Common mistakes in estate planning

THE NAUTILUS GROUP

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The American Taxpayer Relief Act of 2012 was enacted on January 2, 2013. On January 1, 2015, a $5.43 million Federal gift, estate and GST exemption amount and a maximum gift, estate and GST tax rate of 40% went into effect. These considerations apply only to the Federal transfer taxes. Any state-level estate or inheritance tax should be evaluated separately.

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The cash value in a life insurance policy is accessed through policy loans, which accrue interest at the current rate, and withdrawals. Loans and withdrawals will decrease the cash surrender value and death benefit.

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Introduction

It is not uncommon for affluent Americans to have significant mistakes in their wealth transfer plans.

Most do not understand the nature of the mistakes nor the fact that solutions exist.

Summary

This presentation is intended to help uncover your wealth transfer mistakes.

Provide you with information on some typical solutions.

Help lay out a "road map" or action plan for implementing these solutions.

List of common mistakes

1. **Incapacity**
2. Distribution
3. Documents
4. Ownership
5. Tax-free Transfers
6. Cost-efficient Transfers
7. Qualified Plans
8. Charities
9. Funding
10. ?????????????????????????

Incapacity

An incapacitated person is any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except minority...

...to the extent that he or she lacks sufficient understanding or capacity to make or communicate reasonable decisions concerning themselves.

Incapacity mistake

Most of us do not have the **important legal documents** which would be necessary in the event of incapacity!

Incapacity solutions

Durable Power of Attorney

Living Will

Health Care Proxy (a.k.a. Medical Power or Medical Directive)

Living Trust

List of common mistakes

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Distribution question

Should my assets be distributed outright or in trust to my loved ones?

Consider that:

Distribution concerns

Outright transfers (during one's lifetime or at death)

May be immediately available to the creditors (personal injury, divorce, ...) of the recipient of the gift or bequest!

Could be spent indiscriminately by financially immature recipients

It took a lifetime to build your assets; it could take your beneficiaries' creditors a short time to access them.

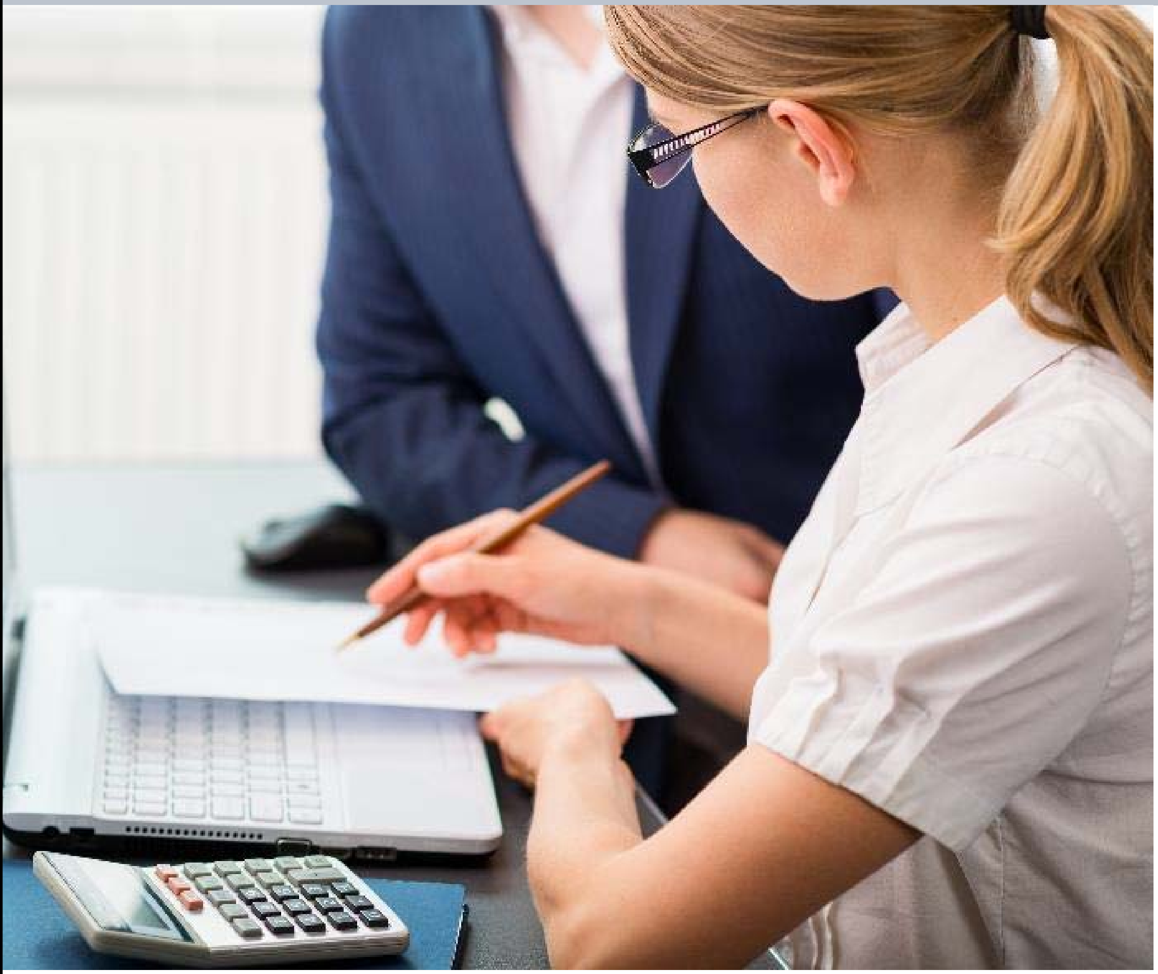
Also...

Distribution concerns

Outright distributions are immediately in the taxable estate of the recipient.

This subjects the assets to a potential estate tax not only upon your death, but once again upon the death of the recipient!

Distribution



- Assets transferred in trust may be afforded protection from creditors.
- If properly drafted, may "skip the generation" of your children for estate tax purposes while benefiting them during their lifetime.
- The maximum that could be skipped in 2015 is $5,430,000 from Grandfather and $5,430,000 from Grandmother.

Is there a better way to give?

Outright means own assets

- Creditor exposure
- Divorce exposure
- Estate taxable
- GST taxable
- May result in fewer assets being available to subsequent generations

In trust means use assets

- Creditor-proof
- Divorce-proof
- Estate tax exempt
- GST tax exempt
- May allow for assets to be available to subsequent generations

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Tax Act (ATRA 2012)

	2015
Estate	5.43M* / 40%
Gift	5.43M* / 40%
GST	5.43M* / 40%
Highest income	39.6%
Capital gain	20%**
Dividends	Ordinary income**

* Adjusted for inflation since 2012.
** In addition, starting in 2013 there is a 3.8% Medicare surtax for individuals with income over certain levels.

Document

- Many married couples have improper wills (or Living Trusts), or no documents at all
- They leave everything "to my spouse if he/she survives me, if not then to my children"
- This is known as a **Simple Will**
- For estates in excess of the Unified Credit [$5,430,000 (as indexed) beginning on 1/1/15], a simple will is inefficient for estate tax purposes

Document

- What may be needed is a more tax-efficient document.
- Consider a “Tax Wise” will or trust.

Simple will

Husband

↓

All assets

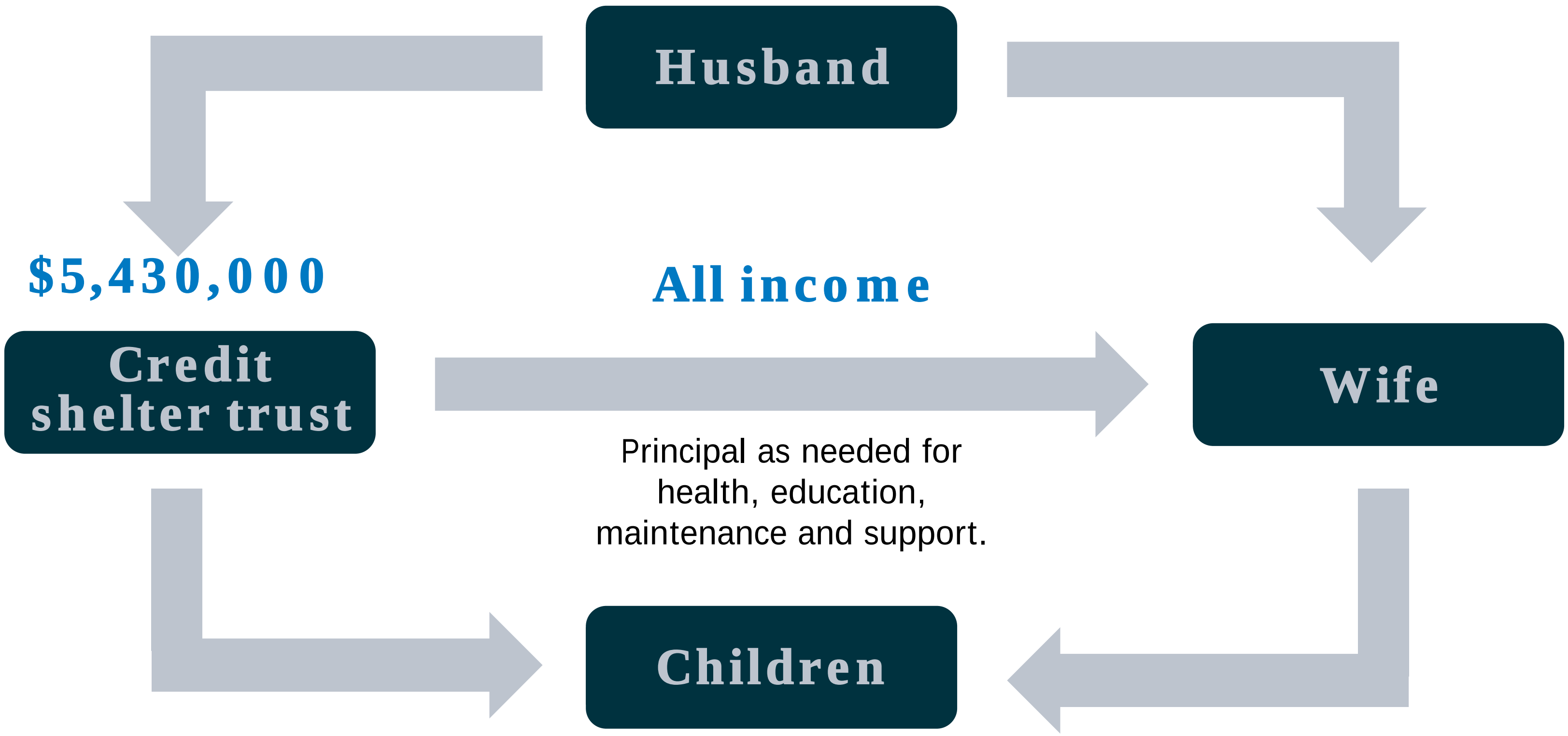
Wife

↓

Children

Children receive $5,430,000
estate tax free
(assumes deaths in or after 2015)

Another option



Children receive $10,860,000 estate tax free by utilizing unified credit at each death

List of common mistakes

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Ownership

Are all or most of your assets titled in joint tenancy with right of survivorship?

- Joint assets pass by operation of law

  As such, they are not available to fund the Credit Shelter Trust

  — Consider state law

  — Common law vs. community property

- Are assets optimally titled from a creditor protection perspective?

  — Individually owned investment real estate vs. LLC owned,

  — Living trust vs. individual POD (pay on death) designations for bank and brokerage accounts,

  — Living trust vs. beneficiary designations for life insurance and annuities.

Ownership

How are your life insurance policies owned?

- **$50,000 policy**
- **$100,000 policy**
- **Whole Life**
- **Group Term**

Existing policies transferred to Irrevocable Life Insurance Trust (ILIT)

$50,000 policy

$100,000 policy

Whole Life

Group Term

New Policy Owner

ILIT

- $50,000 Policy
- $100,000 Policy
- Whole Life
- Group Term

Existing policies transferred to Irrevocable Life Insurance Trust (ILIT)

Death benefit is estate tax free after three years, provided there are no retained incidents of ownership

ILIT

- $50,000 Policy
- $100,000 Policy
- Whole Life
- Group Term

List of common mistakes

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6. Cost-efficient Transfers
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Tax-free Transfers

Most affluent Americans do not make full use of the three tax-free transfers:

Annual gifts up to $14,000 per donee in 2015

Lifetime gifts of up to $5,430,000

Generation skipping transfer tax exemption of $5,430,000 in 2015

List of common mistakes

6. **Cost-efficient Transfers**
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Cost-efficient Transfers

Q: How can I get the best use out of the $5,430,000 applicable gift and GST exemption, and the $14,000 annual gift exclusion, to further reduce my taxable estate?

A: Making assets worth less (worth less for federal gift tax purposes)

Cost-efficient Transfers

There are three ways to make your tax-free transfers more efficient:

01.

Minority interest discounts

02.

Marketability discounts

03.

Present value discounts

Cost-efficient Transfers

Minority discounts

Cost-efficient Transfers

Marketability discounts

Cost-efficient Transfers

Present value/ actuarial discounts:

Remainder interest in property to be received at end of specified term, e.g., 15 years

List of common mistakes

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Qualified Plans

Qualified Plans are one of the best places to have assets while living and usually one of the worst places to have assets at death.

Why?

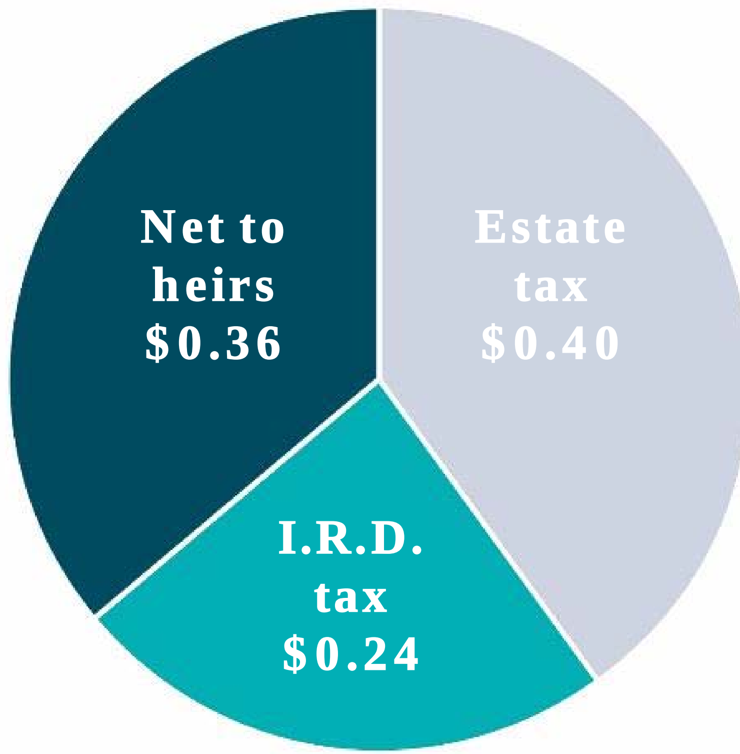
This is due to the double tax treatment of qualified plan assets...

Estate Tax *and* Income Tax

Tax of pension dollar at time of death

$1.00	Pension Dollar
– 0.40	Estate Tax
0.60	Estate After Tax
– 0.24	*I.R.D. Tax

$0.36 Net to Heirs



*Assumes 40% Estate Tax, 39.6% Income Tax to Beneficiary. This example, which is merely an approximation, is for illustrative purposes only.

Qualified Plans

Consider a distribution strategy well suited for your retirement and estate objectives:

- Stretch it out
- Earlier withdrawals gifted to trust
- Charitable strategies

List of common mistakes

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Charities

Have I examined the potential tax savings and social benefits which result from proper charitable planning?

Would it be possible to help reduce the amount going to the IRS by including charitable planning without a reduction in my family's inheritance?

Charities

Charitable planning strategies:

01. The Charitable Remainder Trust (CRT)

02. The Charitable Lead Trust (CLT)

03. Direct charitable bequests and beneficiary designations

04. Other charitable strategies

List of common mistakes

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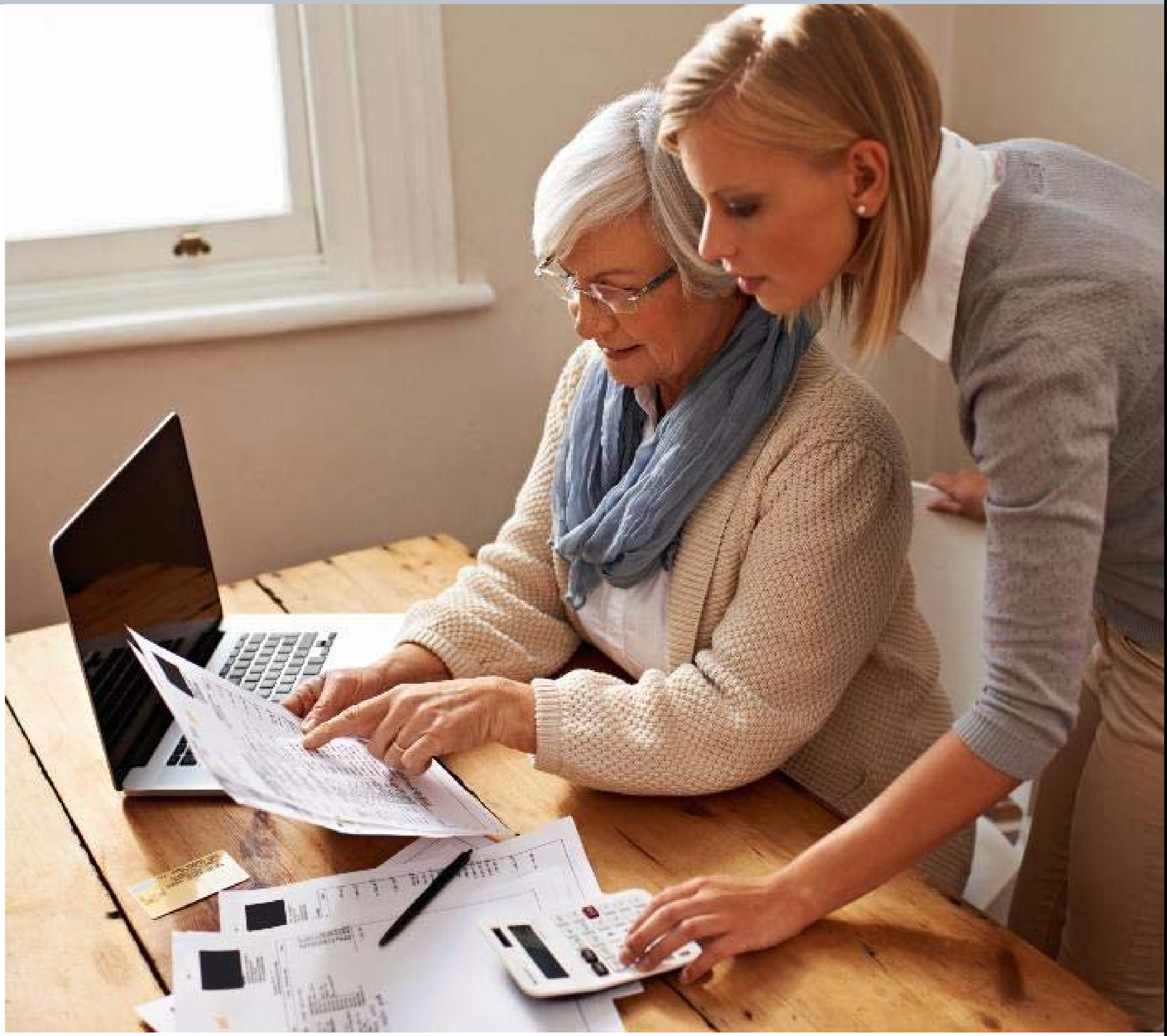
Funding

A well-planned estate will consider the optimum source for the funds needed to pay the potential estate tax due.



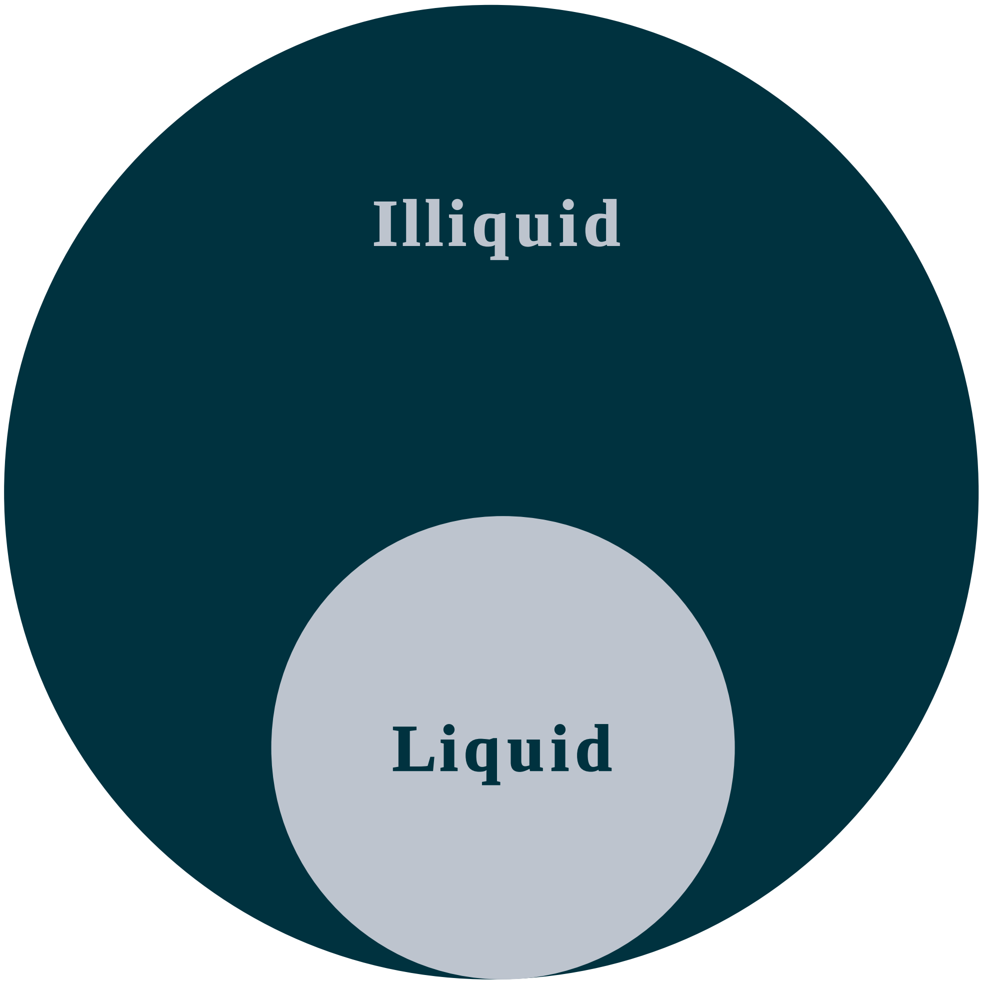
Funding

The estate tax is due generally within nine months of the date of death.

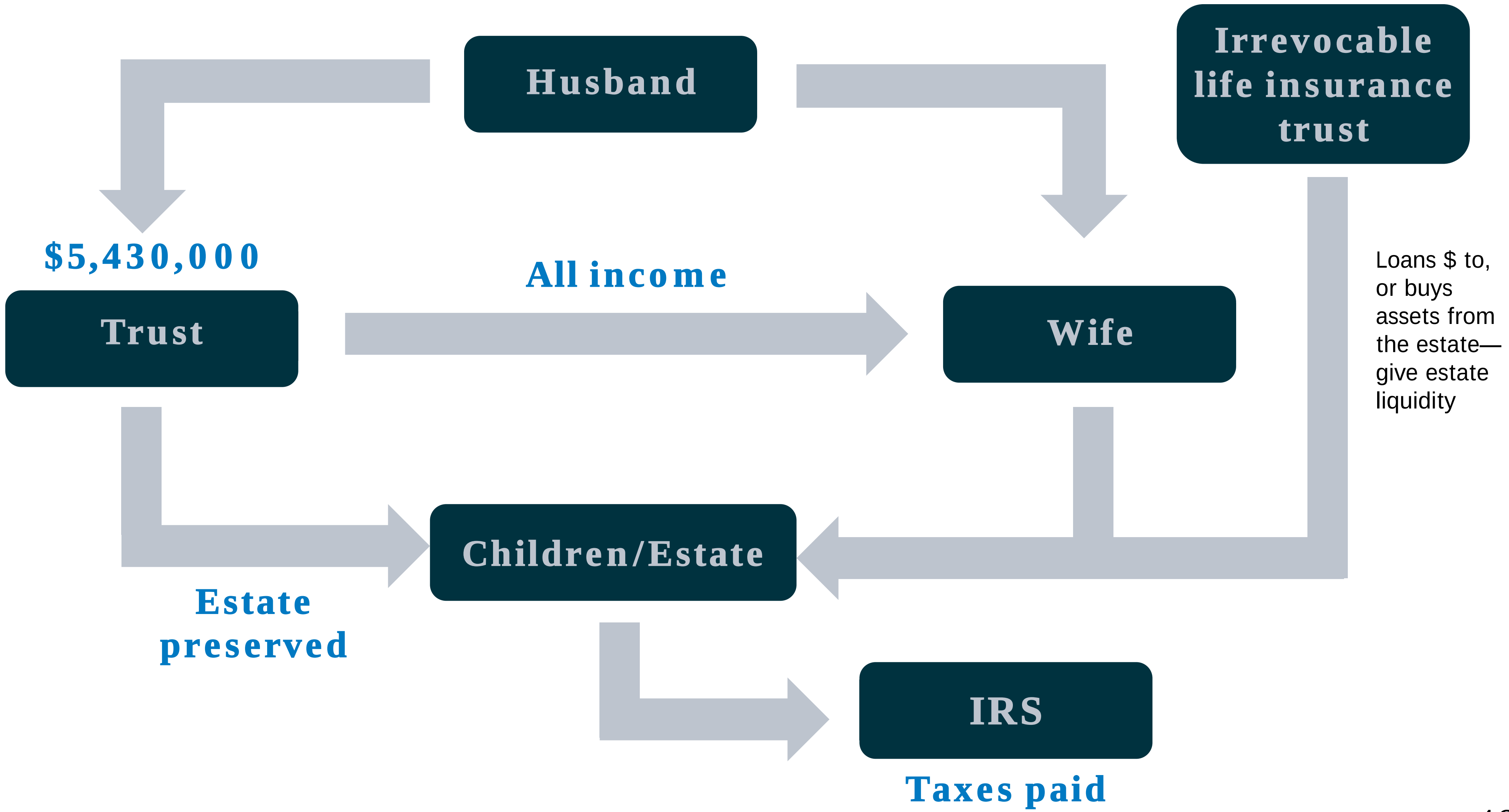
An estate with inadequate liquidity may be forced to sell assets for less than fair value.

Liquid vs. illiquid estates

Estate liquidity



Another option



List of common mistakes

10. **?????????????????????????**

Number 10 is....

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Procrastination

You've spent a lifetime building your estate.

Why not spend the next several weeks protecting and preserving it for the future of your family?

Why act now?

Have your assets and/or family objectives evolved since you last planned your estate?

Is the planning you currently have in place well suited to meet these family objectives?

Have your documents been updated to reflect your current objectives and asset mix?

Suggested action plan

- Obtain an education on the issues and strategies relevant to your unique objectives, assets, and concerns.
- Select and visit your attorney to determine and implement your plan.

Evaluation

- Please complete a seminar evaluation form.
- Check box for complimentary estate planning service.

Thank you for coming!