



JOHNSON
GASINK &
BAXTER^{LLP}

EXPERIENCE to protect those you love

COMPASSION to understand what is important to you

PERMANENCE to be there when you need it most

ESTATE PLANNING 101

Basic Training for the Sandwich Generation

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About the Law Firm



Williamsburg

Richmond

Virginia Beach

What is Estate Planning?

Making arrangements so that your assets go to:

The right people

At the right time

In the right way

While minimizing the transfer cost

And protecting YOU if you become incapacitated

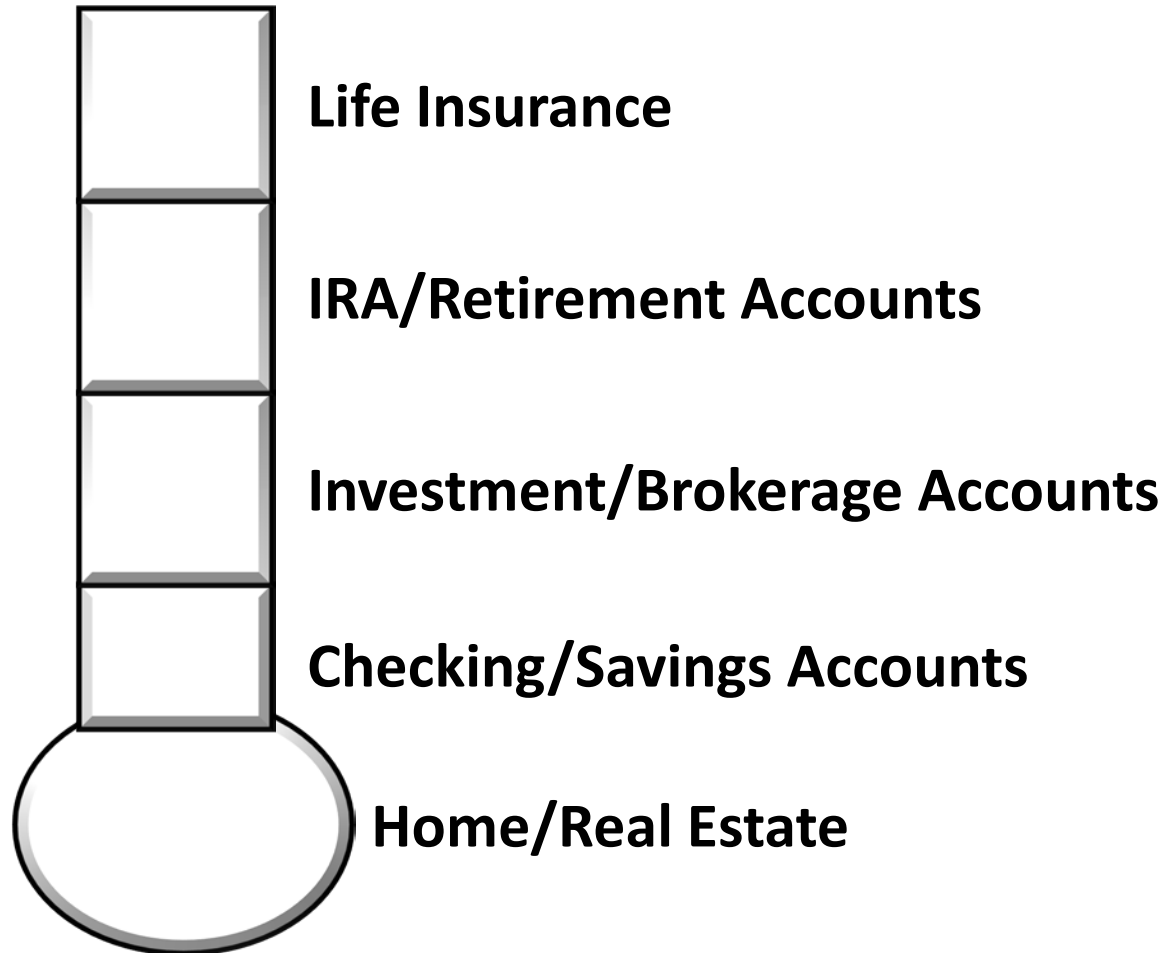
How can I use Estate Planning as part of the ‘Sandwich Generation’?

- Help parents and their siblings make appropriate decisions.
- Protect yourself and your spouse
- Educate your adult children on the topic so that they are better equipped to make their own decision when the time comes.

Do I have enough assets to worry about estate planning?

Your Estate is
LARGER than
you probably
realize.

The **IRS** and the
Probate Court
are ready to profit
from your mistake!



Efficient Plans vs. Effective Plans

Some plans are:

Efficient = Fast/easy transfer of assets

While other plans are:

Effective = Assets get to the right people

However, what most people need is a plan that is both:

Efficient and **Effective** at the same time!

Various Common Types of Estate Plans



Doing Nothing



Will



Joint Ownership



Beneficiary Designations



Giving your Assets Away



Trust Planning

Doing Nothing

= Dying Intestate



- State Law and the Court will determine who gets your assets
- Estate is subject to PROBATE (more on this shortly)

If you become incapacitated during life...

Then the Court/State Law determines who makes your **Financial** and **Medical** decisions for you = GUARDIANSHIP



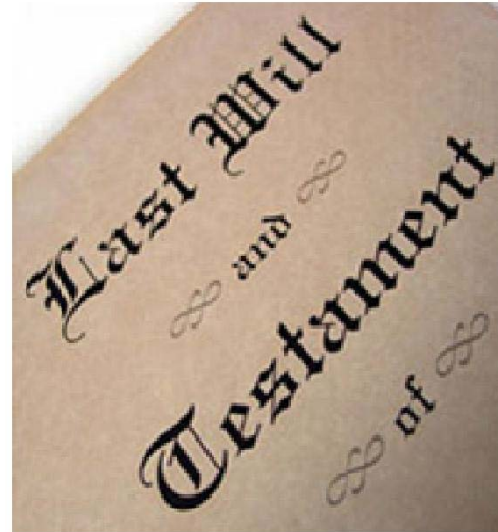


The Every Responsible Adult Plan (“ERA” Plan)

- Will
- General Durable Power of Attorney
- Health Care Power of Attorney + Living Will
(Advanced Medical Directive)
- Personal Effects Memorandum
- Memorial Instructions

Wills

What is a Will?



A written instrument legally executed, by which a person makes disposition of his/her estate, to take effect after his/her death.

Wills



The Good...

- They give your instructions
- Better than dying intestate

The Bad...

- Subject to **PROBATE**
- Only effective at DEATH

The Ugly...

- Estate Contests
- Public Information
- Ancillary Probates if property located in other states

Wills

There are a number of elements required to make an effective Will. Some of the most important of these requirements are:

- Must be in writing
- Must be signed by the Testator (in a method and manner recognized by VA Law)
- The Testator must have testamentary capacity to execute the will





Can I write my own Will?



Technically YES... However this is
DANGEROUS because...



- May not meet Virginia statutory requirements
- May not cite the correct (or any) Virginia Code sections for proper administration
- May tie the hands of your fiduciary because of the instructions/powers given to them – or the lack thereof



**If your self-written Will is
thrown out = your estate
is now intestate!**



IMPORTANT!

If you are not an Attorney, DO NOT write a Will for a family member or friend (or any other person for that matter) as this will constitute the:

**UNLICENSED
PRACTICE OF
LAW**

What is Probate?

- Court Supervised Process
- Public
- On average lasts from 9 months to 2 years
- The process invites estate **CONTESTS**
- Can cost as much as **5%** of the estate



General Durable Power of Attorney

- Broad Grant of Authority
- Better than being subjected to a Court controlled Guardianship
- Generally effective for 5 years from the signing date



Health Care Power of Attorney Living Will



Control your Medical Decisions

- You do not have “automatic” control of medical decisions for your spouse just because you are married
- HIPAA update
- Do not let Medical and End of Life decisions tear apart your family

Joint Ownership

- Easy to do
- Cheap
- Prevalent

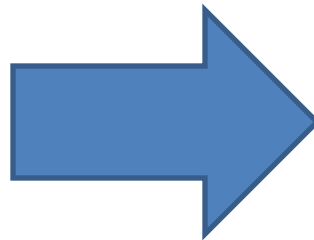


- Can be one of the most **DANGEROUS** forms of estate planning because it often leads to...

Unintentional Disinheritance!

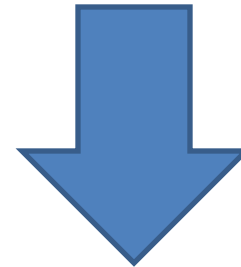
**John Dies
No Probate**

John & Jane

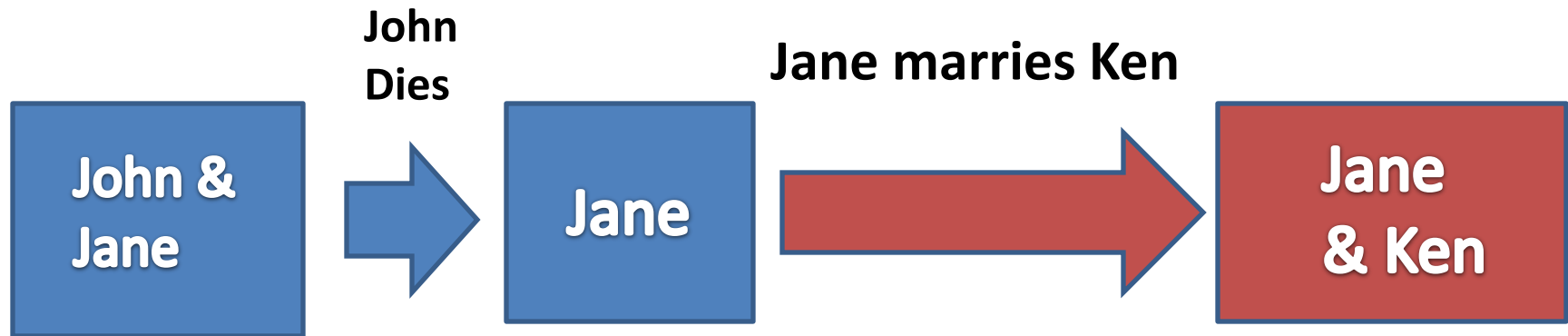


Jane

**Jane Dies
Probate**

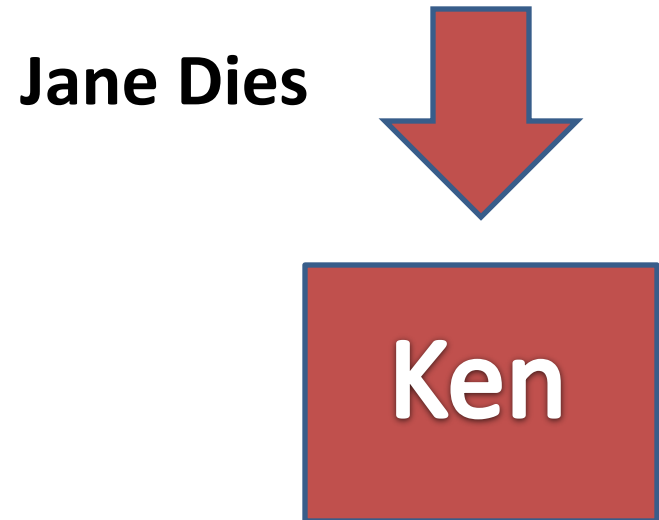
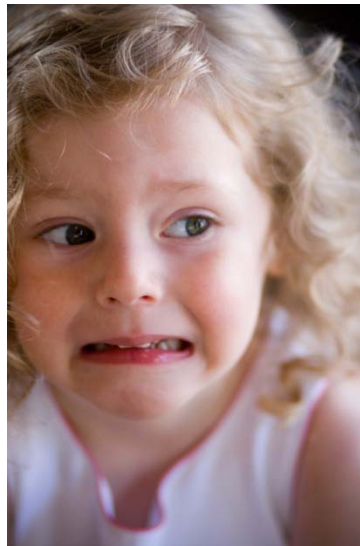


John & Jane's Kids



John &
Jane's Kids

**Unintentionally
Disinherited**



Beneficiary Designations



Every time you fill out a beneficiary designation form your are making a Mini-Estate Plan

Problems can arise if your beneficiary is:

- A Minor
- Incapacitated
- Has predeceased you
- “My estate”

Gifts



Many people try to “plan” their own estates with a heavy dose of gifting because they do not want to pay an Attorney for help. Often, these people are trying to:

- evade taxes
- get around probate
- get onto the Medicaid system

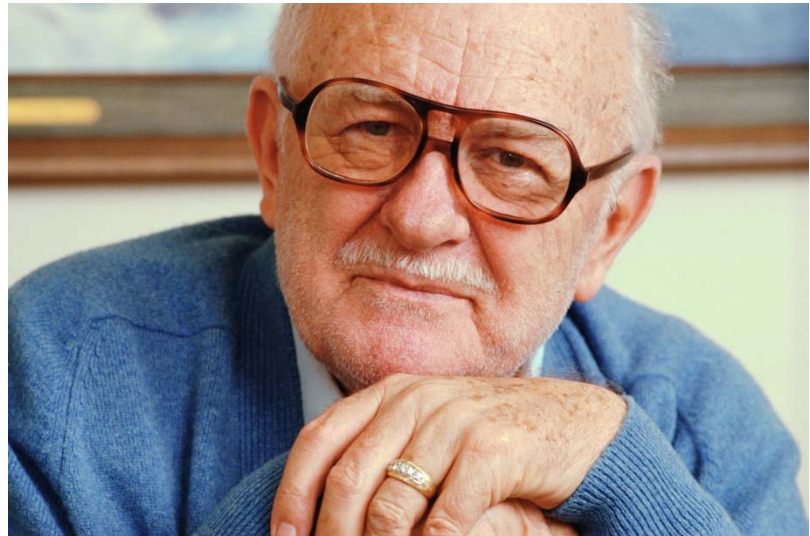
Gifts



The BIGGEST problem with gifting your assets away is that you lose...

CONTROL of your assets

REVIEW



Some of these prior plans were Efficient

Some were Effective

But none of them were both Efficient
AND Effective at the same time!

Trust Planning



Efficient AND Effective

What is a Trust?



- **A Trust is basically a contract**
- **The use of Trusts actually predate the use of Wills**
- **You get to choose who are the Trustees and who are the Beneficiaries**
- **You control and use your assets anyway you want during your life**



What is a Trust? Continued...

- You control and use your assets anyway you want during your life
- You can change/cancel your Trust at any time
- At your death, the assets in your Trust avoid the Probate system

Funding the Trust is Critically Important!

Change Asset Titles/Ownership from:

Dick and Jane

To:

Dick and Jane, Trustees of the Dick and Jane Trust



**Get Assets to your
Beneficiaries...**

In the right way

At the right time



And PROTECT them from



SPIKE

Special Needs Beneficiaries

A properly drafted Trust will protect your beneficiaries from losing their government benefits if they are Special Needs Individuals!



ESTATE TAXES!

Did you know that:

Currently, there is no federal estate tax
(as of January 1st, 2010)

However:

The federal estate tax is currently set
to be reborn on January 1st, 2011!

ESTATE TAXES!

Dick & Jane



\$2 million joint estate

Dick dies = Jane gets everything

No Estate Taxes due to:

Unlimited Marital Deduction!

**Now Jane Dies with all 2 million
of estate value**



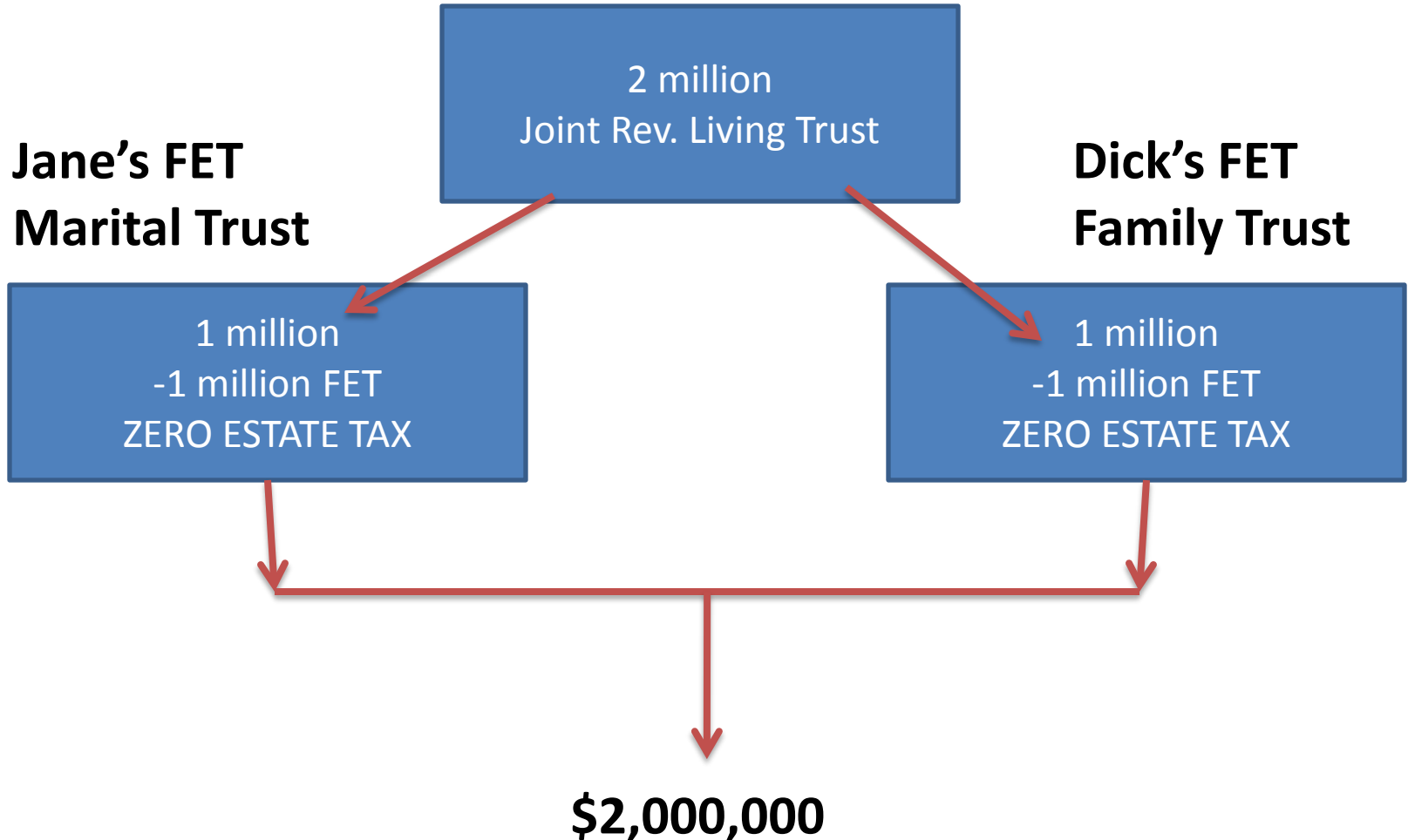
\$2,000,000 (Gross Estate)

\$1,000,000 (Less only Jane's Fed. Estate Tax Exemption)

Leaves a **\$1,000,000** Net Taxable Estate taxed @ **55%**

= \$550,000 of ESTATE TAXES (2011)

This could have been avoided with a Trust!



All of the Assets and none of the tax to the beneficiaries!

Revocable Trust in Summary:

- Provides for you in case of incapacity
- Trust assets avoid probate
- Provides protection to your heirs after you pass
- Minimize estate taxes



What is the next step?





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