

ESTATE PLANNING

---- WHAT AND WHY ----

Side Notes

I. ESTATE PLANNING

- A. Purpose: To preserve estate of client and arrange for its orderly distribution upon the client's death. Provide for the nomination of a guardian for the person and estate of a minor. Shelter assets if a spouse or child has special needs. Minimize inheritance tax.

- B. Result: Forces clients to face their own mortality and the welfare of their families after death. (Clients usually get DPAs and Health Care Directives as well).

- C. Ethics and Estate Planning: Estate planning can be rife with conflicts.
 - 1. Undue influence, who made the appointment, who brought them to the office, do not let them remain present during interview if there is any concern re this.
 - 2. Contests typically involve second spouse vs. children of prior marriage.
 - 3. Always require a dual representation letter signed by both spouses.

- D. Client Interview
 - 1. Discuss in general terms the client's intentions regarding their estate.
 - 2. Gather information concerning assets of parties (identify probate and non-probate assets, and anticipated inheritance).
 - 3. Discuss goals, special concerns, ages they want children to inherit
 - 4. Discuss executors and guardians

E. Who may make a Will - Competency

1. You should determine if testator understands:
 - a. Nature and extent of property
 - b. Person's natural objects of bounty
 - c. The disposition he/she is making of their estate
 - d. Legal effect and nature of the document

F. Discussion of Taxes

1. Washington State exemptions
 - a. Amount that can pass free of transfer tax

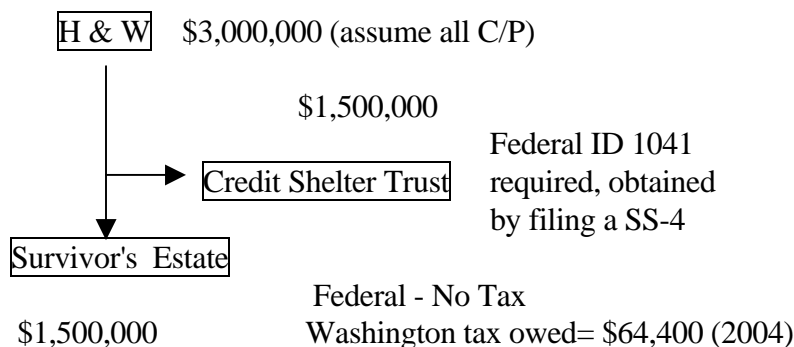
<u>Year</u>	<u>Washington State Amount Excluded</u>
2004	\$850,000
2005	\$950,000
2006 and thereafter	\$1,000,000

For federal exemptions, see Appendix 1.

- b. There is no Washington State Gift tax. For federal exemptions, the amount is unified in that it applies both to transfers that would otherwise be subject to federal gift tax and transfers that would otherwise be subject to federal estate tax to the extent that the total amount of such transfers does not collectively exceed the amount of the federal exemption.
2. Gross estate includes all assets including non-probate assets.
3. Life insurance is included if deceased had "incidents of ownership" (Irrevocable Life Insurance Trusts avoid this).
4. A credit shelter trust, bypass trust, or exemption equivalent trust, refer to the same thing, a trust for the benefit of the surviving spouse that preserves the unified exemption of the deceased spouse.

5. If the amount in decedent's estate exceeds the unified credit, the excess can pass to a marital deduction trust (see Appendix 2).
6. Marital deduction - IRC Section 2056 - decedent's estate receives a full deduction for all property passing to spouse. Marital deduction is unlimited.
7. Generally, property given by decedent to spouse in a marital deduction trust (sometimes referred to as a "qualified terminable interest property" trust) will qualify for the marital deduction. The amount in this trust is added to the surviving spouse's estate at their death for computation of the tax owed on their estate.

F. Planning for Husband and Wife (Credit Shelter Trust only)



G. Same as "F" above but spouse disclaims to fund the trust. A disclaimer must be signed within 9 months of death and no benefit or use must be made of asset. (See RCW 11.86)

1. Disclaimer Credit Shelter Trust. Disclaimed amount goes to trust to preserve decedent's exemption while ensuring the assets are available to surviving spouse under an "ascertainable standard" (See Appendix 3).

H. Value of Property

1. Fair-market value at date of death or within 6 months after decedent's death (alternate evaluation date).

2. Most assets get a stepped up tax basis as of date of death. Exceptions are assets with deferred taxes, such as annuities, 401Ks and IRAs (Income in respect of a decedent).
3. A gift has a carryover basis, whereas an inheritance has a stepped up basis which would eliminate capital gains on the sale of the asset.

I. Gifts

1. \$11,000 per year per donee, without affecting unified credit. (Can also pay tuition and hospital bills directly to the institution without having to report a gift).
2. Excess gifts are reported and count against Unified Credit (file a 709 form with the annual income tax return). Added into amount report on the Inheritance Tax return (Form 706) to determine the amount of the tax.

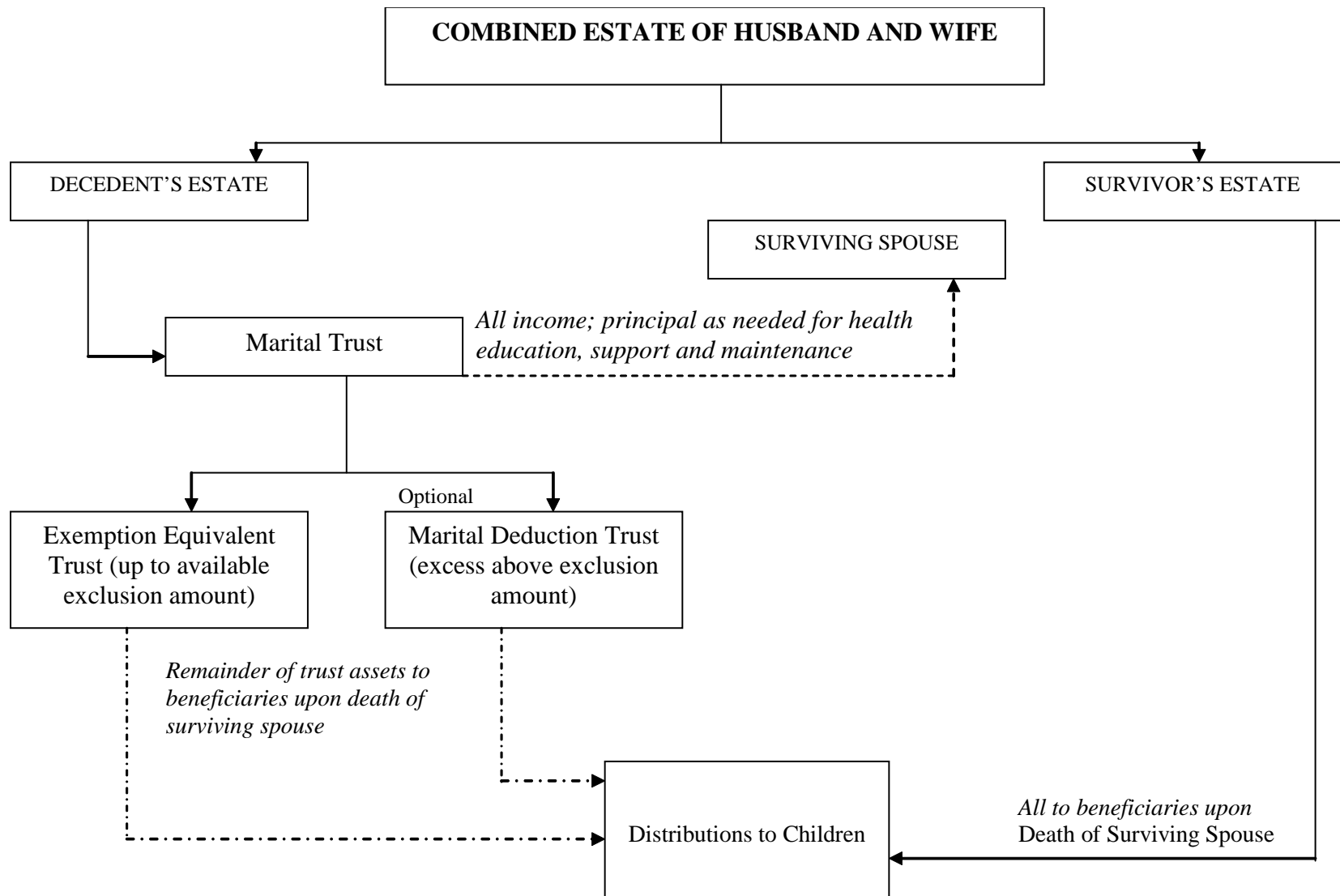
J. To Reduce Size of Estate

1. Make annual gifts of \$11,000. Must be a "present interest" in the amount gifted. Can be an undivided interest in real property, ex. an undivided 2½%.
2. Makes gifts to charity.

APPENDIX 1

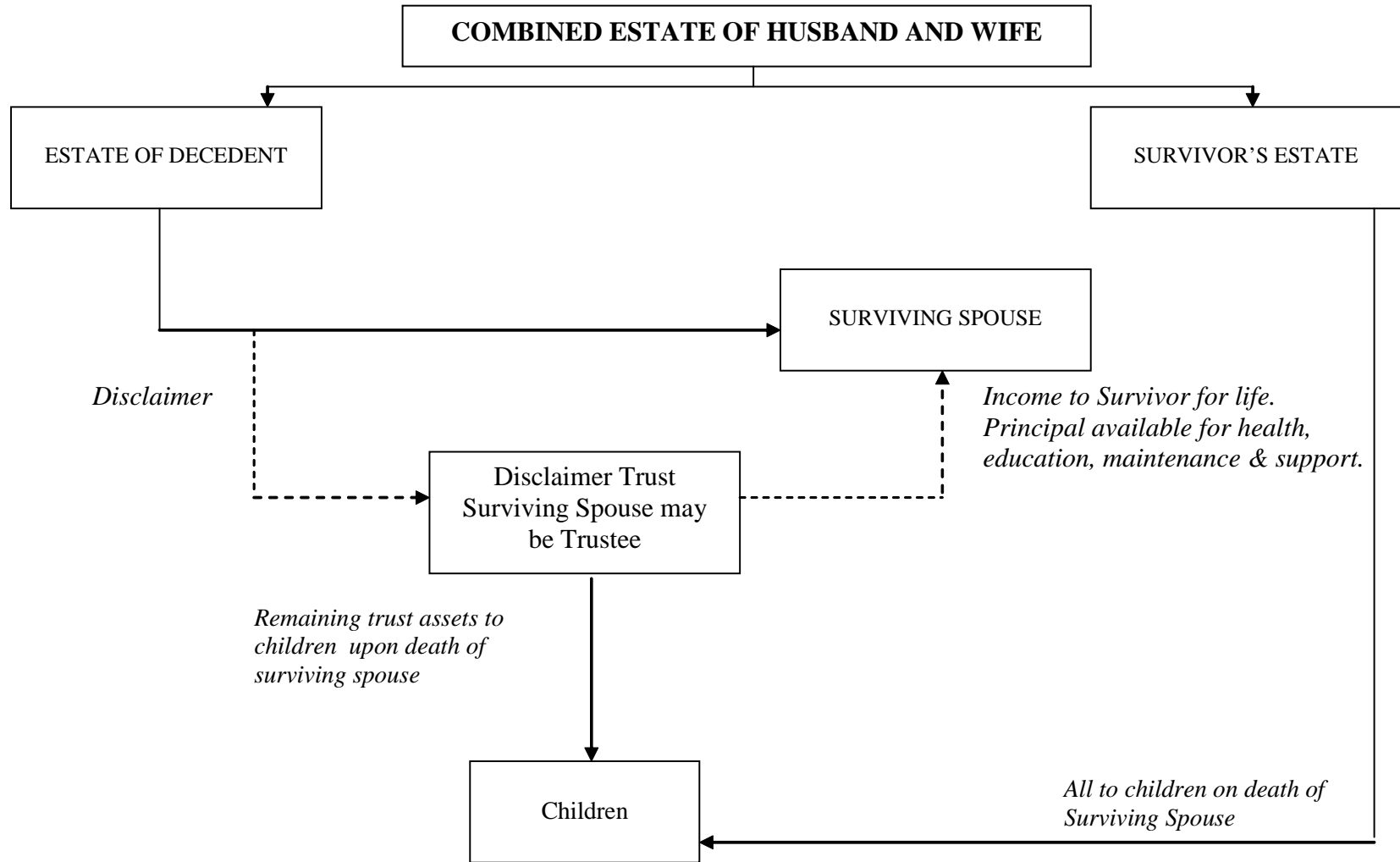
**FEDERAL AND WASHINGTON ESTATE TAX EXEMPTIONS AFTER THE
ECONOMIC GROWTH AND TAX RELIEF ACT OF 2001
P.L. 107-16**

YEAR	TAXABLE ESTATE	FEDERAL EXEMPTION	FEDERAL ESTATE TAX	WASHINGTON EXEMPTION	WASHINGTON ESTATE TAX
2001	\$675,000	\$675,000	0	\$675,000	\$0
2002	\$1,000,000	\$1,000,000	0	\$700,000	\$33,200
2003	\$1,000,000	\$1,000,000	0	\$700,000	\$33,200
2004	\$1,500,000	\$1,500,000	0	\$850,000	\$64,400
2005	\$1,500,000	\$1,500,000	0	\$950,000	\$64,400
2006	\$2,000,000	\$2,000,000	0	\$1,000,000	\$99,600
2007	\$2,000,000	\$2,000,000	0	\$1,000,000	\$99,600
2008	\$2,000,000	\$2,000,000	0	\$1,000,000	\$99,600
2009	\$3,500,000	\$3,500,000	0	\$1,000,000	\$229,200
2010	\$3,500,000	N/A	0	\$1,000,000	\$229,200
2011	\$1,000,000	\$1,000,000	0	\$1,000,000	\$0



APPENDIX 2

DISCLAIMER TRUST TO REDUCE ESTATE TAXES



APPENDIX 3

