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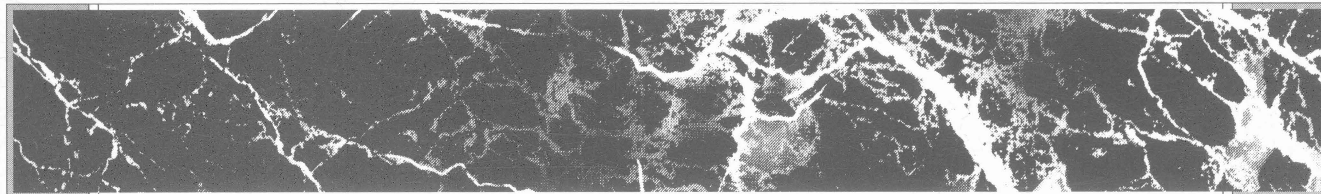

Estate Planning Considerations for Ohio Families

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Estate Planning Considerations for Ohio Families

Darrel L. Acker
Richard D. Duvick
Paul L. Wright[1]

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[1] District Specialist, Farm Management, Southwest District, Ohio Cooperative Extension Service; Extension Economist, Farm Management, and Extension Economist, Agricultural Law, Emeritus, (Attorney At Law) Department of Agricultural Economics and Rural Sociology; The Ohio State University

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Estate Planning Considerations for Ohio Families

The purpose of this bulletin is to acquaint farm and urban people with the legal issues and tax implications associated with estate creation and transfer. It can provide the basis for understanding estate planning terms and assist in outlining personal objectives. This knowledge will be of assistance when working with estate planning counsellors. The general principles discussed in this bulletin should not be applied to specific situations without the advice of an attorney.

Who needs an estate plan? Every person, young or old, who has a family or owns property, needs an estate plan. A good estate plan will allow a person to reach desired economic, legal and personal objectives.

What is Estate Planning?

Estate planning is providing for the desired personal, economic and legal consequences in the accumulation, conservation and distribution of your property. It is the process of arranging for the well-being of your family and the use of your property to accomplish your objectives while you are living and after your death. It involves choosing from among the many alternatives that are available to secure your financial future, especially during retirement, and preserve the largest estate possible for your heirs after payment of debts, taxes and other settlement costs.

Estate planning is complex and requires knowledge in federal and Ohio estate taxation, wills, insurance, methods of owning property, forms of business organization, trusts, and more. It involves consideration of the amount and type of your property, forms of property ownership and plans for its transfer. Retirement plans, arrangements for estate liquidity, concern for your children's futures, planning to meet family objectives and many other factors must be considered. Obviously, this publication is not intended to serve as legal counsel. Rather, it is to help you think objectively about the consequences of alternative ways of using and disposing of your estate.

"An Ounce of Prevention is Worth a Pound of Cure."

What would happen if your estate had to be settled tomorrow? Would your spouse be able to maintain a satisfactory standard of living? Would an adequate education for your children be assured? Who would receive your property if after your death your spouse remarried — your children, the second spouse, a business partner? Will your plan be followed, or would it be the plan provided by Ohio law? These questions and others can be specifically answered in your estate plan.

People spend a lifetime accumulating an estate but are often "too busy" to spend a few hours planning for its conservation and orderly transfer for maximum satisfaction for them and their families. A few hours planning now may save your family thousands of dollars in settlement costs, needless delay and unnecessary family discord. Death is unpleasant to talk about and we tend to shun it or assume we will live forever, but death is inevitable. You will worry less and your family may benefit greatly if you will take time to develop an estate plan.

Choose Knowledgeable Resource People

Each individual and/or family has somewhat unique circumstances, so there is no simple prescription or plan of attack. In developing an estate plan one should seek the counsel of an attorney, a trust officer, an insurance representative, an accountant, a financial advisor or others professionally skilled in estate planning. Your county Extension agent or district farm management specialist may also be able to make suggestions. *An attorney's assistance is essential in finalizing your plans.*

Develop a Plan for Your Situation

Your plan needs to be tailored to your resources and to your family needs. Unfortunately, many families cannot come to grips with this problem because they

either are not aware of the present day cost of not planning, afraid of what they think is a complex subject, or wary of outsiders who seek to help develop a plan. Actually you are unconsciously developing part of your estate plan every time you acquire property, decide how it will be held, or purchase insurance. If you do not have a will, the Ohio Law of Descent and Distribution will be followed for property that is subject to probate. This plan for property distribution may or may not agree with your wishes or family needs. For non-probate property, the way the property is owned or the designated beneficiaries will dictate the distribution. These plans also need careful attention.

Estate Planning Objectives

A good place to start estate planning is to outline some general objectives. From these, more specific objectives may evolve. Common examples might include:

- **To provide for a young widow/widower and children.** Death may strike at any age. Often the amount of assets is less for young families, but planning is still needed to ensure the desired availability, adequacy and control of those assets. A will or trust may simplify financial management. Life insurance proceeds and Social Security benefits for a surviving spouse and minor children can provide needed sources of cash in case of a premature death.
- **To provide adequately for you and your spouse during retirement years.** For many this should perhaps be the next most important objective. It can be lost in attempting to reach other objectives. For many years we have experienced a generally rising cost of living. This makes it difficult to determine how much it will take to live in the fashion to which you are accustomed. If a portion of the investment portfolio is in growth-type assets, some of the escalation of costs can be offset. All sources of income should be considered, including social security and other retirement plans, and investment programs. Renting or selling your property over time produces a retirement income.
- **To treat all children equitably, not necessarily equally.** It may be difficult to treat all children fairly. It's probably impossible to treat them equally. Each is an individual with a unique personality, abilities and needs. Some children may have been given additional help in obtaining an education or purchasing a home. On the other hand, one or more may have stayed in the business to help it succeed. Therefore an equal distribution may not be as fair as rewarding a son or daughter who has cared for the parent or worked in the family business. For another example, if a son's payment for a silo or barn built on the parents' farm goes unrecognized, the uncertainty of ownership may create problems for him as to his rights on the death of his parents.
- **To maintain the business as an efficient and functioning unit.** This objective may be out of respect for family traditions, or may represent the best vocation for the next generation. If heirs outside the business become eligible for part of the wealth at death, withdrawal of that capital may adversely affect the continuation of the business unless the transfer has been carefully planned.
- **To provide liquidity to settle the estate.** Availability of cash at death to meet estate settlement costs without forcing a sale of property is often overlooked. Many times real estate makes up the bulk of an estate. If there are debts and sizeable amounts of estate taxes to be paid, how does the executor get the money? The executor may have to sell some or all of the business assets. The estate plan needs to recognize the possible need for cash in an estate. Things easily converted into cash such as savings accounts, stocks and bonds, grain and livestock, and life insurance proceeds provide liquid assets to meet current obligations and taxes. If one goal in estate planning is to keep the business intact as a going concern for the next generation, additional consideration must be given to liquidity.
- **To maximize the amount remaining for distribution after estate settlement costs.** This may be a more appropriate goal than minimizing estate taxes, legal fees and court costs. Potential estate settlement costs should be estimated, such as Ohio and federal estate taxes, attorney and executor fees, and probate court costs.
- **To maximize total family satisfaction.** This is probably the ultimate objective, but one may need other sub-objectives that can be more easily measured. Parents can allow children and other beneficiaries a meaningful role in reviewing estate plans. This can create understanding and encourage suggestions. Tensions among children may be reduced if parents assume the responsibility for this sharing role.

Retirement Planning Considerations

It is impossible to separate estate planning from retirement planning. Many aspects of retirement planning are beyond the scope of this publication but some economic considerations should be mentioned.

Table 1 shows the latest life expectancies for men and women, ages 35-79. Note the increase in the likely age of death as you move down the table. For example, a male, age 50, can expect to live to age 75.2 while a male age 60 can expect to live to be 77.5. A female, at age 60, can expect to live to age 82.4.

Another factor to be considered is increased cost of living during the course of retirement. Table 2 contains inflation factors to use when projecting the cost of living. Assume a husband, age 62, and wife, age 60, require $20,000 a year to live now. They can both expect to live 16 years, and if the expected rate of inflation is 4 percent, Table 2 suggests it would cost about 1.87 times $20,000, or $37,400, to buy the same bundle of goods and services sixteen years from now.

The mix of goods and services desired by a family will not likely be the same after retirement as before. Also, one must allow for the possibility that some costs will increase more relative to others.

All potential sources of retirement funds need to be considered. This includes income from assets or proceeds from the sale of these assets. The projected earnings from investment portfolios and retirement plans need to be compared with projected living costs.

Table 1. U.S. Life Expectancies, 1980.

Age	Men	Women
35	38.6	44.9
40	34.0	40.1
45	29.4	35.4
47	27.7	33.6
49	26.0	31.8
50	25.2	30.9
51	24.3	30.0
52	23.5	29.1
53	22.7	28.2
54	21.9	27.4
55	21.2	26.5
56	20.4	25.7
57	19.6	24.8
58	18.9	24.0
59	18.2	23.2
60	17.5	22.4
61	16.8	21.6
62	16.1	20.8
63	15.4	20.0
64	14.8	19.2
65	14.2	18.5
66	13.6	17.7
67	13.0	17.0
68	12.4	16.2
69	11.8	15.5
70	11.3	14.8
71	10.7	14.1
72	10.2	13.5
73	9.7	12.8
74	9.3	12.2
75	8.8	11.5
76	8.3	10.9
77	7.9	10.3
78	7.5	9.7
79	7.1	9.2

Balance Between Fixed and Variable Dollar Assets

Farm families tend to set their sights on owning land. And they like it best when it is mortgage-free. They typically acquire more land when possible. Some non-farm families take the same attitude about their businesses. Having all of one's estate in land, a store or a factory can present problems when estate taxes have to be paid.

Some persons diversify their investments, trying to achieve some balance. Over time we have observed periods of high and low prices, inflation and deflation, booming business and some bankruptcies. These different business conditions affect various kinds of investments in different ways.

A fixed-dollar type of investment, such as $10,000 in a savings account, government or corporate bond, mortgage or land contract, should return $10,000 plus interest at the end of 10 years. An investment of $10,000 in real estate, common stocks, a franchise, or other variable-dollar assets may bring in a higher or lower annual return. At some point in the future, it may be worth much more or much less than $10,000 on the market. These are known as growth-type assets. If one expects higher returns, one should also typically expect higher risks.

If we knew for sure what the economic climate would be when we wanted to disinvest, we could choose

Table 2. Annual Rate of Inflation.

Years to Retirement	3%	4%	5%	6%	7%	8%	9%	10%	11%	12%
1	1.03	1.04	1.05	1.06	1.07	1.08	1.09	1.10	1.11	1.12
2	1.06	1.08	1.10	1.12	1.15	1.17	1.19	1.21	1.23	1.25
3	1.09	1.13	1.16	1.19	1.23	1.26	1.30	1.33	1.37	1.41
4	1.13	1.17	1.22	1.26	1.31	1.36	1.41	1.46	1.52	1.57
5	1.16	1.22	1.28	1.34	1.40	1.47	1.54	1.61	1.69	1.76
6	1.19	1.27	1.34	1.42	1.50	1.59	1.68	1.77	1.87	1.97
7	1.23	1.32	1.41	1.50	1.61	1.71	1.83	1.95	2.08	2.21
8	1.27	1.37	1.48	1.59	1.72	1.85	1.99	2.14	2.30	2.48
9	1.31	1.42	1.55	1.69	1.84	2.00	2.17	2.36	2.56	2.77
10	1.34	1.48	1.63	1.79	1.97	2.16	2.37	2.59	2.84	3.11
11	1.38	1.54	1.71	1.90	2.11	2.33	2.58	2.85	3.15	3.48
12	1.43	1.60	1.80	2.01	2.25	2.52	2.81	3.14	3.50	3.90
13	1.47	1.67	1.89	2.13	2.41	2.72	3.07	3.45	3.88	4.36
14	1.51	1.73	1.98	2.26	2.58	2.94	3.34	3.80	4.31	4.89
15	1.56	1.80	2.08	2.40	2.76	3.17	3.64	4.18	4.78	5.47
16	1.61	1.87	2.18	2.54	2.95	3.43	3.97	4.60	5.31	6.13
17	1.65	1.95	2.29	2.69	3.16	3.70	4.33	5.05	5.90	6.87
18	1.70	2.03	2.41	2.85	3.38	4.00	4.72	5.56	6.54	7.69
19	1.75	2.11	2.53	3.03	3.62	4.32	5.14	6.12	7.26	8.61
20	1.81	2.19	2.65	3.21	3.87	4.66	5.60	6.73	8.06	9.65

Example:

1. Mr. & Mrs. Jones would like to retire at age 62, 11 years from now.

2. They guess that the inflation rate will average about 5%.

3. 11 years at 5% = 1.71 inflation factor.

4. Their estimated living expenses at retirement of $20,400 x inflation factor of 1.71 = $34,884 income needed in the first year of retirement to live as they plan to.

more wisely between fixed-dollar and variable-dollar forms of wealth. Since economic conditions are variable and unpredictable, it is usually wise to diversify one's investments among several different fixed and variable income investments.

Different Times Property is Transferred Sale—Gift—Inheritance

Each estate is different. Property may be transferred during life or at death. Taxes are a major consideration in deciding when to transfer property. In regard to income tax, the adjusted cost basis of the property in the hands of the original owner as well as in the hands of the receiver is an important consideration.

Adjusted cost basis is defined as the original cost of property, plus improvements, minus depreciation. In the case of inherited property, the appraised price in the estate from which the property was received represents the original cost. Table 3 presents a brief outline of the adjusted cost basis and type of taxes associated with methods of transfer of property.

If property is transferred by sale, income tax may be due by the seller on the difference between his basis and the sale price. The new owner's basis will be the purchase price. If the sale price is less than market value, then a gift has also been made and gift taxes may be due presently or at the time the seller's estate is settled.

Gift and estate taxes are discussed more fully later. If property is acquired by gift, the new owner's basis is the same as the original owner's plus any gift taxes paid related to the property.

Real property transferred by inheritance may be subject to state and federal estate taxes, based on fair market value at death or an elective "use valuation." The new owner's cost basis is the fair market value in the estate or, if elected, the lower use valuation.

Settling an Estate in Ohio

Figure 1 depicts some key elements of the estate settlement process in Ohio.

Your estate is really evaluated three ways—assets subject to the probate court, assets subject to Ohio estate tax, and assets subject to federal estate tax. If you die with a valid will, you're said to have died "testate" and the executor named in your will handles the process. If

Table 3. What Taxes are Associated with Three Methods of Property Transfers and Basis Upon which Tax is Figured.

How Transfer Is Made	What Taxes May Apply: Income	Gift	Estate	Tax Will Be Figured On	What Basis May Apply: Original Owner	New Owner
Sale	X	X[1]	X[2,3]	Difference between basis and selling price (income tax)	Adjusted cost basis[4]	Purchase price
Gift		X	X[2]	Fair Market Value (FMV) at time gift is made (gift tax)	Adjusted cost basis	Same as the donor's (original owner) cost basis plus a portion of gift and estate tax paid
Inherited —Personal, Grain, etc.	X		X	FMV (estate tax and income tax)	Adjusted cost basis	No step-up in basis[5] for income tax
Inherited —Real —Other Personal			X	FMV or Use Value (estate tax)	Adjusted cost basis	FMV@ death, or use value

[1] If sold at less than fair market value, a gift has been made.
[2] Taxable gifts become part of the gross estate.
[3] Balance due on an installment sale becomes part of gross estate.
[4] Adjusted cost basis, which is original cost plus any new investments less depreciation allowed or allowable to date.
[5] Grain gets a step-up in basis if the estate is for a farmer involved in the business.

you die without a valid will or "intestate," the court appoints an administrator to settle the estate. Probate assets are distributed by the process, through the probate court. Probate assets are those listed plus any other assets, unless specifically excluded as non-probate assets.

Probate court costs are relatively small compared to the balance of settlement costs. Probate costs will usually range from $125 to $300 for an estate. After all assets are inventoried and valued, debts and taxes paid, tax clearance letters received, guardianships settled, and the balance of assets distributed to the heirs, the estate is closed.

Kinds of Property

Property is divided into two distinct classes—*real* and *personal.*

Real Property

Real property is land and improvements attached to the land. They are immovable possessions. Examples include land, trees, fences, tile, buildings, furnaces, and fixtures built into or attached to the house or building. Crops still growing may be considered "realty" by the above definition, but if ready for harvest, they may be considered personal property.

Personal Property

Personal property is movable property. It is made up of two general classes: *Tangible* and *Intangible.*

Tangible personal property includes those articles which can be seen or felt—for example, household goods, personal apparel, automobiles, livestock, stored grain, machinery and equipment.

Intangible personal property is the kind that cannot be seen as such, but is represented by paper, such as life insurance policies, bank accounts, shares of stock, cash, and negotiable notes.

Estate Planning Tools

There are numerous tools for doing estate planning. A representative list includes:

- Form of Property Ownership
- Form of Business Organization (Partnership, Incorporation)
- Will

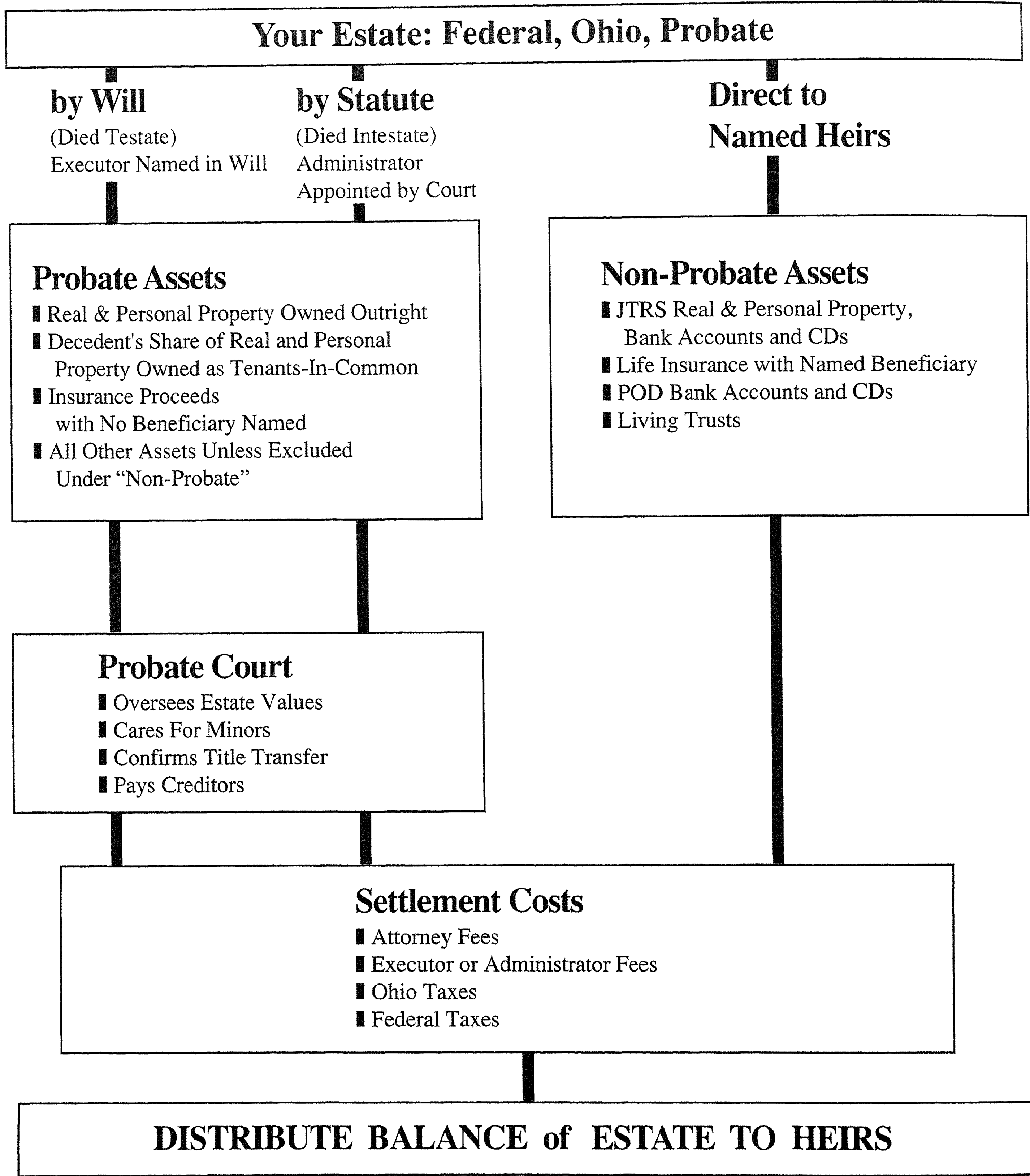


Figure 1. Settling An Estate In Ohio.

- Trust
- Life Estate
- Insurance
- Marital Deduction
- Law of Descent and Distribution
- Disclaimer
- Gift
- Sale
- Rental Arrangement
- Special Use Valuation
- Extended Payment of Taxes
- Purchase Option
- Buy/Sell Agreement
- Installment Sale
- Charitable Gift
- Living Will
- Power of Attorney for Health Care
- Power of Attorney for Business
- Pay on Death Account
- Annuity

Ways of Owning Property

The way property is held and titled is an important tool in planning an estate. Property ownership is the right to possess, enjoy, and dispose of real and/or personal property. One's interest in property may vary from complete ownership to a mere temporary right of occupancy. The nature of one's interest in property may determine what becomes of that property upon one's death. Table 4 summarizes the basic forms of property ownership in Ohio.

Differences between "estate in fee simple" and "life estate"—When a person holds land in fee simple, it means that the person is the absolute owner with all the rights of ownership during the person's lifetime and the right to dispose of it as the person wishes at death. If the owner does not dispose of it prior to death, the property will descend to the heirs.

Life estate means what it says—that one is entitled to the use and benefits of the property for life, but that these rights cease upon death. There are certain restrictions on a person having a life estate in property. The person cannot abuse the property so as to greatly decrease its value. The person can only lease the interest in it, which terminates at death.

It is not uncommon for parents to transfer some of the family property directly to their children with the parents retaining a life estate (this plan does not save taxes and needs careful evaluation), or for one parent to will property to the children with a life estate granted to the other parent. There are two basic parties when property is held with a life estate: the *life tenant and the remaindermen*. The holder of the life estate is referred to as a life tenant, and those to whom the property is to pass at the death of the life tenant are called the remaindermen.

Co-Ownership of Real Property

There are several ways for two or more people to own property together.

Tenancy in Common—Each tenant (owner) in common owns an interest in the undivided property. Individual owners need not own equal shares and need not be related. Each owner has the right to dispose of their share in the property without the consent of the others. If one of the owners dies, their share descends to their heirs by the law of descent and distribution or by will. These heirs may or may not be the other parties holding the property in common with them. The interest (degree of ownership) of each owner may be seized for their debts. One tenant (owner) may force a division of the land by lawsuit, known as a partition action.

Joint Tenancy with Right of Survivorship (JTRS)— Joint tenancy is often called joint tenure. It is a common way for husband and wife to hold such property as the family home. If federal estate taxes are a concern, a husband and wife should carefully select property to be owned with right of survivorship.

For real property, JTRS ownership can be severed if one tenant elects to transfer their interest by sale or gift. Only their interest can be transferred. For personal property, such as bank accounts, each co-owner is entitled to spend or withdraw the entire account without the other's approval.

An important feature is the right of survivorship. This means if one owner dies, those remaining become the owner(s) of the whole property regardless of what the decedent's will states.

Tenancy by the Entirety—This is a special kind of joint tenancy in real estate, provided for in the laws of some states, which can be created only between husband and wife. It carries the right of survivorship. Once this type of co-ownership has been entered into, neither the husband nor the wife can break the arrangement unless both join in a deed to convey away what they both own. Since April 4, 1985, Tenancy by the Entirety ownership

Table 4. Forms of Property Ownership in Ohio

	Title/Examples	Power of Disposition	How Disposition Can Be Made	Whose Estate
A. Fee Simple, Single	John Doe	Complete (except for dower with real property)[2]	Sale, Gift, Will	John Doe (P, FET, OET)[1]
B. Fee Simple, Concurrent:				
Tenancy in Common, (NOT necessarily Equal Shares)	John Doe and Mary Doe OR John Doe, Peter King, and Sam Smith	Each tenant their undivided share (except for dower with real property)	Sale, Gift, Will	Prorata share each owner's estate (P, FET, OET)
Joint Tenancy (Equal Shares)	John Doe and Peter King for their joint lives, remainder to the survivor of them	**Real Property** All may join or each dispose of his share (except for dower) **Non-Real Property** Each has right to all	Sale, Gift Property "automatically" passes to survivor at death regardless of provision in will.	If married, 1/2 in estate of 1st to die; if not married, total presumed to be in 1st estate (FET, OET). Survivor can spend 3/4 of joint account w/o approval of county auditor.
Tenancy by the Entireties[3]	John Doe and Mary Doe, husband-wife as tenancy by the entirety with rights of survivorship	Husband and wife must join	Sale, Gift Property "automatically" passes to survivor at death regardless of provision in will.	1/2 in estate of 1st spouse to die (FET, OET)
C. Life Estate	John Doe for life	John Doe may transfer life interest	Sale or Gift of life interest	If gift remainder interest and retain life interest, total in donor's estate (FET, OET)
	Ruth Doe as remainderman	Ruth Doe may transfer remainder interest	Sale, Gift or Will remainder interest	If receive life interest by inheritance, gift or purchase, there would be a "0" value in life tenant's taxable estate (P, OET, FET)
		Both may join together to transfer entire interest if remainder interest is vested		Remainder interest value is in remainderman's estate (P, OET, FET)

[1] Probate (P), Federal Estate Tax (FET), Ohio Estate Tax (OET)

[2] "Dower" is the right of a spouse to a 1/3 life interest in real property owned by the other spouse. For this reason, a spouse is asked to release dower when real property is transferred or when a mortgage is placed on the property.

[3] Ohio law, effective April 4, 1985, disallows the creation of a tenancy by the entireties after April 3, 1985. Tenancy by the entireties deeds in place before April 4, 1985 will remain as such.

deeds may not be created in Ohio. However, such deeds created before April 4, 1985 are still valid.

Because of the impact of federal estate taxes in estate settlements, it may not be good judgement for a husband and wife with combined estates in excess of $600,000 to hold their property in joint tenancy or in tenancy by the entirety. To do so removes the flexibility in estate planning that may be helpful in reducing federal estate taxes.

There are also certain disadvantages involved in joint tenancy. While joint tenancy, with its elimination of the necessity of administration of an estate, can be very valuable, there are other cases for which it is unsuitable. This is most likely to be true when the amount involved is fairly substantial, and joint tenancy may actually increase the expense of transferring between two or more generations. Therefore, joint tenancy should be created only under the *guidance of an estate planning counsellor.*

Co-Ownership of Personal Property

Bank accounts and certificates of deposit, stocks and bonds, U.S. Savings Bonds, safety deposit boxes and other personal property can be co-owned. Such accounts in banks and similar institutions are generally set up in joint tenancy with right of survivorship, unless tenants in common ownership is specifically requested. JTRS property is part of the gross taxable estate for both Ohio and federal estate taxes. When a married individual dies, and an account is co-owned with a spouse, one half of the account balance is included in the taxable estate of the decedent. If a joint account is owned with someone other than a spouse, the entire account balance is presumed to be owned by the decedent unless the surviving owner can show he/she contributed to the account.

Bank Accounts and Certificates of Deposit—A joint bank account with right of survivorship is payable to either owner during his/her lifetime or to the survivor at the death of the first owner. Although the bank will hold up payment of checks immediately after the death of one of the parties, the surviving party can obtain a tax release from the county auditor. This release can usually be secured rather quickly and will give the survivor the right to draw on the account.

Often a bank account or certificate will be held in joint ownership between parent and child. Sometimes this is to allow the child to take care of the affairs of an elderly parent. Upon the death of the parent, the whole account transfers to the child. A more desirable alternative in most situations is to give the child a power of attorney to transact the desired affairs. It is difficult to keep distributions balanced among children if accounts are held as JTRS. It is much easier to put a clause in the will indicating the fraction of accounts to go to each child.

The signature card, and/or other contract which constitutes the agreement between the depositors and the bank, contains the specific wording which creates the right of survivorship between the depositors.

Payable on death (POD) accounts are typically held in the name of one person but, at the death of that person, go directly to a named beneficiary by the terms of the account. POD accounts are non-probate property. They are, however, still subject to estate taxes.

Stocks and Bonds—These are often owned in joint ownership. The wording showing ownership should be carefully checked.

U.S. Savings Bonds—The U.S. Treasury provides a choice of registration for bonds held in a joint ownership. One of the permitted forms for U.S. Bonds is "Harry A. Smith or Mary A. Smith". Another permitted form is "Harry A. Smith, payable on death to Ms. Helen Bell Smith." In the first case, upon the death of one co-owner, the surviving co-owner will be recognized as the sole owner; in the second case, upon the death of the owner, the named beneficiary will be recognized as the owner. In either case the bond is still subject to tax calculations in the decedent's estate.

Safety Deposit Boxes—There are several ways in which the tenancy of a personal safety deposit box may be arranged. Husband and wife can hold the box in both of their names as joint tenants with rights of survivorship; it can be taken in the name of one, with the other named as deputy to enter; or it can be taken in the name of either with no deputy named. The safety deposit box can also have a POD designation on the contract with the bank. The bank will seal the box upon the death of an owner until it can be opened in the presence of a representative from the county auditor's office. The fact that the safety deposit box is held in the name of one individual, or jointly in the names of two or more individuals, does not necessarily govern the ownership

of the property which may be in the box, either during the lifetime of the owner or owners, or at the death of an owner. Title designations on the property in the box determine ownership.

Other Personal Property—Tangible personal property, such as livestock and farm equipment and the family car, are most often held in one individual's name and would become a part of their estate at death; but these, too, may be held in joint ownership. Items like farm equipment are not titled, so evidence such as depreciation schedules help to determine ownership.

What fits one family's needs may not be suitable for another. For this reason, an attorney should be consulted as property is acquired, or at least periodically to review property ownership.

Methods Used in Property Transfer

Transfer of property takes place at death by direction of a will, by direction of the Law of Descent and Distribution of the state of residence of the deceased or by method of ownership, frequently said to transfer by contract. If property is owned in another state, consult an attorney about how it may be transferred and taxed.

The transfer can take place during the life of the owner by sale or gift. Also the sale or gift can retain a life estate for the transferor, which causes the value to be included in the transferor's estate.

Why Have a Will?

A will is an instrument by which a person provides for the disposition of their property after death. There are several reasons for preparing a will:

1. Appointment of an executor and successor executor.
2. Appointment of guardians for minor children and successor guardians.
3. Appointment of guardians for property management (need not be same individuals as guardians of persons).
4. Provide for property distribution.
5. Provide for a trust or life estate.
6. Plan for payment of debts.
7. Executor can be excluded from having to post bond.
8. Assumed order of death in the event of simultaneous death of parties.
9. Provide for distribution of property in case of potential disclaimer by a beneficiary under the will.
10. Designation of the powers granted to the executor.

If no will is found, the courts will provide an administrator who will divide the estate strictly according to law. Often the provisions of the law are not what the deceased would have wanted.

Making a will is sound business and should not be neglected. Anyone who owns property, real or personal, even though the amount may seem small, should have a will. The individual making the will can name the executor of his choice, rather than having the court name an administrator. *Your Legal Advisor Can Help You With This Important Task*

Legal Requirements and Limitations for a Valid Will in Ohio—The testator (person making the will) must be over eighteen years of age. The will must be in writing and signed at the end by the testator. It must be signed in the presence of at least two competent witnesses who must not be beneficiaries under the will. The testator must, in the presence of the witnesses, declare the instrument to be his last will and testament.

Can a Will Be Changed? Your will should be reviewed periodically, as children are born and grow up, as you desire to change beneficiaries, or as your property situation changes. A testator may change or revoke their will as often as desired unless they become insane or of unsound mind or is under undue influence. The will may be rewritten, or an amendment called a codicil may be attached at the end of a will. Today, with attorneys commonly storing wills on a computer, it is often easier to re-execute an entirely new will than to make changes by codicil. If a codicil is used, it must be executed with the same formalities as the will. The witnesses do not have to be the same persons who witnessed the previously drawn will. Every will should state at the outset that it is the last will of the testator. Never mark up a will; you may invalidate it.

May Persons Will Their Property Any Way They Wish? The law protects the legal share of the surviving spouse. If the will leaves the surviving spouse less than the share of the property to which he or she would have been entitled had there been no will, he or she has the privilege of choosing whether to accept the will's provisions or to take the share allotted by law. No such protection is accorded to children even if disinherited in the will.

It is recommended that every person have a will, even if they think they have all property owned in non-probate form. Something may have been missed, or there could be claims by the estate, like accidental death, which cause probate property.

Law of Descent and Distribution

As in every state, there are laws in Ohio which direct how the property of a deceased person who dies intestate (having made no valid will) is to be distributed. Probate property descends and is distributed as shown in Figure 2.

Living Will and Durable Power of Attorney for Health Care Decisions

Ohio, in 1991, enacted legislation regarding living wills and durable power of attorney for health care decisions. A living will permits Ohio residents to declare their intentions regarding withholding or withdrawal of life-sustaining treatment when they are no longer competent and to have their declaration recognized by Ohio law. The statute requires that in order for the living will to be valid, the individual must be a competent adult and voluntarily execute the living will. The living will must be dated, properly witnessed, and properly notarized.

A living will becomes very useful when a patient is no longer capable of making informed decisions. It is the patient's voice if it is communicated to the attending physician. The living will activates when the attending physician and one other physician determine that the patient is in a terminal condition, or is permanently unconscious and is incapable of making informed decisions.

The living will must specifically authorize withdrawal or withholding of hydration and nutrition. However, the living will does not affect "comfort care" unless the patient can no longer feel pain. Then, comfort care is no longer necessary. A living will may be revoked at any time and in any manner.

The physician has a duty to inform the patient if the facility or the physician cannot or will not comply with the patient's choices set forth in the living will. The physician or medical facility cannot interfere with transferring the patient to a facility which will comply with the patient's wishes. The attending physician must note in the patient's medical record that there is a living will.

If an individual does not have a living will, the statute sets out a priority of persons who can sign a consent to withdraw or withhold life sustaining treatment. The decision which is made for the patient must be consistent with that individual's previously expressed intentions or that which can be inferred from the person's life-style or character. The statute permits the use of preprinted forms for living wills. However, a lay person should be cautious about using those forms without advice from an attorney. A living will does not apply if a patient can make informed decisions, or if nutrition and hydration lend comfort to the patient. A living will has limited application if the individual is pregnant.

The Durable Power of Attorney for Health Care designates an Attorney in Fact to make health care decisions when the principal is unable to communicate his wishes. This document can relate to life termination and to life-time health care decisions. The provisions regarding withdrawal or withholding of life support systems are the same as a living will. If there should be both a living will and a health care power of attorney, then the living will takes precedence for life termination decisions. In such cases, the health care power of attorney allows the attorney in fact to make life-time decisions like having access to and releasing medical records, employing and terminating health care personnel, and selecting health care facilities.

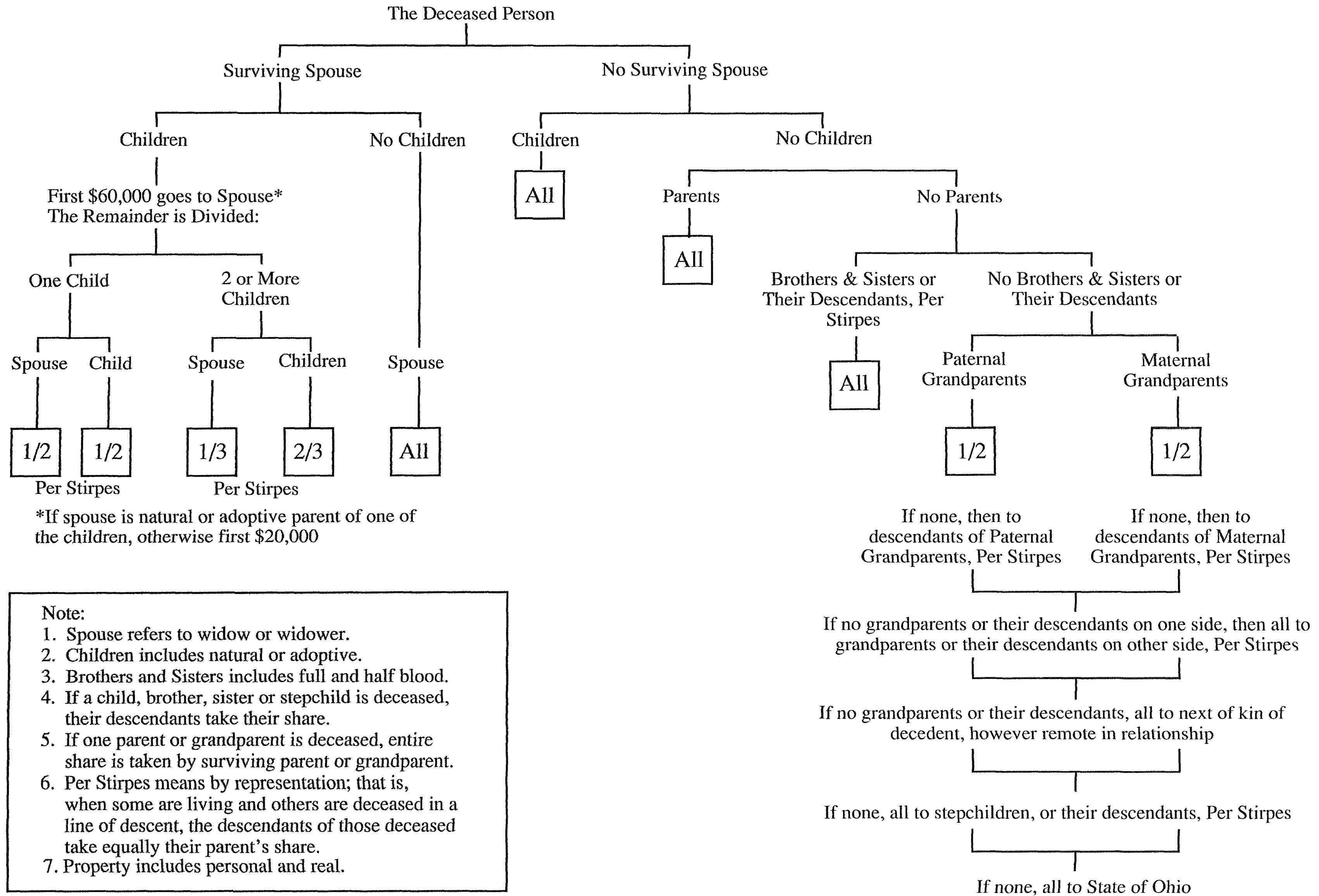
Letter of Instruction

Anyone may be asked at some time to take over the affairs of another individual because of a death or an illness. This responsibility would be much easier if a letter of instruction has been prepared. Such a letter would save much time, trouble and probably expense. As estate plans are completed, it is recommended that such a letter be developed.

Unlike a will, there are no legal requirements for a letter of instruction. Therefore, it can be handwritten or typed. It need not be witnessed and can say whatever you wish. Because a letter of instruction is not a binding legal document, it cannot be a substitute for a properly executed will. A will is essential to direct the disposition of your property. A letter of instruction gives survivors and those you have named to act for you helpful guidelines to facilitate your wishes.

Those you want to act in your place should know that the letter is to be opened immediately if you are

Figure 2. Diagram of the Ohio Statute of Descent and Distribution.
Revised Code of Ohio Section 2105.06
(There are some exceptions to this general statutory provision.)
When a Person Dies Without a Will, Property Descends and is Distributed as Follows:



incapacitated, or upon death. It would be wise to give copies to your attorney, named executor, spouse, grown child or friend who could step in and handle your affairs. As a minimum these persons should know where the letter of instruction is located. It may also be wise to attach a copy of the letter to your will and keep it with your important papers. It should be periodically reviewed and updated.

The content of the letter will differ from individual to individual. Following is a list of typical subjects to be addressed:

The names of family and friends to contact, their telephone numbers and addresses; your attorney; preferred funeral director; social security number and location of the card; information on checking accounts, savings accounts, certificates of deposit, and credit cards; information on stocks, bonds and real estate; information regarding property and liability insurance; military service information; and arrangements for after your death, including location of burial lot, instructions if you wish to have your body donated for anatomical gifts, and funeral instructions.

It should also include employer, business associates, clergy, and insurance agents; the location of important papers, including will, birth certificate, marriage certificate, income tax returns, insurance policies and deeds; location of safety deposit box and inventory of its contents; information regarding medical, accident and income disability insurance; information regarding debts; and any other items you feel will help those charged with the responsibility of carrying out your business and personal affairs.

Table 5. Typical Annual Premium per $1000 Face Value of Life Insurance.

	Male		Female	
Type of Policy	Age 25	Age 50	Age 25	Age 50
Renewable 10 year level term (preferred nonsmoker)	$2	$5	$2	$4
Renewable 10 year level term (standard smoker)	$3	$10	$3	$ 9
Ordinary Life	$12	$31	$11	$30

Many attorneys, trust officers and insurance companies have forms and a list which will help prepare a letter of instruction.

Life Insurance

Life insurance is often thought of as a means to protect a family against loss of income in the event of the premature death of the primary breadwinner. It also can have additional roles. It can provide cash in an estate to pay estate settlement costs, pay off debt, balance inheritance among heirs, or fund the buyout of a business.

The cost of life insurance varies by age, sex and health of the insured and by the type of insurance, as shown by the example figures below. The costs per $1000 also generally decrease as the face value increases. (see Table 5)

Term insurance is generally least expensive per dollar of face value because it provides only insurance and for only a specified period of time and builds no cash value. The figures shown are for a policy which is guaranteed renewable at the end of the year. The premiums for the next 10-year period would be higher due to increased age and would also vary by the health of the applicant.

Premiums are higher for ordinary life insurance and are constant over the life of the insured. In the early years of the policy, the excess above the amount needed to pay off policies for those dying that year and current operating costs is invested by the company. This builds a reserve or cash value which increases over the life the policy.

Variable life insurance is a type which is popular now —it includes a higher degree of investment than ordinary life. The annual premium for a variable life policy would be higher than those shown but would vary widely between companies and types of policies.

There are four parties to a life insurance contract— the insurance company, the insured, the owner, and the beneficiary. The selection of a financially sound insurance company is very important. One of the insurance rating services should be checked to obtain this information.

The owner, the insured, and the beneficiary (ies) may be vested all in one person, may involve two persons, or may be three separate individuals. In Ohio, an insurance policy is not subject to estate tax unless the insured's estate is the beneficiary. For federal estate tax,

the insurance policy is subject to taxation if the insured is the owner.

Ohio law does not usually present a concern because the estate is seldom made the beneficiary. The federal tax law does present a concern. It is not unusual for the insured to also be the owner. If a person's estate exceeds $600,000, the inclusion of life insurance increases the federal estate tax. The ownership on policies needs to be carefully checked.

How might a family use life insurance to reduce problems in settling an estate by providing liquidity? If by examining the husband's probable estate and estimated estate settlement costs, it is felt that $50,000 cash might be needed, the wife might buy $50,000 of life insurance on the husband's life, using her own funds or income, owning the policy herself and naming herself as beneficiary. At the husband's death the $50,000 is then available to pay costs of the estate, although the wife is not obligated to use the funds for those purposes. This may be a better alternative than borrowing against the real estate or selling part of it to settle the estate. The husband can purchase insurance on the wife's life for the same purpose in her estate.

Life insurance is also useful upon the second death of a husband and wife. Often this is when the highest estate settlement costs are experienced. Other uses of life insurance proceeds are to provide funds for paying debt, for funding the living needs of a family, for one child to buy out siblings in case of the child wanting to continue the business, to provide a way to create more fairness among the beneficiaries, or to enable a buyout in case two or more owners have a closely held business and a death of one of the owners should occur.

Installment Sale

An installment sale can achieve two important goals: (1) a reasonable degree of financial security for the parents and (2) a reasonable degree of opportunity for a child to purchase the family farm or business. In addition, the child operating the farm is provided with the maximum incentive to save money and maintain the productivity of the farm.

The payment schedule should be chosen with four factors in mind: (1) the purchase price of the farm, (2) the size of payments the child can expect to make out of the anticipated farm income, (3) the anticipated lifetime of the surviving parent, and (4) the needs of the parents. The installment sale can be by a land contract or a deed and mortgage. The difference is in who holds the deed.

From a business viewpoint, the sale of the farm from parents to the farm-operating child on installments, either by a land contract or deed and mortgage, has much to commend it. It is a clean cut business transaction, and all parties know where they stand. Children know they will get the farm if they do what they have agreed to do. The parents can use the interest and principal payments for their needs during retirement. They can also avoid any re-investment problem involved with an outright cash sale or with an accelerated payment schedule. If the child fails to make the payments, the parents can regain possession of the farm. The other children are not left out by such a sale. The balance due under the contract and the unexpended money received from the sale of the farm become part of the parents' estate and are distributed to the heirs.

Each installment must be allocated between capital gain and interest, and taxes paid. Two major disadvantages of an installment sale under current income tax rules are that tax is due on capital gains realized, and any depreciation recapture resulting from the sale must all be realized in the year of sale. This is more likely to be a serious problem where machinery is involved in the sale. Also, a minimum interest rate of 6 percent compounded semi-annually must be stated and paid on land sold to a family member, or a higher rate will be imputed by the IRS, with basis and income tax implications. If the property is sold to a related buyer who subsequently disposes of the property within two years, all or part of the gain received by the related party will be treated as if received by the original seller. The balance due on an installment contract becomes part of the estate at the death of the seller.

An installment sale can also provide cash for gifts to the purchaser or other family members. If gifts to any one person exceed the annual $10,000 exclusion, a federal gift tax return will be required. However, no gift tax would be due unless donors had used their lifetime credit. Gifts should not be in the form of a forgiven payment, but the payment should be received, then the gift made as a separate transaction. Income taxes still apply on the amount of payment due even if an equal amount is given away.

Under present income tax law, the tax on the gain can result in a significant reduction in net proceeds from the sale. Consequently, it may be difficult to achieve higher total dollar returns than those from keeping and leasing the farm. In some circumstances a long-term lease arrangement with the potential heir, with option to

purchase, may be a viable alternative. Then the heir can get a new "stepped up" basis in the property through the estate, and the estate taxes may be small compared to the capital gains tax on a sale.

Partnership

A partnership arrangement may aid in transferring property from one generation or one party to another. The younger partner can secure an interest in either real or personal property by a gift or a purchase, or as compensation for labor and management contributed to the partnership. The partnership is a very flexible ownership arrangement and may be helpful in many ways in planning an estate.

The partnership's flexibility may be a disadvantage if it becomes unstable at the death of one of the partners. In this respect, it is similar to tenancy-in-common. At the death of a partner, the other partner may be forced to settle up and distribute to the deceased partner's estate a share of the partnership assets. In a farm operation, this could result in the disruption or dissolution of the farm business.

Such disruption could be avoided, however, if the deceased partner's heirs are bound by a written buy-sell provision in the partnership agreement, funded by life insurance if needed. Such a provision would prevent much of the instability that may arise in settling the estates of the respective partners.

A limited partnership can facilitate inter-generational transfer, much like a corporation. There must be at least one general partner. Any or all partners can hold shares of the limited partnership, which could be sold or given away but which carry no control rights nor associated liabilities. A limited partnership is often favored over a corporation for holding real estate.

Incorporation

A corporation is an artificial being created under state law. It is a separate legal business entity distinct from its owners, who are called shareholders because they own shares in the corporation. The major characteristic of the corporate form of business organization is the sharp line of distinction between the business and the owners. The corporation is a separate taxpayer unless shareholders are qualified and elect to be taxed like a partnership, as a Sub-S Corporation.

One advantage of a corporation is that, like with a partnership, it is relatively easy to transfer one or more shares of stock by gift or sale from parents to children. Yet, so long as more than 50 percent of the stock is in either or both of the parents' names, the parents could continue to have the controlling vote in the corporation and in the farming operations. The parents might be considered as having made a transfer with retained interest.

It should be noted in this connection that a minority shareholder in a farm corporation is likely to find himself or herself in a weak position. This may happen to the farm-operating child, or to the surviving parent if there is more than one heir involved in the estate settlement.

Reducing estate settlement costs and estate taxes by means of gifts of stock is a feature often discussed as an advantage of a corporation. Much the same thing can be done by selling the farm on installments and then making gifts equal to a part or all of the current payments on the contract or mortgage up to the exempted limits. However, the income tax on the sale of the farm is involved if there is a capital gain.

Trusts

A trust is a useful device to manage property. This could be land, stocks, bonds, cash, etc. Of all of the tools of estate planning it is probably the least understood and appreciated. Persons may do an excellent job of managing their assets when they are active and alert. When their health fails or they get too old and worried, they may need assistance. A trust is a flexible and practical tool that can be used to carry out one's objectives. A trust is an instrument through which the owner (the settlor) transfers property to a custodian, called the trustee. The trustee manages the property for someone named in the instrument as the beneficiary. The trustee may be an institution, such as the trust department of a bank, or an individual. The beneficiary may receive current income or future income. The same or a different beneficiary may receive the remainder of the trust at some future date.

If there is a large estate, especially if it is made up largely of cash and life insurance proceeds, and the surviving spouse is elderly or inexperienced in investing and managing money, a trust may be the most desirable method of meeting the heir's needs.

Trusts are special, versatile instruments. A trust that is a part of a will and is subject to probate is called a testamentary trust. A trust created and operating during

one's life is called "inter-vivos" (living). There are revocable and irrevocable living trusts. A revocable trust gives the settlor (or creator) of the trust, the power to revoke and/or alter the trust during the settlor's lifetime.

Property placed into a revocable living trust *while living* will not be subject to probate, but will still be included in the decedent's taxable estate as control and/ or other rights were retained. Since the trust is not subject to probate, it is a more private instrument.

An irrevocable trust arises when you completely dispose of your power to control the property in the trust and the income from it. Gift tax liability may result from the creation of an irrevocable trust.

A potentially powerful use of a trust in many estate planning situations is the combination of an irrevocable living trust funded by a very minimal amount, say $25, and a pour-over will, which directs property into the trust at the death of the settlor. Between husbands and wives, property placed into such a trust upon first death can provide income and limited rights to principal to the surviving spouse, but the property in the trust is not in the surviving spouse's estate. This is the way to use the $600,000 credit exemption in both the husband's and wife's estate and to permit $1.2 million to pass federal estate tax-free for the couple.

Another very effective use of a trust today is as the owner and beneficiary of life insurance, to keep the proceeds out of the probate estate. This may reduce probate costs and federal estate taxes.

Costs Involved in Transferring Property

Table 6. Ohio Estate Taxes

Taxable Estate	Tax
First $40,000	2%
$40,001 - $100,000	$800 + 3% over $40,000
$100,001 - $200,000	$2,600 + 4% over $100,000
$200,001 - $300,000	$6,600 + 5% over $200,000
$300,001 - $500,000	$11,600 + 6% over $300,000
Over $500,001	$23,600 + 7% over $500,000

Table 7. Computation of Federal Gift and Estate Taxes After December 31, 1986.

Taxable Estate ($)	But Not Over ($)	Tax ($)	Plus Marginal Tax Rate (%)	On Amount Over ($)
0	$10,000	0	18	0
10,000	20,000	1,800	20	10,000
20,000	40,000	3,800	22	20,000
40,000	60,000	8,200	24	40,000
60,000	80,000	13,000	26	60,000
80,000	100,000	18,200	28	80,000
100,000	150,000	23,800	30	100,000
150,000	250,000	38,800	32	150,000
250,000	500,000	70,800	34	250,000
500,000	750,000	155,800	37	500,000
750,000	1,000,000	248,300	39	750,000
1,000,000	1,250,000	345,800	41	1,000,000
1,250,000	1,500,000	448,300	43	1,250,000
1,500,000	2,000,000	555,800	45	1,500,000
2,000,000	2,500,000	780,800	49	2,000,000
2,500,000 and over[1]		1,025,800	50	2,500,000
(1984-1992)[2]				
2,500,000	3,000,000	1,025,800	53	2,500,000
3,000,000 and over		1,290,800	55	3,000,000

[1] For decedents dying and gifts made after 1992.
[2] For decedents dying and gifts made after 1984 and before 1993, reflecting the phase-in of the 50% maximum rate.

There are three basic sources of costs.

Administration costs represent executor, attorney, appraisal, and court fees. Every estate will incur some administration costs. They may vary considerably from estate to estate due to the size and complexity of the estate. An estimate of five percent on a smaller estate, or four percent on a larger one should be reasonable. These costs should be discussed openly before the services of a professional are employed.

Ohio estate taxes are the next most likely estate settlement cost to be incurred. Table 6 summarizes the Ohio Estate Tax rates, deductions and credits. There is no Ohio tax on gifts made during life. However, for annual gifts in excess of $10,000 to a person within three years prior to death, the amount over $10,000 will be included in the Ohio taxable estate.

Federal estate and gift taxes are the third cost. Since 1987, the estate of each individual has a Unified Credit of $192,800, which will offset any federal gift and estate taxes on an estate of up to $600,000. Federal Gift and Estate Tax rates and the Unified Credit are summa-

Table 8. Computation of Maximum Credit for State Death Taxes (Based on Federal Taxable Estate).

Adjusted Taxable Estate[1] Equal to or More Than ($)	Less Than ($)	Amount in Column 1 ($)	Rate of Credit on Excess Over Amount in Column 1 (%)
0	40,000	0	0
40,000	90,000	0	0.8
90,000	140,000	400	1.6
140,000	240,000	1,200	2.4
240,000	440,000	3,600	3.2
440,000	640,000	10,000	4.0
640,000	840,000	18,000	4.8
840,000	1,040,000	27,600	5.6
1,040,000	1,540,000	38,800	6.4
1,540,000	2,040,000	70,800	7.2
2,040,000	2,540,000	106,800	8.0
2,540,000	3,040,000	146,800	8.8
3,040,000	3,540,000	190,800	9.6
3,540,000	4,040,000	238,800	10.4
4,040,000	5,040,000	290,800	11.2
5,040,000	6,040,000	402,800	12.0
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	786,800	14.4
9,040,000	10,040,000	930,800	15.2
10,040,000		1,082,800	16.0

[1] For purposes of this table, Adjusted Taxable Estate means the taxable estate reduced by $60,000.

rized in Table 7. There is another credit allowed against the Federal Gift and Estate Tax for state taxes paid. Table 8 shows that potential credit.

Ohio Estate Tax

Ohio estate taxes are payable nine months from the date of death, to the treasurer of the county where the estate is administered.

Property included in the gross estate for Ohio taxes includes: 1) Decedent's share of all property in which the decedent, at death, owned a fractional or entire interest (except real property outside Ohio); 2) Insurance on the life of decedents payable to their estate; 3) Property "given away" by the decedents during their lifetime in which they kept some interest for their lifetime; 4) For annual gifts in excess of $10,000 to one person, within three years of death, the amount over $10,000 will be included; 5) One half of the value of property owned with a spouse in joint tenancy with rights of survivorship; 6) The portion of other property owned in joint tenancy contributed to the tenancy by the decedent. (The total is presumed to be in the estate unless the surviving owner can prove otherwise.)

Deductions include: 1) Debts, funeral expenses, costs of administering the estate; 2) losses from fire, storm and other casualty or theft during the settlement of the estate; 3) The amount of money or property left to charitable, religious and educational organizations; 4) The amount of money or property passing without reservation to a surviving spouse that qualifies as the "marital deduction."

The marital deduction is equal to the *lesser* of:

1. The marital deduction as permitted under the federal estate tax marital deduction, OR
2. The *greater* of one-half of the Ohio gross estate minus administration expenses or $ 500,000. On July 1, 1993, the marital deduction is to become unlimited, to coincide with the federal estate tax marital deduction.

Every estate in Ohio has a $500 credit granted by law that offsets the taxes on taxable estates up to $25,000.

Federal Estate Tax

The federal estate tax is levied at death on all the property of a decedent, whether real or personal, tangible or intangible and wherever situated, except real property situated outside of the United States. The total value of the items is called the "gross estate." The tax is imposed upon the taxable estate (gross estate less allowable deductions) of a decedent before it is divided and not upon the share of the estate received by a particular beneficiary.

Filing requirements—IRS Form 706 must be filed by every citizen or resident of the U.S. whose gross estate exceeds $600,000 in value at the time of death. The return should be filed within nine months after death unless an extension of time has been requested and granted.

Property included in the gross estate for federal taxes is the same as for Ohio taxes, above, with these exceptions: 1) All property owned in which the decedent owned a fractional or entire interest (except real property owned outside the United States) is included; 2) Insurance on the life of the decedent payable to beneficiaries if the decedent had any rights of ownership in the policy is included; 3) For all annual gifts of over $10,000 to one person, the amount over $10,000 per person per year will be included. Deductions are the same as those listed for Ohio taxes.

Marital Deduction— There is an unlimited deduction between spouses. This includes a life interest passing to the spouse.

Credit—Some additional credits are allowed against federal estate taxes. State death taxes are an example. If the taxable estate is large enough, some or all of the state estate taxes can be used to offset federal estate taxes.

As an example, the rates of federal estate tax credit for state death taxes on taxable estates of $640,000 to $840,000 would be $18,000 plus 4.8 percent of the excess over $640,000 (Table 8). The credit shown in the table is maximum, if at least that much state tax was paid. In case the surviving spouse dies soon after the mate, there is credit available for previously paid taxes.

If federal estate taxes were paid on property recently inherited, some or all of this tax is allowed as a credit against this estate's tax. The first death would have to have been not more than 10 years earlier. If within two years, there is a 100 percent credit. The credit decreases by 20 percent each two years. Credit for death taxes paid to foreign countries is also allowed.

Federal Gift Tax

Property transferred by gift during the owner's life may be subject to gift tax. Lifetime taxable transfers are taxed at the same rate as death transfers.

Each person can give, tax free, $10,000 annually, to each of as many different individuals as they desire. A husband and wife together could give $20,000 annually to each beneficiary. For example, the husband could give child A $10,000 and child B $10,000, and the wife could give each child $10,000. Hence, the parents could gift property valued at $40,000 to the two children each year, if the parents can afford it. Gifts that are not excluded under the $10,000 per person rules are considered taxable gifts which must be reported on a gift tax return in the year made and become part of the gross estate at death. They count against the donor's Unified Credit. If over $600,000 of taxable gifts are made, the donor begins to pay tax.

Gift tax marital deduction—Donor spouses can give unlimited amounts to their spouse during the donor spouse's lifetime, without gift tax.

Basis of property gifted—Most property passed through an estate receives a new basis equal to its value in the estate. However, property given during life retains the basis it had in the hands of the donor.

Gift tax reports—An annual gift tax return, IRS Form 709, is required for any year in which over $10,000 was given to any one donee by any one donor. The tax return is due by April 15 on the year after the gift was made. No tax is due unless the Unified Credit has been fully utilized by the donor.

Table 9. Estimated Estate Settlement Costs for a Single Person After June 30, 1991.

Net Estate Value[1] ($)	Ohio Tax ($)	Federal Tax ($)	Admin. Costs ($)	Total Costs ($)	Percent of Estate Taken (%)
50,000	525	0	2,500[2]	3,025	6.1
200,000	5,740	0	9,000	14,740	7.4
500,000	21,750	0	22,500	44,250	8.9
750,000	38,240	22,613	33,750	94,603	12.6
1,000,000	56,000	109,780	30,000	195,780	19.6
2,000,000	123,900	467,720	60,000	651,620	32.6

[1] Gross estate, less debt.
[2] Assumes Executor took reduced fee.

Table 10. Estimated Estate Settlement Costs for a Married Person Utilizing the Marital Deduction, After June 30, 1993.

Net Estate Value[1] ($)	Ohio Tax ($)	Federal Tax ($)	Admin. Costs ($)	Total Costs ($)	Percent of Estate Taken (%)
50,000	0	0	2,500[2]	2,500	5.0
200,000	0	0	9,000	9,000	4.5
500,000	0	10	22,500	22,500	4.5
1,000,000	0[3]	0	30,000	30,000	3.0
2,000,000	0[3]	0	60,000	60,000	3.0

[1] Gross estate, less debt.
[2] Assumes Executor took reduced or no fee.
[3] Assumes unlimited Ohio marital deduction, effective 7/1/1993. Prior to 7/1/1993 would be $21,300 @ $1,000,000 and $56,000 @ $2,000,000.

Estimating the Costs

The first step is to estimate the value of all property in the Ohio and federal estates since each has somewhat different exclusions or deductions. Next, potential Ohio and federal taxes and administration costs can be estimated, then the appropriate credit applied against them. Worksheets are provided at the end of this publication to help you estimate your potential estate settlement costs, along with an example.

Tables 9 and 10 may help to put the potential costs into perspective. For a single person, including a surviving spouse, the costs can range from about 6 percent to over 30 percent. (Table 9)

Here is a somewhat simplified example, assuming a relatively small net estate (gross estate less debt) of $200,000 for all three costs, assuming first a married person with $200,000 in assets, utilizing the marital deduction (Table 10). Assume also that the person's surviving spouse later died owning that same $200,000 (Table 9). At the death of the first spouse, administration costs of 4.5 percent equal $9,000. There are no Ohio or federal taxes because of the marital deduction. Therefore, the only cost is $9,000 or 4.5 percent of the total estate.

At the death of the second spouse, administration costs were assumed to be 4.5 percent or $9,000. The Ohio tax on $191,000 ($200,000 less $9,000 administration), from Table 6, is $6,240, less $500 credit = $5740. The tentative federal tax on $191,000, from Table 7, is $38,800 plus 32 percent of $41,000 or $13,120 for a total of $54,120. However, this is totally offset by the available Unified Credit of $192,800. Thus, total costs at the death of the second spouse are $14,740 or 7.4 percent. The total cost of transferring the $200,000 through both estates was $23,740 or 11.9 percent of the original $200,000.

Much attention has been given recently to "avoiding probate costs". In the previous example with a relatively small estate, there would be no federal estate taxes. Actually, a very small part of the estimated costs in this example would be saved by avoiding probate, for example by a living trust. Of the $23,740, actual probate court costs would likely be less than $500. There would still be the Ohio Estate Tax of $5740, Ohio and county transfer fees of from $200 to $800, plus, most likely, some attorney costs.

Other Tax Considerations

"Generation Skipping" Tax—Some grandparents have passed their large estate into a trust (or life estate) for the benefit of their grandchildren but allowed the children (the immediate generation) to enjoy the income from the trust during their lifetime. In so doing, that portion of the estate did not add to the child's estate.

Federally, transfers in excess of $1,000,000 per decedent are subject to a special "generation skipping" tax. As of November 8, 1990, an Ohio generation skipping transfer tax is imposed on Ohio property that transfers at death. The Ohio generation skipping tax also has an exemption of $1,000,000.

Federal Special Estate Tax Valuation for Farms—Real property must be valued at fair market value at the time of death or at an alternate date up to 6 months after death. Under the 1976 law an executor can elect to value real estate used in farming (or in other closely held business), based upon its current value as a farm rather than its "highest and best" use for federal estate taxes.

To qualify for special use valuation the real property must have been used as a farm, and the decedent or a member of the family must have materially participated in the farm operations for five of the last eight years before the decedent's death, retirement or disability. The decedent or a member of the family must also have been at risk. This test can't be met by a cash rent landlord renting to a non-family member. The value of the farm real estate must have been at least 25 percent of the gross estate, and the value of the real and personal property used in farming must have been at least 50 percent of the net estate. In addition, the decedent must have been a U.S. citizen or resident; the farm must pass to a spouse, children or close relative; and the reduction in estate value cannot exceed $750,000.

Special use value is based upon capitalizing for the most recent 5-year period, average cash rents for similar property (less property taxes), using average annual interest rates for all new Farm Credit Bank loans. For example, if similar farmland rents for $60 per acre less $5 property tax = $55 net divided by 10 percent interest = $550 per acre use value.

If within 10 years after the decedent's death the heir sells or transfers the farm to non-family members or it is used for other than farming, part or all of the estate tax savings are recaptured.

Ohio Use Valuation of Farmland for Estate Taxes—Ohio has legislation patterned after the Federal Special Use Value, but much simpler. If the executor elects, the farmland will be valued under the same Current Agricultural Use Value procedure used for Ohio property taxes. To qualify, the property must be located in Ohio and pass to a member of the decedent's family. At least 50 percent of the net worth of the decedent's estate must be in farm real estate and personal property, and at least 25 percent of the net worth of the decedent's estate must be in farm real estate, both using fair market

Table 11. Assets Owned and Value of Assets

		Assets Owned as:		**Assets Passing by Title to:**			
		Sole Proprietorship, Tenants in Common or in Trust		Surviving Spouse		Others	
Asset	Total ($)	Spouse 1 ($)	Spouse 2 ($)	Spouse 1 ($)	Spouse 2 ($)	Spouse 1 ($)	Spouse 2 ($)
Real Estate:							
Farm	250,000	250,000					
Farm	200,000	100,000	100,000				
Cash on Hand or in Banks	20,000			10,000	10,000		
Automobiles & Trucks	10,000	10,000					
Machinery	150,000	150,000					
Livestock	100,000	100,000					
Crops	40,000	30,000	10,000				
Household Goods	5,000	2,500	2,500				
Life Insurance	105,000	100,000	5,000				
Retirement Plans and Annuities	60,000	60,000					
Transfers Subject To Tax							
Stocks, Bonds and Mutual Funds	20,000					20,000	
Other Business Investments							
Accounts Receivable, Notes andMortgages	15,000	7,500	7,500				
Asset Totals	**975,000**	**810,000**	**125,000**	**10,000**	**10,000**	**20,000**	
- Indebtedness	100,000	50,000	50,000				
Net Estate	**875,000**	**760,000**	**75,000**	**10,000**	**10,000**	**20,000**	

values, and the land must have been held in use for agricultural purposes. The agricultural purposes test is the same one used for current agricultural use valuation for real estate taxation.

There is a potential recapture of the tax saved, with interest, if the property ceases to be used for farming purposes or is sold to a person who is not a member of the decedent's family within four years after the decedent's death.

Extended Payment of Taxes—Time of paying federal and Ohio estate taxes may be extended. Normally estate taxes are due by nine months after death.

In order to avoid a forced sale of a closely-held business to pay estate taxes, federal estate tax rules allow estates to stretch out payment of estate taxes over a 15-year period. If funds are needed by the executor, no tax need be paid for the first five years. Interest must be paid, however. Only four percent interest is charged on the first $1 million value of closely-held business. This provision only applies to assets in a closely held trade or business. Cash renting the farm to a tenant outside the family would not qualify. A share rental arrangement for operating the farm does qualify.

The Ohio estate tax extension provides that, if a significant portion of the estate is farm or closely held business assets, then an Executor may apply for an extension. There is an annual application for the extension for a period not to exceed 14 years.

Estimating Your Costs - An Example

Table 11 summarizes an example estate by type of asset and ownership. Table 12 is a worksheet to help estimate estate costs, based on the assets in Table 11. The example reviews a current plan and an alternative.

Current Plan

A married couple has two children, one of whom is involved in the farm. Each owns some assets, but Spouse 1 has the bulk of their property (Table 11). Spouse 1 owns one farm valued at $250,000, and they own, as tenants-in-common, a farm worth $200,000. Their cash and bank accounts are owned equally. Spouse 1 has title

Table 12. Estimating Settlement Costs for Two Estates

	Current Plan		Alternate Plan[4]	
Ohio Estate Tax	Estate 1 ($)	Estate 2 ($)	Estate 1 ($)	Estate 2 ($)
Gross Estate	840,000[1]	870,500[3]	465,000	405,000
- Insurance	(100,000)	(5,000)	0	0
- Administration Expense	(30,000)	(35,000)	(17,400)	(15,200)
- Debts	(50,000)	(50,000)	(50,000)	(50,000)
- Charity	0	0	0	0
- Marital Deduction	(500,000)[2]	0	0	0
= Taxable Estate	160,000	780,500	397,600	339,800
Tentative Tax	5,000	43,235	17,456	13,988
- Credit	(500)	(500)	(500)	(500)
= Ohio Estate Tax	**4,500**	**42,735**	**16,956**	**13,488**
Federal Estate Tax				
Gross Estate[1]	840,000	870,500	465,000	405,000
- Administration Expense	(30,000)	(35,000)	(17,400)	(15,200)
- Debts	(50,000)	(50,000)	(50,000)	(50,000)
- Charity	0	0	0	0
- Marital Deduction	(760,000)	0	0	0
= Taxable Estate	0	785,500	397,600	339,800
Tentative Tax	0	262,145	120,984	101,332
- Unified Credit	(192,800)	(192,800)	(192,800)	(192,800)
- State Tax Credit	0	(22,104)	0	0
= Federal Estate Tax	**0**	**$47,241**	**0**	**0**
Summary of Estate Liquidity Needs				
Administration Expense	30,000	35,000	17,400	15,200
Ohio Estate Tax	4,500	42,735	16,956	13,488
Federal Estate Tax	0	47,241	0	0
Subtotal	34,500	126,602	34,456	28,688
+ Debts Payable At Death	50,000	50,000	50,000	50,000
= Total Liquidity Needs	**84,500**	**176,602**	**84,456**	**78,688**

[1] "Asset totals" from Table 11.
[2] Assumes Spouse 1 died before 7/1/1993
[3] Total assets of spouse 2 of $135,000 plus $735,500 balance of estate received from spouse 1 ($820,000 assets - $84,500 total liquidity needs).
[4] Assume balanced estates and neither spouse willing anything outright to the other.

to the trucks and cars, plus, as farm operator, $150,000 in machinery and $100,000 in livestock is assumed to be owned by him. The $40,000 in crops on hand is divided proportionately with the total real estate value. Household goods of $5,000 are assumed equally owned. Spouse 1 owns a $100,000 insurance policy on himself, with spouse 2 as beneficiary. Spouse 2 owns a $5,000 policy with spouse 1 as beneficiary. Spouse 1 has $60,000 cash value in a Keogh plan. Spouse 2 is beneficiary. Neither has made a transfer to another party for less than full value (a gift) which would need to be included in the estate. Spouse 1 owns $20,000 in stock in joint tenancy with a child, so the full value is in spouse 1's estate, but does not pass to spouse 2. The parents have loaned a child money to buy a house. The $15,000 unpaid balance is an asset. They jointly owe $100,000 in farm and other debts.

In Table 12, if spouse 1 were the first to die, the Ohio gross estate would be $820,000 total assets, plus $20,000 owned with the child. This is reduced by the $100,000 of life insurance, administration costs estimated at 3.75 percent, and spouse 1's share of the debt.

Assume spouse 1 willed the entire estate to the surviving spouse. If spouse 1 died before July 1,1993, $500,000 of the estate would qualify for the marital deduction so Ohio taxes would be $4500.

For federal estate taxes the gross estate is also $840,000. The insurance is part of the taxable estate since spouse 1 owned the policy. However, since the entire estate is willed outright to the surviving spouse, it qualifies for the marital deduction, and there will be no federal estate tax liability. Total estate liquidity needs at the death of the first spouse would be $84,500.

Next, assume spouse 2 dies at least 10 years later (so there's no credit for property recently inherited). Also assuming all values stay constant, the estate would include spouse 2's own total assets of $135,000 (Table 11), plus $820,000 total assets from Spouse 1 (Table 11) -$84,500 total liquidity needs (Table 12) for a total of $870,500.

The second spouse's Ohio taxable estate would be $780,500 with a tax bill of $42,735 (see Table 6). The federal taxable estate would be $785,500, resulting in tentative tax of $262,145 (Table 7). This would be reduced by the $192,800 Unified Credit, and by the State Tax Credit of $22,104 (Table 8) for a tax bill of $47,241. Total liquidity needs for the second estate are $176,602.

So, even though there were no taxes at the first death, taxes and estate settlement costs (not including debt) on both estates consumed $161,102, or 18 percent of the $875,000 total value of today's combined net estate.

Evaluating An Alternative Plan

How could this estate shrinkage be reduced? Many alternatives are available. One of the basic principles of reducing estate taxes and settlement costs, hence maximizing the residual to the heirs, is to balance the estates of the spouses. This could be accomplished in our example by gifts of property from Spouse 1 to Spouse 2.

A second principle is to bypass the second estate, if the combined assets are over $600,000. This could be done by a marital deduction trust credit shelter or life estate, which could still provide income from the assets to the surviving spouse for life.

A third principle is to reduce the size of the taxable estates of the two spouses. In this example, the life insurance policies could be owned by an irrevocable trust, removing them from both taxable estates.

Let's apply all three principles to our example:

1. Assume the estate is owned equally, except for Spouse 1's retirement plan.
2. Assume each spouse passes their estate to the childen, with income for the surviving spouse, using a trust or life estate.
3. Assume all insurance policies are owned by a trust.

With these changes, the combined gross estate that can be split is $810,000 ($975,000 from Table 11 minus $105,000 insurance minus $60,000 retirement plan). Each spouse's half is $405,000. Adding the $60,000 retirement plan makes the gross estate for spouse 1 $465,000.

The resulting estate tax calculations are shown under "Alternate Plan" in Table 12, where they are compared to the "Current Plan." Assuming the trust arrangement doesn't qualify for the marital deduction in the first estate, Ohio estate taxes increase to $16,956. The $192,800 unified credit more than offsets the tentative federal estate tax. Total liquidity needs of $84,456 are almost identical with the first estate under "Current Plan," because of the lower administrative expense resulting from the smaller estate, but increased Ohio estate taxes.

In the second estate, the Unified Credit, again, results in no federal tax. Ohio taxes and administration costs are less than in the "Current Plan". Total liquidity needs are $78,688.

Now, total taxes and administration costs in the two estates are $63,144, or 7 percent of the original $875,000 combined net estate. This is compared to $161,102 or 18 percent in the "Current Plan." To effect this saving, Spouse 2 gave up outright control of the real estate from Spouse 1 but would have a place to live and income from the real property owned by Spouse 1. Spouse 2 also lost the ownership of some of the chattels. However, the spouse could have been provided income from these chattels.

Other alternatives should be evaluated to see what their implications would be. Tables 13 and 14 are blank worksheets like Tables 11 and 12. The place to begin is to estimate the size of each spouse's total estate under your present arrangement in Table 13. Then settlement costs can be approximated from Tables 9 and 10, or estimated more precisely using Table 14.

Summary

Estate planning is an important, complex subject. It calls for a thorough knowledge of the various tools available and how they can be used to achieve the objectives of individuals and their families.

Estate planning is not a do-it-yourself project. However, knowledge of the subject is very important. Professionals that may be included in developing a plan are an attorney, a trust officer, an insurance agent, an accountant, a financial management consultant or an individual working for a charity. Estate planning should be started as soon as you have acquired responsibilities either in the form of a family or through ownership of property. Make changes as circumstances dictate. Finally, remember that if you don't make an estate plan, the state law of Ohio has made one for you, and it may not be to your liking. The first step in the estate planning process is to inventory assets, establish your estate and retirement planning goals, and appraise your present plan. Next, evaluate other alternatives in terms of reaching your goals and the potential costs to achieve them. Then contact the professionals you have selected to put the plan in place.

Table 13. Assets Owned and Value of Assets

		Assets Owned as:		Assets Passing by Title to:			
		Sole Proprietorship, Tenants in Common or in Trust		Surviving Spouse		Others	
Asset	Total ($)	Spouse 1 ($)	Spouse 2 ($)	Spouse 1 ($)	Spouse 2 ($)	Spouse 1 ($)	Spouse 2 ($)
Real Estate:							
Farm							
Farm							
Cash on Hand or in Banks							
Automobiles & Trucks							
Machinery							
Livestock							
Crops							
Household Goods							
Life Insurance							
Retirement Plans and Annuities							
Transfers Subject To Tax							
Stocks, Bonds and Mutual Funds							
Other Business Investments							
Accounts Receivable, Notes andMortgages							
Asset Totals							
- Indebtedness							
Net Estate							

Table 14. Estimating Settlement Costs for Your Estate.

	Current Plan		Alternate Plan	
Ohio Estate Tax	Estate 1 ($)	Estate 2 ($)	Estate 1 ($)	Estate 2 ($)
Gross Estate[1]				
- Insurance				
- Administration Expense				
- Debts				
- Charity				
- Marital Deduction				
= Taxable Estate				
Tentative Tax				
- Credit				
= **Ohio Estate Tax**				
Federal Estate Tax				
Gross Estate[1]				
- Administration Expense				
- Debts				
- Charity				
- Marital Deduction				
= Taxable Estate				
Tentative Tax				
- Unified Credit				
- State Tax Credit				
= **Federal Estate Tax**				
Summary of Estate Liquidity Needs				
Administration Expense				
Ohio Estate Tax				
Federal Estate Tax				
Subtotal				
+ Debts Payable At Death				
= **Total Liquidity Needs**				

[1] "Asset totals" for Estate 1 from Table 13.