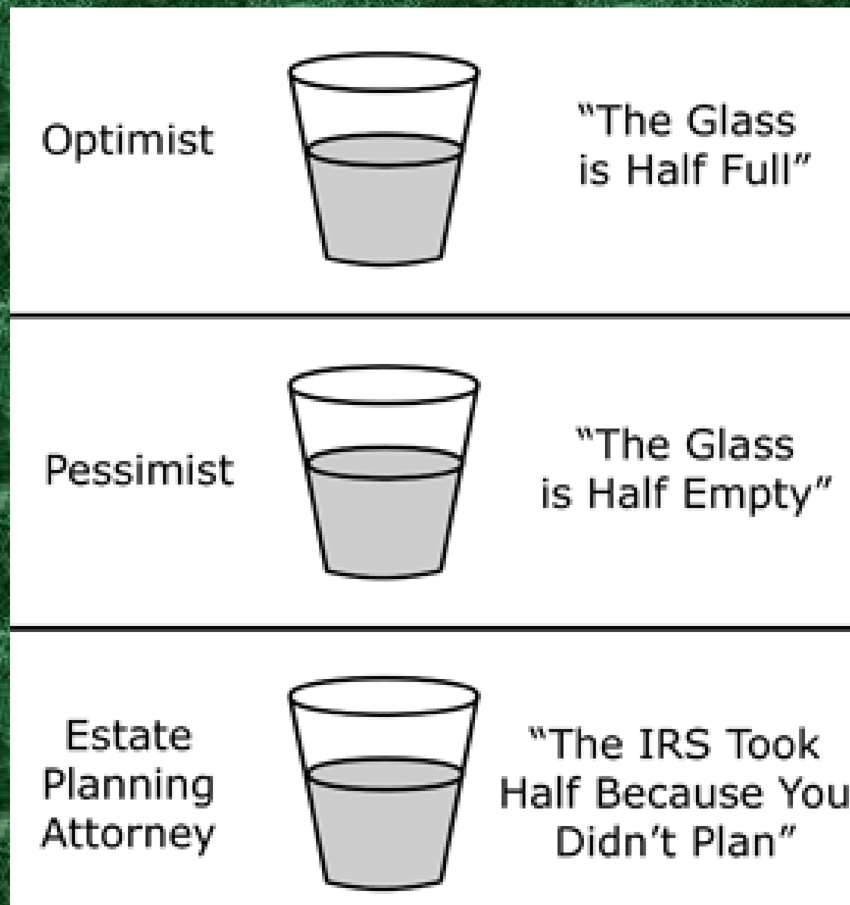
Estate Planning Concepts

Nathan Hartman, Esq. MTS
Hartman Private Law, LLP
1534 North Decatur Road, Ste 102
Atlanta, Georgia 30307
404-271-5646
nathan@hartmanprivatelaw.com


Optimist
"The Glass is Half Full"
Pessimist
"The Glass is Half Empty"
Estate Planning Attorney
"The IRS Took Half Because You Didn't Plan"

Estate Planning

- Do you have or need an estate plan?
- Old Documents/Non-Georgia Documents
- Estate planning “foundation”
  - Four primary estate planning documents
    - Revocable Trust
    - Pour-Over Will
    - Durable Power of Attorney
    - Living Will and Health Care Surrogate Designation

Myth 1: You Do Not Have an Estate Plan

- Joint property
- Life insurance/retirement benefits/P.O.D.
  - Beneficiary designation/default rules
- Intestate succession/homestead
  - Note: Elective Share
- Health care decisions
- Guardianship

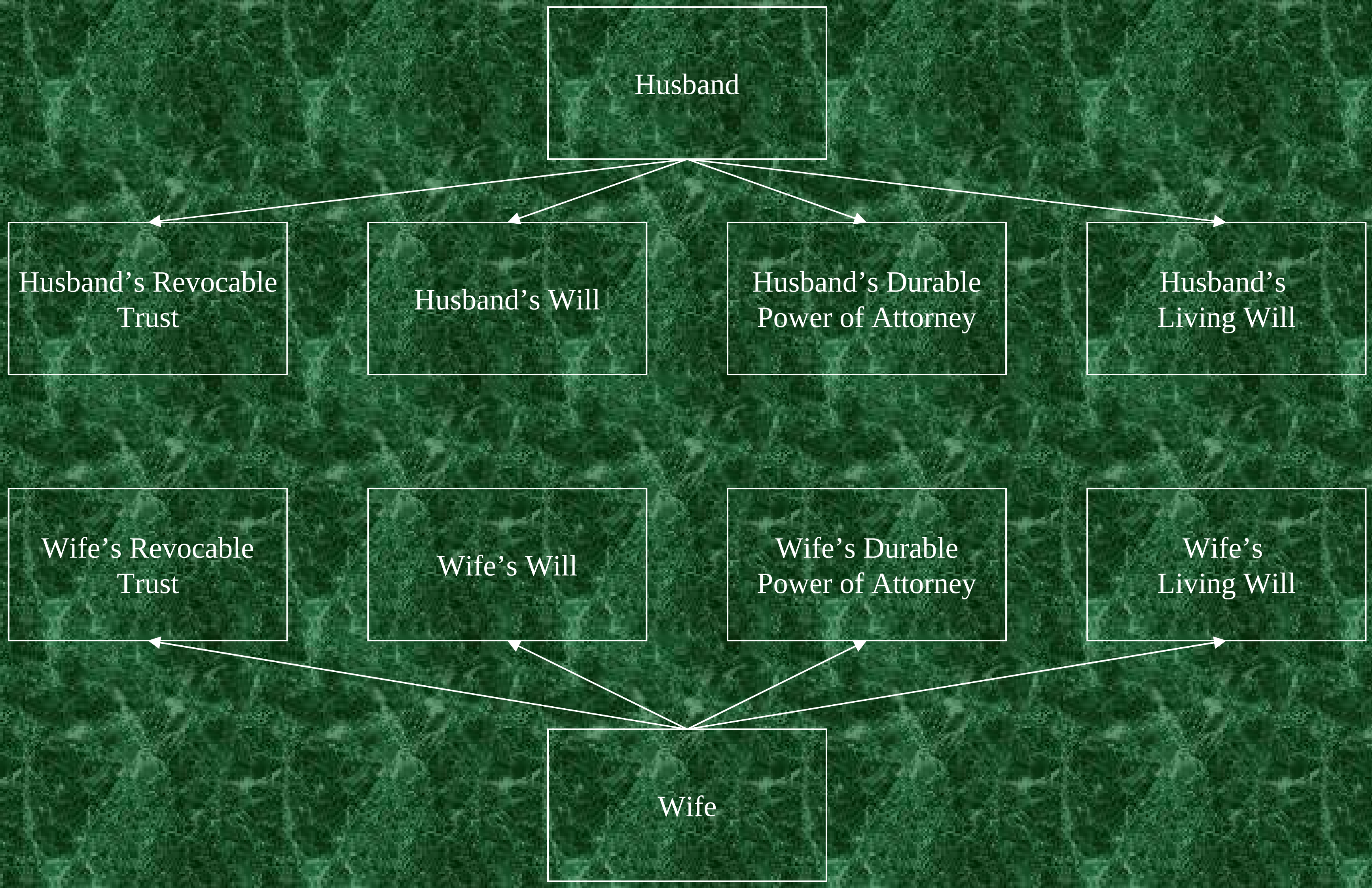
Myth 2: I Do Not Need to Plan Due to Repeal of the Estate Tax

- Is full repeal a likely possibility?
- Replacement tax?
- You still need a trust or will
  - To say who gets what
  - To say how each person will benefit
    - Outright bequest or distribution?
    - Trust?

Old Documents: When to Review or Change

- Move from Another State
  - Your documents are not automatically invalid
  - Amend to help establish Georgia residency
  - Minor changes may be needed:
    - Elective Share
- Change in Family Circumstances
  - Births, deaths, divorces or potential divorces
- Change in Finances
  - With respect to you or any major beneficiary
- Change in the Laws

“Foundation” Documents



Health Care Surrogate Designation and Living Will

- Nominates a person (a "surrogate") to make your health care decisions if you cannot
  - Should name alternates
  - If you do not have a surrogate, we have to follow the statutory list
- Typically includes the power to make living arrangements and mental health care decisions
- Declares preferences on medical care if terminal condition, comatose state, or end-stage condition is present (as certified by two doctors)

Durable Power of Attorney

- Nominates an “agent” or “attorney-in-fact” to handle your financial affairs if you cannot
  - Helps avoid a guardianship
  - Can be effective immediately or “spring” into effect upon incapacity
  - Should include the power to make gifts for tax purposes or to qualify for government aid
- Nominates a person to serve as your guardian in the event a guardianship is needed
- Should name alternate agents/guardians

Revocable Trust

- Holds bulk of your assets to avoid
  - Guardianship
  - Probate
- You still control assets as trustee during your life
  - No income tax or creditor protection effect
- Trust agreement says who gets what and when after your death
  - Private document unlike a will

Wills vs. Revocable Grantor Trusts

- Wills
  - Up to two year delays as a result of probate courts
    - Results from the complex filing and review process
    - During this time the assets of the deceased are frozen and thus inaccessible.
  - The court may appoint a personal representative the descendent did not approve.
    - Personal rep. might have to post a bond, even if not required by the will.
      - Freezing the personal rep's assets as well
  - Probate court proceedings and records are public.
  - When the person becomes incapacitated the government steps in and appoints a guardianship.
    - The guardian proceedings are costly, restrictive, and could result in the appointment of an ineffective guardian.

Wills vs. Revocable Grantor Trusts Cont.

- A Revocable Grantor Trust
  - Allows immediate access to funds
  - No probate proceedings or unwanted personal representatives because you are the personal rep.
    - Thus, none of the personal representative's assets are frozen
    - Avoid court, filling, and greater attorney fees for probate
  - Remains completely private
    - No public records or court involvement
  - Avoids guardianship problem
    - No annual reports, restrictions, unwanted guardians, and additional court cases, guardianship fees, and delays
  - Most importantly, all assets remain in the trusts for the benefit of the surviving spouse and family

Pour-Over Will

- Orders Probate Court to add assets not added to your revocable trust during your life, to your revocable trust upon your death
  - In other words, it "pours" the assets into the trust
- Nominates:
  - Personal representative (or executor)
  - Guardians for minors/incompetents
- Typically a short document

Drafting the Revocable Trust

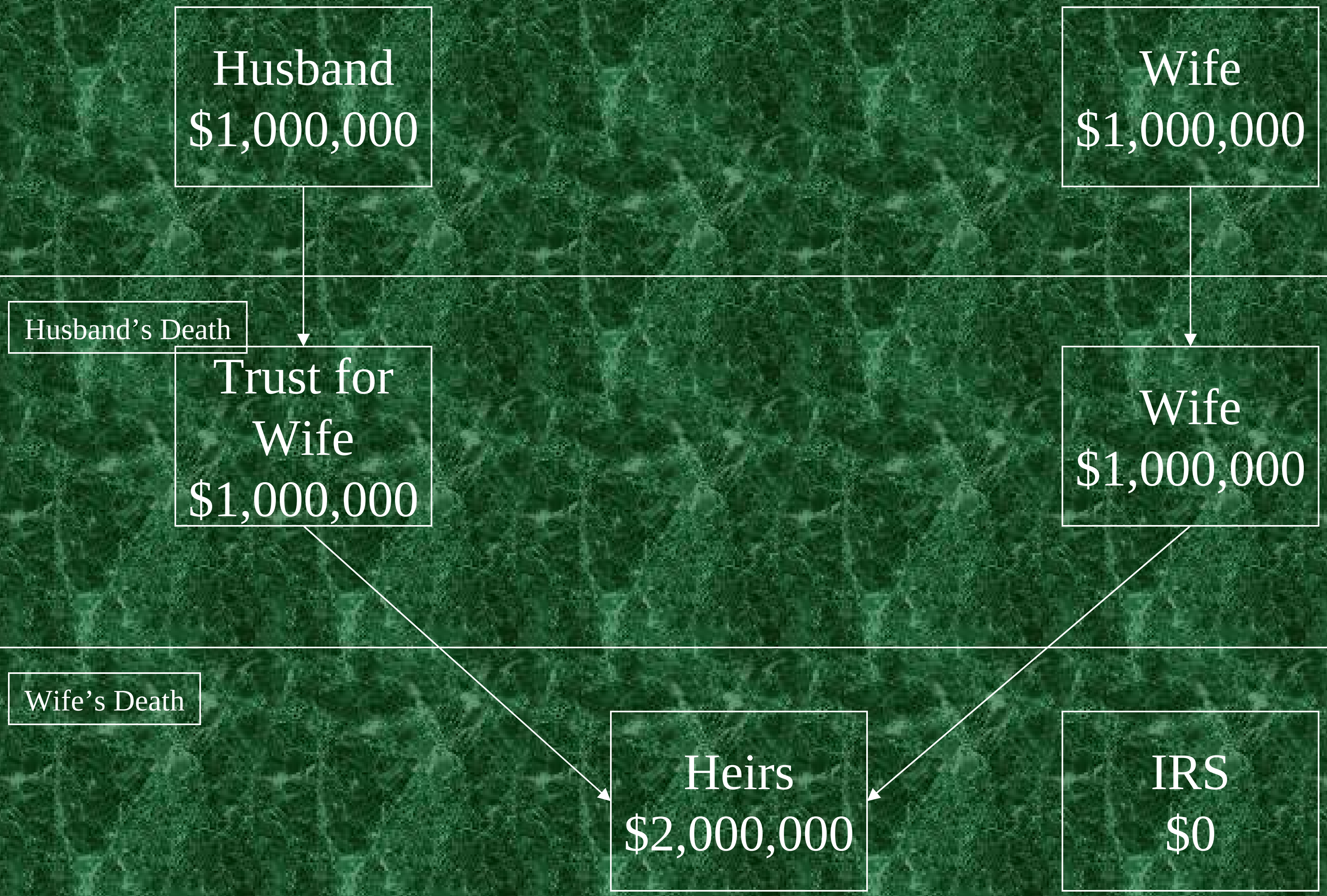
- First goal: making sure your assets go
  - Where you want them to go
    - Identify heirs
  - When you want them to go
    - Outright
    - In trust (e.g., minors, spendthrifts, etc.)
- Second goal: minimizing taxes
  - Effective use of estate tax exemption and marital and charitable deductions
- Usually the two goals can be achieved together

Effective Use of Exemption

- Current exemption
  - Currently no tax, next year potential reduction to 1,000,000
  - Subject to changes in tax laws
- Husband and wife
  - By acting together, a husband and wife can potentially free themselves from the estate tax.
  - Next year potential protection will be up to 2,000,000

Defective Estate Plan

Effective Estate Plan



Charitable Giving

- Lifetime (Cash, Stocks, etc.)
- Death
- Complex Techniques
  - Charitable Gift Annuities
  - Charitable Remainder Trusts
  - Charitable Lead Trusts

Estate Planning Concepts

Nathan A. Hartman

Licensed Attorney by the Georgia Bar

Emory Law School J.D.

Emory's Candler School of Theology, M.T.S.

Emory College, B.A.

Hartman Private Law LLC

1534 N. Decatur Rd. Suite 102 Atlanta, GA 30307

Phone (404) 271-5646   nathan@hartmanprivatelaw.com