

# Estate Planning

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# Basic Estate Planning

## Frequently Asked Questions

1. Where does my property pass if I die without a will?
  - a. What about my jointly owned accounts and residence?
  - b. What about my IRA, 401(k) and life insurance?
  - c. What about property passing to my minor children.
2. What is Probate?
  - a. Do I need to avoid probate?
  - b. My siblings in Florida have revocable trusts; do I need one?
3. I am in a second marriage and have children from my first marriage.
  - a. Can I leave all my property to my children and cut out my new spouse?
  - b. Are there states where I cannot cut out my spouse?
4. What are the basic estate planning documents that I need?
  - a. Will
  - b. Health Care Directive and Living Will.
  - c. Business Power of Attorney
  - d. Coordinate with beneficiary designations
5. I read that 5 billionaires who died in 2010 paid \$0 in estate taxes; Is the estate tax dead? All I own is my home, investment accounts and life insurance. there is no way this will be exposed to estate tax, right?
  - a. At the death of the first spouse.
  - b. Later death of the second spouse

# Who gets my property if I die without a will?

# Probate & Non-Probate Assets

- Probate Assets pass under your Will.

Examples:

- Assets owned exclusively in your name
- Assets owned as Tenants in Common (Not Joint Tenants With Rights of Survivorship)

- Non-Probate Assets pass outside of and are not controlled by your Will.

Examples:

ASSET

Life Insurance

Joint (Survivorship) Assets

- *Real Estate owned as JTWROS*
- *Joint Bank Accounts*

Assets in a Revocable Trust

Retirement Plans

- *IRAs*
- *401(k)s*
- *Pension Plans*

PASSES BY:

Beneficiary Designation

Operation of Law

Trust Provisions

Beneficiary Designation

# Probate Assets without Will

If survived by spouse & children: Spouse & children share equally  
*(spouse always gets at least 1/3)*

If survived by spouse only (i.e., no children): All to spouse

If survived by children only (i.e., no spouse): Equally to children

If no spouse, no children, & no grandchildren: Equally to parents

But if no parents, then: Equally to siblings

But if no siblings, then: Equally to grandparents

But if no grandparents, then: Equally to aunts and uncles

*Additional Issues: minor children, and children from a prior marriage*

# What is probate, and do I need to avoid it?

# Do I Need a Revocable Trust?

- Generally, you do NOT need a revocable trust in Georgia
  - Revocable Trusts are commonly necessary in states that have a complex and/or expensive probate system
- The Georgia probate system is very simple and inexpensive
- Your Georgia Will may include provisions which allow your Executor to serve without:
  - Posting a bond
  - Filing inventories and/or returns with the Probate Court
  - Obtaining court approval to handle estate matters
  - Paying any significant Probate fees (Probate fees in Georgia are typically under \$200)

**Can I cut out my new spouse,  
and  
leave everything to my children?**

- What protects the surviving spouse?
- What protects minor children?



# What are the basic estate planning documents?

# Georgia Estate Planning Documents

## BASIC DOCUMENTS:

1. **Will**
  - May include trust for children
  - May include trust(s) for estate tax savings
  
2. **Health Care Power of Attorney**
  - Appoints “agent” to make health care decisions if you cannot make decisions for yourself
  - Includes Living Will provisions
  
3. **Business Power of Attorney**
  - Appoints “agent” to handle business matters if you cannot handle matters yourself

## Optional Documents:

for estate tax planning, income tax planning and/or asset protection

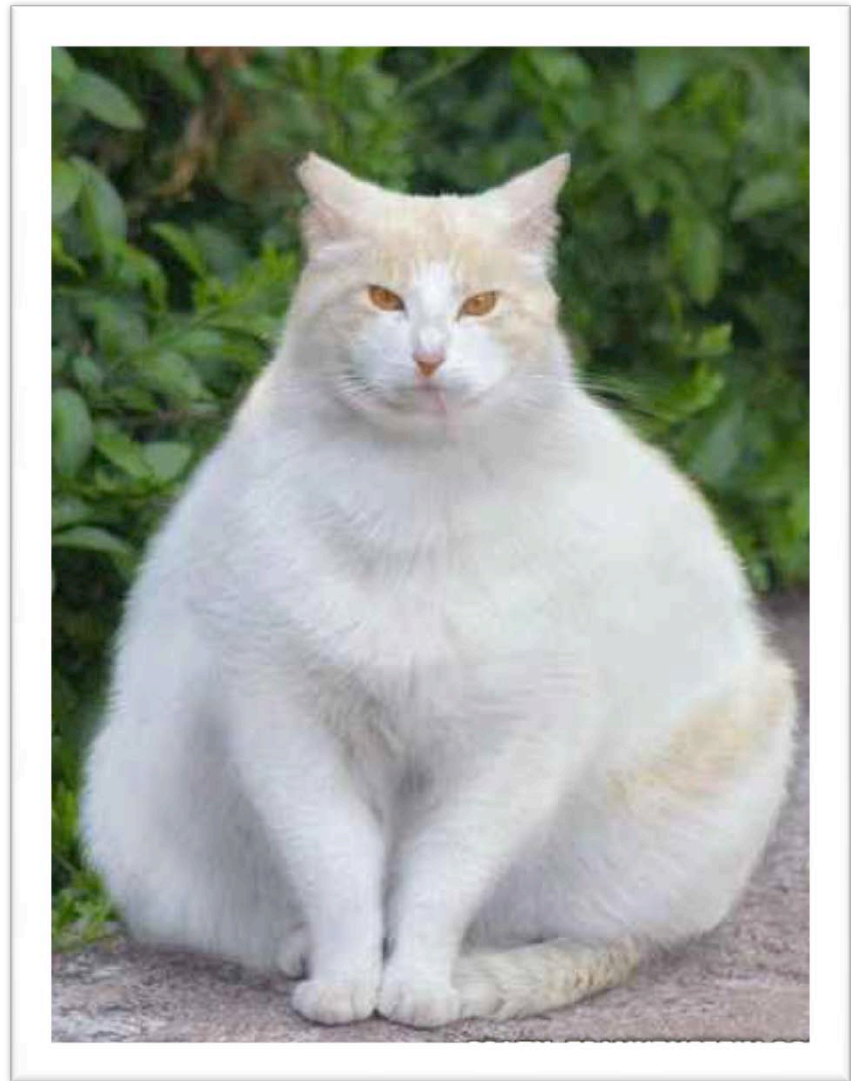
- Irrevocable Life insurance Trust (ILIT)
- Qualified Personal Residence Trust (QPRT)
- Charitable Remainder Trust (CRT)
- Family Limited Partnership (FLP)
- Qualified Terminable Interest Trust (QTIP)
- Generation Skipping/Dynasty Trust (GST)
- Grantor Retained Annuity Trust (GRAT)
- Special Needs Trust (SNT)

# Are my documents up to date?

<u>Yes</u>	<u>No</u>	<u>Don't Know</u>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Does my existing will contain "tax oriented" provisions which need revision based on the 2010 Tax Act?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Does my Georgia Health Care Directive / Living Will name the person I want to make these important health care decisions?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Does my Durable Business Power of Attorney name the most qualified person to make business decisions for me if I cannot?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are the beneficiaries designated in my life insurance policies and/or retirement plans properly coordinated with the beneficiaries named in my will?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are the named executors and trustees in my existing will / trust still the best candidates to handle my estate?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Do certain beneficiaries of my estate need a trust to protect them?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Have I reviewed my estate plan with my attorney in the last three years?

# Is the estate tax dead?

# Mr. & Mrs. Fat Cat



# Billionaires Who Died in 2010

<u>Billionaire</u>	<u>Estate Tax Estimate</u>	<u>Actually Paid</u>
George Steinbrenner	\$495,000,000	\$0
Walter Shorenstein	\$495,000,000	\$0
Mary Janet Cargill	\$765,000,000	\$0
Kohn Kluge	\$2,900,000,000	\$0
Dan L. Duncan	\$4,000,000,000	\$0

**All I own is my home,  
investment accounts, and life  
insurance.**

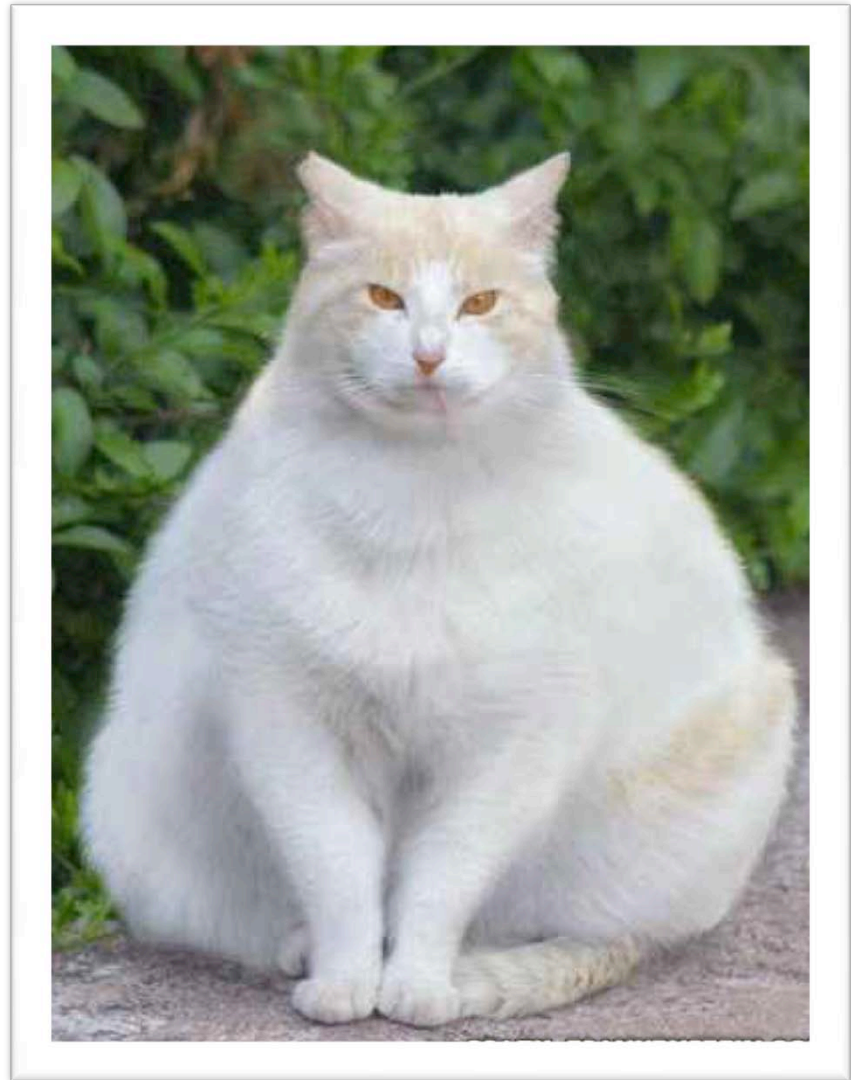
**There is no way this will be  
exposed to estate tax, right?**

# Estate, Gift, & GST Taxes

	2009	2010	2011	2012	2013
<b>Estate Tax Exemption</b>	\$3,500,000	\$5,000,000 (or opt out)	\$5,000,000	\$5,000,000	\$1,000,000
<b>Generation-Skipping Tax Exemption</b>	\$3,500,000	No GST Tax (0% GST rate)	\$5,000,000	\$5,000,000	\$1,000,000
<b>Gift Tax Exemption</b>	\$1,000,000	\$1,000,000	\$5,000,000	\$5,000,000	\$1,000,000
<b>Highest Applicable Tax Rate</b>	45%	35%	35%	35%	55%



# Mr. & Mrs. Fat Cat



# Why not own everything jointly?

## JOINT OWNERSHIP

<u>Husband</u>	<u>Wife</u>
\$1,000,000	\$1,000,000
	<u>1,000,000</u>
	\$2,000,000
	- <u>550,000</u> TAX
	\$1,450,000

\$1,450,000 to Children

## SEPARATE OWNERSHIP

<u>Husband</u>	<u>Wife</u>
\$1,000,000	\$1,000,000
	- <u>0</u> TAX
	\$1,000,000

▼  
"Credit Shelter  
Trust" for Wife &  
Children

\$2,000,000 to Children