**David L. Howell, Attorney at Law**

[www.estateplanaustin.com](http://www.estateplanaustin.com) \* [david@davidhowelllaw.com](mailto:david@davidhowelllaw.com) \* (512) 784-3710

**ESTATE PLANNING FORM**

This form is designed to help you collect important information to facilitate preparation of estate plans by your attorney. You should feel free to discuss any of these questions with your attorney. Two appendices appear at the end of this form with additional explanation of estate-planning related terms.

Instructions: This form is meant to be filled out in Microsoft Word on your PC. Please Fill In or check off items in BLUE. For Text entries, just click on the Blue Text, and then type over the blue text. Click on the box for a check-mark. Pull-down menus are in RED. When you click on a Red Text choice, click on the black down arrow to the right of the box to pull down the menu. You can press the TAB key to automatically move to the next fillable field. Skip anything not relevant to you. The check boxes and drop down menus do not work on a Mac; please call me for a hand-fill-in form.

***Please save the form with a new file name that includes your name and a date.***

**Use of this form does not in itself create an attorney-client relationship between you and David L. Howell. Any attorney-client relationship must be based on a separate, written attorney-client agreement.**

**GENERAL INFORMATION ABOUT YOU, YOUR SPOUSE AND YOUR FAMILY**

**YOUR PERSONAL INFORMATION**

Spouse 1 Name: Full Legal Name Date of Birth: DOB US Citizen? [Yes or No]

Spouse 2 Name: Full Legal Name Date of Birth: DOB US Citizen? [Yes or No]

Marriage Date: Date Place: Location

Spouse 1 Prior Marriage (None:): Please provide ex-spouse name, date of termination of marriage

Spouse 2 Prior Marriage (None:): Please provide ex-spouse name, date of termination of marriage

**YOUR HOME AND CONTACT INFORMATION**

Home Address: Number and Street, City, State ZIP Do you own this home? [Yes or No]

Home Phone: Home Phone Spouse 1 Mobile: Cell # Spouse 1 Work Phone: Work # Spouse 1 Email Address: Email

Spouse 2 Mobile: Cell # Spouse 2 Work Phone: Spouse Work # Spouse 2 Email Address: Email

Which email should attorney use to contact you? Which Email for Contact? OK to send draft documents to that email? [Yes or No]

**YOUR CHILDREN**

**CHILD #1**: Full Legal Name; Nickname: Nickname Date of Birth: DOB Child of: [Choose] Special Needs? [Yes or No]

Address (Same as Parents ): Number and Street, City, State ZIP

Home Phone: Home Phone Mobile: Cell # Work Phone: Work #

**CHILD #2**: Full Legal Name; Nickname: Nickname Date of Birth: DOB Child of: [Choose] Special Needs? [Yes or No]

Address (Same as Parents ): Number and Street, City, State ZIP

Home Phone: Home Phone Mobile: Cell # Work Phone: Work #

**CHILD #3**: Full Legal Name; Nickname: Nickname Date of Birth: DOB Child of: [Choose] Special Needs? [Yes or No]

Address (Same as Parents ): Number and Street, City, State ZIP

Home Phone: Home Phone Mobile: Cell # Work Phone: Work #

**CHILD #4**: Full Legal Name; Nickname: Nickname Date of Birth: DOB Child of: [Choose] Special Needs? [Yes or No]

Address (Same as Parents ): Number and Street, City, State ZIP

Home Phone: Home Phone Mobile: Cell # Work Phone: Work #

Do either spouse have any deceased children? [Yes or No] If yes, please list separately.

**YOUR REAL PROPERTY**

**Real Estate You Own** (*not your residence*):

PROPERTY #1: Number and Street, City, State ZIP

How is the property titled: [Choose] Do you have copy of deed? [Yes or No]

PROPERTY #2: Number and Street, City, State ZIP

How is the property titled: [Choose] Do you have copy of deed? [Yes or No]

*If more, please use separate sheet or append to end of this document to describe the property(ies).*

**YOUR TANGIBLE PERSONAL PROPERTY**

**High value physical property** (antiques, jewelry, art, collections, etc.):

No specific high-value personal property:

ITEM #1: Item 1 Description Approximate Value: $ Value

ITEM #2: Item 2 Description Approximate Value: $ Value

ITEM #3: Item 3 Description Approximate Value: $ Value

*If more, please use separate sheet or append to end of this document to describe the item(s).*

**YOUR FINANCIAL ASSETS**

**Checking/Savings/Brokerage Accounts** (*not retirement/tax-deferred or life insurance*)

**ACCOUNT #1**: Bank / Brokerage Name: Bank Name Account Type: [Choose] Account # (last four digits) 4 Digits.

How is title held? Joint or Separate

**ACCOUNT #2**: Bank / Brokerage Name: Bank Name Account Type: [Choose] Account # (last four digits) 4 Digits.

How is title held? Joint or Separate

**ACCOUNT #3**: Bank / Brokerage Name: Bank Name Account Type: [Choose] Account # (last four digits) 4 Digits.

How is title held? Joint or Separate

**ACCOUNT #4**: Bank / Brokerage Name: Bank Name Account Type: [Choose] Account # (last four digits) 4 Digits.

How is title held? Joint or Separate

*If more, please use separate sheet or append to end of this document to describe the account(s).*

Do either of you have any joint accounts with other family members such as parents? [Choose]

**IRA, 401K, Tax-Deferred Retirement Accounts**

**ACCOUNT #1**: Institution Name: Bank Name Account Type: [Choose] Account # (last four digits) 4 Digits. Owner: Spouse 1 or Spouse 2?

**ACCOUNT #2**: Institution Name: Bank Name Account Type: [Choose] Account # (last four digits) 4 Digits. Owner: Spouse 1 or Spouse 2?

**ACCOUNT #3**: Institution Name: Bank Name Account Type: [Choose] Account # (last four digits) 4 Digits. Owner: Spouse 1 or Spouse 2?

**ACCOUNT #4**: Institution Name: Bank Name Account Type: [Choose] Account # (last four digits) 4 Digits. Owner: Spouse 1 or Spouse 2?

*If more, please use separate sheet or append to end of this document to describe the account(s).*

**Business Interests**

*Do you own any interests in any non-publicly traded companies? If yes, please fill out:*

#1 Name of Company: Company Name Address: Number and Street, City, State ZIP Your % Owned: % Owned Business Type: Choose

#2 Name of Company: Company Name Address: Number and Street, City, State ZIP Your % Owned: % Owned Business Type: Choose

*If more, please use separate sheet or append to end of this document to describe.*

**TRUSTEES / EXECUTORS / GUARDIANS / HEALTH CARE DECISION MAKERS**

*Appendix A, appearing at the end of this document, provides additional explanation of these different roles.*

**Executor(s) of Will(s)**: (*The Executor handles probate of your will, if necessary. Typically, spouses/partners name each other as executor, then name back-up persons.)*

Appoint spouse/partner as initial executor: [Yes or No]

**Successor/Backup #1**: Name: Full Name Address: Number and Street, City, State ZIP Phone(s): Main Phone # Secondary Phone # Email Address: Email Address

**Successor/Backup #2**: Is Successor #2 a Co-Executor with #1? [Yes or No] Name: Full Name Address: Number and Street, City, State ZIP Phone(s): Main Phone # Secondary Phone # Email Address: Email Address

*Check here if spouses/partners want to name different successor Executors*:

**Trustee(s):** (*Typically, but not necessarily, spouses or partners serve as co-trustees. The survivor of them then acts as sole trustee. After that, other persons are named as back-ups; these can be people serving alone, or two people serving as co-trustees. Many people name the same back-up persons as both successor Executors and successor Trustees*).

Appoint spouse/partner as sole trustee on death/incapacitation of first spouse?: [Yes or No]

Successor/Backup #1: Name: Full Name Address: Number and Street, City, State ZIP Phone(s): Main Phone # Secondary Phone # Email Address: Email Address

Successor/Backup #2: Is Successor #2 a Co-Trustee with #1? [Yes or No] Name: Full Name Address: Number and Street, City, State ZIP Phone(s): Main Phone # Secondary Phone # Email Address: Email Address

*Check here if spouses/partners want to name different trustees*:

**Guardians of Minor Children**: *Guardians will be nominated in the order shown here. Any surviving spouse would be considered the guardian before any person nominated here. Consider whether you want a married couple to be joint guardians, and then what happens if that couple breaks up, or if one dies; should the children go with one of those two, or to a new set of guardians altogether.*

Guardian #1: Name: Full Name Address: Number and Street, City, State ZIP Phone(s): Main Phone # Secondary Phone # Email Address: Email Address

Guardian #2: Name: Full Name Address: Number and Street, City, State ZIP Phone(s): Main Phone # Secondary Phone # Email Address: Email Address

Are Guardians # 1 and #2 related by marriage: [Yes or No] If yes, and if they divorce or break up, what should happen to the children: What if Guardians Break Up?

Guardian #3: Name: Full Name Address: Number and Street, City, State ZIP Phone(s): Main Phone # Secondary Phone # Email Address: Email Address

Guardian #4: Name: Full Name Address: Number and Street, City, State ZIP Phone(s): Main Phone # Secondary Phone # Email Address: Email Address

Are Guardians # 3 and #4 related by marriage: [Yes or No] If yes, and if they divorce or break up, what should happen to the children: What if Guardians Break Up?

**Durable Power of Attorney – Attorney in Fact**: *This usually involves the spouse naming only the other spouse as his or her attorney-in-fact to make property decisions, but no successor.*

Please indicate if you will want to name a third party to act as successor? [Yes or No]

*If spouse(s) want other arrangements, please discuss directly with attorney.*

**Advance Health Care Directives – Attorney in Fact**: *Typically, spouses/partners name each other as their attorney-in-fact for medical decisions, and then name back-up persons in case the health care attorney cannot serve. Please note the age, proximity to where you live (in order to arrange hospital visits) and willingness to make hard choices (will your attorney-in-fact be willing to follow your direction to ‘pull the plug’ when the time comes?) when choosing a health care attorney-in-fact. Also, please make sure you have complete addresses, multiple telephone numbers, an email address, etc. for them. You will want to make it as easy as possible to locate such a person quickly.*

Appoint spouse/partner as initial health care decision maker?: [Yes or No]

As to Spouse 1:

Successor/Backup #1: Name: Full Name Address: Number and Street, City, State ZIP Phone(s): Main Phone # ; Secondary Phone # Email Address: Email Address

Successor/Backup #2: Is Successor #2 a Co-Executor with #1? [Yes or No] Name: Full Name Address: Number and Street, City, State ZIP Phone(s): Main Phone # Secondary Phone # Email Address: Email Address

As to Spouse 2: (Same as Spouse 1:

Successor/Backup #1: Name: Full Name Address: Number and Street, City, State ZIP Phone(s): Main Phone # ; Secondary Phone # Email Address: Email Address

Successor/Backup #2: Is Successor #2 a Co-Executor with #1? [Yes or No] Name: Full Name Address: Number and Street, City, State ZIP Phone(s): Main Phone # ; Secondary Phone # Email Address: Email Address

**DISTRIBUTION OF YOUR ESTATE**

**Specific Bequests**: *Please list any specific items, or specific amounts of cash, you wish to go to particular person(s), organizations or charities. If you choose to distribute an item on the death of a specific spouse, that item will be distributed whether that spouse dies first or second*:

Item #1: Description: Item Description Person(s) to receive: Recipient(s) When should this item be distributed?: When to Distribute?

Item #2: Description: Item Description Person(s) to receive: Recipient(s) When should this item be distributed?: When to Distribute?

Item #3: Description: Item Description Person(s) to receive: Recipient(s) When should this item be distributed?: When to Distribute?

Item #4: Description: Item Description Person(s) to receive: Recipient(s) When should this item be distributed?: When to Distribute?

Would you like the will or trust to reference a separate list of personal property items that you can make and update later, but would expect the executor or trustee to find and use for distributions: [Yes or No]

*If you need to list additional items, please use a separate sheet or list them at the end of this document.*

**Specific Bequests of Percentage of Estate Value.** *Please list any persons, organizations or charities who are to receive a fixed percentage of the value of the estate*.

Person/Entity #1: Name of Person or Entity, Percentage of Estate: % of Estate

Person/Entity #2: Name of Person or Entity, Percentage of Estate: % of Estate

Person/Entity #3: Name of Person or Entity, Percentage of Estate: % of Estate

Person/Entity #4: Name of Person or Entity, Percentage of Estate: % of Estate

*If you need to list additional beneficiaries, please use a separate sheet or list them at the end of this document.*

**Residue of Estate**:

*The residue is everything not otherwise specifically gifted away. Often, this is the substantial majority or all of an estate*.

1. Give everything to my spouse, and then my children in equal shares: , or

2. Give everything to my children in equal shares: , or

3. I wish to make other arrangements:  See “Alternative Arrangements”, below.

*If you are making distributions to minors or young adults, you may wish to stagger the distributions over a number of years so that the ‘kids’ do not get a windfall of money at too early an age and waste their inheritance. Many people have three distributive stages, but this is up to you. Pick an age at which you wish the final distribution to be made and you can discuss the other stages with your attorney.*

Staggered distributions for children. [Yes or No] Number of stages: How many stages? Age for final distribution: Age for Final Distribution [*For attorney: Separate Share or Family Pot*]

**Alternative Distribution Arrangements:**

Beneficiary #1: Name: Full Name Relationship to you: Relationship to you. Percentage or Specific $ Value: % or $ Value How much?: How much?

Beneficiary #2: Name: Full Name Relationship to you: Relationship to you. Percentage or Specific $ Value: % or $ Value How much?: How much?

Beneficiary #3: Name: Full Name Relationship to you: Relationship to you. Percentage or Specific $ Value: % or $ Value How much?: How much?

*For additional beneficiaries, or other arrangements, please use separate sheet, append to the end of this document or just talk with attorney.*

**Disinheritance**:

Is there anyone you want to specifically disinherit? [Yes or No] If “YES”, please complete the following:

Person 1: Name; Relationship to you: Relation

Person 2: Name; Relationship to you: Relation

*If you have additional persons to disinherit, please use separate sheet or append to the end of this document.*

**ADVANCE HEALTH CARE DIRECTIVE – WISHES**

**Level of Care**: *What level of medical care do you wish to receive in the event you are in a situation where you cannot make medical decisions for yourself?*

Spouse 1: Spouse 1 Level of Care Spouse 2: Spouse 2 Level of Care

**Donation of Organs, etc.?** *Do you wish to allow the donation of your body, in part or in whole? You can limit the use of donated organs for use only as tissue transplants to living donors.*

Spouse 1: Spouse 1 Organ Donation? Spouse 2: Spouse 2 Organ Donation?

**Autopsy?** *In the event medical personnel or government authorities wish to perform an autopsy on your body, are you willing to allow one? Note that in the event of a death under suspicious circumstances an autopsy may not be voluntary.*

Spouse 1: Spouse 1 Autopsy OK? Spouse 2: Spouse 2 Autopsy OK?

**Special Burial Requests**. *Please describe any special requests you have for memorial services, burial, etc*.

Spouse 1: I have made my wishes known to my family  - OR- *Describe your preferences*: Special Service/Burial Requests

Spouse 2: I have made my wishes known to my family  - OR- *Describe your preferences*: Special Service/Burial Requests

*Please feel free to add any notes, questions, additional information, requests, etc., below. Feel free to add as many additional pages as necessary:*

Appendix A: Terms for estate planning ‘jobs’:

In preparing an estate plan, there are several ‘jobs’ to be filled by the persons making the estate plan and persons they appoint to take responsibility for various things when they are no longer able to do so for themselves. This is a quick primer on the terms used for these various positions. Of necessity, these are brief descriptions, but hopefully the reader will get a general understanding of these terms:

1. **Settlor**, or **Trustor**: This is the person or persons who make a trust, the owners of the property being placed into the trust. In a typical married couple situation, this is the husband and wife making the estate plan. It can also be just one of the spouses, or of course a single person.

2. **Testator**: This is the term for a person making a will. If a person makes a will and a trust (which often happens), that person is both a testator as to the will and a settlor as to the trust.

3. **Executor**: The Executor is the person to ‘executes’ a will. This term relates only to a will. The executor’s function is to collect the property covered by the will and distribute it to the beneficiaries of the will, usually with little delay. The executor’s job is supposed to be short-term. In some cases, the beneficiary of a will could be a trust, in which case the executor’s job is to pass the property along to the trustee(s) of a trust. It is possible to appoint co-executors and make two people have to agree on a course of action. Executors should be trusted family members or friends, or perhaps a professional like your attorney or CPA. It is a good idea to appoint successor executors in a will in the event the person(s) appointed initially are not able or willing to serve as executor. In the typical case of a married couple, the spouses are often appointed as the initial executors for each other, with successors named as well.

4. **Trustee**: The Trustee is the person or persons responsible for administering a trust. Depending on the terms of the trust, this could be a long-term job. For example, if a trust is created for children with property to be held until they reach a certain age, it could be a long time before the trust is fully distributed. Thus, choosing a trustee who will be up to the long-term task of managing property in a trust is important. As with other positions, it is wise to appoint one or two successors in case the first appointed person is unable to serve. Co-trustees can be appointed, just like executors.

In the case of a “Revocable Living Trust” created for a living, and competent, settlor or settlors, the initial trustee(s) is usually the settlor(s). In that way, the original owners of the property still have total control of the property, only it is held in the legal entity of a trust.

5. **Beneficiary**: Beneficiary refers to the person(s) or entities who are to receive an inheritance under a will or trust. These are the ‘heirs’ in many cases, although in the case of a Revocable Living Trust, the initial beneficiaries are also the settlors and often also the trustees. In a typical trust case, spouses hold their property in the form of a trust, acting as settlors and trustees. They are also the beneficiaries of that trust while alive – they have the use of the property, income, etc., of the trust. Only when they are no longer around to be the beneficiary would any ‘successor beneficiary’ or ‘contingent beneficiary’ take over: the property is held first for the benefit of the spouses, and when they are gone it goes to the children. A charity can be a beneficiary if you leave a gift to a university or hospital or charitable organization like the Boy Scouts or Red Cross or ASPCA.

6. **Attorney-in-Fact**: Individuals can appoint other persons to make decisions for them, during their lives, relating to their property and/or their health care. The appointed decision maker is the “Attorney in Fact.” Spouses often name each other as attorneys-in-fact for property decisions so that one can open a joint bank account, or handle the transfer of property, without the other’s presence (in case one is out of town, or in the hospital, etc.). As to health care, people often name their spouses as their first attorney in fact for health care decisions, but it is wise to appoint successors to act in case the first named attorney-in-fact is unavailable. This is where someone might appoint a sibling to make health care decisions in the event their spouse cannot. Attorneys-in-fact are appointed by documents called Powers of Attorney, either a Medical Power of Attorney or a Durable Power of Attorney for Property Management. These documents only give power to decision makers during the lifetime of the person making the appointments. When the person dies, there is no longer a need for a medical attorney-in-fact, and authority over property transfers to an executor or trustee.

As to a medical attorney-in-fact, some thought might be given to choosing someone relatively local, as making visits to a hospital might be expected – thus appointing a sister in Dallas might be a better choice than a brother in Boston. Also, when choosing a medical attorney-in-fact, it is important that that person(s) be willing to make hard decisions relating to cessation of life support in grave situations. It is possible to appoint co-attorneys-in-fact for medical care decisions who would act unanimously, or serially if one or more was unavailable.

7. **Guardian**: The most common use of this term relates to someone appointed to be the physical guardian of minor children in the event the parents are unable to care for them. Guardians for children can be appointed singly or in couples, and if a couple is appointed some thought should be given to what happens if the couple breaks up – with whom do the children to or perhaps they go to another person or couple altogether. Also, thought should be given to parenting styles, and ages – it may not be appropriate to appoint a guardian if that person will be very old when the child in question will still be under 18. If the child(ren) is old enough, he or she might have a say in who is chosen to be the guardian. It is possible to appoint separate guardians for the person of a child and the estate of a child – i.e. someone to physically care for the child and someone else to handle the funds of the child. If there is a trust set up, the trustee will likely have control of any funds for the child in any case and the guardian is responsible for the physical care of the child.

Less often, persons who believe they may need a guardian for their own interests (perhaps knowing they have a degenerative mental or physical disease which will necessitate greater care in the future) can appoint guardians for ‘when the time comes’. This is often, but not always, spouses as spouses may be too old themselves.

Appendix B: Trust related terms:

1. **Will:** A will is the most basic estate planning document: it simply says ‘who gets what’ after a person dies. Wills can be very formal, or very informal, but there are execution requirements to make a valid will which mean that “Do It Yourself” can be tricky. In cases where a living trust is created, there will also be a “pour over will” whereby whatever property was not already in the trust on the death of the testator/settlor would be given to the trust by way of the will.

2. **Living Trust or Revocable Trust**: This is a trust created while the settlors are alive (hence, ‘living’) and the trust can be revoked while they are alive (and generally, the terms of a revocable trust become irrevocable and unchangeable after the settlor dies). The Living Trust is a legal entity created to hold and administer the settlor’s property as, primarily, a way to avoid the necessity of probate when the settlor dies, although in some cases there can also be significant estate tax advantages for very wealthy clients.

3. **Testamentary Trust**: This is a trust that is created by the terms of a will (i.e. the last will and testament), and only comes into existence after 1) the death of the person who made the will and 2) only if the circumstances described in the will are extant at that time. The classic example is a trust that is only created if the children are under a certain age when the parent dies. I.e., if the children are under some particular age, then a trust is created for their benefit and the property held until they reach that age, but if they are already old enough then the property is distributed to them outright and no trust is created.

4. **A/B Trust** or a **Bypass Trust**? These are terms used to describe a type of trust where the marital trust property is divided on the death of the first spouse (hence “A/B”). Among other features, this allows the couple to take full advantage of both spouse's lifetime estate tax exclusion by holding the deceased spouse’s share separately from the survivor’s share (“Bypassing” the survivor’s estate). Thus, it would be taxed separately, and if the share was small enough it would avoid the confiscatory estate tax. The survivor’s share would be taxed on that spouse’s death. This way, each spouse had the benefit of a full exclusion. On the other hand, if Spouse A left everything to Spouse B, then Spouse B would have double the estate on her death and possibly face estate taxes. With the A/B Trust, Spouse B can have the benefit of Spouse A's property without ‘owning’ it for estate tax calculation purposes. The terms of the trust as to the share of Spouse A's property become irrevocable on Spouse A's death, so Spouse B cannot change the distribution terms, trustee terms, etc., while Spouse B retains total control of his or her “survivor’s” share (sometimes having the first share become irrevocable is a good idea anyway for family political reasons, but that is a separate consideration from estate taxes).

When the estate tax exclusion limit was significantly lower than today’s approximately $5.5 Million per person, it was fairly easy for a successful couple to meet or exceed the exclusion amount and so having an A/B trust allowed maximum use of both exclusions. However, that tax now only applies to \*very\* wealthy families and the estate tax avoidance function of that type of trust is much less relevant for most people. In fact, in many cases, spouses who set up an A/B Trust more than five years ago, then facing potential estate taxes, no longer really need that type of trust. It becomes unreasonably difficult to administer in view of the lack of benefit afforded by the more complicated structure. In many if not most cases it may make much more sense and be much easier to administer if the trust were amended to be a:

5. "**Power of Appointment**" Trust. In a Power of Appointment Trust, when one spouse does, the survivor has full control of everything. If the spouses trust each other to fulfill their joint intent for their property, then this is much easier for the survivor, and then any successor trustee, to administer. Unless the total value of the marital property is going to exceed $5.5 Million (and, really, higher thanks to “portability” of unused exemption - a subject for another day), the A/B Trust may be unnecessary and spouses with that type of trust might consider changing to a Power of Appointment trust format.

6. "**Family Pot**" versus "**Separate Share**" trusts.  These terms refer to how property is held for the benefit of multiple beneficiaries, usually multiple children of a couple.  In a "Family Pot" trust, the property is all held and used for the benefit of the children, and the trustee is authorized to spend different amounts on different children without equalizing the amounts spent.  The classic example: Child 1 wants to attend Harvard Medical School, while Child 2 wants to attend a trade school to become an electrician.  The expenses involved with those two paths are enormously different, but are both paid from the same "family pot" and Child 1 will have the benefit of more money for education than Child 2. That is accepted, and no equalizing takes place.

In a "**Separate Share**" trust, when the last spouse dies, the funds are split into separate shares of (usually) equal value and each child has the benefit of his or her share, but no more.  In that case, if Child 1 burns all her money on school, but Child 2 does not, then Child 2 might have money for a down payment.  In a hybrid case, the funds may be held as a family pot until the youngest reaches an age where he or she is presumed to be past a bachelor's degree, and then the family pot is split into separate shares at that point.

7. **Portability**. This is a new feature of federal estate tax law whereby any unused exclusion relating to one spouse can be ‘ported’ over to the other spouse to add to his or her exclusion. For example: Spouse A dies with a total estate of $2 Million. The estate tax exclusion is $5.5 Million, so Spouse A did not use $3.5 Million of the exclusion. That amount is ‘ported’ to Spouse B so that Spouse B now has $9 Million in exclusion (his or her own $5.5 Million plus the $3.5 Million unsed by Spouse A).