Estate

Planning

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GUIDE

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Introduction

This publication will help you be an informed consumer of estate planning services. Decisions you make about your ***estate plan*** will have long-term effects on you, your spouse, your partner or "significant other," and your children. By developing a working knowledge of the basic considerations involved in estate planning and by realistically assessing your own family and financial situation, you can develop a plan that best serves your needs.

Estate planning appears complex because it draws upon a diverse body of law. In addition to lawyers, many different professionals may be involved in some aspects of estate planning including accountants, financial advisors, trust officers, and insurance agents.

However, for some families, a simple will may be all that is needed. For example, if you and your spouse have not been previously married, have no children, do not own a business, do not own property out of state, do not have extensive debts, are not disabled, and want to leave all your property to each other, a simple will may be appropriate. However, as families and/or financial situations get more complex, planning gets more complex. Estate planning involves the interrelationship of many facts such as family relationships, private property and business property, and legal documents. You will be able to accomplish your objectives best with the help of a lawyer.

If you are using a commercial product such as a "will kit" or computer program to produce part of your estate plan, we strongly urge that you have the final product reviewed by a lawyer. Likewise, we strongly advise that you take any documents related to your estate, including ***living trusts*** you might purchase, to a lawyer of your own choosing for review.

As an initial caution, wills, ***trusts***, and probate are governed by state law. The law of each state varies significantly. This publication will discuss Idaho law. If you live in another state for either some or all of the year, or own real estate in another state, or intend to move to another state in the near future, you should consult the laws of that state. Contact the Cooperative Extension System in the state to which you move to see if a publication on estate planning is available specific to that state.

Underlying the creation of any estate plan are profound human concerns: your desire to pass on property to loved ones. So, a good estate plan is an accurate reflection of your individual spirit. While much of this publication is about mechanics, methods, and documents, it's important to remember that no matter how well you deal with the legal technicalities, your estate plan won't succeed unless you take human concerns into account, too.

Estate planning involves the interrelationship of many facts such as family relationships, private property and business property, and legal documents.

Many of the legal terms in this bulletin are ***italicized bold*** in the text and defined in a glossary following page 39.

The Estate Planning Questionnaire provided in this guide will help you analyze your financial situation and get the information the estate planner needs.

Getting started

There is plenty that we can do to ensure that our property affairs will be taken care of through times of disability and at death. Estate planning is the process by which individuals make effective disposition of their property according to their personal objectives. Whether you know it or not, every individual already has an estate plan. If you have a simple will, then your estate plan is the will. If you do not have a will, then your estate plan is Idaho's ***intestacy statute*** (which dictates how your property will be disposed of upon your death. See Fig. 1 page 7.) Unfortunately, many people with a simple will need more comprehensive planning so as to minimize taxes and probate costs. Most people without a will would prefer not to have the state decide what happens to their property. Your estate planning specialist will assist you in evaluating your current estate plan and will help you choose the best plan for the organization and disposition of your property.

Gathering information

Before you see your estate planning specialist, there are a number of things you can do to save time and money. An estate planner needs accurate information regarding your family and ***assets***. The Estate Planning Questionnaire (Worksheets 1 through 9, beginning on page 26) provided in this guide will help you analyze your financial situation and get the information the estate planner needs. Preparing the questionnaire in advance will save you time and money. When listing your assets on the questionnaire, list realistic values for each. Your planner will need to know the ***fair market value*** of each item, not book value. Fair market value is the price you would sell something in the retail market to a willing buyer who has knowledge of relevant facts and who is not under any compulsion to buy. For example, the fair market value of a car is the price for which a car of the same description, make, model, age, and condition could be purchased by the general public. Fair market value is the price a used car dealer would pay. For stocks and bonds traded on a stock exchange, use the average between the highest and lowest quoted selling prices as of a recent date. For household items or personal effects, try to place a value on each. You may, however, place a single value on a group of items that have relatively small value.

Note that some information an estate planner needs may be provided orally, whereas other information will need to be verified through documentation. You should be prepared to provide the following documentation:

- Existing wills and other estate planning documents (e.g., trusts, powers of attorney, medical directives, and living wills);
- Real estate deeds and mortgages (including documents, such as contracts, creating spouses' ***separate property*** in ***community property*** states, like Idaho) (Worksheet 4: Inventory of Tangible Personal Property);

- Life insurance policies (Worksheet 5: Life Insurance);
- Existing pension, profit-sharing, stock bonus, Keogh, deferred compensation or similar plans, or IRAs (Worksheet 6: Employee Benefit Plans and IRAs);
- Divorce, separation, and pre-marital agreements;
- Business documents (e.g., articles of incorporation, bylaws, partnership agreements, buy-sell agreements) (Worksheet 7: Information About Closely Held Business Interests);
- Prior income tax returns (for past three years);
- All gift tax returns previously filed by either spouse; and
- Personal and business financial statements for past years.

You may also be asked to submit other documentation, such as marriage certificates, birth certificates (yours and your children), adoption records, stock and mutual fund records or certificates, and signature cards for accounts at financial institutions (Worksheet 2: Information About Financial Assets).

Developing planning objectives

In addition to gathering information about your family and property, you will need to think about your planning objectives. Everyone has unique objectives. Some individuals wish to provide for a surviving spouse and provide for children after the surviving spouse's death. Others wish to keep a family farm or business within the family. Some wish to minimize income, ***gift***, and estate taxes, even if that requires giving up control over property. An estate planner will have to ascertain your specific desires with respect to the disposition of your assets. You should be prepared to answer the following type questions:

- Who do you want to receive your property (your beneficiaries)?
- When do you want the beneficiaries to get the property (e.g., now, via a lifetime gift, when a specific event or condition occurs, or upon death)?
- Will you give the recipients unrestricted outright use of the property, or should the property be placed in a trust with certain limitations or conditions on use?
- Who will manage the property (e.g., the person receiving the property, a trustee, or an agent)?
- If you are disabled, who will manage property and make health care decisions for you (e.g., a relative, friend, or attorney)?

Once you and the planner have analyzed your financial situation and clarified your planning objectives, the planner will help you choose an effective plan for the disposition of your property. Although more than one plan is usually under consideration, you have the final say in which plan to adopt. Your estate planner will supervise the implementation of the plan. Documents may be executed, property may be transferred, gift tax returns may be prepared, and fiduciaries may be advised as to their duties to beneficiaries and others.

In addition to gathering information about your family and property, you will need to think about your planning objectives.

Although the Idaho laws for distributing a person's property often approximate what the average person would probably do if he or she made a will, the law can be inflexible and have unforeseen results.

Dying without a will

When a person dies without a will, he or she is said to die "***intestate***." In such a situation the relatives or other interested parties (such as creditors) must ask the court to administer the estate. The court will appoint a ***personal representative*** for the estate of the person. This person is usually the spouse or a close relative of the deceased person. The deceased person's property will then be distributed in accordance with Idaho state law. (See Fig. 1, Intestate Succession Rule.)

Although the Idaho laws for distributing a person's property often approximate what the average person would probably do if he or she made a will, the law can be inflexible and have unforeseen results. Consider the following situations:

- *Second marriages.* A man has a child from his first marriage. He remarries and he and his second wife have a second child. He dies with a will that leaves all of his property to his second wife. If the second wife dies without a will, all the property will go to the second child and the child from the first marriage will inherit nothing.

- *Special needs children*. Intestacy law treats all children of the deceased person equally. Assume that a family has three children. One is disabled and cannot live independently. The other two children are adults who have good jobs and live on their own. If the mother and father are killed in a car accident, their estate will be divided evenly between the three children even though the disabled child has a greater need for support from the parents' estate.

- *Simultaneous death*. Assume a married couple who has no children is in a car accident. The husband is killed instantly, but the wife lives for two weeks after the accident eventually dying of injuries suffered in the accident. If they do not have wills, the husband's property will pass first to the wife and then the wife's property (including what she received from the husband's estate) will pass to her parents or brothers and sisters. None of the property will pass to the husband's parents or relatives. This would be so even if the main item of property owned by the husband was real estate that had been given to him by his parents prior to his death!

- *Dying without a will can also result in additional expenses*. It may require the appointment of a ***guardian*** if property is passed to minor children even where one of the children's parents is alive and caring for them. Such a guardianship requires regular accounting to the court, and may require court permission to sell or otherwise deal with assets.

Miscellaneous things to consider regarding dying without a will

If you are a permanent resident of Idaho when you die, Idaho law will govern the distribution of your personal property (including stocks,

Figure 1: Intestate succession rules

Survivors	Division of property
Spouse only, no children or parents.	All to spouse.
Spouse and parents, no children.	Community property to spouse. First $50,000 plus half of the rest of separate property to spouse. The remaining separate property, if any, divided equally between parents.
Parents only, no children.	Divided equally among parents.
Spouse and children who are all children of both the deceased person and the surviving spouse. This provision includes descendants such as grandchildren and great-grandchildren.	Community property to spouse. First $50,000 plus half of the rest of separate property to spouse. The remaining separate property, if any, to be divided equally among the children (descendants of a pre-deceased child split that child's share).
Spouse and children one or more of whom are not the natural or adopted children of the surviving spouse.	Community property to the surviving spouse, half of the separate property to the surviving spouse. The remaining separate property to be divided evenly among the children (descendants of a pre-deceased child split that child's share).
Children (including descendants of such children), no spouse.	Divided equally among children (descendants of a pre-deceased child split that child's share).
Brothers and sisters or descendants of brothers and sisters only. No spouse, children, or parents.	Divided equally among brothers and sisters (descendants of pre-deceased brothers and sisters split that brother's or sister's share).
Grandparents or descendants of grandparents (such as aunts and uncles).	Varies depending on relationship.
No relatives.	All to State of Idaho.

A will is a specialized document that tells how property is to be distributed after a person dies.

bonds, accounts, furniture, and other personal effects) no matter where that personal property is located. In addition, Idaho law will apply to the distribution of real estate that is located in Idaho. However, if you own real estate located in another state, the law of that other state will determine the distribution of that real estate. For example, if you live permanently in Idaho but have a stock brokerage account with a Seattle stock broker, Idaho law will apply to the distribution of that account when you die. If, however, you own a house in Seattle, Washington law will apply to the distribution of that ***real property***.

If you are the parent of young children, Idaho law permits you to designate a guardian for those children in a will should you and your spouse pass away simultaneously or should your spouse predecease you. If you die without a will, a court will appoint a guardian for your children. Preference will be given to close relatives in such a proceeding, but unforeseen disputes can arise. For example, members of your spouse's family may not agree with your family about the appropriate guardian for your children.

Wills

You can provide for the distribution of your property to match your desires and your family's needs by making a will. A will is a specialized document that tells how property is to be distributed after a person dies. A person who makes a will is referred to as the "testator." A will must be written, and must be signed by the testator (the person who makes the will) and the testator's signature must be witnessed by at least two witnesses. Each witness must either see the testator sign the will or hear the testator actually acknowledge that the will is his or hers.

A will only takes effect once a person dies; it has no effect while a person is still living. Wills can be changed during the testator's lifetime to meet the changing needs of the testator.

Any person of sound mind who is 18 or older may make a will. In general, a person is of sound mind if he or she knows the general nature and extent of his or her property, and those who would normally be expected to inherit property because of their relationship to the testator. In addition to being of sound mind, a person must also be making the will of his or her own free will.

The only exception to these requirements for making a will is the "***holographic will***" exception. A "holographic will" is one that is entirely in the handwriting of the testator. Holographic wills need not be witnessed. However, even though not required, it is always a good idea to have witnesses to the signing of a

will in case there are questions about the will's validity.

Once a person dies, the validity of the will must be established through witnesses. The need to provide such testimony can be eliminated if the testator and witnesses sign a "self-proving" affidavit and attach the affidavit to the will. It is a good idea to sign this affidavit at the same time the will is drafted, although it can be signed later on. (See Worksheet 10: Self-Proving Affidavit, page 37.)

What can a will do?

- Provide for property dispositions that differ from intestacy transfers, such as leaving all property to a surviving spouse, or dividing property unequally between children.
- Provide for distributions of property to persons or entities that are not relatives, such as to your church or other charities or to a close friend, stepchild, or foster child.
- Anticipate future changes in your family such as the birth of a child.
- Designate a guardian for minor children.
- Designate a personal representative.
- Include a special provision for paying debts.
- Include a trust (known as a ***testamentary trust***) or pass property to a pre-existing trust (known as an "inter vivos," or living trust).
- Include cost-saving measures such as allowing the personal representative to waive the requirement of securing a bond or include special provisions allowing the personal representative to operate a family business such as a farm.

What can't a will do?

- Change the ***beneficiary*** on an insurance policy, pension plan, or other similar type of contract.
- Dispose of property held in joint tenancy (this property passes to the co-owner automatically).
- Dispose of your spouse's interest in community property.

Can a will be changed?

As long as a person is of sound mind, he or she can change his or her will, either by adding to it, changing particular provisions, or by starting over from scratch. A person can add to or change discreet provisions of a will by executing a codicil. ***A codicil*** adds to or amends a pre-existing will and must meet the same requirements—signatures and witnesses—as the original will.

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You and your spouse can change the character of property from community property to separate property and vice versa by signing a contract or deed so stating.

Community property and other forms of property ownership

What is community property?

Community property is any property acquired by you or your spouse during the marriage with the following exceptions. Property is separate property if it was acquired by assets you or your spouse owned before you were married. Also property acquired by you or your spouse as a result of a gift to one of you, or through inheritance, is separate property. A gift to both of you, however, is generally community property. Your earnings during marriage and things purchased with those earnings are community property. Furthermore, in Idaho, rents and profits of the separate property owned by you or your spouse are community property. For example, if you owned stock before marriage, the dividends paid on the stock during marriage would be community property; but the increase in the value of that stock would not be community property. Interest is another example of rents and profits of separate property that would be community property. Finally, you and your spouse can change the character of property from community property to separate property and vice versa by signing a contract or deed so stating.

Special estate planning considerations for community property

- *Special informal probate provisions.* Idaho law provides for informal probate of estates under two circumstances. The first is streamlined probate where all the property is community property, and there is a surviving spouse who is the sole ***heir***. In addition, Idaho law allows informal probate of estates where there is no will, the property is community property, and where there is a surviving spouse.
- *Disposition of property by agreement.* Idaho law permits spouses to provide for the disposition of their property to each other at death through the execution of a community property agreement. The agreement need not be witnessed but must be notarized. If it involves real estate it must be filed in the real estate records of the county in which the couple reside and in every county in which they own real estate. Property passed pursuant to one of these agreements avoids probate. Community property agreements, also sometimes referred to as "***devolution*** agreements," can have consequences for divorce, can limit the effect of later wills, and can have tax consequences, so it is recommended that you consult an attorney before signing such an agreement.
- *Taxes.* Some community property may be treated more favorably for federal tax purposes. Refer to the part of this publication that discusses tax treatment of community property.
- *Effect on wills.* Each spouse has the power to dispose of his or her

half of each item of community property by will. Exceeding this power without the agreement of the other spouse may enable the surviving spouse to disrupt the estate plan by electing not to participate.

- *Quasi-community property*. If you resided in another state before you moved to Idaho, property acquired in the first state that would have been community property had it been acquired in Idaho will be treated as quasi-community property. Idaho law places limits on the ability of the owners of quasi-community property to dispose of that property by will to persons other than their surviving spouses. In general, the surviving spouse is entitled to half of the quasi-community property no matter what the will provides. This right of a surviving spouse to half of the quasi-community property applies to some non-probate property also.

Other property ownership issues

- *Joint tenancy*. Joint tenancy is a form of co-ownership in which the deed or other written document provides that there is a "right of survivorship." Under this "right of survivorship," the property passes to the surviving co-owner when the first co-owner dies. In Idaho it is not possible to own community property as joint tenants. If a husband and wife invest community property in the purchase of a house, for example, and sign a deed that says "Harold and Wanda Smith, joint tenants," they have changed the character of their community investment to a joint tenancy.
- *Tenancy in common*. Tenancy in common is a form of joint ownership with no survivorship rights. A will is needed to pass each owner's share as he or she wishes.
- *Tenancy by entireties*. Tenancy by entireties is a particular kind of joint ownership. It must be real estate and it must be owned by a married couple.

In Idaho, it is not possible to own community property as joint tenants.

Because the trustee's role is so important, you should give careful thought to naming a trustee.

Trusts

What is a trust?

A trust is a form of property ownership under which one person, the trustee, holds and manages property for the benefit of others, the beneficiaries. The person(s) who creates a trust is often referred to as the settlor or grantor. The person(s) who manages the property is referred to as the trustee. And the person(s) who benefits from the trust is referred to as the beneficiary. Property in a trust is often referred to as the "trust property," the "corpus," or the "res." When a trust is created in the settlor's will the trust is referred to as a testamentary trust. When the trust is created while the settlor is alive, it is called a living trust or an *inter vivos* trust.

A trust is generally created through a written document, although sometimes a written document is not required. A written document is important even where it is not required because it enables the settlor to give the trustee instructions and set limits and conditions on the management of the trust property.

When a settlor creates a trust, she or he actually transfers ownership of the trust property to the trustee. The trustee of the trust has a "***fiduciary*** duty" to manage the trust property, that is, the trustee must manage the property in the way that is most prudent to carry out the purposes of the trust and provide the intended benefit to the beneficiaries. In addition to management of the trust assets, the trustee is also responsible for distributing the property of the trust according to the terms of the trust instrument. Saying that the trustee has a fiduciary duty means that the trustee has a special obligation to the trust and beneficiaries and can be held personally responsible for mismanagement.

Because the trustee's role is so important, you should give careful thought to naming a trustee. The person should be someone who has the ability to carry out the terms of the trust and who is willing to serve as trustee. The trustee of the trust can be an adult, a bank with trust authority, a trust company, or a combination of these. When non-family members serve as trustees, they usually charge a fee for their services, whereas family members typically waive their fees.

Why make a trust?

Trusts are flexible devices. The settlor and trustee can be the same person, trusts can be revocable (meaning they can be changed or terminated while the settlor is alive), and they can provide for management of property during the settlor's life and after the settlor's death.

Here are some common uses and benefits of trusts:

- unifying the management of assets in one plan;
- obtaining professional management of assets;
- providing for disposition of property at death so as to avoid probate;
- tax planning;
- insulating assets from creditors;

- planning for incompetency; and
- privacy (living trusts do not go through probate and their terms are therefore private).

Not all the purposes of trusts can be accomplished at the same time in the same trust. Some of the purposes may require terms that conflict with each other. Careful thought should be given to the reasons for using a trust in any given situation.

Here are some common situations in which a trust might be helpful:

- *Providing for minor children*. Parents can leave property to a trust for the benefit of their children. With proper planning all the parents' assets can be unified in the trust for the children, including life insurance proceeds, death benefits from pensions, as well as the proceeds from other assets of the parents' estate. Because the assets are part of a trust, they are not managed by a guardian.
- *Providing for incapacity*. Through a trust, a gift of property can be made to a person who lacks the ability to manage the property, such as a surviving spouse or child who is incapacitated.
- *Tax planning*. Trusts are often used by estate planning specialists to minimize the amount of estate tax in certain types of estates, particularly for transfers to a surviving spouse. See the section in this publication on Estate and Gift Taxes.

What is the difference between a testamentary and a living trust?

As mentioned earlier, a testamentary trust is set up in a will and comes into being after the death of the settlor/testator, whereas a living trust is made during the settlor's life. Living trusts are commonly used in conjunction with a will, but the trust is a separate instrument. The living trust permits flexibility. The trust can be used during the settlor's life to accomplish certain goals such as obtaining professional management of assets and for tax and creditor protection. But it also serves as part of the settlor's estate plan, providing for the management and/or disposition of the trust assets at the settlor's death. The biggest disadvantage of using a living trust is its potential complexity. Serious negative consequences can occur if the settlor changes his or her will but overlooks changing the trust or vice versa. The advantage of a testamentary trust is simplicity. Only one legal document is involved. However, it is not possible to avoid probate using a testamentary trust; nor is it possible to obtain benefits from trust management during the settlor's lifetime.

Whether a testamentary or living trust is the right planning device for any given estate depends on the purposes of the estate plan and the individual client's situation. If lifetime management and probate avoidance are not your top goals for an estate plan, and if you are worried about being saddled with a complex plan, a testamentary trust could be the answer. You should discuss the pros and cons with an expert.

Whether a testamentary or living trust is the right planning device for any given estate depends on the purposes of the estate plan and the individual client's situation.

Living trusts can be either revocable or irrevocable.

What are the advantages of a revocable vs. irrevocable trust?

Living trusts can be either revocable or irrevocable. A revocable trust can be altered or terminated by the settlor, whereas an irrevocable trust is a final and complete disposition of the trust property. A revocable trust can be flexible because it can be changed to reflect the settlor's changing situation. However, if the settlor has the power to revoke the trust, she or he will be treated as the owner of the trust property for at least some purposes. Thus, the income on the trust property may be taxable to the settlor of the trust, the settlor's creditors may be able to attach the trust assets, and the transfer of property to the trust may not be considered a completed gift for gift tax purposes. In comparison, an irrevocable trust is treated as a completed transfer of the property for all purposes—the trust property will not be treated as belonging to the settlor. Neither will the settlor be able to change the trust to account for unanticipated events.

Other documents in addition to wills and trusts

Living will and durable power of attorney for health care

While you are involved in estate planning you may also want to consider completing a Living Will and a Durable Power of Attorney for Health Care. These two documents allow you to designate the level of life sustaining medical treatment to be given you in case of your incapacity and specify a particular individual who is authorized to make your health care decisions. The durable power of attorney for health care is key if you want health care decisions to be made by an individual who is not your spouse or immediate relative.

NOTE: A comprehensive guide for completing a *Living Will and Durable Power of Attorney for Health Care* can be obtained for $3 from the Idaho Medical Association at 305 West Jefferson, P.O. Box 2668, Boise, Idaho 83701.

Estate and gift taxes

You are undoubtedly familiar with the federal *income* tax. You may not be familiar, however, with the federal *gift* tax and the federal *estate* tax. Single individuals or married couples with estates valued over $600,000 should generally understand gift and estate tax and the planning tools available to minimize their impact.

The federal gift tax is imposed on transfers of property during life, and the federal estate tax on transfers at death. Both are imposed on the transferor (***donor*** or ***decedent's*** estate) and both use the same multipurpose, graduated rate table (see Table 1: Estate and Gift Taxes, page 38). Taxes on transfers from one generation to the next cannot be avoided by making lifetime gifts.

Federal estate tax

The amount of the estate tax depends on the size of a decedent's gross estate and the deductions and credits available. The gross estate includes a broad category of items. It consists not only of property actually owned by a deceased person at death (e.g., what one normally thinks of as the probate estate under Idaho law), but also consists of some items passing outside of probate, such as certain life insurance and jointly-owned property.

Gross estate

The gross estate includes the following:

- Property (whether real or personal, tangible or intangible) that is owned solely by the decedent at the time of his or her death;
- One-half of community property, and one-half of property held by the decedent and his or her spouse as ***tenants by the entirety*** or joint tenants with rights of survivorship;
- All property held jointly by the decedent and a person other than his or her spouse (excluding that part of the entire value as was attributable to consideration furnished by the other joint owner or owners), and the decedent's interest in property held in tenancy in common;
- Life insurance proceeds payable to the decedent's estate (or for the benefit of the estate) or payable to other beneficiaries where the decedent at the time of death retained any "***incidents of ownership***" in the policy (e.g., the power to change beneficiaries or to cancel, surrender, or borrow against the policy);
- Property over which the decedent possessed a ***power of appointment*** exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate;
- Property transferred before death, but over which the decedent retained some right of enjoyment (e.g., right to income from the property transferred for life) or some power or control;
- Certain property (such as life insurance) that was transferred within three years of death; and
- The value of an annuity or other payment receivable by any

Single individuals or married couples with estates valued over $600,000 should generally understand gift and estate tax and the planning tools available to minimize their impact.

The marital deduction is the most important deduction from a planning perspective.

beneficiary, by reason of surviving the decedent, to the extent that the value of the annuity or payment is attributable to contributions by the decedent or the decedent's employer.

The value of property included in a decedent's gross estate is its fair market value at the time of the decedent's death. The personal representative may elect to value all property six months after the decedent's death if the alternative ***valuation*** date decreases both the gross estate and the estate tax. An ***executor*** may also make a special election to value certain real property used as a farm or in a closely held business on the basis of its actual use, which may be lower than its fair market value. This special valuation method, however, cannot reduce a decedent's gross estate by more than $750,000. Because several stringent requirements must be met before these special valuation rules apply, you should consult an estate planning specialist.

Deductions

Several allowable deductions and credits exist to reduce the estate tax. Allowable deductions from the gross estate include:

- Funeral and administration expenses, including compensation to the personal representative, attorney's fees, court costs, fees for selling estate property, and medical expenses if not deducted on the decedent's final income tax return;
- Debts of the decedent and unpaid mortgages or other claims against the estate;
- Casualty and theft losses occurring during the settlement of the estate;
- Contributions to charitable, religious, educational, or governmental organizations; and
- The value of property passing from the decedent to the surviving spouse (the "***marital deduction***").

The marital deduction is the most important deduction from a planning perspective. As is apparent, a decedent can easily wipe out his or her gross estate by passing property to his or her surviving spouse. It should be noted, however, that property passing to the surviving spouse will be taxed in the surviving spouse's gross estate to the extent he or she retains the property until his or her death. Hence, the marital deduction merely postpones payment of the federal estate tax until the death of the surviving spouse.

Credits

A number of credits against the estate tax are allowed. The most important is the "***unified credit***," a credit of $192,800 allowed to the estate of every decedent. Because $192,800 is the amount of tax computed under the multi-purpose, graduated rate table (see Table 1, page 38) on $600,000, the unified credit effectively shields $600,000 of property from the estate tax. Therefore, maximum use of the credit is an important estate planning objective.

An important role of the estate planner is balancing the use of the marital deduction against the use of the unified credit. As noted above, the marital deduction serves only to postpone payment of tax until the second spouse dies, whereas the unified credit avoids tax on $600,000 altogether. Accordingly, the unified credit should always be utilized to the fullest extent possible. Estate planners have a number of fundamental tools to prevent the deduction from defeating or wasting the credit. A "credit shelter" or "bypass" trust can be utilized. Your estate planning specialist can ensure that the correct amount of property is put in such a trust.

Depending on your objectives, your planner may recommend a second trust, sometimes called a "marital deduction" trust. A common marital deduction trust used in a second marriage is known as the QTIP trust. Because these are complicated, you are advised to consult a specialist for guidance.

Another credit allowed against the federal estate tax is a credit for any inheritance or death taxes actually paid to any state. The amount of the state death tax credit is subject to a maximum dollar limit provided in the Internal Revenue Code.

Idaho death tax

Idaho has what is commonly referred to as a "pick-up" tax. In short, Idaho taxes the estate only to the extent of the maximum federal state death tax credit allowed by the Internal Revenue Code. Thus, the estate does not pay any more taxes than it would have paid anyway. It just pays the State of Idaho rather than the federal government.

Federal gift tax

The federal gift tax serves to backstop the estate tax; without a gift tax, taxes on transfers from one generation to the next could be avoided by making lifetime gifts. A gift occurs whenever there is a complete transfer of property without receipt by the transferor of full and adequate consideration. The value of a gift for gift tax purposes is similar to the value of property for estate tax purposes: the price an informed and willing buyer would pay an informed seller not under a compulsion to sell. There are complex, special valuation rules for transfers of interests in corporations, partnerships, and trusts between related family members. Your estate planner can suggest planning opportunities in the wake of these special rules.

Exclusions

A number of important exclusions are available to reduce the gift tax liability. As the donor, you can exclude the first $10,000 of gifts made per donee per year if the gifts are of present interests in property. Accordingly, you can transfer tax free up to $10,000 each year to an unlimited number of donees and so can your spouse. A couple can effectively double the annual exclusion and transfer tax free up to $20,000 annually to each donee. Because the annual exclusion is available only for gifts of *present* interests in property, the question often arises whether a gift to a

You can transfer tax free up to $10,000 each year to an unlimited number of donees and so can your spouse.

You can make tax-free lifetime gifts to reduce your estate and utilize the spouse's tax credit.

guardian or trustee for the benefit of a minor qualifies for the annual exclusion. Properly drafted, trusts may be set up for the benefit of minors that qualify for the annual gift tax exclusion.

In addition to the annual gift tax exclusion, an unlimited exclusion is available for amounts paid, on behalf of an individual, directly to an educational institution for tuition, or directly to a health care provider for medical expenses.

Deductions

As with the estate tax, certain deductions are allowed to reduce the gift tax. For instance, a deduction exists for gifts made to certain charitable, religious, educational, and governmental organizations. More importantly, an unlimited marital deduction exists for lifetime gifts made to a spouse. Such gifts become especially important if you own substantial property and your spouse does not. For example, if you own substantial property and die first, you will be able to use your unified credit. If your spouse who owns little or no property dies first, however, her unified credit is wasted.

One way for spouses to fully utilize the credit shelter of the less wealthy spouse is to balance the estates using the gift tax marital deduction. For example, you can make tax-free lifetime gifts to reduce your estate and utilize the spouse's tax credit. Your estate planner can help determine which type of property is best to transfer and how much.

Unified credit

You may recall that a credit of $192,800 is allowed against the federal estate tax. That same credit (the "unified credit") may be used against the federal gift tax. When the unified credit is used to offset gift tax, however, the amount of credit available to offset estate tax is reduced. In sum, taxpayers cannot offset $192,800 of gift tax liability and $192,800 of estate tax liability. The credit is used effectively to offset only $192,800 of gift *or* estate tax, *or* a combination of the two.

Filing requirements

If you make a gift you must generally file a gift tax return on IRS Form 709. However, you, the donor, need not file a return for transfers which are not included because of the annual gift tax exclusion of $10,000 or the exclusion for the payment of certain education and medical expenses. Further, you need not file a gift tax return with respect to transfers for which a marital deduction is allowed. The gift tax return must be filed on or before the 15th day of April following the close of the calendar year in which you made the gift. The Internal Revenue Service may grant a reasonable extension of time for filing the return and paying the tax.

Helpful tax publications are available from the Internal Revenue Service: IRS Pub. No. 448, A Guide to Federal Estate and Gift Taxation. For general tax assistance, contact the Internal Revenue Service, 1-800-829-1040. For free IRS forms and publications, contact the Internal

Revenue Service, 1-800-829-3678, http://www.ustreas.gov.

Generation-skipping transfer tax

The gift and estate taxes apply to transfers of property during life or at death. There is another federal transfer tax, known as the generation-skipping transfer tax (the "GST tax"), which also taxes gratuitous transfers of property. This special tax taxes transfers that skip a generation. For example, if you give property to your grandchild or great-grandchild, you may be subject to both the gift tax *and* the generation-skipping transfer tax. The amount of the GST tax depends upon several factors. Because its operation is complex, you should consult an estate planning specialist.

Federal income tax issues

In addition to understanding the federal gift, estate, and GST taxes, one must understand aspects of the federal income tax pertinent to estate planning. For example, there is a special provision in the Internal Revenue Code that gives the surviving spouse a stepped-up (fair market value) tax basis in his or her own one-half interest in community property. Accordingly, the surviving spouse will have a fair market value tax basis in not only the decedent's one-half interest passing to the surviving spouse, but also in her own one-half interest. If the surviving spouse sells the property immediately after the decedent's death, she will owe no income tax.

A taxpayer's "***basis***" in property is generally the cost of property or what one has invested in property. Tax basis is often adjusted for items such as permanent improvements made to the property. When property is sold, one can recover tax free her basis in property before having any gain from its disposition. Therefore, when the surviving spouse receives a stepped-up basis in property equal to its fair market value, she will have no gain on the sale of that property for fair market value. Many people change the character of property from separate property to community property to take advantage of this estate planning opportunity.

If you give property to your grandchild or great-grandchild, you may be subject to both the gift tax *and* the generation-skipping transfer tax.

Life insurance proceeds generally go directly to the beneficiary(ies) with minimal delay and administrative costs.

Life insurance and annuities

Life insurance is a popular estate planning tool, especially for people with relatively small estates. Among other things, life insurance can be used to:

- provide security for survivors who depend on the insured person's income;
- provide readily available funds to pay debts, taxes, and other estate settlement costs;
- meet living expenses for dependents while an estate is being settled;
- maintain liquidity needed to preserve a business; and
- create wealth and build an estate.

Life insurance proceeds generally go directly to the beneficiary(ies) with minimal delay and administrative costs.

They generally are not subject to income taxes. However, life insurance proceeds may be subject to death taxes, depending upon a number of factors.

Proceeds payable to the decedent's estate, proceeds payable to beneficiaries from policies where the decedent retained "incidents of ownership," and gifts of life insurance within three years of death are generally included in the decedent's gross estate for federal estate tax purposes. However, where the proceeds are payable to a surviving spouse, the marital deduction can be used (thus there would be no federal estate tax liability when the first spouse dies). (See section on taxes, page 15.)

The insured person does not necessarily have to be the owner of the policy. In some instances, it may be beneficial to transfer ownership of a life insurance policy to another person to avoid the above situation where the proceeds are included in the decedent's gross estate. Such a transfer may be subject to the gift tax, however, at replacement cost. In considering such a transfer, it is important to work with an insurance agent and other professional estate planning advisers to review the consequences, and if the transfer is desired, make sure the necessary changes are correctly made to the insurance policy. (Use Worksheet 5 to list life insurance policies, ownership, and beneficiaries.)

Deciding if life insurance meets your needs

Ask yourself these questions to assess whether you need life insurance for short-term estate planning needs.

- *How long is it likely to be, after you die, before your property is turned over to your inheritors?* If your property will avoid probate, there is usually little need for insurance for short-term expenses. By contrast, if the bulk of your property is transferred by will, and therefore will be tied up in probate for months, your family and other inheritors may need the ready cash that insurance can provide.
- *What assets would be available to take care of immediate financial needs?* Aside from insurance, there are other ways of provid-

ing ready cash, such as leaving some money in joint or pay-on-death bank accounts, or placing marketable stocks and other securities in joint tenancy.

- *If you own a business, how much cash would it need on your death?* To answer this, you have to estimate how your death is likely to affect the business.

Deciding how much life insurance is needed

Remember, life insurance is for the people you'll leave behind. You pay for it; they use it. If after reviewing the previous discussion on life insurance you determine you need coverage, the next question is how much? Insurance professionals can help you with the calculations to determine what it would cost your family to live after your death or your business to transition to the new management. You will need to list all the available income and savings your surviving dependents would have if you died today (not including the value of your house), like wages of your employed spouse and Social Security family benefits until the youngest child reaches age eighteen. Your family's immediate needs can probably be covered by inexpensive term insurance.

If, at middle age when your children are no longer dependent on your income, you decide that you still want to carry life insurance, start converting some of your term insurance into a cash-value policy. Review your life insurance coverage every three to five years, or when something changes in your life—a new baby, disability of a wage earner, an inheritance, or divorce.

Choosing life insurance beneficiaries

When you buy life insurance, you name the policy's beneficiaries—those who receive the proceeds when you die. As long as you are the owner of a life insurance policy, you can change beneficiaries. You can't, however, change a beneficiary of an insurance policy simply by naming a new beneficiary in a will or living trust.

Idaho is a community property state, which means if you buy a policy with community property funds, one-half of the proceeds are owned by the surviving spouse, no matter what the policy says about the beneficiary. This result can be varied by a written agreement between the spouses, in which one spouse transfers all interest in a particular insurance policy to the other spouse.

If you want minor children to be the beneficiaries of your policy, you must arrange some legal means for the proceeds to be managed and supervised by a competent adult, usually by setting up a trust. If you don't, the insurance company would likely require that a court appoint a property guardian for the children before releasing the proceeds.

Annuities

An ***annuity*** is a contract providing for regular payments, beginning on a fixed date, and continuing for a term of years or for the lifetime of one or more individuals. The total of these payments may or may not

Review your life insurance coverage every three to five years, or when something changes in your life—a new baby, disability of a wage earner, an inheritance, or divorce.

An annuity is a contract providing for regular payments, beginning on a fixed date, and continuing for a term of years or for the lifetime of one or more individuals.

equal the money or property contributed by the person establishing the annuity (the ***annuitant***). Two common types of annuities are commercial and private annuities.

Commercial annuities

are issued by insurance companies and others in the financial services industry. Under the agreement the annuitant contributes a sum of money to the company which, in return, promises to make periodic payments to the annuitant. Fixed income annuities provide for a guaranteed amount of income beginning at a specified age and continuing for a set number of years or for life. Variable income annuities provide varying amounts of income, depending on such factors as current economic conditions and the stock market. While variable income annuities may involve more risk, they also provide some protection against inflation.

A question to consider in a commercial annuity is what happens when an annuitant dies. In a "straight life annuity," the annuitant typically gets payments for life or for a specified number of years, but no additional payments are made to the annuitant's estate upon death. On the other hand, "refund annuities" typically guarantee payments to the annuitant and also guarantee the annuitant's beneficiaries an amount at least equal to the difference (if any) between what the annuitant invested in the contract and what is received from the contract. In return for this additional responsibility, however, payments from refund annuities typically are smaller than similar ***straight life annuities***.

Another type of commercial annuity is the joint life and survivorship annuity. Payments are made to both the annuitant and a co-annuitant for as long as either lives. These annuities are commonly used by married couples.

Tax rules allow annuitants to recover the amount invested in the annuity income tax free over the term of the payments. The other portion of the payments represents the income from the investment and is taxed as income. If the annuitant lives past his or her life expectancy, payments after this date are considered totally income. If the annuitant dies sooner than his or her life expectancy, the investment that was not yet recovered tax-free can be deducted on the decedent's final income tax return.

Private annuities

differ from commercial annuities in two major ways. Property other than cash (generally real estate) may be used to purchase the annuity and the promise to make the payments is usually made by an individual (often a relative) rather than by an insurance company or others in the financial services industry. Those interested in exploring this type of annuity should consult with an attorney or other estate planning professional. Great care must be taken when establishing a private annuity.

The probate process

Probate is the process by which a deceased person's assets are gathered together, her affairs wound down, and her property distributed. Probate has several purposes. First, probate provides an orderly process for identifying and notifying persons—such as relatives and creditors—who have interests in a deceased individual's estate. More importantly, however, probate is the mechanism by which ownership of property is settled. Finally, some small, but often significant, protection of the family assets from the claims of the deceased person's creditors can be obtained through probate.

What property must be probated?

Not all property of a deceased person is subject to probate. If the deed, contract, or trust contains language that disposes of the property at the death of one of the owners, often that property is not subject to probate. For example, property held as joint tenants with a right of survivorship is not subject to probate. Other property not subject to probate includes property held in trust, where the trust contains terms disposing of the property, and property held in accounts with payable-on-death or beneficiary provisions, such as life insurance, individual retirement accounts, some bank accounts, U.S. Savings Bonds, and some pension benefits. (Refer to Worksheet 6: Employee Benefit Plans and IRAs, page 33, and Worksheet 2: Information about Financial Assets, page 29.)

It should be noted that even though some property may not be subject to probate under Idaho law, the property nevertheless may be subject to federal estate taxes. Federal law taxes not only property actually owned by a deceased person at death, but also taxes some items passing outside of probate, such as jointly-owned property and life insurance proceeds payable to beneficiaries. See the section of this guide dealing with the Federal Estate Tax, page 15.

Settling ownership

One of the main purposes of probate is to settle ownership of the decedent's property. This includes more than deciding who gets the property. It also includes the process of providing evidence of ownership such as a deed to the person(s) who gets the property. This evidence of ownership is important because it allows the recipient of the property to sell or mortgage the property. For example, assume that a married couple owns their home as community property and the deed grants title to "John and Jane Smith, husband and wife." If John Smith dies and leaves all his property to Jane, Jane will need to change the deed to reflect that she is now the sole owner of the property. This change in title is accomplished through probate of John's estate.

This "title-clearing" process is especially important with regard to real estate. However, it can also be important for cars and other vehicles, many stocks and bonds, some financial accounts such as bank accounts (where no survivor or death beneficiary is designated).

Even though some property may not be subject to probate under Idaho law, the property nevertheless may be subject to federal estate taxes.

Thought should be given to the competence and willingness of the person to perform the duties of your representative.

Protecting the family from the deceased person's creditors

The probate process can also offer some protection to family members of the deceased person's property against the creditor's of the deceased person. Family members may be able to designate a homestead in certain property of the estate, set aside certain items of personal property, and obtain a periodic distribution of the estate's assets for purposes of support.

In addition, if an estate is probated, shorter time periods apply to determine when claimants against the estate must file their claims than if no probate is filed. When the court enters the final order distributing the estate, claimants who did not file in the probate are forever barred from advancing their claims.

The personal representative

The person who carries out the settlement of an estate is called the "personal representative." This person can be designated by the decedent in his or her will. If the will does not designate a personal representative, or if the decedent dies without a will, the court will appoint a personal representative. If the decedent's will appoints a personal representative, that appointment will be given priority by the court unless the person is not competent to serve as personal representative or unless the person declines to accept the appointment. When the court appoints a personal representative, preference is given to the surviving spouse or next of kin of the decedent.

The personal representative's responsibilities include making an inventory of the decedent's assets, overseeing the valuation and management of those assets, protecting the interests of the beneficiaries of the estate, hiring an attorney for the estate, serving as the representative of the estate in all court proceedings, and filing tax returns.

The personal representative may be liable to the beneficiaries of the estate if she or he fails to perform any of these responsibilities in a careful manner. As a result, the job of a personal representative should not be viewed as a reward for a faithful spouse, friend, or relative. Instead, thought should be given to the competence and willingness of the person to perform this important job.

Probate costs and fees

In addition to taxes, a probate estate is liable for costs to the court and fees to the personal representative and any attorney retained by the personal representative. Idaho law provides that the personal representative and attorney for the estate may be paid reasonable compensation. If the estate is in order and the testator has well drafted documents, probate should not be particularly expensive in Idaho. However, in other states fees may be charged as a percentage of the estate, so beware outside Idaho. You should ask attorneys what their fee is and you should feel free to shop around for an attorney.

You can save time and money by having a "Letter of Last Instruction" that keeps your personal representa-

tive informed of your personal wishes and the location of your assets and important documents. The publication CIS #958 *A letter of last instruction: Everybody needs one* is available through the local office of the University of Idaho Cooperative Extension System.

Summary

Periodically review your will and all other documents of your estate plan to ensure that is meets changing conditions and continues to serve your best interests.

Review your estate plan periodically.

Your estate plan should be reviewed periodically, especially when there are changes in your family or financial situations. Such circumstances might include:

- Birth of a child
- Marriage or divorce
- Death of a beneficiary
- Substantial changes in the value of any property
- Moving to another state
- The executor can no longer serve
- The guardian can no longer serve, or a guardian is no longer needed
- Changes in the tax laws
- Acquiring additional property of significant value
- A desire to change the status of beneficiaries

Estate planning questionnaire
Worksheet 1: Family information

1 Personal information.

	You	Spouse
Name		
Soc. Sec. No.		
Birth date		
Place of birth		
Home address		
Home phone		
Occupation		
Business address		
Business phone		
Date and place of marriage		
Prior marriages and divorces		
Number of years in Idaho		
Prior residences during marriage		

2. Your children and grandchildren.

Child's name ____________________
(Is current spouse the parent of this child? ___Yes ___ No)
Soc. Sec. No. ____________________
Birth date ____________________
Address ____________________
____
Occupation ____________________
Name of your child's spouse ____________
Names and ages of grandchildren __________
____
Special needs ____________________

Child's name ____________________
(Is current spouse the parent of this child? ___Yes ___ No)
Soc. Sec. No. ____________________
Birth date ____________________
Address ____________________
____
Occupation ____________________
Name of your child's spouse ____________
Names and ages of grandchildren __________
____
Special needs ____________________

Child's name ____________________
(Is current spouse the parent of this child? ___Yes ___ No)
Soc. Sec. No. ____________________
Birth date ____________________
Address ____________________
____
Occupation ____________________
Name of your child's spouse ____________
Names and ages of grandchildren __________
____
Special needs ____________________

Child's name ____________________
(Is current spouse the parent of this child? ___Yes ___ No)
Soc. Sec. No. ____________________
Birth date ____________________
Address ____________________
____
Occupation ____________________
Name of your child's spouse ____________
Names and ages of grandchildren __________
____
Special needs ____________________

3. Your parents.

	You	Spouse
Names		
Address		

Birth date	Mother_____	Father_____	Mother_____	Father_____
Death date	Mother_____	Father_____	Mother_____	Father_____
Estimated dollar value of his/her estate	Mother $_____	Father $_____	Mother $_____	Father $_____

4. Your brothers and sisters.

	You	Spouse
Names and ages		

5. Other living relations.

	You	Spouse
Names, ages and how related		

Estate planning questionnaire

Worksheet 2: Information about financial assets

1. Accounts in financial institutions.

	You	Spouse	Joint
Checking			
Bank name			
Amount			
Savings			
Bank name			
Amount			
Certificates of deposit			
Bank name			
Amount			

2. Stocks and mutual funds.

Company or fund	Ownership*	# of shares	Date of purchase	Basis	Current market value

*Indicate restrictions on transfer if any.

3. Bonds and notes.

Issuer	Date of purchase	Maturity	Current value

Estate planning questionnaire
Worksheet 3: Information about real estate

	Property 1	Property 2
Location		
Type of property (residential, commerce, vacant land, etc.)		
Form of ownership		
If joint property, contribution by each joint tenant		
Date purchased		
How acquired (gift, purchase, etc.)		
Current market value		
Encumbrances		
Original mortgage amount		
Current mortgage amount		
Monthly payments		
Interest rate		
Remaining period of loan		
Annual gross income		
Annual real estate taxes		
Annual costs		
Annual tax depreciation		

Estate planning questionnaire
Worksheet 4: Inventory of tangible personal property

	You	Spouse	Joint
Clothing			
Jewelry			
Household furnishings			
Automobiles			
Art objects			
Antiques			
Collections (coins, stamps)			
Boats, aircraft			
Club memberships			
Other			

Estate planning questionnaire
Worksheet 5: Life insurance

	On your life	On life of your spouse
Company		
Policy number		
Type of policy		
Face value		
Annual premium		
Cash surrender value		
Owner of policy and designated successor		
Beneficiaries designated in policy	1. 2.	1. 2.

NOTES:

Estate planning questionnaire
Worksheet 6: Employee benefit plans and IRAs

List below any employee benefit plans (pension, profit-sharing, deferred compensation arrangement, IRA, etc.) in which you or your spouse has an interest. Indicate retirement benefit, amount vested, death benefit.

	Retirement benefit	Money vested	Death benefit
You:			
Spouse:			

NOTES:

Estate planning questionnaire

Worksheet 7: Information about closely held business interests.

Name of business _____

Business address _____

Type of entity
(e.g., C Corporation,
S Corporation, Partnership,
Limited Liability Co.) _____

Percent owned _____

Is interest jointly
owned with spouse? _____

Estimate of fair
market value of
interest _____

Tax basis of interest _____

Does buy-sell
agreement exist? _____

If not, anticipated
disposition of stock _____

NOTES:

Estate planning questionnaire
Worksheet 8: Liabilities (not previously listed)

Creditor	Debt is secured by	Interest rate	Payment schedule	Current balance

NOTES:

Estate planning questionnaire
Worksheet 9: Names of your business and financial advisors

List the names, addresses, and telephone numbers of your advisors

Attorney(s) _____

Accountant _____

Investment advisor _____

Stockbroker _____

Life insurance advisor _____

Other insurance advisor(s) _____

Physician _____

Religious counselor _____

NOTES:

Estate planning questionnaire
Worksheet 10: Self-proving affidavit

I, _____, the testator, sign my name to this instrument this _____ day of _____, 19___, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

_____
Testator

We, _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of his knowledge the testator is eighteen (18) years of age of older, of sound mind, and under no constraint or undue influence.

_____
Witness

_____
Witness

The State of Idaho
County of _____
Subscribed, sworn to and acknowledged before me by _____, the testator,
and subscribed, sworn to and acknowledged before me by _____ and _____
witnesses, this _____ day of _____, 19___.

(seal) (signed) _____

_____
(Official capacity of the officer)

Table 1: Estate and gift taxes

If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Not over $10,000	18 percent of such amount
Over $10,000 but not over $20,000	$1,800, plus 20 percent of the excess of such amount over $10,000
Over $20,000 but not over $40,000	$3,800, plus 22 percent of the excess of such amount over $20,000
Over $40,000 but not over $60,000	$8,200, plus 24 percent of the excess of such amount over $40,000
Over $60,000 but not over $80,000	$13,000, plus 26 percent of the excess of such amount over $60,000
Over $80,000 but not over $100,000	$18,200, plus 28 percent of the excess of such amount over $80,000
Over $100,000 but not over $150,000	$23,800, plus 30 percent of the excess of such amount over $100,000
Over $150,000 but not over $250,000	$38,800, plus 32 percent of the excess of such amount over $150,000
Over $250,000 but not over $500,000	$70,800, plus 34 percent of the excess of such amount over $250,000
Over $500,000 but not over $750,000	$155,800, plus 37 percent of the excess of such amount over $500,000
Over $750,000 but not over $1,000,000	$248,300, plus 39 percent of the excess of such amount over $750,000
Over $1,000,000 but not over $1,250,000	$345,800, plus 41 percent of the excess of such amount over $1,000,000
Over $1,250,000 but not over $1,500,000	$448,300, plus 43 percent of the excess of such amount over $1,250,000
Over $1,500,000 but not over $2,000,000	$555,800, plus 45 percent of the excess of such amount over $1,500,000
Over $2,000,000 but not over $2,500,000	$780,800, plus 49 percent of the excess of such amount over $2,000,000
Over $2,500,000 but not over $3,000,000	$1,025,800, plus 53 percent of the excess of such amount over $2,500,000
Over $3,000,000	$1,290,800, plus 55 percent of the excess over $3,000,000

Glossary

Annuitant A beneficiary of an annuity.

Annuity An amount payable yearly or at other regular intervals.

Assets Money, property, and money-related rights owned by a person; property of all kinds—real and personal—tangible and intangible.

Basis Basis is the tax system's way of measuring what was originally paid for an investment. When property is sold, one can recover tax-free her basis in property before having any gain from its disposition.

Beneficiary The person designated to receive income or property.

Bequest The act of bequeathing—to give or leave by will—used especially for personal property.

Codicil A legal instrument modifying an existing will.

Community property Property acquired by either spouse during the marriage including rents and profits of separate property, with the exception that any property acquired by one spouse by gift, will, or inheritance is that spouse's separate property.

Decedent A deceased person.

Devise The act of giving or disposing of real property by will.

Devolution on death Idaho law permits spouses to provide for the disposition of their property to each other at death through the execution of a community property agreement, also referred to as devolution on death.

Domicile A person's fixed, permanent, and principal home for legal purposes.

Donor One that gives, donates, or presents.

Estate plan Arrangement for the disposition of one's property after death.

Executor IRS uses executor, but Idaho code defines as personal representative.

Fair market value	The price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.
Fiduciary	Bound by special obligation to manage a trust for another and can be held personally responsible for mismanagement.
Gift	Property you transfer freely (not by sale or trade) to a person or institution.
Guardian	One who has the care of the person or property of an other.
Heir	One who receives the property of a deceased person especially by operation of law or by virtue of a will.
Holographic will	A document (will) wholly in the handwriting of its author.
Incidents of ownership	The right of the insured or his or her estate to the economic benefits of a life insurance policy (examples include the right to change beneficiaries, the power to cancel or surrender the policy, the power to assign the policy or revoke the assignment).
Intervivos trust	When the trust is created while the settlor is still living, it is referred to as a living trust or an inter vivos trust.
Intestacy statute	Dictates how your property will be disposed upon your death if you die without a will.
Intestate	A person who died without having made a valid will.
Intestate succession rules	When a person dies without a will, he or she is said to die "intestate." The laws of Idaho then provide for distribution of the deceased person's property in this case.
Living trust	When the trust is created while the settlor is still living, it is referred to as a living trust or an inter vivos trust.
Marital deduction	A deduction from the decedent's gross estate equal to the value of all property that passes from the decedent to the surviving spouse.

Personal representative The person who carries out the settlement of an estate is called the personal representative.

Power of appointment A power to decide who gets property and which is held by one who does not own the property. A "general power" is any power of appointment exercised in favor of the holder, or the holder's estate, his or her creditors, or the creditors of his or her estate.

Probate The process by which a person's assets are gathered together, affairs are wound down, and property is distributed after death.

Real property Land and things attached to the land, such as building, fences, and plant material growing on the land.

Replacement value The cost of replacing the property with similar property.

Self proving affidavit In order to rely on a will to distribute property once a person dies, the validity of the will must be established through witnesses. The need to provide such testimony can be eliminated if the testator and witnesses sign a "self-proving" affidavit and attach the affidavit to the will. (See Worksheet 10: Self-Proving Affidavit.)

Separate property Property is separate property if it was acquired by assets you or your spouse owned before you were married. Also property acquired by you or you spouse as a result of a gift to one of you, or through inheritance, is separate property.

Straight life annuities In a straight life annuity, the annuitant typically gets payments for life or for a specified number of years, but no additional payments are made to the annuitant's estate upon death.

Tenants by the entirety Joint tenants with rights of survivorship solely between a husband and a wife.

Term life insurance A form of insurance that promises payment only within the specified term covered by the policy, though such policies are commonly renewed each term. Term policies have no cash surrender value.

Testamentary trust	When a trust is created in the settlor's will the trust is referred to as a testamentary trust.
Testate	Testate means to die leaving a will or other valid property-transfer device, such as a living trust.
Testator	A person who leaves a will or testament in force at his or her death.
Trustee	A natural or legal person to whom property is legally committed to be administered for the benefit of a beneficiary.
Trusts	A property interest held by one person for the benefit of another.
Unified credit	A credit of $192,800 allowed to offset the gift tax as well as the estate tax.
Valuation	The act of determining the estimated monetary worth of something.
Whole life insurance	Insurance for which premiums are collected as long as the insured person lives. Whole life policies build cash value. (sometimes called "straight life insurance")

Additional resources

A comprehensive guide for completing a *Living Will* and *Durable Power of Attorney for Health Care* can be obtained from the Idaho Medical Association at 305 W Jefferson, PO Box 2668, Boise, Idaho, 83701.

The publication CIS 958 *A Letter of Last Instruction: Everybody Needs One* is available through the local office of the University of Idaho Cooperative Extension System.

Many free publications are available from the American Association of Retired Persons, 601 E Street, NW, Washington, DC 20049.

In Idaho, contact the Area Office on Aging nearest you.

Sidney, Kess. CCH Financial and Estate Planning Guide (CCH 1994 ed.).

Tax publications

IRS Tax Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return* and Instructions for Form 706 (revised August 1993).

IRS Tax Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return* and Instructions for Form 709 (revised November 1993).

IRS Pub. No. 448, *A Guide to Federal Estate and Gift Taxation.*

For general tax assistance, contact the Internal Revenue Service, 1-800-829-1040. For free IRS forms and publications, contact the Internal Revenue Service, 1-800-829-3678, http://www.ustreas.gov.

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This publication is based on Idaho and federal law in effect as of January 1997.

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