

IMPORTANT QUESTIONS TO ASK
EVERY ESTATE PLANNING CLIENT



By:

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I. WHY ASK QUESTIONS?

- A. Before proper estate planning documents can be drafted for your client, you must accumulate reasonably detailed information concerning your client's personal and financial circumstances.
1. Different planning vehicles would be used for
 - the rising young executive with two preschool age children

vs.

 - the retired business person whose children have embarked on their own careers.
 2. Different planning approaches would be taken for
 - a family whose entire wealth consists of cash and marketable securities

vs.

 - a family whose wealth is concentrated in a closely held business interest or in relatively unproductive but extremely valuable real estate.
- B. Because data concerning your client's personal and financial circumstances must be known by you, it is your task to ascertain all relevant information.
1. You cannot rely solely on what the client deems relevant to disclose.

2. The client who refuses to acquaint you with his complete financial situation increases the risk that his estate plan will not operate as projected. You should caution your client of this risk.
- C. Malpractice Protection
1. To defend against possible malpractice claims, it could be helpful to show that you asked all of the proper questions even if you did not receive the correct or complete answers.

II. WHEN AND HOW TO USE A QUESTIONNAIRE/CHECKLIST

- A. Most efficient: Have the client complete the data sheets prior to your initial appointment.
- B. Some of you (and me included), and some of your clients, may feel that the aforesaid approach is too impersonal.
- C. Client relations may improve if you complete the data sheet during (or after) the interview.
- D. Certain details are best left to oral discussion.
 1. *Eg.* “Does your spouse have sufficient business sense to manage assets left to her/him outright?”
 2. For other sensitive items that are best not handled by a routine form, see “Matters to Be Discussed During Initial or Follow-up Conference,” attached as “Addendum B.”

III. A SAMPLE QUESTIONNAIRE/CHECKLIST

- A. The following sample, from Nathan & Neff, *Louisiana Estate Planning, Will Drafting and Estate Administration, With Forms* (LexisNexis, Second Edition 2006), broken apart to comment on why particular data could be important, is designed to help in the assembly of financial and personal data, as well as to elicit information that for one reason or another a client might be embarrassed to disclose.
- B. The sample form should not be viewed as cast in stone. You should develop your own questionnaire/checklist—one that works best for you—but that at a minimum should cover the items set forth therein.

C. Generation-Skipping Issues

1. Due to the Tax Reform Act of 1986, which introduced a tax on certain generation-skipping transfers, it may also be appropriate to inquire concerning the financial situation of your client's parents and/or children to be able to plan to reduce the impact this tax may have upon the family. Additionally, the complete estate plan may validly require changes in your client's parents' plans and/or in those of your client's children.

- D. The following forms, without annotations or discussion, are attached as "**Addendum A,**" commencing at Page 30.

Acquisition of Personal Data

Full formal name: _____

Name as normally signed on documents: _____

Name as may sometimes appear on documents: _____

Comment No. 1: *For the client whose name may appear in various ways throughout different documents, it may be advisable to determine what his proper legal name is and all of the permutations, and to include “also known as” or “a/k/a” in the estate planning documents. This could be helpful to avoid confusion later.*

Nickname: _____

Comment No. 2: *Clients sometimes prefer their documents to refer to their loved ones with less formality and in the manner in which they are actually known. The nickname can be used as follows and can be employed throughout the document thereafter:*

I leave to my son, Matthew S. Jones (hereinafter “Matt”) the following . . .

Domicile: _____

Comment No. 3:

1. *The state of a person’s domicile is the state that has the right to tax that person’s tangible property under its death tax statutes, if any, and will determine the law that will control the disposition of most, if not all, of his assets.*
2. *Questions of domicile may determine in which state primary probate will be had and in which state or states ancillary probate may be necessary.*
3. *Although the words “domicile” and “residence” are often used interchangeably, they have slightly different meanings.*
 - a. *“Residence” implies physical presence. You can have several residences, like a summer home or weekend camp, plus your main residence.*
 - b. *You can have only one “domicile.” It implies more than mere physical presence, but also a special relationship to a place that makes it one’s “home” rather than simply his “abode”—the place where his heart is, not necessarily where his hat hangs.*

4. In Louisiana, domicile is determined by two criteria:

Objective factor: the act of residing in a place.

Subjective factor: the intent to permanently reside in a place.

5. How do you prove subjective intent? It can only be proven by objective means.

Examples:

--Register to vote

--Obtain or renew a driver's license and a passport

--Join social and civic groups

--Establish or transfer bank accounts

--Purchase or rent real estate

6. Proof of intent to change domicile may also be accomplished by an express written declaration by the party making the change before the recorders of both the parish where the declarer formerly resided and that to which he is moving, which declaration is registered by the recorders. La. Civ. Code arts. 41 and 42.

Residence address: _____

Telephone: Business _____ Home _____

Fax No.: _____ E-mail address: _____

Business address: _____

Prefer to be called: Home _____ Office _____

Correspondence sent: _____ Home _____ Office

Prior domiciles in other states and when: _____

Comment No. 4: The character of property as community or separate may vary if your client has moved from another state where he acquired some of his assets. Property brought into Louisiana preserves the character it had at the time the couple moved here. Property that was a spouse's separate property upon moving here is not transformed into community property because of the move, although the presumption of community property will still apply.

Another point: A married couple who moves to Louisiana from elsewhere has one year after establishing their domicile here within which they may, without court approval, elect to avoid the community property system altogether, or to modify the system as they desire, by contract. La. Civ. Code art. 2329.

Date and place of birth: _____

Social security number: _____

Place of employment: _____

Occupation: _____

Comment No. 5: *This item can generate the following inquiries:*

Does the employer provide certain benefits like life insurance, retirement plans, deferred compensation plans, ESOPs?

Has the client made beneficiary designations?

Has the client made contingent beneficiary designations?

Does the client plan to retire? If so, when?

Does the client plan to continue living in Louisiana following retirement?

General state of your health: _____

Married: Yes _____ No _____

If married, complete the following for spouse:

Spouse's full formal name: _____

Name as normally signed on documents: _____

Name as may sometimes appear on documents: _____

Nickname: _____

Spouse's date and place of birth: _____

Spouse's social security number: _____

Spouse's place of employment: _____

Spouse's occupation: _____

General state of your spouse's health: _____

Date and place of marriage: _____

If presently not married, indicate whether:

_____ Never married _____ Previously married

If previously married, indicate whether:

_____ Prior marriage ended in divorce

If so, indicate name of divorced spouse, date of divorce, and court proceedings (name and docket no.) where obtained: _____

Comment No. 6: *Was a property division completed with the former spouse? These questions can lead you to determine if there are any unresolved issues with the former spouse.*

- *Does the client have any continuing support obligations? If so, to whom?*
- *Do any obligations continue after the client's death?*

_____ Prior marriage ended with death of spouse

If so, indicate name of predeceased spouse, date of death, and court proceedings (name and docket no.) where estate handled: _____

Comment No. 7: *If a prior spouse was deceased, the pleadings, if filed, could reveal:*

- *The nature and value of the assets of the surviving spouse.*
- *Whether your client is full owner of certain assets or merely a usufructuary. Many of our clients do not and/or cannot make that distinction and/or do not understand the distinction.*
- *Whether your client will owe a debt to the naked owners (who may not be his own children) at the termination of the usufruct.*
- *Whether a usufructuary accounting at your client's death may be an issue for his estate and whether your help now in tracing the assets and/or in advising on establishing identifiable usufructuary accounts could avoid complications later for the client's estate.*
- *Whether a "Q-TIP" election was made on a Federal Estate Tax Return, Form 706, filed in the estate of the deceased spouse, and the effect that can have upon your client's estate. What are the assets of the deceased spouse that will be fictitiously added to your client's estate on his death and be subject to estate tax under IRC § 2044?*

If spouse was previously married, indicate whether:

_____ Prior marriage ended in divorce

If yes, indicate name of divorced spouse, date of divorce, and court proceedings (name and docket no.) where obtained: _____

_____ Prior marriage ended with death of spouse

If so, indicate name of predeceased spouse, date of death, and court proceedings (name and docket number) where estate handled: _____

Have you ever signed a matrimonial, pre-nuptial, or post-nuptial agreement? _____

If so, attach copy.

Are you, your spouse and children citizens of the United States?

Yes _____ No _____

If no, who is not a U.S. citizen? Of what country are they citizens? _____

If your spouse is not a U.S. citizen, does he/she have plans to become a U.S. citizen?

Yes _____ No _____

If yes, what are those plans and when are they to take place? _____

Comment No. 8: The Non-Citizen Spouse and the Marital Deduction

- A. *The Technical and Miscellaneous Revenue Act of 1988 drastically changed marital deduction planning where the client's spouse is not a U.S. citizen. The Act eliminated the estate tax marital deduction for property passing to a non-citizen surviving spouse except for property passing to a non-citizen surviving spouse in a "Qualified Domestic Trust." IRC § 2056(d).*

- B. *The Revenue Reconciliation Act of 1989 liberalized some requirements and also provided that property that passes from the decedent to the surviving spouse outside of the decedent's estate (e.g., insurance proceeds, retirement or IRA proceeds) or that passes outright to the spouse pursuant to the decedent's will, that is transferred by the spouse to a "Qualified Domestic Trust" before the due date of the Federal Estate Tax Return, will also qualify for the marital deduction.*

C. *The “Qualified Domestic Trust” (“QDT” or “QDOT”), IRC § 2056A, and pursuant to IRS Proposed Regulations and Proposed Amendments to Regulations:*

1. *One trustee must be an individual U.S. citizen or domestic corporation provided that no distribution may be made without the approval of that trustee.*
2. *The surviving spouse is entitled to all of the income payable at least annually.*
3. *If the assets exceed \$2 million at the first decedent’s death, at least one trustee must be a bank that must furnish bond equal to 65% of the trust’s principal.*
4. *If the assets do not exceed \$2 million, the security referred to in C(3) above is not required, but no more than 35% of the trust assets may be invested in real property outside of the U.S.*
5. *If the non-citizen spouse wishes to treat probate and/or non-probate property as QDOT property, the spouse may irrevocably elect to transfer property to a QDOT within 9 months of death, and the transfer must occur before the estate administration of the decedent is completed.*
6. *As to non-assignable annuity payments, the surviving spouse may either agree to pay deferred estate taxes annually on the corpus portion of same or to transfer the corpus portion of each such payment into the QDOT within 60 days of receipt.*

D. *The Tax Treatment of the “QDOT,” IRC § 2056A(b)(i):*

1. *It does not result in the transfer of includability to the estate of the surviving spouse as with the usual marital deduction.*
2. *A tax is imposed upon:*
 - a. *Any distribution before the surviving spouse’s death other than a distribution of the required income and other than distributions made on account of hardship (defined as “an immediate and heavy financial need relating to the non-citizen spouse’s health maintenance or support”); and*
 - b. *The value of the trust at the surviving spouse’s death.*

- E. *A trust may be reformed to meet the requirements of a QDOT by a judicial proceeding instituted before the due date of the Federal Estate Tax Return, including extensions.*
- F. *If the non-citizen spouse becomes a U.S. citizen before the Federal Estate Tax Return is filed, the marital deduction is permitted.*

Does your spouse or any of your children have any physical, mental or emotional disability?

Yes No

If yes, identify who is disabled and describe the disability. _____

If yes, does that person currently receive SSI (Supplemental Security Income) and Medicaid benefits?

Yes No

Comment No. 9: Supplemental or Special Needs Trusts

If you can ascertain that a potential legatee is disabled and either currently qualifies or may in the future qualify for governmental benefits, such as Medicaid and SSI, an inheritance by that person would clearly disqualify him from benefits if it results in his having "countable resources" above \$2,000 under current rules. In such a case, the creation of a "Supplemental (or Special) Needs Trust" could be in order, either using an inter vivos (for non-probate asset proceeds) or a testamentary trust.

CHILDREN OF THE MARRIAGE (Provide the following for each child):

Name and address
 Date of birth
 Marital status
 Names and dates of birth of children
 Social Security Number
 Spouse's name
 More children anticipated?

CHILDREN BY PRIOR MARRIAGES (Provide the following for each child):

Name and address
 Date of birth
 Other parent
 Marital status
 Names and dates of birth of children
 Social Security Number

Spouse's name

ADOPTED CHILDREN (Provide the following for each child):

Name and address
Date of birth
Social Security Number

ILLEGITIMATE CHILDREN (Provide the following for each child):

Name and address
Date of birth
Other parent
Social Security Number

As to each child born outside of marriage ("illegitimate"):

Is the child acknowledged? _____

If so, formally or informally? _____ If formally, how? _____

Has a judgment establishing paternity been obtained? _____

If the child is not acknowledged or is only informally acknowledged, do you want to formally acknowledge? _____

Comment No. 10: Forced Heirship

It is obvious that the aforesaid questions are aimed at determining whether the client has any forced heirs:

A. *Forced heirs are:*

1. *Children who are 23 years of age or younger at the decedent's death.*
2. *Children of any age who because of either a physical or mental disability are permanently incapable of either managing their affairs or taking care of their persons.*
3. *Children of any age who, at the time of the parent's death, have, according to medical documentation, an inherited, incurable disease or condition that may render them incapable of caring for their persons, or administering their estates in the future. New Subsection E of Article 1493, added by the 2003 Louisiana Legislature.*
4. *A grandchild whose parent is deceased and whose parent would not have attained the age of 24 at the time of the grandparent's death.*

5. *A grandchild whose parent is deceased and which grandchild is physically or mentally permanently disabled.*

B. *The forced portion—La. Civ. Code art. 1495*

1. *One forced heir—1/4 of the probate estate.*
2. *Two or more forced heirs—1/2 of the probate estate.*

MISCELLANEOUS REGARDING CHILDREN

Are any of the children still dependent on you? _____

Are you receiving/paying alimony or child support? _____

Any special problems of any of the children (i.e., health, mental or physical disabilities, drugs, etc.): _____

Any desire to favor one child over another? _____

If so, in what way? _____

Are your children citizens of the U.S.A.? _____

CHILDREN WHO HAVE PREDECEASED (Provide the following for each child):

Name

Date of birth

Date of Death

Surviving Spouse

Names and ages of children (note if they are disabled)

GIFTS:

Have you made gifts to any of your children? _____

If so, identify gift, date, amount or value: _____

If so, were the gifts exempted from collation? _____

If not, do you wish to do so? _____

If gift tax returns were filed, so state and attach copies.

Comment No. 11: Taxable or Non-Taxable Gifts

- A. *These questions are asked to determine if any gifts were made that qualified for the Federal Gift Tax Annual Exclusion, now at \$12,000 per donor per donee per year (\$3,000 pre-1982, \$10,000 from 1982-2001, \$11,000 for 2002-2005, \$12,000 since 1/1/06), or exceeded the Annual Exclusion.*

B. *If taxable gifts were made above the Annual Exclusion, a portion of the client's Estate Tax Exemption would have been utilized with less remaining to apply upon the client's death.*

DISINHERISON:

Any desire to disinherit a child? _____

If so, state which child and the specific reasons: _____

Has there been a reconciliation? _____

TUTORS FOR THE CHILDREN (Provide the following for each tutor):

Name

City and state

Relationship

Special Provisions

PARENTS

Name, City, State and Approximate Age for:

Husband's mother: _____

Husband's father: _____

Wife's mother: _____

Wife's father: _____

Any support provided to any parent? _____

Any desire to provide for a parent in your will? _____

PROVISIONS FOR THE SURVIVING SPOUSE

1. Usufruct:

Over all? _____

Over a portion? _____

What portion: _____

Term (death, remarriage, other)? _____

Power to dispose of non-consumables? _____

Usufruct over "unopened mines"? _____

2. Trust:

What interest? _____

Term of the interest? _____

Trustees? _____

Special provisions? _____

Comment No. 12: Rights to Grant to the Surviving Spouse

- A. *A great deal of thought and discussion often accompanies the question of what rights the client wants to grant to the surviving spouse, especially when the client has been married more than once.*
- B. *Beneficiary designations of outright ownership to the surviving spouse of life insurance and IRA, 401(k) and retirement plan benefits are most typical. Should the client also include legacies in full ownership to the surviving spouse?*
- C. *A discussion of the possible under-utilization of the Federal Estate Tax Applicable Exemption Equivalent of the Applicable Credit can be appropriate to assist the client in avoiding the creation of a taxable estate on the death of the surviving spouse.*

**The Federal Estate Tax Exemption Equivalent—
Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA 2001)**

<u>Calendar Year</u>	<u>Exemption Equivalent</u>	<u>Top Marginal Estate Tax Rate</u>
2002	\$1,000,000	50%
2003	\$1,000,000	49%
2004	\$1,500,000	48%
2005	\$1,500,000	47%
2006	\$2,000,000	46%
2007	\$2,000,000	45%
2008	\$2,000,000	45%
2009	\$3,500,000	45%
2010	Taxes Repealed	0%
2011	\$1,000,000 (Return to Prior Statute)	Return to Prior Statute

D. *Techniques for Maximum Utilization of the Applicable Credit Amount*

1. *Testamentary “By-Pass” or “Exemption Equivalent” Trusts*

- a. *Divide the corpus of the trust for the benefit of the Testator’s children into two portions.*
 - 1) *“Portion A” is that portion of the estate that can pass to the legatees free and clear of any federal estate tax due to a combination of the applicable credit amount provided by Internal Revenue Code (IRC) Section 2010 in effect at the Testator’s*

death, plus any other federal estate tax credits allowable to the estate (as for example, the credit for tax on prior transfers, IRC § 2013).

- a) *To make certain that the value of the property used to fund “Portion A” does not exceed the non-taxable amount available, it is necessary to subtract from that figure the value of all other transfers passing outside of the estate that are included in the Testator’s gross estate for federal estate tax purposes and that do not qualify for the marital or charitable deductions (IRC §§ 2056 and 2055, respectively), as for example, life insurance payable to a third party such as a child or a bank in discharge of a loan. Also subtracted are special legacies contained in other parts of the will to legatees other than the surviving spouse or charitable beneficiaries.*
 - b) *The second portion referred to as “Portion B” is the balance of the probate estate.*
- b. *The client can choose for the surviving spouse any of the following:*
- 1) *Usufruct for life over all;*
 - 2) *Usufruct for life over “Portion B” but for something other than life for “Portion A” such as a usufruct that terminates on the spouse’s remarriage or if the spouse lives in “open concubinage” with another adult.*
 - 3) *Usufruct for life or less than life over “Portion A” and full ownership of “Portion B.”*
- c. *By dividing the trust into the two portions, the executor can elect to claim a marital deduction for qualified terminable interest property for “Portion B” only.*
- d. *The Result: The assets that fund “Portion A” will permanently pass free and clear of federal estate tax at the surviving spouse’s death. Only the assets that fund “Portion B” will be includible in the estate of the surviving spouse under IRC § 2044.*
- 1) *An opportunity for “post mortem estate tax planning”: Select the assets to fund “Portion A” that are most likely to grow in value to get the assets and their growth to the children(or other legatees) without estate tax. Select the assets to fund “Portion B” that are most stagnant in value because they will be subject to tax at the*

death of the surviving spouse at their value at the surviving spouse's death.

2. *Providing for the "By-Pass" or "Exemption Equivalent" with Non-Probate Assets*

a. *For many of our clients, the bulk of their estates is in their non-probate assets that will typically pass outright to the surviving spouse because of the beneficiary designation and thus will be subject to the Automatic Marital Deduction. As a result, a good part of the credit shelter is lost.*

b. *A solution with a "By-Pass"/"Exemption Equivalent" Inter Vivos Trust as contingent beneficiary:*

1) *Clients can name the spouse as primary beneficiary and a certain kind of trust as contingent beneficiary.*

2) *Through a "qualified disclaimer" under IRC Section 2518(b) ("an irrevocable and unqualified refusal by a person to accept an interest in property"), called a "renunciation" under Louisiana law, executed by the surviving spouse within nine months of the decedent's death, the disclaimed property can pass to the contingent beneficiary, i.e., the "By-Pass"/"Exemption Equivalent" Trust.*

a) *This approach enables the surviving spouse, through post-mortem planning, to carefully use up the otherwise unused Exemption Equivalent of the first spouse to die.*

3. *Jointly Held Real Estate Outside of Louisiana*

a. *Certain forms of joint ownership of real estate located in states other than Louisiana will operate to pass property automatically to the surviving joint owner:*

1) *Joint tenancy with the right of survivorship.*

2) *Tenancy by the entirety.*

b. *Contrast: Tenancy in common will not pass ownership to the surviving co-owner but will pass in accordance with the terms of the deceased co-owner's will or by intestacy.*

c. *You may want to assist clients in retitling their non-Louisiana real estate from a form of joint tenancy to tenancy in common to avoid the application of the automatic Marital Deduction. Because title to real*

estate is involved, it would of course be necessary to associate the services of a lawyer in that particular jurisdiction.

TRUSTS FOR THE CHILDREN:

Over what? _____

Interests of the children? _____

Trustees? _____

Term? _____

Distributions of income? _____

Special provisions? _____

Comment No. 13: *Creation of testamentary trusts for the children and designing the specific terms of a trust for them that would be applicable under a variety of scenarios certainly warrants a good deal of discussion.*

*If the size of the client's estate is such that estate reduction techniques are appropriate, a discussion of the use of inter vivos trusts, and probably "Crummey Trusts," would be desirable. See discussion at **Comment No. 19**, below.*

SPECIAL BEQUESTS:

Any special bequests desired? _____

CHARITABLE BEQUESTS:

Any charitable bequests desired? _____

If yes, to whom? _____

Do you want to restrict the charity on the use of the bequest? _____

If yes, why? _____

CHARITABLE LIFETIME DONATIONS:

Do you currently support certain charities? _____

If yes, who? _____

Do you want to consider making additional lifetime donations? _____

If yes, do you have any highly appreciated assets you would consider donating? _____

If so, what assets? _____

Do you want to discuss your retention of income from assets that you would give to charities? _____

LIVING WILLS:

Do you have living wills? _____

If so, who has been provided with copies? _____

If not, do you desire to execute one? _____

If so, do you want nutrition and hydration withheld or administered? _____

If so, who should copies be provided to? _____

Comment No. 14: A Living Will Form is provided at La. R.S. 40:1299.58.3. The illustrative form was amended by the 2005 Louisiana Legislature following the notorious Terry Schiavo case [Schiavo ex rel. Schindler v. Schiavo, 544 U.S. 957, 125 S. Ct. 1722 (2005)] so that any Declaration executed as of 8/15/05 and thereafter must contain an option the Declarant must initial to either have nutrition and hydration administered or withheld.

POWERS OF ATTORNEY/PROCURATIONS:

Identify all powers of attorney (including bank accounts): _____

Please attach copies.

Have you executed medical powers of attorney? _____

If not, do you desire to execute one? _____

Should any existing powers be revoked? _____

Should new powers be prepared? _____

Do you desire to execute an advance directive for mental health treatment? _____

SAFETY DEPOSIT BOXES (Provide the following for each box):

Number: _____

Bank _____

Access by whom: _____

If any contents do not belong to you, please identify such items and their owner:

EXECUTORS:

Name: _____

City and state: _____

Relationship: _____

Bond? _____

Do you want your executor to have the power to select assets to fund portions expressed in quantum or value (*La. Civ. Code art. 1573*)? _____

Do you want your executor to be allowed to act independently of the courts? _____

Comment No. 15: Independent Administration of Successions

For most of our clients, having the estate able to have independent administration is desirable.

ATTORNEYS:

For the estate (note appointment not legally enforceable): _____

For the trusts: _____

OTHER ADVISORS:

	Name	Address	Phone
Accountant:	_____	_____	_____
Life insurance agent:	_____	_____	_____
General insurance agent:	_____	_____	_____
Investment advisor:	_____	_____	_____
Stockbroker:	_____	_____	_____
Trust officer:	_____	_____	_____
Banker:	_____	_____	_____
Other attorney:	_____	_____	_____
Physician:	_____	_____	_____
Personal secretaries:	_____	_____	_____
Clergyman:	_____	_____	_____
Any other advisors:	_____	_____	_____

Acquisition of General Financial Data

INCOME

	Husband	Wife	Joint
Salary, commission and bonus	\$ _____	\$ _____	\$ _____
Dividends and interest	\$ _____	\$ _____	\$ _____
Net real estate income	\$ _____	\$ _____	\$ _____
Partnership or LLC income	\$ _____	\$ _____	\$ _____
Other income	\$ _____	\$ _____	\$ _____

Comment No. 16: *Obtaining a copy of the client's last filed Federal Income Tax Return can provide this information as well.*

ASSETS AND VALUES

Comment No. 17: Estate Size and Character

- A. *Obviously, a good deal of our attention with a client questionnaire/checklist is to determine the size of the client's estate and the nature of the assets.*

- B. *In lieu of filling out this complete form, if the client has a recent financial statement, or a summary of assets prepared by the client's financial planner, that can be used as well.*

- C. *Estate Size*
 - 1. *Could it be subject to the Federal Estate Tax?*

 - 2. *What special steps should be taken to assure the best use of the Exemption Equivalent?*

See **Comment No. 12,** above, regarding the Federal Estate Tax Exemption Equivalent.

COMMUNITY PROPERTY

- 1. Cash, checking and savings accounts: \$ _____
- 2. Certificates of deposit, money market accounts: \$ _____
- 3. Notes, accounts receivable, mortgages: \$ _____

- 4. Bonds:
 - a. Corporate: \$ _____
 - b. Municipal/tax-exempt: \$ _____
- 5. Marketable stocks: On margin? \$ _____
- 6. Mutual funds: \$ _____
- 7. U.S. government securities: \$ _____
- 8. Leasehold interests: \$ _____
- 9. Real estate:

	Address	Market Value	Mortgages	Net Value	% Ownership
Home:	_____				
Vacation home:	_____				
Investment real estate:	_____				
Mineral interests:	_____				

- 10. Tax shelters: _____
- 11. Employee benefits/retirement plans
 - Husband: _____
 - Wife: _____
- 12. IRAs, 401(k)s, 403(b)s:
 - Husband: _____
 - Wife: _____

Comment No. 18: *Because clients often do not know what beneficiary designations they have made and/or have not made any contingent beneficiary designations, you should ask the client to obtain copies of their existing beneficiary designations. For the sake of efficiency, it should be suggested that the client obtain Change of Beneficiary Forms at the same time since it is possible that certain changes should be made.*

Determining the values of these non-probate assets is important. Typically, the surviving spouse is designated as primary beneficiary of these assets which, without special planning, could result in the under-utilization of the employee spouse's full Applicable Credit Amount. See

discussion at **Comment No. 12**, above.

13. Stock options, stock purchase or stock bonus plans: _____

14. Life insurance and annuities:

Insured: _____

Company: _____

Policy No.: _____

Proceeds: _____

Type: _____

Have you ever transferred the ownership of any policies on your life? _____

If so, to whom, and when? _____

Comment No. 19: Some Life Insurance Issues

- A. *If the insured is the owner of the policy on his own life, the proceeds are includable in his estate for Federal Estate Tax purposes.*
- B. *If the insured transfers ownership of the policy within three years of his death, the proceeds are brought back into his estate.*
- C. *If the proceeds are payable to the surviving spouse, they are subject to the Federal Estate Tax automatic marital deduction.*
- D. *If the proceeds are not needed for the support of the surviving spouse, but could be beneficial if received by the insured's children, it could be appropriate to recommend the creation of a certain type of trust to become the owner and beneficiary of the policy. The "Crummey Trust," created pursuant to the case of Crummey v. Commissioner, 397 F. 2d 82 (9th Cir. 1968), qualifies gifts to the trust for the Federal Gift Tax Annual Exclusion, currently at \$12,000 per donor per donee per year. The special trust provisions require that the beneficiary be notified in writing when a gift has been made to the trust and allows the beneficiary a limited period of time to demand distribution to the gift directly to the beneficiary.*
 - 1. *Before a transfer of an existing policy is made to a trust, the value of the policy must be ascertained (approximately its cash surrender value) since that will determine the value of the gift.*
 - 2. *Subsequent cash gifts to the trustee to provide funds to pay annual premiums as they come due are treated as gifts to the beneficiaries and are subject to the Federal Gift Tax Annual Exclusion limitations.*

15. Plans of deferred compensation:

Employee: _____

Employer: _____

Amount: _____

Certificate No. _____

Beneficiary: _____

16. Gifts previously made:

When? _____

Amounts? _____

Donee? _____

Intended as extra portions? _____

If so, attach document so stating.

If Gift Tax Returns filed for any gifts, attach copies.

Comment No. 20: *See discussion regarding Taxable or Non-Taxable Gifts at **Comment No. 12**, above.*

17. Trusts and custodianships established for others: _____

Comment No. 21: *You will want to review the client's existing trusts. It is possible the client may possess powers as a trustee that could cause the trust assets to be includable in his estate, which powers you may advise be relinquished. If the trusts and custodianships were established by the client, it is possible that some of the client's Applicable Credit Amount could have been used.*

18. 529 Plans established for others: _____

Comment No. 22: *If the client has established a Section 529 Plan and has "pre-funded" it, as allowed by law (e.g., in 2007, the client establishes a Section 529 Plan for his child and funds it ahead with five years of annual exclusion gifts totalling \$60,000), and dies before the full number of years passes, a certain amount of the pre-funding would be includable in the client's estate for estate tax purposes.*

19. Trusts of which you are a beneficiary: _____

Comment No. 23: *You will need to review any such trusts to determine if the beneficial interest of the client would be includable in his estate. Is the client an income beneficiary only? Does the client have a Power of Appointment in the trust (common in trusts drafted outside of Louisiana) and if so, is it exercisable in his will?*

20. Usufructs (life estates): _____
21. Naked ownership (remainders): _____
22. Personal effects (jewelry, furs, etc.): _____
 Insured? _____
23. Furniture, antiques, or other valuable art objects: _____
 Insured? _____

Comment No. 24: Often the distribution of household contents and personal effects causes the greatest controversy among the legatees; therefore, this warrants some discussion with your client. Some clients prefer the use of a non-binding "Side Letter" in which they identify particular items to go to particular people by using language such as "It is my wish that . . ." or "It is my desire that . . . the following people receive the following items of my personal belongings: . . ." Although not legally binding, legatees usually feel morally bound to carry out those wishes. Some clients prefer to set out a method for the legatees to follow in dividing up such items (e.g., the drawing of straws to determine who picks first).

24. Vehicles (cars, trucks, RVs, boats, planes):
 Description: _____
 Value: _____
 Mortgages: _____
 Net value: _____

25. Precious metals or stones: _____
26. Collections (e.g., coins, stamps): _____

Comment No. 25: See discussion at **Comment No. 24**, above.

27. Closely held business interests: _____

For each such interest, complete the following.

Type of interest: _____

Limited Liability Company _____ Proprietorship _____ Partnership _____
 Corporation _____

Percentage of ownership: _____

Fair market value: _____

Description of product or service: _____

Is there a buy/sell agreement? _____ Yes _____ No

If yes, is it funded? _____ Yes (attach copies) _____ No

Comment No. 26: *Closely Held Business Interests*

These types of assets require special attention to determine if the transfer of interests upon the client's death or the client's co-owner's death have been addressed. Copies of all relevant documents need to be provided and reviewed to determine if changes should be made and/or if new documentation should be prepared.

28. Miscellaneous (patents, trademarks, copyrights, royalties): _____

29. Out-of-state real estate: _____

Comment No. 27: *Copies of the titles to out-of-state real estate should be reviewed. Typically, where a married couple acquires real estate elsewhere, title is a "joint tenancy with the right of survivorship." Because in such a case the will of the first spouse to die does not control, but the form of joint ownership does, the automatic marital deduction may apply which may or may not be what the client wishes or may or may not be in the client's best interest. Should a quit claim be prepared by an out-of-state attorney changing the joint tenancy to a "tenancy in common," which would allow the wills of each spouse to control the ownership of his or her interest upon death?*

30. Property interests in foreign countries: _____

31. Anticipated inheritances: _____

32. Other assets: _____

ASSETS AND VALUES
SEPARATE PROPERTY

Has a declaration reserving fruits and revenues of separate property as separate been executed? _____

If so, attach copy. If it has been recorded, identify where: _____

Owner: _____

Value: _____

Comment No. 28: Clients are typically unaware of the rule of community property law that the fruits and products of separate property are community property. La. Civ. Code art. 2339. Clients are also usually unaware that the owner spouse may execute a declaration reserving the fruits and products of separate property to stay separate, which must be recorded in the conveyance records of the parish the declarant's domicile, and as to immovable property in the parish in which the immovable property is located.

1. Cash, checking and savings accounts: _____

2. Certificates of deposit, money market accounts: _____

3. Notes, accounts receivable, mortgages: _____

4. Bonds:

Corporate: _____

Municipal/tax-exempt: _____

5. Marketable stocks: _____

On margin? _____

6. Mutual funds: _____

7. U.S. government securities: _____

8. Leasehold interests: _____

9. Real estate:

Address	Market Value	Mortgages	Net Value
---------	--------------	-----------	-----------

Home: _____

Vacation home: _____

Investment real estate: _____

- Mineral interests: _____
10. Tax shelters: _____
11. Employee benefits/retirement plans:
Husband: _____
Wife: _____
12. IRAs, 401(k)s, 403(b)s:
Husband: _____
Wife: _____
13. Stock options, stock purchase or stock bonus plans: _____
14. Life insurance and annuities:
Insured: _____
Company: _____
Policy No.: _____
Proceeds: _____
Type: _____
Have you ever transferred the ownership of any policies on your life?
If so, to whom, and when? _____
15. Plans of deferred compensation:
Employee: _____
Employer: _____
Amount: _____
Certificate No. _____
Beneficiary: _____
16. Gifts previously made:
When? _____
Amounts? _____
Donee? _____

Intended as extra portions? _____

If so, attach document so stating.

If gift tax returns filed for any gifts, attach copies.

17. Trusts and custodianships established for others: _____

18. 529 Plans established for others: _____

19. Trusts of which you are a beneficiary: _____

20. Usufructs (life estates): _____

21. Naked ownership (remainders): _____

22. Personal effects (jewelry, furs, etc.): _____

Insured? _____

23. Furniture, antiques, or other valuable art objects: _____

Insured? _____

24. Vehicles (cars, trucks, RVs, boats, planes):

Description: _____

Value: _____

Mortgages: _____

Net value: _____

25. Precious metals or stones: _____

26. Collections (e.g., coins, stamps): _____

27. Closely held business interests: _____

For each such interest, complete the following.

Type of interest: _____

Limited Liability Company _____ Proprietorship _____ Partnership _____

Corporation _____

Percentage of ownership: _____

Fair market value: _____

Description of product or service: _____

Is there a buy/sell agreement? _____ Yes _____ No

If yes, is it funded? _____ Yes (attach copies) _____ No

28. Miscellaneous (patents, trademarks, copyrights, royalties): _____

29. Out-of-state real estate: _____

- 30. Property interests in foreign countries: _____
- 31. Anticipated inheritances: _____
- 32. Other assets: _____

LIABILITIES

Amount

- 1. Real estate mortgages: _____
- 2. Security interests and other liens: _____
- 3. Unsecured notes to banks: _____
- 4. Notes to relatives: _____
- 5. Notes to others: _____
- 6. Loans on insurance policies:

	Insurer	Policy Number	Type	Beneficiary	Loans

- 7. Accounts to others: _____
- 8. Contingent obligations: _____
- 9. Pledges to charities: _____
- 10. Taxes: _____
- 11. Debts of separate estate of a spouse to the community: _____
- 12. Debts of the community to the separate estate of a spouse: _____
- 13. Debts of separate estate of either spouse to the separate estate of the other spouse: _____

"Addendum A"

Acquisition of Personal Data

Full formal name: _____

Name as normally signed on documents: _____

Name as may sometimes appear on documents: _____

Nickname: _____

Domicile: _____

Residence address: _____

Telephone: _____ Business _____ Home _____

Fax No.: _____ E-mail address: _____

Business address: _____

Prefer to be called: _____ Home _____ Office _____

Correspondence sent: _____ Home _____ Office _____

Prior domiciles in other states and when: _____

Date and place of birth: _____

Social security number: _____

Place of employmnt: _____

Occupation: _____

General state of your health: _____

Married: Yes _____ No _____

If married, complete the following for spouse:

Spouse's full formal name: _____

Name as normally signed on documents: _____

Name as may sometimes appear on documents: _____

Nickname: _____

Spouse's date and place of birth: _____

Spouse's social security number: _____

Spouse's place of employment: _____

Spouse's occupation: _____

General state of your spouse's health: _____

Date and place of marriage: _____

If presently not married, indicate whether:

_____ Never married _____ Previously married

If previously married, indicate whether:

_____ Prior marriage ended in divorce

If so, indicate name of divorced spouse, date of divorce, and court proceedings (name and docket no.) where obtained:

_____ Prior marriage ended with death of spouse

If so, indicate name of predeceased spouse, date of death, and court proceedings (name and docket no.) where estate handled:

If spouse was previously married, indicate whether:

_____ Prior marriage ended in divorce

If so, indicate name of divorced spouse, date of divorce, and court proceedings (name and docket no.) where obtained:

_____ Prior marriage ended with death of spouse

If so, indicate name of predeceased spouse, date of death, and court proceedings (name and docket no.) where estate handled:

Have you ever signed a matrimonial, pre-nuptial, or post-nuptial agreement? _____

If so, attach copy.

Are you, your spouse and children citizens of the United States?

Yes _____ No _____

If no, who is not a U.S. citizen? Of what country are they citizens? _____

If your spouse is not a U.S. citizen, does he/she have plans to become a U.S. citizen?

Yes _____ No _____

If yes, what are those plans and when are they to take place? _____

Does your spouse or any of your children have any physical, mental or emotional disability?

_____ Yes _____ No

If yes, identify who is disabled and describe the disability. _____

If yes, does that person currently receive SSI (Supplemental Security Income) and Medicaid benefits?

_____ Yes _____ No

CHILDREN OF THE MARRIAGE (Provide the following for each child):

Name and address

Date of birth

Marital status

Names and dates of birth of children

Social Security Number

Spouse's name

More children anticipated?

CHILDREN BY PRIOR MARRIAGES (Provide the following for each child):

Name and address

Date of birth

Other parent

Marital status

Names and dates of birth of children

Social Security Number

Spouse's name

ADOPTED CHILDREN (Provide the following for each child):

Name and address
Date of birth
Social Security Number

ILLEGITIMATE CHILDREN (Provide the following for each child):

Name and address
Date of birth
Other parent
Social Security Number

As to each child born outside of marriage ("illegitimate"):

Is the child acknowledged? _____
If so, formally or informally? _____ If formally, how? _____
Has a judgment establishing paternity been obtained? _____
If the child is not acknowledged or is only informally acknowledged, do you
want to formally acknowledge? _____

MISCELLANEOUS REGARDING CHILDREN

Are any of the children still dependent on you? _____
Are you receiving/paying alimony or child support? _____
Any special problems of any of the children (i.e., health, mental or physical
disabilities, drugs, etc.): _____
Any desire to favor one child over another? _____
If so, in what way? _____
Are your children citizens of the U.S.A.? _____

CHILDREN WHO HAVE PREDECEASED (Provide the following for each child):

Name
Date of birth
Date of Death
Surviving Spouse
Names and ages of children

GIFTS:

Have you made gifts to any of your children? _____

If so, identify gift, date, amount or value: _____

If so, were the gifts exempted from collation? _____

If not, do you wish to do so? _____

If gift tax returns were filed, so state and attach copies.

DISINHERISON:

Any desire to disinherit a child? _____

If so, state which child and the specific reasons: _____

Has there been a reconciliation? _____

TUTORS FOR THE CHILDREN (Provide the following for each tutor):

Name

City and state

Relationship

Special Provisions

PARENTS:

Name, city, state and approximate age for:

Husband's mother: _____

Husband's father: _____

Wife's mother: _____

Wife's father: _____

Any support provided to any parent? _____

Any desire to provide for a parent in your will? _____

PROVISIONS FOR THE SURVIVING SPOUSE:

1. Usufruct::

Over all? _____

Over a portion? _____

What portion: _____

Term (death, remarriage, other)? _____

Power to dispose of nonconsumables? _____

Usufruct over "unopened mines"? _____

2. Trust:

What interest? _____

Term of the interest? _____

Trustees? _____

Special provisions? _____

TRUSTS FOR THE CHILDREN:

Over what? _____

Interests of the children? _____

Trustees? _____

Term? _____

Distributions of income? _____

Special provisions? _____

SPECIAL BEQUESTS:

Any special bequests desired? _____

CHARITABLE BEQUESTS:

Any charitable bequests desired? _____

If yes, to whom? _____

Do you want to restrict the charity on the use of the bequest? _____

If yes, why? _____

CHARITABLE LIFETIME DONATIONS:

Do you currently support certain charities? _____

If yes, who? _____

Do you want to consider making additional lifetime donations? _____

If yes, do you have any highly appreciated assets you would consider donating?

If so, what assets? _____

Do you want to discuss your retention of income from assets that you would give to charities? _____

LIVING WILLS:

Do you have living wills? _____

If so, who has been provided with copies? _____

If not, do you desire to execute one? _____

If so, do you want nutrition and hydration withheld or administered? _____

If so, who should copies be provided to? _____

POWERS OF ATTORNEY/PROCURATIONS:

Identify all powers of attorney (including bank accounts): _____

Please attach copies.

Have you executed medical powers of attorney? _____

If not, do you desire to execute one? _____

Should any existing powers be revoked? _____

Should new powers be prepared? _____

Do you desire to execute an advance directive for mental health treatment? _____

SAFETY DEPOSIT BOXES (Provide the following for each box):

Number: _____

Bank: _____

Access by whom: _____

If any contents do not belong to you, please identify such items and their owner:

EXECUTORS:

Name: _____

City and state: _____

Relationship: _____

Bond? _____

Do you want your executor to have the power to select assets to fund portions expressed in quantum or value (*La. Civ. Code art. 1573*)? _____

Do you want your executor to be allowed to act independently of the courts?

ATTORNEYS:

For the estate (note appointment not legally enforceable): _____

For the trusts: _____

OTHER ADVISORS:

	Name	Address	Phone
Accountant:	_____	_____	_____
Life insurance agent:	_____	_____	_____
General insurance agent:	_____	_____	_____
Investment advisor:	_____	_____	_____
Stockbroker:	_____	_____	_____
Trust officer:	_____	_____	_____
Banker:	_____	_____	_____
Other attorney:	_____	_____	_____
Physician:	_____	_____	_____
Personal secretaries:	_____	_____	_____
Clergyman:	_____	_____	_____
Any other advisors:	_____	_____	_____

Exhibit to "Addendum A"

Documents to Attach

1. Existing wills and codicils
2. Powers of Attorney (general, special, medical) and Living Wills
3. Advance directives for mental health treatment
4. Wills of which you are a present or future legatee
5. Copies of deeds, leases
6. Personal financial statements
7. Personal income tax returns
8. Business financial statement and tax returns
9. Federal Gift Tax Returns
10. Trust agreements established by you or of which you are a beneficiary or trustee
11. Summary of company fringe benefits
12. Divorce papers
13. Adoption papers
14. Formal acknowledgments of illegitimate children
15. Declarations reserving fruits and revenues of separate property
16. Exemptions of gifts from collation
17. Contracts and business agreements

"Addendum B"

Matters to Be Discussed During Initial or Follow-up Conference

Note: *There are certain items that are more appropriately discussed with the client than handled by a routine form. While these items are not part of a form submitted to the client, the estate planner would do well to document that these questions have been asked of the client.*

1. Is your marriage stable?
2. Would your spouse be able to manage assets or seek competent advice in this connection?
3. Have you any reason for treating your children other than equally?
4. Have you chosen people to act as tutors for any minor children?
5. If you have specific wishes in connection with your funeral or burial, have you discussed these wishes with your family?
6. Is any family member subject to a disability or so irresponsible as to require special concern or treatment?
7. Have you ever executed a prenuptial agreement or a separation agreement?
8. How do you want to allocate your generation-skipping transfer tax exemption?
9. Which portion of your estate do you want to be responsible for your generation-skipping transfer tax?
10. Do you want to elect to treat yourself as transferor from a QTIP for generation-skipping purposes, so that your GST exemption, rather than your spouse's, will apply?
11. If you have made lifetime gifts, have you exempted those gifts from "collation?" If not, do you wish to do so?