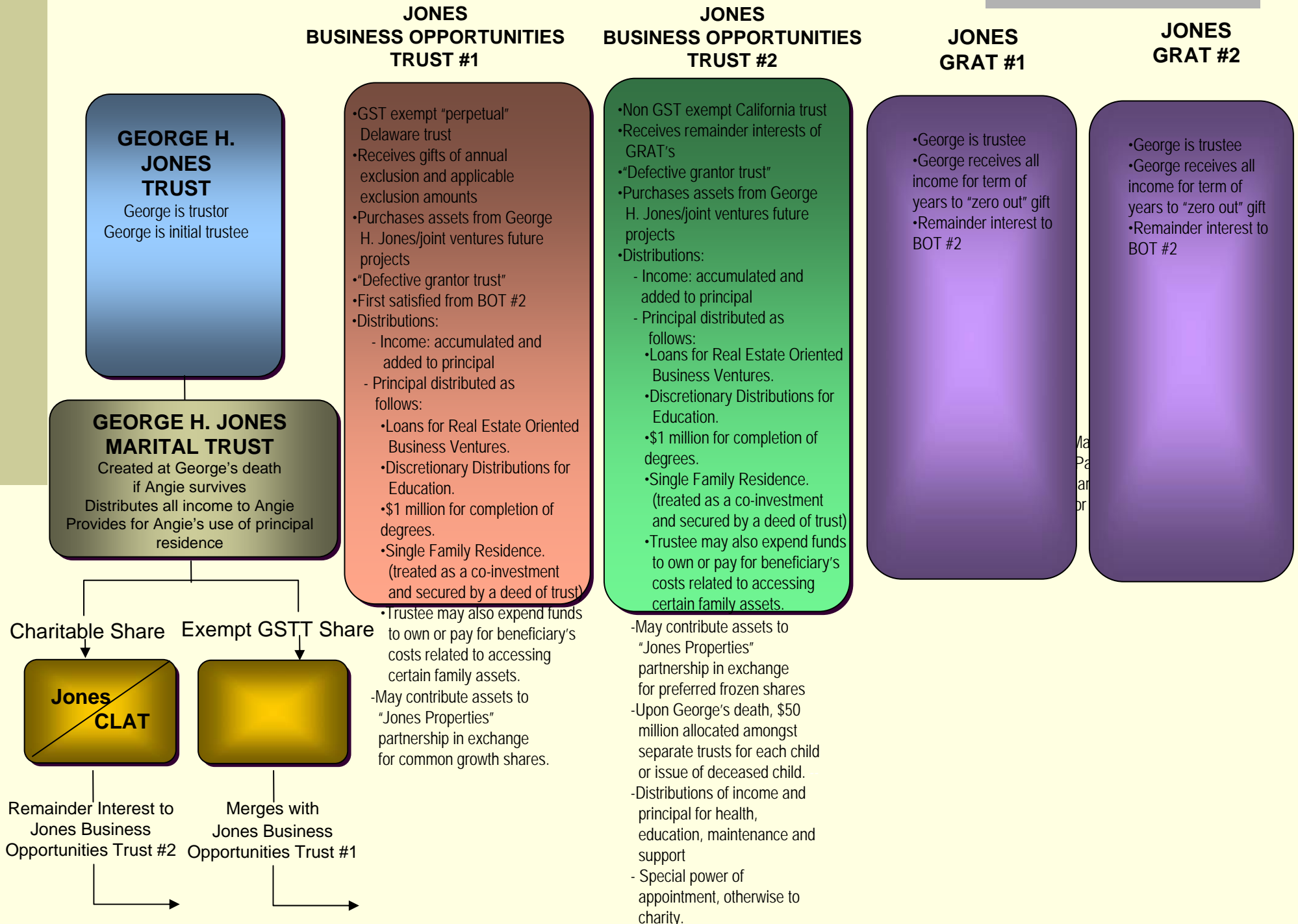
Education. At the sole discretion of the Trustee, distributions may be made to pay for a Beneficiary's actual cost of tuition and other fees, books, and reasonable room and board incurred by the Beneficiary in pursuing education at any level, preschool through graduate school. To be eligible to receive distributions for educational purposes, a Beneficiary must maintain a minimum 3.0 grade point average (based on a 4.0 scale) or equivalent, based on the grading scale used by the school attended by the Beneficiary. The Trustee may review the situation of a Beneficiary wishing to pursue a vocational or non-traditional education on a case-by-case basis, but expenses for more formal education shall be given priority. The Trustee may waive the requirement that educational distributions be made for degree programs if the Beneficiary participates in a non-traditional educational opportunity (for example, musical internship, art apprenticeship, fellowship) which, in the Trustee's sole discretion, is structured and of significant educational value. To remain eligible to receive a distribution of educational benefits, a Beneficiary must complete their studies at any level in a period which shall not exceed the normal period by more than 50% (that is, for example, 6 years for a 4 year degree, or 3 years for a 2 year degree). A Beneficiary at the elementary or secondary school level must advance on schedule to the next grade level (that is, for example, a Beneficiary must complete ninth grade in the same school year that he or she begins ninth grade). However, if a Beneficiary is held back a guardian's discretion in the interest of strengthening their academic preparation, the Trustee shall continue disbursements to that Beneficiary so as not to penalize the Beneficiary.

If a Beneficiary obtains a Juris Doctorate degree, passes the California Bar and obtains a Masters in Business Administration or a Masters in Real Estate then the Trustee may in the Trustee's discretion, distribute to such Beneficiary up to one million dollars (\$1,000,000).

Upon completion of the above degrees, a Beneficiary is then eligible to act as a Co-Trustee of this Trust and receive appropriate compensation for their service. In addition, such Beneficiary will become eligible to sit on the Board of Directors of any entity that the Trust owns or controls

George H. Jones

Revised Estate Plan



VIII. **Monitoring the Financial Planning Recommendations - Step 6**

A. The Annual Review Process

1. Update financial condition model
2. Verify objectives
3. Validate current plan
4. Identify new opportunities
5. Work with an implementation checklist

B. Fee for service – clients are happy to pay for a “clean bill of health”

C. Other

1. Implementation is a long term process – never really “done”
2. You can be a resource to participate in family retreats

IX. **Conclusion**

A. All of your leads are once again prospects.

B. Armed with the “six step process,” financial planners are uniquely positioned to assist clients in developing an estate plan that is reflective of their values, supportive of their goals and integrated into their overall financial plan.

C. Don't forget the “Six Don'ts”

IRREVOCABLE TRUST ANALYSIS FORM

| | |
|--------------------------------|-----------------------------------|
| NAME OF TRUST | TRUSTOR(S)/SETTLEOR(S)/GRANTOR(S) |
| DATE OF TRUST / SITUS OF TRUST | INITIAL TRUSTEE(S) |
| CORPUS | BENEFICIARIES: |

NOTE: INDICATE PAGE AND PARAGRAPH REFERENCE(S) AFTER CHECKED BOX

| DISPOSITIVE PROVISIONS DURING TRUSTOR(S)' LIFETIME | | | |
|---|-----------------------------------|---------------------------------|--------------|
| INCOME | PRINCIPAL | FOR WHOSE BENEFIT | OTHER ISSUES |
| <input type="checkbox"/> ALL | <input type="checkbox"/> BROAD | <input type="checkbox"/> SPOUSE | |
| <input type="checkbox"/> BROAD | <input type="checkbox"/> H-E-S-M* | <input type="checkbox"/> ISSUE | |
| <input type="checkbox"/> H-E-S-M* | | <input type="checkbox"/> OTHER | |

| DISPOSITIVE PROVISIONS AFTER TRUSTOR(S)' DEATH | | | |
|---|-----------------------------------|---------------------------------|--------------|
| INCOME | PRINCIPAL | FOR WHOSE BENEFIT | OTHER ISSUES |
| <input type="checkbox"/> ALL | <input type="checkbox"/> BROAD | <input type="checkbox"/> SPOUSE | |
| <input type="checkbox"/> BROAD | <input type="checkbox"/> H-E-S-M* | <input type="checkbox"/> ISSUE | |
| <input type="checkbox"/> H-E-S-M* | | <input type="checkbox"/> OTHER | |

| WITHDRAWAL ("CRUMMEY" DEMAND) PROVISIONS | DISTRIBUTION OF BENEFICIARY'S SHARE |
|---|--|
| <input type="checkbox"/> None | <input type="checkbox"/> Outright at ages: |
| <input type="checkbox"/> Limited to lesser of gift, "5x5" or annual exclusion | <input type="checkbox"/> May be held in trust at beneficiary's discretion (lifetime general power to appoint to themselves) |
| <input type="checkbox"/> Hanging powers (gifts in excess of 5x5 hang) | <input type="checkbox"/> Held until beneficiary's death, with general power of appointment (i.e. their estate or creditors) |
| <input type="checkbox"/> Special/General Power of Appointment (incomplete gift method) for gifts in excess of 5x5 | <input type="checkbox"/> Held until beneficiary's death, with special power of appointment (e.g. amongst a class of beneficiaries, including charity) continues as a generation skipping trust |
| <input type="checkbox"/> Other | <input type="checkbox"/> No power of appointment-continues as a generation skipping trust |
| | <input type="checkbox"/> Other |
| | |

* Indicates preferred provision under most circumstances.

| PLANNING ISSUES |
|---|
| <input type="checkbox"/> "Crummey" demand notices are on file |
| <input type="checkbox"/> Gift tax returns are being filed as necessary for taxable gifts and to allocate GST exemption, as necessary (get copies) |
| <input type="checkbox"/> Are children recognizing their share of trust income (Crummey power is a general power of appointment causing trust income to be taxable to power holders, regardless of whether or not distributed) |
| ADDITIONAL PLANNING PROVISIONS |
| <input type="checkbox"/> Provision to amend trust (to maintain compliance) |
| <input type="checkbox"/> Provides for "letter of wishes" from trustor to trustee |
| <input type="checkbox"/> Beneficiary/trustee has special power of appointment (including to grantor) |
| <input type="checkbox"/> Grantor retain rights to replace trustee (cannot be subordinate party) |
| <input type="checkbox"/> Provides Trust Protector (has authority to: terminate trust, alter percentages of distribution or other terms, replace trustee, change situs, etc.) |
| <input type="checkbox"/> Marital deduction fail safe if insurance found includable in deceased spouse estate with spouse surviving (e.g. payable to surviving spouse, QTIP or irrevocable trust qualified as QTIP) |
| <input type="checkbox"/> Contains perpetuities savings clause |
| <input type="checkbox"/> Reasonable exercise period (i.e. 15-60 days) |
| <input type="checkbox"/> Provides for grantor to notify trustee as to which beneficiaries gifts are made and which are intended to qualify for demand (i.e. as present interest) |
| <input type="checkbox"/> Trustee required to notify beneficiaries of demand right |
| <input type="checkbox"/> Crummey demand can be satisfied in kind (e.g. life insurance or other propriety in lieu of cash) |
| <input type="checkbox"/> Grantor possess power of substitution (creates defective grantor trust) |
| <input type="checkbox"/> Third party (e.g. trust protector) can expand class of beneficiaries (creates defective grantor trust) |
| <input type="checkbox"/> Authority to purchase life insurance |
| <input type="checkbox"/> Authority to use trust income for premiums (creates defective grantor trust to extent income actually used) |
| <input type="checkbox"/> Provision for trust to separate into GST exempt and non-exempt shares |
| <input type="checkbox"/> Contains spend thrift clause |
| <input type="checkbox"/> Allows trustee discretion to loan money to grantor or grantor's estate and to purchase assets from grantor's estate |
| <input type="checkbox"/> Sited in state without rule against perpetuities. |
| MISCELLANEOUS NOTES & OBSERVATIONS |
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |

* Indicates preferred provision under most circumstances.

REVOCABLE TRUST ANALYSIS FORM

| | |
|------------------------|-------------------------------------|
| NAME OF TRUST | NAME(S) OF TRUSTOR/SETTLEOR/GRANTOR |
| DATE OF TRUST | NAME(S) OF TRUSTEE(S) |
| DATE OF LAST AMENDMENT | NAME(S) OF SUCCESSOR TRUSTEE(S) |

Wills pour over into this trust*

All income, principal is distributed to trustors' during joint lifetime per the trustor's request and / or broad powers of the trustee.

Provision for surviving spouse use of the home*

Trust Estate: Trustor's Community & Separate Property Other

Funding Values: Date of death funding values Date of distribution funding values*

Funding Formula: Fractional Pecuniary Marital Trust / Residual Bypass Trust* Pecuniary Bypass Trust / Residual Marital Trust

| | | | |
|------------------------------|--|---|---|
| "A" TRUST / SURVIVOR'S TRUST | "B" TRUST / BYPASS TRUST / CREDIT SHELTER TRUST | "C" TRUST / MARITAL TRUST / QTIP TRUST | OTHER TRUST (E.G., DISCLAIMER TRUST GENERATION-SKIPPING TRUST) |
|------------------------------|--|---|---|

* Indicates preferred provision under most circumstances.

| | | | |
|--|--|---|--|
| ASSETS OF TRUST <input type="checkbox"/> Survivor's ½ CP* <input type="checkbox"/> Survivor's SP* <input type="checkbox"/> Marital deduction bequest from decedent <input type="checkbox"/> Other | ASSETS OF TRUST <input type="checkbox"/> Exemption equivalent from decedent* <input type="checkbox"/> Disclaimer by survivor* <input type="checkbox"/> Other INCOME <input type="checkbox"/> All <input type="checkbox"/> H-E-S-M* <input type="checkbox"/> Broad <input type="checkbox"/> Other PRINCIPAL <input type="checkbox"/> H-E-S-M* <input type="checkbox"/> Broad <input type="checkbox"/> 5x5 <input type="checkbox"/> None <input type="checkbox"/> Other | ASSETS OF TRUST <input type="checkbox"/> Marital deduction bequest from decedent* <input type="checkbox"/> Other INCOME <input type="checkbox"/> All (required if QTIP) <input type="checkbox"/> Other PRINCIPAL <input type="checkbox"/> H-E-S-M* <input type="checkbox"/> Broad <input type="checkbox"/> None <input type="checkbox"/> Other ADMINISTRATION <input type="checkbox"/> Partial QTIP election* <input type="checkbox"/> Sub-trust if partial QTIP election* | ASSETS OF TRUST <input type="checkbox"/> Exemption equivalent from decedent <input type="checkbox"/> Disclaimer by survivor <input type="checkbox"/> Other INCOME <input type="checkbox"/> All <input type="checkbox"/> H-E-S-M* <input type="checkbox"/> Broad <input type="checkbox"/> Other PRINCIPAL <input type="checkbox"/> H-E-S-M* <input type="checkbox"/> Broad <input type="checkbox"/> None <input type="checkbox"/> Other DISTRIBUTION AT DEATH <input type="checkbox"/> Added to Bypass Trust* <input type="checkbox"/> To GST exempt / non-exempt trusts* <input type="checkbox"/> Special POA <input type="checkbox"/> Other |
| ASSETS DISTRIBUTED <input type="checkbox"/> Outright <input type="checkbox"/> In trust* | <input type="checkbox"/> Broad* <input type="checkbox"/> Other | <input type="checkbox"/> None <input type="checkbox"/> Other | <input type="checkbox"/> None <input type="checkbox"/> Other |
| INCOME <input type="checkbox"/> All <input type="checkbox"/> Broad* <input type="checkbox"/> Other | <input type="checkbox"/> Broad <input type="checkbox"/> 5x5 <input type="checkbox"/> None <input type="checkbox"/> Other | <input type="checkbox"/> None <input type="checkbox"/> Other | <input type="checkbox"/> None <input type="checkbox"/> Other |
| PRINCIPAL <input type="checkbox"/> Broad* <input type="checkbox"/> Other | <input type="checkbox"/> Broad <input type="checkbox"/> 5x5 <input type="checkbox"/> None <input type="checkbox"/> Other | <input type="checkbox"/> None <input type="checkbox"/> Other | <input type="checkbox"/> None <input type="checkbox"/> Other |
| DISTRIBUTION AT DEATH <input type="checkbox"/> GPOA otherwise added to Bypass Trust* <input type="checkbox"/> To GST exempt / non-exempt trusts* <input type="checkbox"/> Other | DISTRIBUTION AT DEATH <input type="checkbox"/> Outright unless heirs under age _____, then in family trust until age _____ <input type="checkbox"/> To GST exempt / non-exempt trusts* <input type="checkbox"/> Special POA <input type="checkbox"/> Other | DISTRIBUTION AT DEATH <input type="checkbox"/> Added to Bypass Trust* <input type="checkbox"/> To GST exempt / non-exempt trusts* <input type="checkbox"/> Special POA <input type="checkbox"/> Other | DISTRIBUTION AT DEATH <input type="checkbox"/> Added to Bypass Trust* <input type="checkbox"/> To GST exempt / non-exempt trusts* <input type="checkbox"/> Special POA <input type="checkbox"/> Other |

* Indicates preferred provision under most circumstances.

