

# Comprehensive Estate Planning: Achieving Your Vision

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**WILLIAMS PARKER**  

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**HARRISON DIETZ & GETZEN**



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# Ever-changing Legislative Landscape

- Where are we today?

	2013	2014	2015
Annual Exclusion	\$14,000	\$14,000	\$14,000
Medical/Education	unlimited	unlimited	unlimited
Equivalent Exemption	\$5,250,000	\$5,340,000	\$5,430,000
Marital Deduction (Citizen Sp.)	unlimited	unlimited	unlimited
GST Exemption	\$5,250,000	\$5,340,000	\$5,430,000
Max Estate Tax Rate	40%	40%	40%
Portability	Yes	Yes	Yes
Max Income/Capital Gains	39.6%; 20%	39.6%; 20%	39.6%; 20%
Net Investment Income Tax	3.8%	3.8%	3.8%

# Obama Administration 2015 Proposals

- Max capital gains rate from 23.8% to 28%
- Near elimination of stepped up basis allowance
- New tax on foreign earnings
- “Buffet Tax” – millionaires pay minimum of 30%
- New contribution limitations for tax-preferred retirement accounts
- And more...

# What Should I Do?

- Do I need a revocable (“living”) trust?
  - Easier to administer a more complex plan
  - Potentially seamless transition from trustee to successor trustee
  - Allows for greater privacy regarding finances and decisions
  - May result in avoidance of probate
- Current popular “advanced” estate planning techniques:
  - **QPRT**                      **–GRAT**
  - **FLP**                        **–IDGT**
- Remember, there’s no one size fits all.

# What Should I do?

- Testamentary Planning:
  - Marital/Credit Shelter Trust Planning vs. Disclaimer Trust Planning
  - Portability vs. Disclaimer

# What Should I Do?

- The Basics - “KISS”
  - Annual exclusion gifts
  - Unlimited educational and medical gifts
  - Use equivalent exemption via outright gifting
  - Simple notes using low AFR’s

# What Should I Do?

## Understanding the Basics

	Annual Exemption	Education	Hospital	Taxable Gift	Equivalent Exemption Remaining (Form 709)
1/1 – Cash Gift	\$14,000				\$5,430,000
3/1 – College Tuition		\$50,000			\$5,430,000
7/1 – Hospital Payment			\$10,000		\$5,430,000
10/1 – Taxable Gift				\$2,000,000	(\$2,000,000)
					\$3,430,000



# What Should I Do?

- What type of assets should I transfer?
  - “Stepped-up” vs. “Transferred” basis
  - Rules of thumb:
    - Transfer assets you expect to appreciate with an income tax basis equal to or close to FMV.
    - Keep assets that have low income tax basis to maximize the benefit of step-up treatment.
    - Consider that current maximum income tax rates are nearing the estate tax rate.

# Qualified Personal Residence Trust “QPRT”

# What is a QPRT?

- An irrevocable trust to which a grantor transfers his or her interest in a residence (personal or vacation) in exchange for the right to use such residence for a defined term

## Best When:

- Property's value is expected to appreciate
- Property's income tax basis = FMV
- No mortgage
- Discounts are available

# QPRT

- Pros

- Legislative blessing
- Removal of future appreciation
- Availability of discounts
- Potential for post-term use

- Cons

- Irrevocable
- Mortality risk
- Performance risk
- No step-up in basis
- Technical requirements and limitations

# Family Limited Partnership “FLP”

# What is a FLP?

- A business entity created by a family for purposes such as the following:
  - Tax efficient wealth transfer to younger generations
  - Consolidation of assets for investment purposes
  - Protection of assets from creditor claims

## Best When:

- Low AFR “hurdle rate”
- Asset values are expected to appreciate
- Asset income tax basis = FMV
- Discounts are available

# FLP Structure

- General Partner (“GP”) – manages the FLP
  - Often an LLC or other entity
- Limited Partners (“LP’s”) – equity owners
  - May be individuals, trusts, or other entities
- Senior generation funds FLP and typically gifts or sells LP units to lower generations

# FLP

- Pros

- Availability of discounts
- Removal of future appreciation
- Retained control by senior generation
- Asset protection

- Cons

- Attacked by White House proposals
- IRS scrutiny/audit risk (tax + interest & penalties)
- Limitations on retained control
- Limitations on the ownership of certain assets
- No step-up in basis



# Some Additional Planning Vehicles

## (Possible Roundtable Topics of Discussion)

- Lifetime GST or “Dynasty Trust”
- Irrevocable Insurance Trust or “ILIT”
- Lifetime QTIP Trust
- Spousal Lifetime Access Trust or “SLAT”
- GRAT
- IDGT
- 2503(c) Trust
- Charitable Trusts
- Blended Techniques
- Etc...

# Responsible Transmission of Wealth

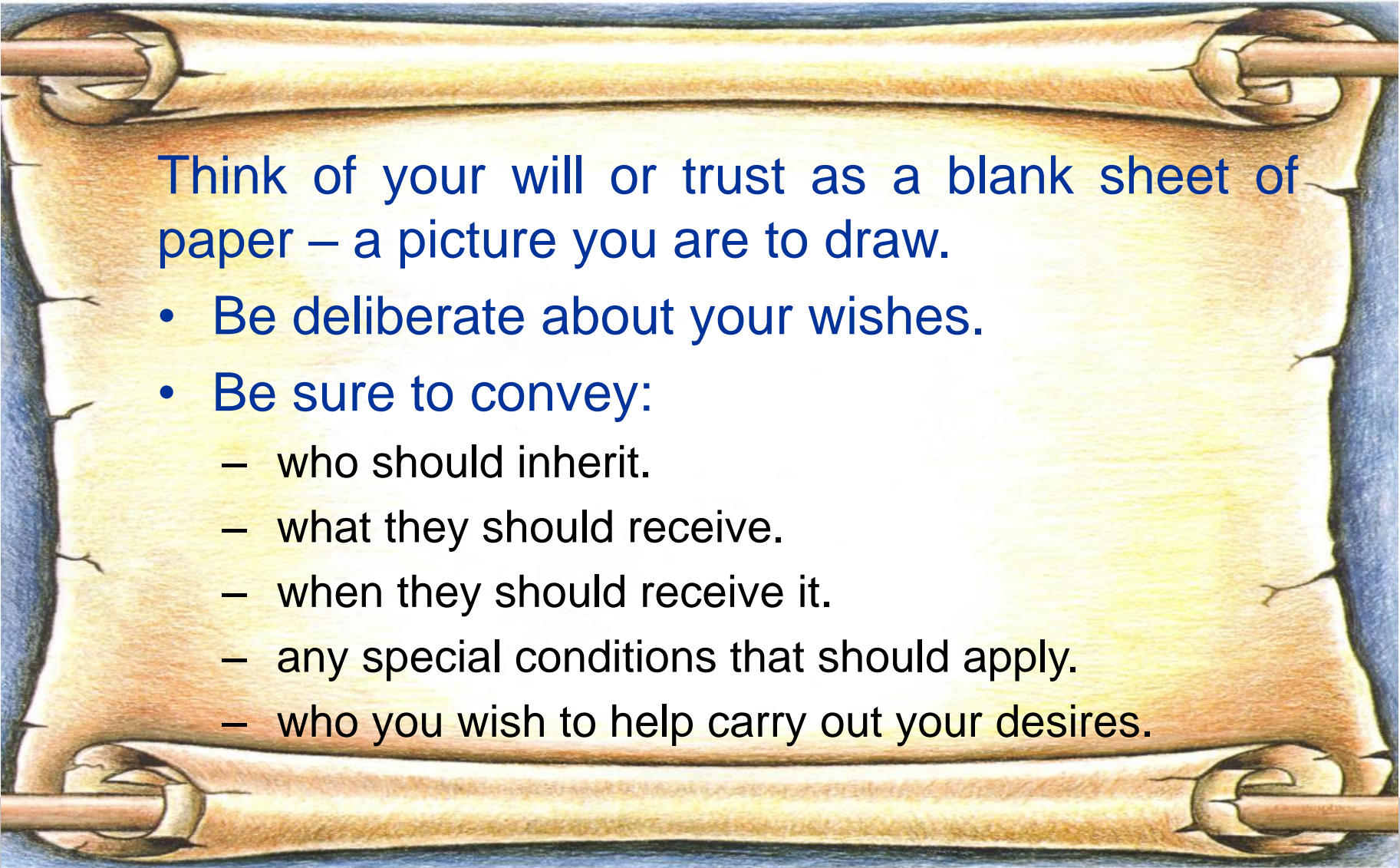
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## Beyond Taxes

# How Do I Get Started?

- Choose the right attorney.
  - He or she should:
    - have excellent credentials (e.g., AV rating, board certification).
    - wear many hats.
      - Priest/Rabbi
      - Counselor
      - Trusted Confidant
      - Your “General Counsel”
      - Psychologist
      - Advocate
      - Trusted Advisor
      - Solid Listener
  - know the importance of input from both spouses in a joint representation.
  - take the time to draft a personalized plan and a corresponding pro forma.

# How Do I Create a Will /Trust?



Think of your will or trust as a blank sheet of paper – a picture you are to draw.

- Be deliberate about your wishes.
- Be sure to convey:
  - who should inherit.
  - what they should receive.
  - when they should receive it.
  - any special conditions that should apply.
  - who you wish to help carry out your desires.

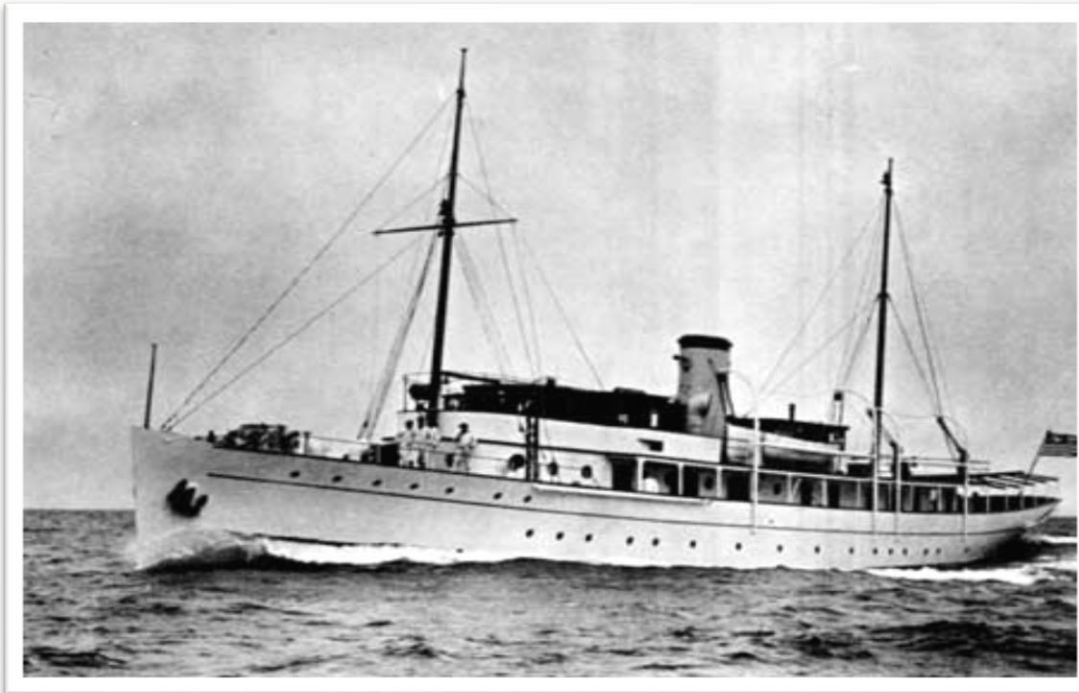
# How Do I Protect My Family and Money?

1. Design your plan to provide blessings (rather than curses).
2. Determine the behaviors that you wish to incentivize (be realistic and honest).
3. Be active in the estate planning process. Do not allow your team to play without you.
4. Have your team provide you with flow charts and pro-forma reports to ensure the plan reflects your desires and functions according to your expectations.
5. Make certain your investment philosophy dovetails with your estate plan.

# Responsible Inheritance

“Until the age of 12, I sincerely believed that everybody had a house on Fifth Avenue, a villa in Newport, and a steam-driven ocean-going yacht.”

- *Cornelius Vanderbilt, Jr.*





# Responsible Inheritance



“A fortune is usually the greatest of misfortunes to children. It takes the muscles out of the limbs, the brain out of the head and the virtue out of the heart.”

- *Henry Ward Beecher*

# Responsible Inheritance

“The perfect amount of money to leave children is enough money so that they can do anything, but not so much that they could do nothing.”

- *Warren Buffett*





# Common Estate Planning Questions

- Do you leave your money equally?
  - Inheritance is a privilege, not an entitlement.
- How much to give and when to give it?
  - These decisions are based on three primary factors:
    - *Intent*
    - *Needs*
    - *Character*

# How do I Incentivize the Behavior I Desire?

- Pursuit of education and career
- Promotion of a positive work ethic
- Encouragement of altruism
- Within limits, it is a blank page

# How Do I Plan for Succession of a Family Business?

1. Start as early as you are able. A well-planned business succession plan can take 5 to 20 years or more to fully develop and implement.
2. Consider a business advisory or oversight committee.
3. Openly discuss each child's potential role and have a family meeting or series of meetings to discuss such roles. Be realistic. Just because they are your children does not mean that they are the most capable of running a business.
4. Establish your future retirement income independently of the business.
5. Identify key employees.
6. Consider liquidity needs, estate taxes and operations of the business in your absence.
7. Review shareholder agreement or other underlying governance documents.
8. Review terms of any loan documents for conditions of default.
9. Section 6166 – Internal Revenue Code.

# Summing It All Up - What Really Matters?

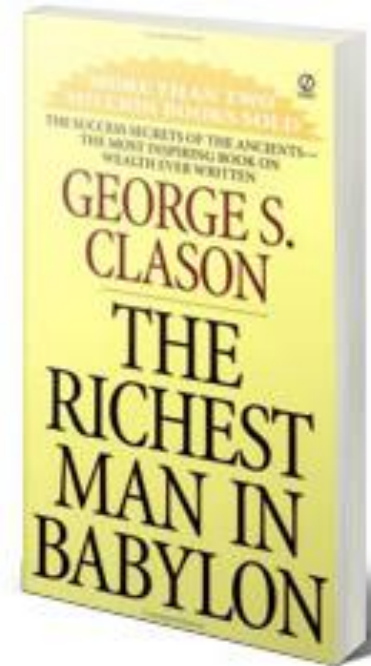
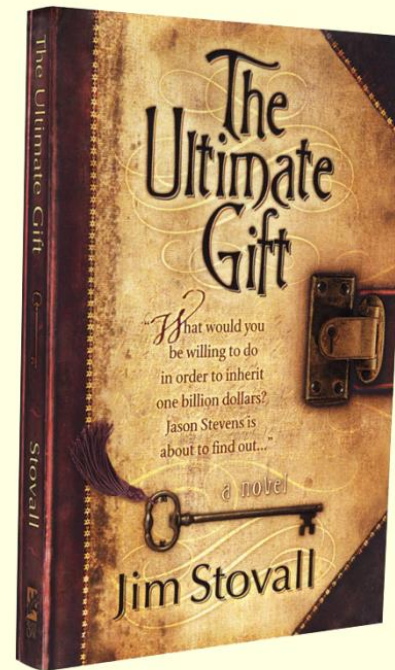
- You and Your Intent
  - There is no one size fits all.
  - Invest the time to make certain the documents reflect your desires.
  - Take your estate plan for a test drive.
  - Make certain your estate plan dovetails with your investment philosophy.

# How Can I Have the Last Word?

- In the end a person is often most remembered by the impact he or she has on others.
- Consider Letters or Videos from the Grave

# Recommended Reading

- The Gift of Work
- The Gift of Money
- The Gift of Friends
- The Gift of Learning
- The Gift of Problems
- The Gift of Family
- The Gift of Laughter
- The Gift of Dreams
- The Gift of Giving
- The Give of Gratitude
- The Gift of a Day
- The Gift of Love
- The Ultimate Gift – Life lived to its fullest



# Thank You!

- Disclaimer: This presentation is for general informational purposes only. It shall not be construed to contain legal advice or establish an attorney client relationship with any individual. Please consult with your estate planning attorney for specific advice tailored to your personal facts and circumstances.
- Questions?
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