



## Agenda

- Review Prior Sessions
- Estate Planning Discussion
- Q&A



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## Accessing Private Aviation

- Charter
  - One time transportation
- Jet Cards
  - 25 or 50 hour prepaid blocks
  - Part 135
- Fractional Ownership
  - Undivided interest
  - 5 year contract
  - Part 91 or 135
- Whole Ownership
  - You own, operate and control your aircraft
  - You control hiring crew and maintenance personnel



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## Making Informed Decision

- Financing Considerations
  - Evaluate the cost to purchase AND operate
  - Lease vs. Buy
- Transportation Needs
  - Typical Mission
  - Desired Features
- Market Research
- Aircraft Selection
- Technical Analysis



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## Purchasing an Aircraft

- Select Aircraft and Make Offer
- Visual Inspection/ Records Review
- Negotiate Purchase Agreement
- Confirm Aircraft Ownership and Operation and Tax Strategy
- Technical Inspection
- Correction of Discrepancies
- Delivery and Closing

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## Ownership and Operating Plans

- Aircraft Ownership Structure will depend on:
  - Operational Factors
  - Tax Factors
  - Liability Factors
- Operating Plan Considers:
  - Tax Advantages
  - Liability Exposure
  - FAA Compliance



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## Sales/Use Tax Exemptions

- Not Purchased for Use in CA
- Interstate Commerce
- Charter or Common Carrier



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## Federal Tax Issues

- Entity & Structure
- Depreciation in General
- Depreciation Methods



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## Financing Your Aircraft

- Define flight mission
- Understand cost to operate
- Define percentage of personal use
- Evaluate after tax cost and ownership structure
- Loan or lease and residual value risk
- Important to work with experienced professionals with expertise related to your plan

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## TYPICAL ESTATE PLAN FOR A MARRIED COUPLE BOTH RESIDENTS OF CALIFORNIA

- Living Trust
- Pour-Over Will
- Community Property Agreement
- Advance Health Care Directive
- Durable Power of Attorney



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## Living Trust

- The trust is created by the husband and wife while both are alive.
- They transfer all of their assets to the trust, including community property, quasi-community property (property acquired while married and living in a non-community property state), and separate property.
- They have the same control over the assets as they had before the transfer.
- The trust assets are not subject to probate when they die.
- When the first spouse dies, that spouse's separate property and quasi-community property and one-half of the community property are included in his or her federal gross estate for federal estate tax purpose.

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## Survivor's Trust

- The property in the trust is divided at the spouse's death into two or three trusts.
- One trust, sometimes referred to as the survivor's trust, will continue to hold the surviving spouse's separate property, the surviving spouse's one-half interest in quasi-community property, and the surviving spouse's one-half interest in the community property.
- The survivor's trust may also hold the assets included in the federal gross estate of the deceased spouse to the extent they exceed the estate tax applicable exclusion amount (currently \$2,000,000). These assets are held in a separate trust, sometimes referred to as the family trust or credit shelter trust.

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## Marital Share

- The property included in the deceased spouse's federal gross estate is divided into two shares, one share is equal to the estate tax applicable exclusion amount (currently \$2,000,000) and the other share, often referred to as the marital share, consists of the balance of the property included in the deceased spouse's federal gross estate.
- The share that is equal to the estate tax applicable exclusion amount is held in a separate trust, which, as mentioned, is referred to as the family trust or credit shelter trust.

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## Creditor Shelter Trust

- This trust is designed so that the trust assets will not be included in the surviving spouse's federal gross estate, although the surviving spouse may have the right to the income, to distributions of principal for his or her health and support needs, and to direct where the trust assets will go after his or her death.
- The surviving spouse may also serve as a trustee, or as the sole trustee of this trust.

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## Marital Trust

- The other share is either held in the survivor's trust described above, or transferred to a third trust, sometimes referred to as the marital trust.
- The assets in the marital share transferred to the survivor's trust or to the marital trust will qualify for the marital deduction.
- Consequently, because the assets included in the deceased spouse's estate in excess of the estate tax applicable exclusion amount qualify for the marital deduction, there is no federal estate tax due at the death of the first spouse.
- The marital trust will generally have the same terms as the family trust, but because the trust assets qualified for the marital deduction in the deceased spouse's estate, the assets remaining in the marital trust at the surviving spouse's death will be included in his or her federal gross estate.

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## Ultimate Disposition

- At the death of the surviving spouse, all the trust assets will pass to the couple's intended beneficiaries, such as their children or grandchildren, or to one or more charitable organizations.
- The assets in the survivor's trust and the marital trust and any assets owned by the surviving spouse will be included in the surviving spouse's federal gross estate, but the assets in the family or credit shelter trust will not be included in the surviving spouse's federal gross estate.
- The surviving spouse's estate tax applicable exclusion amount (currently \$2,000,000) will be available.

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## Pour-Over Will

- Each spouse will also have a pour-over will that ensures that any assets that have not been transferred to the living trust before the spouse dies will pass to the trust anyway.
- Other assets, such as life insurance proceeds, retirement plan benefits, and IRAs, may pass directly to the trust pursuant to a beneficiary designation signed by the deceased spouse.

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## Community Property Agreement

- If the couple has moved to California after they were married, they may also sign a community property agreement converting some or all of their property to community property.
- This ensures that all of the property so converted will receive an increase in basis when the first spouse dies.

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## Other Documents

- The couple may also sign advance health care directives, which include provisions formerly contained in a living will and a health care power of attorney.
- The couple may also sign durable powers of attorney naming one another, or perhaps others, to act on their behalf in connection with financial matters.

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## Transfer Taxes

- **Gift Tax.** There is a federal, but not a California, gift tax on taxable gifts in excess of \$1,000,000 per individual. The tax ranges from 41% to 45%.
- **Estate Tax.** There is a federal, but not a California, estate tax on the value of an estate that exceeds \$2,000,000 in 2007 and 2008, and \$3,500,000 in 2009. The tax rate is 45%.
- **Generation Skipping Transfer Tax.** There is a federal, but not a California, generation skipping transfer (GST) tax of 45% on transfers to grandchildren and more remote descendants in excess of \$2,000,000 in 2007 and 2008, and \$3,500,000 in 2009.

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## Estate Planning Techniques In General

- **Basis of Assets Gifted or Passing At Death.** Generally, the basis of an asset a donee receives by way of gift is equal to the donor's basis. In contrast, the basis of a beneficiary in an asset that passes as a result of the death of an individual is equal to the fair market value of the asset at the date of the individual's death (or the alternate valuation date, if elected). Consequently, if the client has assets with a high basis and assets with a low basis, the high basis assets are better candidates for lifetime gifts.

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## Special Concerns for Aircraft Ownership

- **Is Aircraft Leased or Owned?**
  - Review lease agreement
  - Who has ability to terminate lease?
  - Under what circumstances?
  - Are there any termination fees?
- **If Aircraft Is Owned**
  - Was aircraft financed?
  - If so, review financing documents. Many loans have provisions that accelerate note on death of owner under the default provisions

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## Title to Aircraft

- Consider using Limited Liability Company if aircraft will be leased to third parties for creditor protection purposes.
- If LLC has one owner, the LLC will be disregarded for tax purposes. Will have little or no effect on death of LLC member
- If multiple owners, LLC is also a good option.
- If LLC has multiple owners, discounts will apply at death of an LLC member
- Include provisions to deal with death, divorce, transfer of LLC interest, valuations, etc.

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## Provisions in Trust to Consider 1

- Add specific provisions to deal with aircraft
- Often aircraft is tied to one person.
  - If that person becomes incapacitated, should trustees have authority to sell aircraft in order to stop incurring expenses associated with owning an aircraft? Should it depend on level of incapacity and whether individual may become capacitated?
  - If that person dies, what should trustees do?

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## Provisions in Trust to Consider 2

- If aircraft will be retained, is there sufficient income and/or assets to cover expenses?
- If multiple beneficiaries, who decides who gets to use the aircraft and when
- What happens if the beneficiaries disagree on usage?
- Can the trustees lease the aircraft to non-family members? If so, is this only if no family members want to use the aircraft?

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### Provisions in Trust to Consider 3

- If used by family members, who pays for expenses (e.g., fuel), the trust or the beneficiaries?
- Who are the beneficiaries?
  - Only U.S. citizens and resident aliens may register an aircraft in the United States
  - May set up a trust for the benefit of foreign beneficiary as long as trustees are U.S. citizens or resident aliens and may act independently

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### Considerations if Aircraft is Sold

- Who pays for expenses until the aircraft is sold?
- How is purchase price determined? Can trustees sell for less than FMV for a quick sale? If so, limit liability of trustee
- Who can use aircraft during interim period?
- Can trustees use aircraft for trust related business?
- Income tax benefit to selling after death. Step-up in basis to FMV as of decedent's date of death. Big benefit if previous 1031 exchanges

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