FREQUENTLY ASKED QUESTIONS *
Estate Planning and Trust

1. What are the basic estate planning documents I may need in Florida?

The basic documents are:

- Last Will and Testament
- Durable Power of Attorney
- Durable Health Care Power of Attorney (also known as a "Health Care Surrogate Designation")
- Living Will
- Revocable ("Living") Trust

2. What is a Last Will and Testament?

A will describes how your property is distributed upon your death. It must be in writing, signed by you, and properly witnessed by two persons. A will should also be "self-proving" to avoid having to find witnesses upon death. A self-proof is an affidavit stating that the testator/testatrix signed the Last Will and Testament and that the witnesses and the testator/testatrix signed the will in the presence of each other.

A Last Will and Testament may contain:

- Specific distributions of property or cash
- Provision for a separate writing for personal items
- Trust provisions to control how the property is to be distributed after your death
- Name of a guardian for your minor children
- Name of a personal representative to handle payment of bills and coordination and distribution of your estate

3. What is probate?

Probate is the legal process to ensure that all assets are transferred in accordance with a will or by law. Florida law contains detailed instructions for the handling of the probate of an estate. Once the personal representative is appointed then he or she is responsible for gathering all the assets and filing an inventory with the court. Taxes and creditors must be paid, and the remaining assets are distributed in accordance with the will or by law. A full accounting must be rendered to the residuary beneficiaries and the court unless it is waived by all interested parties.

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4. Who can be the Personal Representative of my estate?

You can name anyone you want as your executor or personal representative, as long as that person is over the age of 18, mentally competent, and a resident of Florida. The designated personal representative must meet statutory relationship requirements if the person is not a resident of Florida. If you do not want to name an individual as personal representative, then you can name a professional fiduciary, such as a bank trust department, your attorney, or your accountant.

5. What are the responsibilities of a Personal Representative of an estate?

- Locate your will
- Confer with the lawyer who will serve as attorney for your estate and arrange with the lawyer for probate of your will
- Talk with family members to determine their immediate financial needs
- Make tentative arrangements for support and maintenance payments to be paid to your loved ones during the settlement period
- Seek court authority to serve as your executor
- Manage your property, including your business, during the settlement period
- Distribute your property according to the directions in your Will
- File your final personal income tax return
- Choose a tax year for your estate
- File your estate's federal income tax returns
- File any state income and death tax returns
- Complete and file the federal estate tax return
- Become a party to litigation relating to the estate
- Sell assets, such as real estate, stocks and bonds
- Invest assets that are not needed immediately for distribution or expenses
- Account to the beneficiaries for all actions taken during administration

6. How can I avoid probate?

There are a number of techniques which can be used to avoid the probate process. Some of these techniques may have significant potential problems. Here are a few of the techniques:

Use jointly-owned property with rights of survivorship. The probate process is avoided until there are no more joint owners surviving. The property is then exposed to the probate process. In the situation where your gross estate is in excess of the available unified credit the use of jointly-owned property may cause federal estate tax problems. Because of the “dangers” discussed in Section 3 above use of joint property might be the least advantageous way to avoid probate.

Use a Revocable Trust. Property which is titled in the name of the trustee is not

exposed to the probate process. See other questions and answers which discuss revocable trusts in more detail. Note that a revocable trust only avoids probate for those assets retitled to the trust. Assets that remain in your individual name may still require a probate proceeding.

Name beneficiaries and provide for contingent beneficiaries for all life insurance policies and retirement plans, including IRAs. Life insurance policies and retirement plans all have provisions for naming beneficiaries when the insured or retirement plan owner dies. If the named beneficiary predeceases the insured or retirement plan owner, then the beneficiary usually becomes the probate estate of the insured or retirement plan owner. It is important to provide for contingent beneficiaries in all such situations.

Use “in trust for”or “pay on death” designations for bank accounts and stocks. Many assets can be titled in your name but with a designated beneficiary at your death. This avoids many of the problems associated with joint ownership but also avoids probate. A typical designation would read “John Jones in trust for Mary Able” or “John Jones I/T/F Mary Able.”

7. What is a guardianship?

A legal process whereby a person with debilitating physical or mental conditions is declared incapacitated, and a guardian of the person or property is appointed by the court. This process is usually very expensive as court appearances are required with expert testimony and there is ongoing court supervision and accountings.

8. What is a Durable Power of Attorney (DPOA) and how can it help me avoid guardianship?

A DPOA permits you to name an “agent” or “attorney-in-fact” to handle your financial affairs if you become incapacitated which can be defined in the document. For example, a person can be deemed incapacitated upon the writing of two (2) doctors. The DPOA can authorize the agent or attorney-in-fact to transfer property, borrow money, handle bank accounts and pay bills. This document can be very useful to avoid the time and expense of a court appointed guardian. The agent or attorney-in-fact named should be a person who you trust and who is capable of carrying out your wishes.

9. What is the difference between a “non-springing” DPOA and a “springing” DPOA.

Before 2002 Florida only allowed “non-springing” DPOAs which meant that a DPOA became effective upon signing and, when necessary, could then be used by the attorney-in-fact. Many lawyers would have clients sign an Escrow Instruction Letter which allowed the release of the DPOA only upon the signer’s oral or written instructions or a written letter signed by a physician.

A “springing” DPOA is defined in Florida Statute §709.08 and permits the attorney-in-fact to assume control of your business affairs only when certain affidavits are signed, including an affidavit sworn to by a doctor (not just a letter signed by your doctor) stating that you are unable to handle your affairs. Unfortunately, many individuals probably will not

use “springing” DPOAs as many doctors will be reluctant to sign an affidavit.

10. What is a Living Will?

A Living Will is a document that expresses your desire not to be kept alive by artificial means and/or nutrition or hydration. It describes what levels of care you do and do not want if you have a terminal condition. The Living Will must be in writing and have two witnesses.

11. What is a Durable Health Care Power of Attorney (also known as Health Care Surrogate Designation)?

A Durable Health Care Power of Attorney allows you to name an individual to make medical decisions for you if you become unable to do so yourself. The declaration must be in writing and signed by two witnesses. Currently a health care power of attorney is only effective if you are determined to be incapacitated.

12. What is a Revocable (“Living”) Trust and how does it avoid probate?

A Revocable (“Living”) Trust is a document created by you to provide for management of your assets during your lifetime and you can designate to whom your assets will be distributed at your death. You can amend or revoke this document at any time as long as you are not incapacitated. If you are the initial trustee, then the document will name a successor trustee to administer the trust upon your death or incapacity.

Upon your death the successor trustee is responsible for paying all claims and taxes and then distributing the assets in accordance with your instructions contained in the trust agreement. This avoids the costs, time and necessity of going through the probate procedures.

Ownership of assets must be formally transferred to the trust before your death to get the maximum benefit from the trust. If assets are not properly transferred to the trust, then the assets may be subject to probate. However, certain assets should not be transferred to a trust because income tax problems may result.

13. How do I know if my assets are in my Revocable Trust?

The account statement, stock certificate, title or deed will make some reference to the trust or to you as trustee. Some examples are:

James Smith, U/T/D 2/3/98
James Smith, as Trustee FBO James Smith
James Smith, TTE
James Smith Trust dated February 3, 1998

14. How is an estate taxed for federal estate tax purposes?

If the value of all assets owned by you (net of deductions) exceeds your available “applicable exclusion amount,” then federal estate tax must be paid. The federal estate tax

rates begin at 18% and increases to 45%. Your taxable estate includes everything you own, no matter how you own it. For example, all assets held in your sole name, a portion or all of jointly held assets, assets held in your revocable trust's name, life insurance and certain other property will be part of your taxable estate.

The amount that each individual can distribute, without paying an estate or gift tax, is called the "applicable exclusion amount." This amount is scheduled to increase through the year 2009 as follows:

2006, 2007 & 2008	2,000,000
2009	3,500,000
2010	no estate tax
2011	1,000,000

15. How can married couples minimize estate taxes?

Married couples often leave all their assets to the surviving spouse. By doing so you do not use the available applicable exclusion amount of the first spouse to die. If the value of the assets that remain for the surviving spouse exceed his or her available applicable exclusion amount, your beneficiaries will owe estate taxes. For example, Joe and Mary own assets worth $3,000,000 in 2007. All assets are either in joint names or have the spouse as designated beneficiary, such as an IRA. Upon Joe's death Mary becomes the owner of the entire estate and at her death there will likely be estate taxes because the amount in her estate exceeds her applicable exclusion amount of $2,000,000 in the year 2006.

However, your estate plan can provide for a special trust to be created at the death of the first spouse that can pay all income to the surviving spouse and distribute principal as he or she may need for health, support and maintenance. Your spouse can even be the trustee of this special trust. This special trust can generally be funded with an amount of money or assets equal to the deceased spouse's applicable exclusion amount. This arrangement is often referred to as a "credit bypass trust," "family trust" or an "A-B trust" if a marital trust is used for the balance.

For Joe and Mary, at Joe's death we could put $2,000,000 in this special trust. The assets in this trust are not counted as part of Mary's taxable estate at her death and the estate tax is reduced to zero because her estate of $1,000,000 is less than the applicable amount.

16. How can lifetime gifts help me reduce my estate tax?

Gifts can ultimately reduce the size of your estate and thus, the corresponding estate tax. You can make gifts of $12,000 each year to an unlimited number of recipients. Currently, there is no limit to the number of these gifts that can be made in any given year. Of course, when you make a gift, you must relinquish control of the assets to the recipient (i.e., "no strings attached"). Gifts valued in excess of $12,000, per recipient, will count against your applicable exclusion amount and reduce the amount that will be available to you at your death. This amount is used for both estate and gift tax purposes. Gifts to your spouse are generally not subject to gift tax if your spouse is a U.S. citizen. The current

limitation on lifetime gifts is $1,000,000.

17. How can charitable gifts be used in my estate plan?

Your estate plan can include charitable gifts in your will and trust to create a charitable deduction for estate tax. You can also give charitable gifts during your lifetime in a number of ways. These lifetime gifts have the dual benefit of providing a current income tax deduction as well as estate tax benefits at your death.

18. How can I make a charitable gift during my lifetime and still use the assets?

Charitable gifts made during your lifetime can provide a lifetime income to you, save on income and estate taxes, and give you the satisfaction of seeing the benefit of the gift. Lifetime charitable gifts can take a variety of forms, including charitable remainder trusts, charitable lead trusts, pooled income funds, gift annuities, life estates and insurance.

19. What is a Charitable Remainder Trust?

A Charitable Remainder Trust is an irrevocable trust where you (or persons you designate) will receive distributions from the trust periodically during your lifetime or the lifetime of others designated to receive distributions. The distribution amount is determined at inception based on income needs, age, value of the property and other relevant factors. The trust can be a Charitable Remainder "Unitrust" or a Charitable Remainder "Annuity Trust."

Distributions from a Unitrust are calculated as a percentage of the asset value with the value redetermined annually. Distributions from an Annuity Trust are a fixed amount each year based on the value of the asset at inception.

Upon your death, or at the death of the designated income recipients, the remaining trust assets will be distributed to the charities selected by you. You can retain the right to change the charitable beneficiaries during your lifetime. The amount distributed to the charities will be a deduction in your taxable estate. If the trust has other noncharitable beneficiaries, then the deduction will be based on the anticipated remainder value to the charities.

You can place a highly appreciated asset in a Charitable Remainder Trust and avoid capital gains tax on the sale of the asset. For transfers made during your lifetime you will receive an immediate income tax deduction, subject to an annual limitation of 50% or 30% of your adjusted gross income, depending on the charity and the type of asset involved. Any excess deduction not allowed in the year of the gift can be carried over for 5 years. This deduction is based on the value of the interest that the charity will ultimately receive and depends on a number of variables. Transfers made at your death will receive an estate tax deduction rather than an income tax deduction.

20. What is a Charitable Lead Trust?

The Charitable Lead Trust is just the opposite of the Charitable Remainder Trust and provides for the charity to receive the income first and your beneficiaries to receive the principal at the expiration of the trust term. The Charitable Lead Trust can be a Unitrust or

an Annuity Trust.

21. How does a Pooled Income Fund work?

The pooled income fund is useful if you do not have sufficient assets to contribute to a Charitable Remainder Trust or Charitable Lead Trust or if you prefer to make smaller contributions over a period of time. Contributions from many individuals are pooled together and shares of the fund are given to each contributor. An income tax deduction is available in the year the contribution is made. Income is paid until the last income beneficiary dies and then the shares transfer to the charity.

22. How can I use a Gift Annuity in charitable giving?

A direct gift is made to a charity and a designated beneficiary receives income for life. Part of the income received from the annuity is a return of the gift so only a portion is taxable as income. A charitable income tax deduction is available in the year the contribution is made. Upon death the charity keeps the remaining principal and undistributed income.

23. How can I use a Life Estate in charitable giving?

This arrangement is made when all or a portion of a home or other real property is given to the charity while you are alive. Until death you enjoy the use of the property. Upon your death the property belongs to the charity and you receive a charitable income tax deduction for the value passing to the charity. The property is also removed from your taxable estate for estate tax purposes.

24. Can I give a life insurance policy to a charity?

Yes, a life insurance policy (new or existing) can be donated to a charity by making the charity the owner and the beneficiary. An income tax deduction will be allowed for the contribution.

25. I own all of my assets jointly with another person. Is it true that when I die all of my assets will go immediately to the surviving joint owner without going through the probate process?

Generally, yes, if the asset is owned either as tenants-by-the-entirety (for husbands and wives) or joint tenants with right of survivorship. However, at the death of the survivor, the assets will be exposed to the probate process unless the survivor adds another joint owner.

26. What types of “joint” ownership property are allowed in Florida?

There are several types of “joint” ownership in Florida. Some typical types are:

Joint Tenancy with Right of Survivorship is allowed in Florida, but to be sure that the

parties intended survivorship, which could result in the disinheritance of other family members, Florida law requires that the title to such property specifically state: “John Brown and Henry Brown, as joint tenants with right of survivorship and not as tenants-in-common.” Otherwise, the ownership may be construed as tenants-in-common and the interest will pass under each owner's will.

Tenancy-by-the-Entirety is joint ownership of property by a husband and wife and provides that the survivor will own the property upon the death of the other spouse. Neither spouse can sell, gift or convey their undivided one-half interest without the joinder of the other spouse.

In Florida, real property titled in the name of husband and wife is presumed to be tenants-by- the-entirety property unless there are more people on the deed. However, it is a good idea to title any future joint purchases of real property by spouses as follows: “John Brown and Mary Brown, Husband and Wife, as tenants-by-the-entirety.”

In Florida, personal property titled in the name of husband and wife is not always presumed to be tenants-by-the-entirety property. Therefore, personal property should also be titled: “John Brown and Mary Brown, Husband and Wife, as tenants-by-the-entirety.”

Tenants-in-Common does not have the element of survivorship. Property owned in this manner will pass under an owner's will upon death. Florida law will construe tenants-in-common in situations where non-spouses are involved and it is not clearly survivorship property. A suggested title so as to avoid tenancy-in-common treatment is: “ John Brown and Henry Brown, as joint tenants, with right of survivorship and not as tenants-in-common.”

27. What are some of the dangers of owning property jointly with someone other than a spouse?

If a joint owner is involved in litigation with creditors, such as the IRS, or the victim of an automobile accident with that joint owner, then the jointly-owned property may be subject to attachment by those creditors, even if that joint owner really is on the title only to avoid probate.

If a joint owner becomes incapacitated, and the property is jointly-owned real estate, then a court appointed guardian may have to be obtained to sell the real estate.

The family of the first joint owner to die may be disinherited because the property will pass by operation of law to an unrelated surviving joint tenant.

There can be a great deal of tax uncertainty with respect to whether a gift is made when a joint account is set up and who should pay the income tax on interest earned by a joint account.

28. What kinds of insurance should I consider to enhance my financial and estate plan?

Life insurance, health insurance, long-term care insurance, umbrella liability and disability insurance are examples of kinds of insurance you may need.

29. How can life insurance pay estate taxes?

Life insurance proceeds can pay estate taxes and other expenses in settling an estate. Annual premiums used to purchase life insurance to pay estate taxes can provide a large payoff for low premiums. A major financial obligation of an estate can be estate taxes. Federal estate taxes must be paid within nine months of the date of death. Estate taxes can be substantial, currently as high as 45% of the taxable estate. Life insurance can provide the liquidity needed to pay the tax.

30. How can I use an Irrevocable Life Insurance Trust in my estate plan?

Life insurance proceeds are not usually part of a decedent's probate estate but are included in a decedent's gross estate for federal estate tax purposes. If your estate is the named beneficiary, or if no named beneficiary survives you, then the life insurance proceeds become part of your probate estate. Inclusion in the gross estate for estate tax purposes could dramatically increase the size of the estate and the amount of estate taxes that must be paid.

Life insurance proceeds paid on a policy, held in an irrevocable life insurance trust, are usually not included in the decedent's gross estate. The trust owns the life insurance policy and is the designated beneficiary. If the insured has no “incidents of ownership” in the policy, then it will not be included in his or her taxable estate. It is important to note that any legal right to control a life insurance policy, such as the right to borrow from the policy or designate the beneficiary, can cause the policy to be subject to estate tax.

31. When should I use an Irrevocable Life Insurance Trust?

If your estate is taxable, then a life insurance trust should be seriously considered. The use of an irrevocable life insurance trust is preferable to giving a policy to an individual outright. Giving a policy to your spouse may cause the policy to be included in your spouse's estate and to revert to your (the insured's) estate should your spouse die before you. If the life insurance policy is transferred within three years of the insured's death, then the proceeds will be included in the insured's estate. Giving ownership to another will cause a loss of control over the policy. The new owner could change the beneficiaries, take the cash value, and even cancel the policy. For married individuals an irrevocable trust can provide benefits to the surviving spouse for his or her health, education, support and maintenance. The assets remaining at the spouse's death can still pass estate tax free to children or other designated beneficiaries.

32. Should I transfer existing life insurance policies into an Irrevocable Life Insurance Trust?

It may be best to purchase a new policy to fund the trust. Otherwise, a gift of existing policies would be subject to the three year rule and be included in your gross estate. However, if you are no longer insurable, or purchasing a new policy will be very expensive, then it may be best to gift existing policies to a trust subject to the three year rule.

33. Who should be the beneficiaries of life insurance policies?

If the proceeds of policies will be included in your estate, and if you have a surviving spouse, then these monies will be eligible for the marital deduction and therefore defer the tax on the policies. You should name a contingent beneficiary, such as adult children. If a minor child is a beneficiary, then name a trust for the minor as the beneficiary. This can be a revocable living trust if you have one or a trust created under your will.

34. What will a trustee be required to do?

Serving as trustee is no simple task. While very important, prudently investing trust assets is not a trustee's only responsibility. The job's scope is generally much broader. Your trustee's exact powers and duties will depend on the instruction in your trust agreement but, in general, your trustee will:

- Hold trust property
- Invest the trust assets
- Distribute trust income and/or principal to the beneficiaries, as directed in the trust agreement
- Make tax decisions concerning the trust
- Keep records of all trust transactions
- Issue statements of account and tax reports to the trust beneficiaries
- Answer any questions and the beneficiaries may have concerning the trust
- Make reports to the probate court when necessary

35. Why should a corporate institution be named as trustee and what is its responsibilities?

A corporate institution should be considered as trustee of a revocable trust because of its permanence, safety, experience, group judgment and investment expertise. Unlike individuals who might not outlive you or who might move away, a corporate institution continues on and would remain available to handle the trust administration. If desired, a corporate institution can also serve as co-trustee with a designated individual, such as a family member.

In administering a revocable trust the corporate institution receives the assets and arranges for the transfers of title into trust registration. The corporate institution safeguards the trust assets, collects income when due, and distributes income and/or principal as requested or needed by the trust beneficiaries. If the grantor becomes incapacitated, then the corporate institution can pay his or her bills directly from the trust and collect any applicable medical insurance reimbursement.

An investment objective is established by the corporate institution and the grantor. The corporate institution's investment officers then periodically review the trust portfolio and make any recommendations they feel will better accomplish the objectives.

Upon the grantor's death the corporate institution pays any final debts, taxes and expenses and then distributes the remaining assets as directed by the trust agreement.

Most corporate institutions publish a fee schedule detailing the charges for the various services involved in administering a trust.

36. Who should I name as trustee or as successor trustee?

You can name almost anyone as your trustee. Your spouse, a sibling, a friend, a business associate or even yourself as long as the person named has reached the age of majority and is not legally disqualified from serving. You can also name a corporate trustee, such as a bank or trust company. How much authority you give your trustee depends on your trust document as you and your attorney determine. Your trustee may have broad powers or very limited powers. In any case, your trustee, as a fiduciary, is held by law to a strict standard of care in performing trust functions.

37. Does Medicaid pay for nursing home care?

There are a complex set of rules governing qualification for Medicaid assistance. In general, there are stringent asset requirements and restrictions on asset transfers by the person trying to qualify. There are also certain exemptions for individuals and their spouses. The rules are too complex to explain in this limited space. If you are interested in more details, then it would be advisable to see an attorney that specializes in this area.

38. What is homestead property?

Under the Florida constitution a person's personal residence or homestead is entitled to certain protection. First, a person's homestead is not subject to claims of creditors. Thus, a creditor cannot force one to sell one's home to pay off one's debts. This applies even if a person has filed bankruptcy. A person's homestead is also eligible for a $25,000 annual exemption against the assessed value for purposes of calculating the ad valorem taxes on the property. The homestead is also subject to the favorable “save our home cap” which limits annual increases in real estate taxes.

There are also restrictions on how a person's homestead may be devised at death. If a person is survived by a spouse and minor children, then the surviving spouse must receive a life estate in the property with the minor children taking a remainder interest.

If the decedent is survived by a spouse, but no minor children, then it may be devised outright in fee simple to the surviving spouse. If the property is not devised in fee simple, outright to the surviving spouse, and the decedent is survived by lineal descendants, then the spouse will receive a life estate and the lineal descendants will receive the remainder.

The surviving spouse will take the entire property if it is held as tenants-by-the-entirety (husband and wife) regardless if there are minor or adult children.

If the decedent is survived by lineal descendants, but no spouse, and there is no devise of the homestead, then the lineal descendants will take the property as tenants-in-common.

Finally, if the decedent is not survived by a spouse, and has no minor children, then the homestead may be devised to whomever the decedent has designated in his or her will.

39. What is an “elective share?”

An “elective share” is the right of a spouse to elect against the provisions of a will and/or trust. On October 1, 2001, the legislature changed the law regarding the right of a

spouse to make an “elective share.” Prior to the change a spouse generally had the right of a 30% elective share of the <u>probate</u> assets. If no assets were distributed through probate (i.e., if all of the assets were in an revocable trust), then a spouse would get 30% of zero which was nothing. The legislature changed this law now providing that the 30% is based upon a total of <u>all</u> of the “elective share estate” of the decedent, <u>not</u> just the probate assets in a certain order under the statute. Basically, the law calculates the amount of the elective share and then satisfies that amount with assets. For example, if an estate is worth $1,000,000, then a spouse would be entitled to $300,000. If the spouse did not otherwise receive that amount, (other than the homestead), then he or she can make an election to take the elective share. The $300,000 is then satisfied with assets distributed to the spouse directly, including, but not limited to, life insurance, IRAs, pension plans and trust assets. The statute then provides for the distribution of certain assets, such as real estate and assets in trust, etc. to the spouse.

40. <u>What is the generation-skipping tax and should I worry about it</u>?

The generation-skipping tax is a tax in addition to gift and estate taxes. The tax is imposed on transfers that “skip” generations. The generation-skipping tax laws are very complex. Each individual may exempt $2,000,000 from this tax. A typical generation-skipping transfer would be as follows: a trust is created by an individual which provides the individual's son with income and upon the son's death the trust property passes to the grandchildren. The trust property is not subject to tax in the son's estate, thus "skipping" a generation level of estate taxes. The tax also applies to a direct transfer of property from an individual to his or her grandchildren.

41. <u>Who should be the beneficiaries of my retirement plan</u>?

Careful planning in naming the beneficiaries of your plan is important. Estate tax and income tax impact of the designations must be considered. Funds contributed to the plan by an employer have been previously excluded from income taxation. Upon death your vested balance in a plan is included in your taxable estate. Your beneficiary will also be subject to income tax on the benefits. Some death benefits are excluded from the income tax and you may also receive a credit for estate taxes paid on the retirement plan assets. Only a surviving spouse may rollover the distribution to his or her own IRA which allows the surviving spouse to defer paying income tax on the distribution until he or she begins withdrawals from the rollover IRA. Since taxation in this area is very complex proper evaluation is imperative if assets in a plan are significant.

42. <u>What is the Florida Uniform Transfers to Minors Act</u>?

This is a statutory provision for holding assets for the benefit of a minor. Since minors are unable to own property the law allows you to designate a "custodian" to be responsible for the assets until they reach majority. If a minor receives property by will, and it is held by a custodian for the minor's benefit, then the minor will be entitled to receive the property when he or she turns 18. However, if you specifically designate a custodian for gifts made to the minor during your lifetime, or to receive distributions from your estate upon your death, then the assets can be held by the custodian until the minor is 21. The custodian is

authorized to use the assets for the minor's education and other necessary expenditures.

43. What happens to my safe deposit box upon my death?

If you are the only person authorized to enter the box, then a court order must be obtained to enter the box and remove any contents. However, if you have other authorized signers, such as a spouse or children, then they may access the box after your death or in the event of your incapacity. Florida does not "freeze" safe deposit boxes like many other states.

44. How did the law passed in 2001 affect estate planning?

Generally, the 2001 Tax Act provides the largest tax cut since 1981 for individuals, mainly in the form of tax benefits (i.e., income tax rate reductions; increases in the child tax credit; decreases in the federal "death tax"; greater retirement savings incentives, including increases in the contribution limits to individual retirement accounts (IRAs); employer-sponsored retirement programs, such as 401(k) plans; several education related tax benefits; and individual alternative minimum tax (AMT) relief).

Under the 2001 Tax Act estate tax rates are reduced and the exemption amount is increased between 2002 through 2009. In 2010 there is complete repeal of the estate tax; however, as discussed below, the current estate tax system will be reinstated in 2011 due to the "sunset" provision. The following chart indicates the numbers:

Year	Top Estate Tax Rate	Estate Tax Exclusion Amt/ Credit Equivalent	Gift Tax Exemption Amt
2001	55%	$675,000 ($220,550)	$675,000
2002	50%	$1 million ($345,800)	$1 million
2003	49%	$1 million ($345,800)	$1 million
2004	48%	$1.5 million ($555,800)	$1 million
2005	47%	$1.5 million ($555,800)	$1 million
2006	46%	$2 million ($780,800)	$1 million
2007	45%	$2 million ($780,800)	$1 million
2008	45%	$2 million ($780,800)	$1 million
2009	45%	$3.5 million ($1,455,800)	$1 million
2010	repealed	N/A	$1 million
2011& thereafter	55%	$1 million ($345,800)	$1 million

While the gift tax rates mirror the estate tax rates through 2009, the increase in the gift tax exemption is limited to $1 million. Accordingly, the existing unified transfer tax system will become more complex as the estate tax exemption increases, reaching $3.5 million by 2009. While the estate tax is repealed in 2010 (for only one year) the 2001 Tax Act retains a gift tax to prevent excessive gifts of appreciated property from high income tax bracket taxpayers to low income tax bracket taxpayers. In 2010 gifts in excess of the lifetime $1 million exemption will be subject to gift tax at the top individual income tax rate at the time of the gift (under the 2001 Tax Act, 35%).

Beginning in 2004, the 2001 Tax Act also coordinates the generation-skipping

transfer tax ("GSTT") exemption to the estate tax exemption and repeals the GSTT tax in the year 2010 and reinstates the GSTT in 2011. In 2002, the 2001 Tax Act repeals the 5% surtax that applies to large estates (i.e., estates valued at more than $10 million). In 2004, the deduction for qualified family- owned business interests also is repealed.

An immediate impact of the 2001 Tax Act on plans for married couples occurred because many Revocable Trusts, which are created to save estate taxes, create a Family Part and a Marital Part that are funded by a formula at the death of the first spouse. Generally, the funding formula provides that the Family Part is funded with the applicable exclusion amount (in 2001 the amount was $675,000) and all remaining assets fund the Marital Part. Because the applicable exclusion amount will be increasing drastically between now and 2009, under the traditional funding formula a greater proportion of the estate will fund the Family Part (rather than the Marital Part). **THUS, IT IS IMPERATIVE TO REVIEW THE VALUE OF YOUR ASSETS AND YOUR DOCUMENTS TO BE SURE THE FUNDING IS CONSISTENT WITH YOUR WISHES.** An alternative is to limit the Family Part to a percentage or dollar amount so that the spouse knows that his or her Marital Part will be funded.

Faced with the prospect that an individual may die before repeal of the estate tax, or after repeal if the current transfer tax rules are reinstated, an individual's future estate planning may need to use a two-pronged approach: one plan if the individual dies when the estate tax is repealed (currently only in the year 2010) and one plan if the individual dies while an estate tax is still imposed. This determination will need to be made on a case-by-case basis because each family's goals may be different. Remember also that further changes are almost a certainty.

Furthermore, upon an individual's death, his or her assets generally receive a "stepped-up" basis to their date of death value. Thus, if a beneficiary immediately sells an inherited asset, little gain or loss will result. Subject to a few exceptions described below, when the estate tax is repealed in 2010, the 2001 Tax Act will require the person acquiring property from a decedent to <u>retain</u> the decedent's basis in that property (i.e., carryover basis). Under the 2001 Tax Act, however, each decedent is allowed a $1.3 million exemption from this carryover basis rule, thus assets may continue to receive a "step-up" in basis of up to $1.3 million above the basis in the hands of the decedent. For married couples, there is an additional $3 million "step-up" available for transfers to a surviving spouse. Estate planning documents may need to be revised prior to 2010 to take advantage of the limited basis "step-up" opportunities. Again, due to the "sunset" provisions, when the current estate tax rules are reinstated in 2011, the automatic "step-up" basis rules will be reinstated as well. Nonetheless, it may be prudent to ensure that all tax basis records are retained until an asset is sold.

One final aspect of the legislation merits comment. Technically the changes made by the new law, including the "death tax repeal," will cease to apply after 2010. This highly unusual provision was included to insure technical compliance with the federal budget law. The lawmakers obviously assume that this provision will be eliminated in future legislation.

As of 2007 many tax bills have been proposed but none have passed. The most recent legislation proposed House Bill 3170 on July 24, 2007 and proposes the following:

(1) Coordinating the gift tax credit with the estate tax credit
(2) Increasing the applicable exclusion amount as follows:

2010	$3,750,000
2011	$4,000,000
2012	$4,250,000
2013	$4,500,000
2014	$4,750,000
2015 and thereafter	$5,000,000

(3) Rates double as estate increases over $25,000,000
(4) Inflation adjustments
(5) Carryover of unused applicable exclusion amount by surviving spouse