

Estate Planning: The Financial “Must Do” that Most People “Just Don’t”

Attorney and estate planning expert Jason Morris gives listeners concrete takeaways on topics such as why a trust is essential, the consequences of not putting one together correctly, and the importance of keeping your trust up to date.

I’m Greg Hughes. I’m with Hughes Private Capital and I wanted to welcome Jason Morris today, who’s an attorney with Woodburn and Wedge, right here in Reno, Nevada. And is it pretty fair to say that you specialize in estate planning? Is that what you do for the most part? That’s right. Yes.

Why don’t you tell us how long you’ve been in the business for? And tell us a little bit more about yourself.

Sure. So I’m a local boy, I was born and raised here, attended Galena High School, and I went away for school. I’ve been practicing now with Woodburn and Wedge for ten years. So I was happy to come back to this area. I love Northern Nevada. And I really enjoy helping folks with their planning. When I first came out of school, I was doing quite a bit of litigation. And so I saw some of the downsides of what can occur if you don’t plan properly. Or frankly, if you’ve done planning but it’s very outdated, which we see more and more these days. We find people who have done planning at some level,

but they just haven’t kept it up to date. And that can cause a lot of issues in and of itself.

Well, that sort of dates me because my kids went to Galena so... I don’t feel like Galena has been around long enough for you to have gone there and my kids to have gone there. Well, you had sent me a PowerPoint that had given me some highlights on some of the things that we’re gonna talk about today. But, I really like this... this one of the first slides in here. It’s a picture of a guy, and he’s on the phone and it says, “No, Thursday’s out. How about never? Is never good for you?” Now tell us, why is that slide in there?

Yes. I used that comic because all too often I feel like the gentleman in that comic. He’s trying to schedule an appointment with someone and they’re saying you know, on the other side, the party’s saying “Thursday’s out, I can’t make it.” And so, you know, the caller’s saying, “Well, fine. Is

never good? Is never good for you?” All too often, as estate planning attorneys... we’re really like... we’re the last in the line when it comes to folks and their financial preparedness and their financial planning. And so oftentimes, we’ll see folks come in with their insurance guy, their financial adviser, their CPA, and then finally, they’ll come in to us as the estate planning attorneys, if at all. And all too often, it’s something that folks think that they can just put off entirely and, quote-unquote, “The kids will work it out.” Which is one of the worst ideas and worst plans, if you can call it that because all too often, the kids don’t work it out. And even if it is a happy, harmonious family, things just don’t work out, if that’s the default plan.

Yeah. Things really change when a death occurs in the family. And money’s at stake and everything else and even though everybody seems to get along, it doesn’t. You

THE EDGE with Greg Hughes

No-nonsense strategies for personal, professional, and financial **SUCCESS.**

Episode 1

probably see that all the time, right?

Certainly. Certainly. And I see that with, you know, various creeds, religions, faiths, it does not matter. It really doesn't. And all too often people say it will work, we're a good Catholic family...we're a good Mormon family. Whatever it may be, you label it, and that will never be us. No, no, it will be you. And I see it. And I see... I've worked in this long enough to where I've seen the plans that we've created and how the kids react once mom or dad have passed away, and it definitely changes and alters the way they treat each other and their inability to get along.

"If you have a sinus infection, you're not going to go to your podiatrist, right? We see a lot of people who would go to the guy who did their divorce, then [let them] do their will...their trust. That's really not very sensible. As much as we like to encourage them to 'just do it,' just do it with someone who specializes in this arena."

Well, and it's...it's also not just the kids, right? Because the kids now are married, and they have kids, you know, or maybe grandkids, and...and so on, and so on in all of this, right? So you've got a lot of other influences that are all around having to deal with that estate on a whole deal. So, is that the biggest challenge that you see out there as people just put it off over and over and over?

Absolutely. I mean, it's the old trade saying of Nike, "Just Do It," right? Their marketing slogan "Just Do It." And if there was one, I guess, nugget to take away from this would be to just do it. And I guess, add onto that, to kind of tack onto that piece of advice or recommendation is to do it with someone who specializes in this area. I like to use the medical analogy, right? You know, if you have a sinus infection, if you're, you know, clogged up in there... in the sinuses, you're not going to go to your podiatrist, right? If you have some heart issues, you're probably not going to go to an orthopedist. You know, for some reason in the law, we see a lot of people who would

go to the guy who did their divorce, to then do their will... their trust. The person who helped on their business deal or when they broke up with their business partner, they'd go to that guy for their will or their trust. That's really not very sensible. And so, as much as we like to encourage them to just do it, just do it with someone who specializes in this arena.

Yeah. It's a big pain in the rear, right? I did my trust when I was probably twenty-five years old. So, I mean, I did it at probably a pretty young age for most people. And my dad went in to do it at the same time. But my dad, still to this day, does not have a trust. And I'm not really quite sure why, Right? And obviously, he's older and probably needs it more than I do; although we all need one. But I always felt a sense of planning on it. You know, you have to stop and think through things, and I think that's a little bit of what is really kind of a challenge with people, right? So, what would you say if you're Middle America? You know, you've done okay for yourself, you got some assets. How many hours have you got to put into this thing? How much time do we have to spend talking about it and doing it?

Yeah. You know, if you kind of have an idea of where you want your property or assets to end up, that really helps the process. That's the number one most difficult thing for our clients to determine is how they want their estate distributed. Who ends up with your stuff, okay? So, if you can come in and prepared with that very crucial decision point, then it will really streamline the process. I guess because I work in this arena, I'm always flabbergasted or taken aback by how many people come in

and just don't know where they want the assets to go...where they want it to end up.

They just...they just never thought of that, right?

Exactly. They've never taken the time to ponder, "Where do I want the assets to go?" So, if we can not have that discussion...If you can come in prepared with that idea, it does save on the time and it'll save on the cost frankly, because I bill based on the time it takes and so, if folks can come in prepared with that important decision, it'll really save a lot of time. Well, overall, I mean, we're looking at several hours on the client end because they need to gather their asset information. And deliver that asset information to our office because with the trust, we're going to change title to your assets. We're going to take title from your name or your joint name with you and a spouse, into the name of the trust. And so we need the client participation. We need the client communication to provide that documentation to our office.

Right. And so there's a little bit of work to be done there too, right? So if I've got my house, and I want it to be in The Hughes Family Trust, and other assets, as such. Let's talk that. Do you want to talk about what a trust is and how that works?

Absolutely. I mean, there's a lot of confusion between a trust and a will. And what's the difference, why do you need it? For a trust, we create this agreement. It's basically a contract in effect. It's a contract between the party creating it, oftentimes called a "Grantor" or "Trustor," and as the party creating it, you can also act as the "Trustee."

For your own trust, right?

For your own trust.

Importantly, you are going to choose a successor trustee, someone who will step in and administer the trust after you are deceased or incapacitated. But, you take title in the name of the trust to all of your titled assets. And so it becomes sort of a wrapper or an umbrella for all of your assets. All of your assets are under this wrapper of the trust name or under the umbrella of the trust.

Would you ever call it an entity? It's not truly an entity.

But in a way, you can almost look at it that way.

That's a fair way of doing it, yes. I like the analogy, yes. An

If you die with assets outside of the trust, in your bare name, you're gonna fall into a form of probate.

LLC or even an IRA. And in an IRA, you can hold various forms of investments or assets. Similarly, a business entity can hold various assets, just like a trust can hold assets. The virtue of the trust is you can move assets in and out of it. They don't have to remain in the trust. We prefer that they do because if you die with assets outside of the trust, in

Why do I need a will?

- Directs the disposition of your assets
- Names a guardian of young children
- Provides backup protection for assets
- Useful for Naming a personal representative (Executor) of your estate
- Vary the consequences of the Simultaneous Death Statute and allows you to condition a bequest on the beneficiary's survival for up to 6 months.

your bare name, you're going to fall into a form of probate. So the biggest advantage of having a trust is probate avoidance. As an attorney, I love probates. Okay? All attorneys love probates.

Tell us why you love probates. I thought you did trusts?

Yeah, exactly. And I do... we do trusts, but we're going to catch you in one way or the other. With that I mean, a probate is necessary --

You can't avoid it? Basically, one way or another?

Exactly. Yeah. So, the probate is necessary if you die with title assets in your name. And even having a will, does not mean you avoid probate.

"Probate takes probably about a year's time and at least \$5,000 in attorney's fees...and that's if all goes swimmingly well. "

Okay. Even though the will says, "This is what I want to do," you still have to go through probate. Okay. First of all, what's probate? What does that look like?

Sure. Probate is the court. I mean, in saying, we want to make sure that Greg's assets go to the rightful parties. And so we're going to oversee the administration of Greg's estate...Greg's probate estate.

And so the court comes in and says, "You've got a file X, Y, Z, and beyond, with us, to make sure that those assets end up in the correct place." These days in Washoe County, probates take probably about a year's time and at least \$5,000 in attorney's fees and costs.

That's a minimum?

That's, I mean, and that's if all goes swimmingly well.

It is that even, like, a very small estate, too?

So that's the irony. It doesn't necessarily matter on the size, per se. It's more the warring parties, the beneficiaries fighting, disagreeing. Or, if the will has been drafted poorly and it's left for interpretation or subject to the whims of the parties named in that will. So, size does affect the type of probate. Once your assets exceed \$300,000 in value, under Nevada law you are subject to what's known as a General Probate Administration. Which is that year's time and \$5,000 at a minimum.

Okay. And just tells us what the \$5,000...Who's that paying? Is that paying you? Is it paying the court?

Yeah, that would be attorney's fees. And the court cost would be anywhere from about \$500, plus there are publication fees because you have to publish notice.

Everything becomes public at that point, right?

Yes.

So all your dirty laundry gets to be put out in public.

That's right. And these days, you know, when a celebrity dies, and a will is lodged into court, within minutes it's available on whatever sites you want to pick up.

You had mentioned to me the other day when we were talking about this, wasn't Prince one of them? I mean, many of them, right?

Michael Jackson is one. Prince, and his estate is a total nightmare because there are multiple competing wills. There is a lot to be resolved in that estate.

So in other words, all those become public information at that point.

Exactly. On the contrary to that though, a trust is private. And so, you have another advantage of the trust. One, you avoid the probate hassle - as I'll call it. You avoid reaching me and my colleagues in the legal field. And it's private. It doesn't ever have to be disclosed. Provided you transfer your assets into the trust name and the trust can provide for the disposition or distribution of your assets.

Okay. So, I want to come back to what kind of assets

we transfer under the name. But before we go to that, let's go back to the probate for a second and a look at a couple of things. So first, if \$5,000 is a minimum, what's the average? I mean, you know, again, let's use kind of typical Middle America, you've done alright, you own your house, you own these other things. And now, you died, and you have your will, right? I mean, this is assuming you have a will, but you'll still go through probate at that point. What do you think?

Yeah. I would say we tend to stick close to that \$5,000 figure. I would say, generally speaking, that's probably right about it in the wheelhouse. Anywhere in that \$5,000 to \$7,500, is probably the going rate, I guess you would say. But I have some very modest estates...I've got one right now where our fees and costs are almost \$20,000. And it's because the parties are fighting. They can't get along. They think mom

was under undue influence or incapacitated when she created the will. And the will, admittedly, is poorly written. It wasn't done by someone who specializes in this area. And so it's led to this cascading series of undesirable results.

I've heard so many times that the money is even greater than that. I mean, I've heard in a hundred thousand dollar mark. Is that really unusual then, for the most part?

Not necessarily. If your estate is large enough, and there's enough to fight over, certainly. We have a matter right now where the gal died with about \$16 million. No one's really fighting, but she had really odd and unusual holdings around the country. And so liquidating those holdings and then making disbursements out to her heirs...I mean we are well in excess of a hundred thousand dollars in fees. I have to go back and look at the billings. We're probably pushing a

THE EDGE with Greg Hughes
No-nonsense strategies for personal, professional, and financial **SUCCESS.**

Episode 1

hundred and fifty thousand in fees.

Okay. So one of the things with probate, and the assets, and that sort of stuff – it's not like it's all just sitting there in cash, right? It's not just in Wells Fargo and everybody takes their little divvy part. It's different. It's their home, it's their cars, it's the vacation homes, and then probably, a lot of times, like you were just saying, kind of different types of assets. And they have to make all these decisions based on "do we sell it, not sell it." How do you split up the asset that can't be split up among the three siblings or whatever? Give me any kind of an example on some of the things that you've seen.

Sure. Sure. I've come to not really like commercial properties, just because they're harder to sell. Typically, they're a larger dollar figure, right? That's one of the kickers in all this. You know you want a big estate, you want to grow your assets, but the larger an individual asset, the more difficult it is to find buyers, right? I mean, you have a 1.5 or 2.5 million-dollar property; frankly, there aren't as many prospective buyers for that type of property. And so, certainly

What assets should go in my trust?

The key assets to go into the trust are title assets: vehicles, homes, bank accounts, investment accounts, and business entities such as LLCs, S corporations, and C corporations. Anything with a title to it should be held in the trust name.

that's the case, we will see all types of different assets. And one of the most difficult ones to transfer, sell, etcetera, would be closely-held businesses, right? Particularly when the decedent was the manager, the owner, the operator of the business entity. Once that individual dies, it's hard to retain that same value that the business had when he or she was alive and running it. And so that becomes really, really problematic. And these heirs, these children, believe that that business should be dollar for dollar the same, the day before the individual died and the day after.

Right. Right. So let's go back to what you put in a trust. You said the assets. Do I take my Fitbit that I've got on my wrist and, and make sure that's in The Hughes Family Trust? Where do you draw the line on all this stuff?

The key thing for the assets to go into the trust are title assets. So vehicles, homes, bank accounts, investment accounts, but also business entities, LLCs,

"Vehicles are sort of an exception... Oftentimes, the insurance companies aren't real keen on insuring the vehicle if the vehicle's owned in a trust name."

S-Corporations, C-Corporations, anything with a title to it, we'd

like to have in the trust name. Folks will go so far as to specify things like: my fraternity ring, my knitting collection. We see people get really specific and really down into the weeds. That is unnecessary. But if that's what the client wants, that's what we'll do. And we'll do assignments or transfers, and conveyances into the trust.

Okay. So mainly titled things. So let's just say that I don't have my vehicles in my trust. So now I die. I have all my real estate, and everything else is there. Do I have to go through probate for my two cars?

You know, vehicles are sort of an exception. And IRAs or any beneficiary designated account and we'll come back to that in just a minute. So, vehicles are difficult because it's such a hassle to put them into the trust through DMV. Oftentimes what we do with vehicles is do a separate stand-alone document whereby we assign the vehicle interest to the trust. So, we're not gonna go change the title on the vehicles. What we'll do is an assignment where you declare and state your intent to have the vehicles in trust. And it becomes difficult too for those who have teenage drivers in their homes. Oftentimes, the insurance companies aren't real keen on insuring the vehicle if the vehicle's owned in a trust name. Because they're insuring drivers. And so when

the ownership is in a trust it becomes a little more murky, as to who the drivers might be. And so you see some issues with insurance companies on that end. So that's what we do the end-around of an assignment where we convey your interest to the trust.

So, I'll admit something to you right now. So, I've been poor...I was great about getting my trust done, but over the years I've been not so great at getting it back and making sure all of my assets were in my trust. It literally sits on my desk at home. I've pulled the list out, at times, I looked at it and thought, "Okay, I need to do this." I just don't get around to doing it. Because it is, I guess, not a priority at the time, right? And you must see that all the time. But you just have to do that every...What would you say? Every two to five years?

Yes.

You still need to do both a will and a trust...The will acts as a backup.

I know probably depending on the situation too, right?

Yes. Definitely. Definitely, as you acquire new assets, that's

the time to revisit everything. But the seminal life events, we say birth, death, divorce, marriage. And that honestly, for you as an individual client, your heirs and beneficiaries too, if any of those events come up, then we start to revisit planning. And as part of that review or update, we examine the asset list and make sure that the assets are titled appropriately in the trust.

And you help people to get that stuff titled and all of that, right?

Certainly.

I mean, it's probably part of what your services are.

Certainly.

Make it easier for them. And remind me because I've now spent long enough, but you know, I have four kids. And with the four kids, of course, it's very important who were to take over for us if both my wife and I were to die. Was that in my trust or was that in my will?

There should be one in each. Under the trust, it'll be known as the Successor Trustee. And under the will, it'll be known as the Executor, or under Nevada Law now, it's Personal Representative. Executor and Personal Representative are synonymous. But under the trust, that Successor Trustee we hope, takes the biggest burden in so far as everything, the bulk

of your assets that are in the trust. Such that the will could be totally inapplicable. It would have no bearing or effect on your estate after you're gone. Provided everything is titled in the trust name. So, we still need to do a will with the

At this point they are a quarter million in fees, and it all could've been avoided if he had just come in and signed it.

trust. Because what'll happen is someone like you will form a trust at age 25, and kudos to you for doing it at that young age. But they'll go out with their life, acquire new assets, properties, a building like this, new vehicles, and they won't put them in the trust. And so the will acts as a backup to have those assets corralled over or transferred into the trust... If they are not.

If I remember correctly, it was more in the will, where I gave my medical type of answers – Do I want to be resuscitated? Do I want to be on life-support? Those types of things, is that the case? Or is that the same thing; does that go into both?

Actually, so those decisions now are a separate stand-alone document that is known as a Healthcare Power of Attorney, or Living Will, or Advanced Directive.

So that is a Living Will, right?

Yes. And those are part of the package when we create the estate plan. Those are definitely documents that become part of that overall planning package. In these days, with the advances in medicine and technology,

we're seeing more and more individuals who need those documents, right? We're keeping people around a lot longer, but they don't necessarily have their mental faculties or ability to make those decisions for themselves. And so those Powers of Attorney are becoming more and more crucial.

Got it. I probably need to change mine. I think I want to be frozen. I think that will work out a lot better. Wait till they come up with something right...Yeah, no doubt. As that stuff continues to change, and it changes what we're doing. Alright. You've talked about it a little bit, but I really would love for you to tell us more on a probate type of a deal because I think there are some real horror stories out there and you probably have had to see some of them. And I want to talk more about what the trust can do. Is there something more specific that

you've dealt with? That you just said, "I can't believe if this person would've just gotten a trust done, all this family's anguish..." You've already lost a loved one, right? You're at that point in the game.

Yeah. One I can think of occurred last year. We had a gentleman who knew he was ill. He knew he was battling some issues. He owns a series of businesses in this area, a big estate...big, large estate, and has four kids. One of the four kids is involved in the business and the other three are pretty resentful of that child's involvement in the businesses because dad is sort of taking the child on as a project, wanting to try to help the kid along the way. When dad came in to do the trust with us, he took a long time getting us the information we needed to do the planning. Ultimately, we received information, sent out the draft documents. He sat on the draft for a month. The day he was supposed to sign the documents, he passed away.

Wow...

I kid you not. We called to the home and said, "Hey, we're waiting for you. You're late for the appointment." And we

Right now, we have the largest estate tax exemption on record. An individual can pass up to 5.49 million dollars, free of estate tax.

were told, "The ambulance is here. It's not looking good. He may not make it." And surely, he did not make it. And so his estate fell into probate. And I've not been involved in that probate, but I've caught the tail-end of it, and it's been a total nightmare. The kids can't get along. The three kids who were not participants in the business don't want the one child participant to be involved. They don't want the child to have any say in management and operations of the company. And it has just been chaos. At this point as I know it, they're a quarter million in fees and it all could've been avoided had he just come in and signed it. And so, I stay up at night worried over those individuals where we have sent out draft documents and they just sit on, sit on, and sit on. And we pepper them. Email them, call them, try to get them --

You do everything you can do.

Yeah. I've had a couple instances like that where an individual had the draft documents, they just didn't get around to signing it. And so then we fall in this expensive, time-consuming probate.

And it must just tear families apart, into where they would have probably been fine if that was put together. But maybe they can't heal those wounds once that happens, for the rest of their lives, right? Well, that's the big reason to not make it "Never." Let's do it already. Let's get it done. Just do it. This has been kind of a great overview. You want to get into just a few more of the specifics and some of the advantages of doing this.

"If we keep the assets in the estate until date of death, you will receive what's known as 'Step-Up in Basis' to the fair market value of the assets."

Yeah. I think that basis step-up is an important concept. And I'll just talk about the paradigm that we're offering for now on estate planning. Right now, we have the largest estate tax exemption on record. An individual can pass up to 5.49 million dollars, free of estate tax.

And does that just mean me? I mean, does my wife have the same thing?

Your wife has the same thing. So, as a couple you could transfer almost 11 million dollars, free of estate taxes. So for us as planners, we used to think we have got to shift all the assets out of an estate. We

have them and just get rid of the assets in life so that they don't face the estate taxes. Well nowadays, we're thinking, it's more advantageous to keep the assets in your estate until date of death. Because the estate tax probably won't reach you or reach most individuals. The reason being, if we keep the assets in the estate until date of death, you will receive what's known as a "Step-up in Basis" to the full fair market value of the assets. What do I mean by that? You bought this building, let's say you paid \$200,000 for it ten years ago. It's appreciated to \$500,000. If you were to gift this building to a child, during your lifetime, it would take your carry-over cost basis in the building of \$200,000, what you paid for it. You now have a big built-in gain in this property. They're exposed to the tune of \$300,000 and a potential gain. If they're gonna sell it at \$500,000, the fair market value, they're gonna pay tax on that \$300,000 gain. Whereas, if you leave this building to the child in a will or trust, etcetera, it will instead receive a step-up in basis to the full fair market value, at your date of death of \$500,000. Such that when they go and sell the building, they'll recognize little or no gain.

So just because it's in the trust, as compared to being gifted? For the step-up in basis?
I should be clear about that.

As long as it, in your estate generically, whether it's in a trust, will, or not in either of those devices, you will receive that step-up in basis. One of the advantages of a trust for a married couple is that upon the death of the first spouse, all of the assets can be stepped-up in basis. So, under our community property laws in the state of Nevada, a surviving spouse, can receive a step-up in basis for all of the assets in the trust.

"In the state of Nevada, a surviving spouse can receive a Step-Up in Basis for all of the assets in the trust."

Even though they both hold those same assets? If I were to die, and this building was worth \$500,000, and my wife were to get it, she's got the Step-Up in Basis. And if she sells it, because now I'm dead and she doesn't need the building anymore, she's at \$500,000 as well for herself?
Exactly.

So it doesn't benefit just the kids, then?

Exactly. And then there will be a subsequent step-up in basis when that surviving spouse

"Because of this large exemption or exclusion amount of \$5.49 million, we've really shifted from being too concerned about estate tax to the income tax consequences. So we're doing a lot more income tax planning to help the overall family's after-tax results."

dies.

Okay. So, if it's worth \$700,000 at that point, and she still has it. My wife dies then, okay. So it just continues down the road from that standpoint. Okay. That's a huge advantage.

It's big. It's really big and what we see all too often is mom or dad wants to gift some assets to a child during life, and at this point, we're trying to talk them out of that. But it's for tax reasons, for the most part. But it's really odd that we see a lot of individuals think that they should gift their home to their children, or stick their child on title.

Because that's what they think is the right way to do it. But it actually can; it can be lesser tax results.

Right. In this case, it's probably better to wait until you have the estate and then you got that Step-Up in Basis. Yes. Yeah. And so, again, because of this large exemption amount or exclusion amount of \$5.49 Million, we've really shifted from being too concerned about the estate tax consequences to the income tax consequences. So we're doing a lot more income tax planning to help the overall

family's after-tax results.

Okay. So, just to take us a little bit further that last statement. So you've moved from estate to income tax planning. Just give a good example. What are we talking about on income tax planning?

Primarily, the Step-Up in Basis, that's probably the largest one. It's just making sure that people understand this basis step-up concept.

Just explain this to me, so I'm sure that I'm clear on this. What do you mean by income tax? I mean, if my business is worth, let's say a million dollars today, and I've got basis along \$200,000 in that, does that do a step-up basis as well?

Had you gifted that business or already gifted that business, your child – whoever receives the business as a gift – they have to pick up the sale of that business on their income tax or their federal income tax return and pay an unnecessary amount.

I see. I think I misunderstood a little bit what you were saying. You're talking about; you actually tried to move things out of the estate to try to avoid some of the estate taxes. And now you don't have to do that so much anymore.

Correct.

Okay. Alright. Good. Do you want to talk about portability?

Sure. This is tough to do without graphics honestly – this portability. The concept behind it is great. There are some funny consequences that can result from portability. But basically, you have your \$5.4 million; your wife has her \$5.4...

Let's just call it five and a half million. I know it has got to be exact. That's five and a half million per person.

Yeah. What used to happen is, if you died, and we didn't allocate assets to a special trust upon your passing, that five and a half million – poof! It was gone.

So, if I don't have a trust, it goes away?

As of the end of 2012, Congress enacted this portability provision which allows the surviving spouse to port or take the deceased spouse's exclusion amount. They call it DSUE, D-S-U-E, or the Deceased

Spousal Unused Exclusion Amount. So that's a mouthful. When you think about what that means, the deceased spouse didn't use up his or her exclusion amount to five and a half million. That can be ported over to the surviving spouse.

Which makes sense because all those assets were being held by both husband and wife at that time.

And so yeah, it is a sensible provision. We just didn't have it up until 2012. Now, one of the kickers in this is the possibility of, as we call it, "DSUE journey." We have kind of given it this label. The Deceased Spousal Unused Exclusion journey, which means, you passed away. Your wife remarries. You died with \$3 million of unused exclusion amount. She could port over that \$3 million, stack it on top of her five and a half. That would be eight and a half. Let's say she remarries, a pauper –



"No, it's my husband that's expired. Is his credit card still good?"

most anyone would be like a pauper compared to you, right?

Sure.

So, she remarries. Her individual assets five and a half million. How much do you think she would then have?

She could add it all up then. She's got her five and a half. He's got his five and a half. Plus the 3 million.

Congress is not that that good. You have a lot more faith in Congress, Greg. So, she gets the five and a half from the new spouse. She loses the three from you, okay. So, she gets to port over the five and a half from the new spouse. Leaving her with the eleven million. Having said that, during her remaining years married to this gentleman – second spouse – she can transfer assets during life and use up his entire five and a half million. Let's say she outlives the second husband; he dies, she remarries another gentleman with the five and a half million. She would now have another five and a half million to stack on top of her five and a half million. In effect, you just turn your way through spouses and transfer assets out to various heirs and beneficiaries. So, like I say, we're calling it the DSUE journey.

Right. Now, this is a little bit like the Black Widow thing. All of a sudden, you can get your DSUE if you marry the right

guy.

Well, I've joked when I make these presentations on this topic. I say, "You know, if you're looking for love and you still have your full DSUE amount, you might wanna advertise that on match.com or whatever dating sites..."

"Nowadays, with portability, AB and ABC trusts are largely unnecessary. And so, I would just encourage any audience or listeners that know that they have an AB or ABC trust, to have it reviewed."

Absolutely. They should have a little checkbox.

So, like I said, certainly, we don't know if there are cases where this is occurring. But we think it's out there. It's a possibility.

It's a possibility. If people really understand and know what's going on with that. Is there anything more you want to go over on that part?

Just like you said, I think that out of fairness, it makes sense. A lot of surviving spouses didn't take what the deceased spouse didn't use. But also because of this portability, a lot of people do not need what are known as AB trusts or ABC trusts.

Okay.

And yesteryear, with our lower exemption amount, or lower exclusion amount, we really – we didn't have portability. With the lesser exclusion amount, so we needed to use that deceased spouse's exclusion amount. Nowadays, with portability, AB and ABC trusts are largely unnecessary. And so, I would just encourage any audience or listeners, that know that they have an AB or ABC trusts to have that reviewed. It may be unnecessary. And frequently, we're seeing it. We're undoing AB trusts. We're doing various trust to take away this AB provision. Largely due to this portability.

And if I've got my trust done, and it's time to review it, from what I can see, it's obviously

The beauty of that "Annual Exclusion Amount" is that there's no filing qualifications. Nothing to report. It doesn't get listed on your returns; it doesn't get listed on their returns either.

Federal Gift Tax

Current annual exclusion amount: \$14,000
per year per donee

Current maximum lifetime exemption (in
addition to annual exclusions): \$5,490,000

Current maximum gift tax rate: 40%

a lot easier to do. Little tweaks here and there. And worth every amount of time that you spend and penny on that. Exactly.

Federal Gift Tax. Just real quickly. *Let's just talk about that. What's that?*

So the Federal Gift Tax is actually right now coupled, or tied, to that exclusion amount. So we can all transfer up to 5.49 million – round that to five and a half – up to five and a half million during life. That number, you can either utilize that exclusion during life or in death. So we have this five and a half million we can use up by making gifts during life or after death in terms of an estate. And you can't use five and a half during life and another five and a half during death. It's all unified. It's a unified credit. You can only start diving into that five and a half million if your gifts exceed \$14 thousand per year.

Per person that you're giving

the gift to. And it can be anyone. It doesn't have to be family.

And to drive that point home, I always tell audiences, I will act as the donee of your gifts, free of charge.

Right, right. Which is very nice.

That's my gift to you, my service to you. And I say that to drive home that point. That it is anyone. There's a big misconception that it has to be family members, relatives. Not the case. You can give that \$14 thousand to anyone. And for a married couple, you can do \$28 thousand. So for you and your wife, with your four kids, you guys can pretty quickly whittle down your estate. If you wanted to gift \$14 thousand to your kids just like that. The beauty of that "Annual Exclusion Amount" - as it's known - is that there's no filing qualifications. Nothing to report. It doesn't get listed on your returns; it doesn't get listed on their returns, either. So if you don't exceed that \$14

thousand a year, it's very clean and very easy.

Let's go back. And I don't want to make you try to come up with costs because I know every one of these is going to be different. But let's just talk about it. About how much time it takes. Can we talk a little bit about how much these things would cost? Well, I'll let you take it from there.

Yes. So for the Trust Package, I would say were looking at about \$2,500, for most scenarios. Certainly, there are scenarios that would be double that cost if it gets down to it.

Does it go a whole lot less than \$2,500?

Certainly on the reviews, the updates, the addendums. Sure, they're far less than that. We're talking about an hour or two of my billable time. My billable rate is \$300 an hour. And so, it really varies on the situation. But for a new planning package - where we're creating the trust, the will, the powers of attorney, helping you fund the trust, move all the assets into the trust - \$2,500 is probably the starting point when we're looking at that situation. When we're looking at an update or a refresh, you can be safe to say that it's going to be less than that.

Right. \$500 or \$1,000; a lot of times. Which is so much less

than all of the hassles that you would have to go through. All the effort and time that goes into it. And probably, everything sounds like it's a lot worse than it really is. Once you get going, with it, it's not near as bad. Yeah, you've got to do some things to get it done. Like you said, probably collection of all your assets and just thinking it through, and seeing all of the different stuff that you have to get put in, right?

Yeah, what we're finding is that these days, with so much done electronically, no one receives paper statements anymore. It used to be very easy, where we'd have people drop off their paper statements to their various accounts, and we'd have the info we needed. Nowadays, just to get people online, find out where they've got to click to find the statements...Then we tell them, you can email it to us. You know? Download and email it to us. You don't have to print it and hand-deliver it. So, that's sort of the hangup that we find. Most folks can't figure out how to access their statements.

Well, it cuts into their Facebook time, you know? Haha yes, it does.

You've got to move from Facebook over to your browser to look at your accounts and all that stuff.

You've got to have time to listen to the podcasts you guys produce. So yeah, it's tough.

Alright, so tell me, what do you think? What's kinda the number one piece of advice that we've talked through all this stuff. What would you say to people?

I sort of alluded to it earlier. It would be to just do it. Get it done. Don't delay it because you never know what life's going to do to you. To take it to a little bit more of a somber tone, I lost a spouse as a 26-year-old. My first wife passed away from leukemia. And you just never know what life's going to throw at you. And you don't know what might lie ahead for you. You think everything's fine and hunky dory, and everyone's going to die in the natural order

of succession, and that's just not how life works. So just do it. Get it done. Adding onto that, do it with somebody who knows what they're doing.

Right, exactly. Worth every penny. Just a single mistake can cost way more. Well and most of the time people probably aren't even saving money. They could be spending more money because they are working with somebody that is not doing it every day on top of that. Okay.

Well, we kind of knew that that was going to be your advice to everybody. But it's important. Okay, so we're going to have a little bit of fun to finish of this podcast, the show. I'm going to ask you a few different types of questions. Nothing to do with trusts whatsoever. But we want to know just a little bit more about Jason, alright? So I want you to tell me, what's one thing that you do that other people think is just crazy. What would that be?

This is the worst question ever

"I lost a spouse as a 26 year old. My first wife passed away from leukemia. And you just never know what life's going to throw at you. And you don't know what might lie ahead for you. You think everything's fine and hunky-dory, and everyone's going to die in the natural order of succession, and that's just not how life works. So just do it. Get it done. Adding onto that, do it with somebody who knows what they're doing."

to come up with one thing because there's a whole litany of items I could go on and on about. Um, I'm definitely a person who likes to stack papers. Whether in my office, at home, you name it. I would just create stacks of paper. In fact, I'm sitting here to today with a stack of them right here in front of me.

It makes you feel comfortable? For some reason, I've stuck a little fortress around me, for some reason. But that drives my wife nuts. She files things; she knows where things go. My assistants – it drives them nuts. Put it in the file, put the file back. I realized that is a major annoyance to those around me.

So, if you could have it your way, you'd have stacked paper all around your office. Everywhere and every once and a while, just to feel good, you'd go through and really make sure it's nice and neat and stuff.

I know where it is, and that's all that matters to me. Unfortunately, everyone else doesn't.

That's awesome. That's a good crazy. So what do you spend a silly amount of money on?

This is easy. I just bought a boat this year. And you've heard the acronym for b.o.a.t.? Bust Out Another Thousand?

Oh no, that one I didn't hear before.

Yeah, and that's proven to be the case. I'm a new...first boat I've owned. And third day out and I've already dinged up the propeller. So yeah, my wife also is not a big fan of this endeavor. She hasn't warmed up to the idea. But, well, we own it.

You have to take care of it. Where do you like to go boating most of the time?

So this year, Lahontan actually has some water, and it's a little warmer out there than most of the other lakes.

How about Lake Almanor?

Have you ever been out there? I haven't been out there.

You need to. Go out there when you get a chance and spend some time out there. So I thought you were going to say - you know the old saying – “your best day is when you bought the boat, and the best day of your life was also when you sold the boat.” But I'm with you. I love boating and have had a boat ever since I was 18 years old. It's only been about the last five years that I haven't had a boat. Alright, so now tell us. What absolutely pains you to spend money on?

This is probably going to sound bad, but insurance. Because of the hassle every time you need

to use the product. You know, you pay this money. And in and of itself is sort of betting. It's essentially gambling. Here we are in Nevada right? It's essentially betting that you're going to need this service. And then when you do need it, it's a major hassle and harang. And so that drives me insane, I'll be honest. I've had some – unfortunately – need to use insurance this past year. It's been a process.

That's so true. It's very irritating when you've paid and paid and paid and paid, and then something happens, and you have to fight the insurance company because of that. Alright, great, well I've got one more question for you. So, you don't say you're an 'attorney' or an 'attorney of law.' You say you're an 'esquire.' Right? Why is that? What's the difference and do other people that have your exact same degree and pass the bar say different? Do you get to choose?

Yeah, you're trying to stump me with the last question. No, there's really no rhyme or reason behind it. The esquire thing is almost sort of an inside joke with my brother. I have a younger brother that went to law school. We just, we

think it's sort of a silly title. So I've always put it on my email signature, and it's just sort of an inside joke with brothers, and we think it's just silly to be called as esquire. As if it connotes some greater degree of authority. There's truly no purpose behind it.

Good, you cleared all that up for us. Well why don't you tell us, how do we get in touch with you?

Sure. You can look me up on our firm website Woodburn & Wedge. My phone number is 775-688-3000. Email is jmorris@woodburnandwedge.com. I'm happy to take a look at plans that are in place, or sit down with folks for new planning and getting those estate plans put together.

You have, also, I see here, another website. Do you want to just tell everyone what that is?

Yes. We have a little blog that we've created. Not as well maintained as it probably ought to be. It's nvplanningandprobate.woodburnlaw.com and that has – I actually use a lot of posts on that if people have questions regarding probate or portability. I've done posts on those topics. So I'll just shoot out links to those various blog posts. It helps orient them and gives them an idea of what lies ahead with probate or what we really mean with this portability concept.

Well, great. And people can look there for also some articles. I know you're going to be a guest

writer for us on what we're sending out there. And talk a little bit more about this. So we can get it out to everybody. Well good. Thanks so much for coming today, Jason. This was terrific to have you here and some really great information.
I appreciate it.