

Flowcharts for Planning During Uncertain Times

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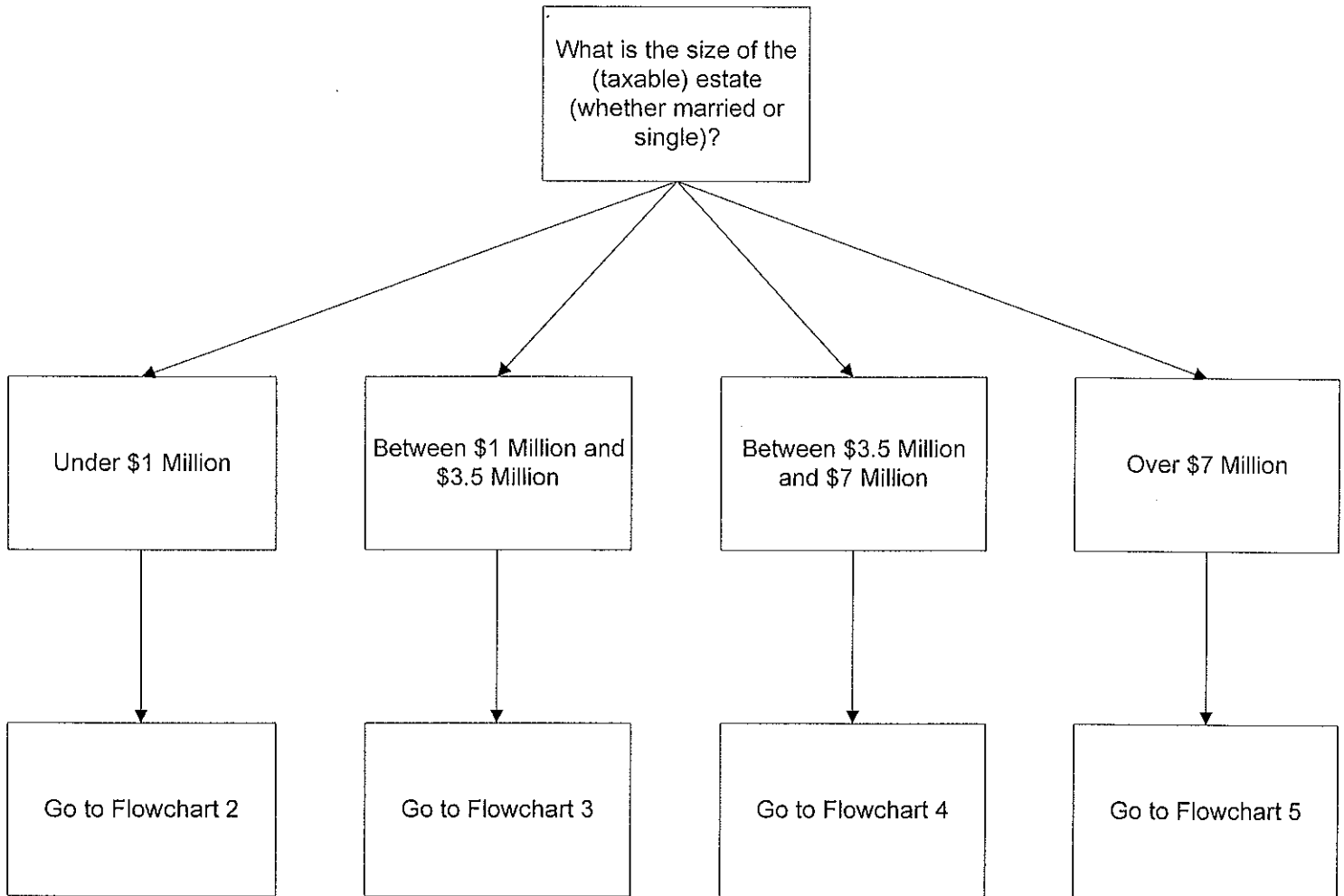
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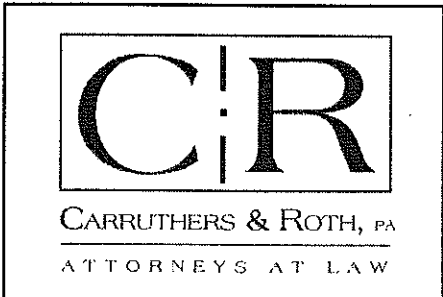
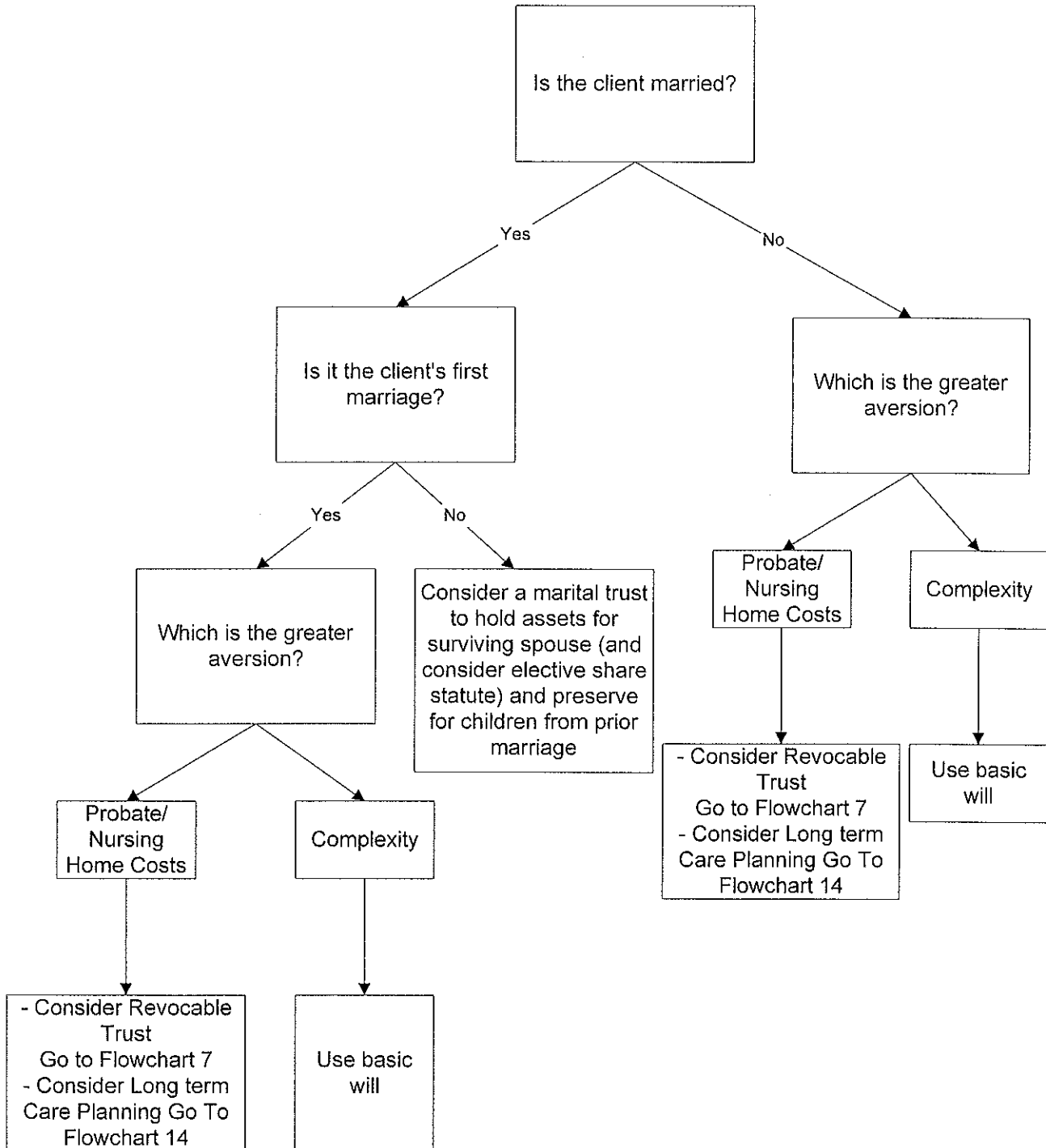
Flowcharts for Planning During Uncertain Times

Flowchart 1



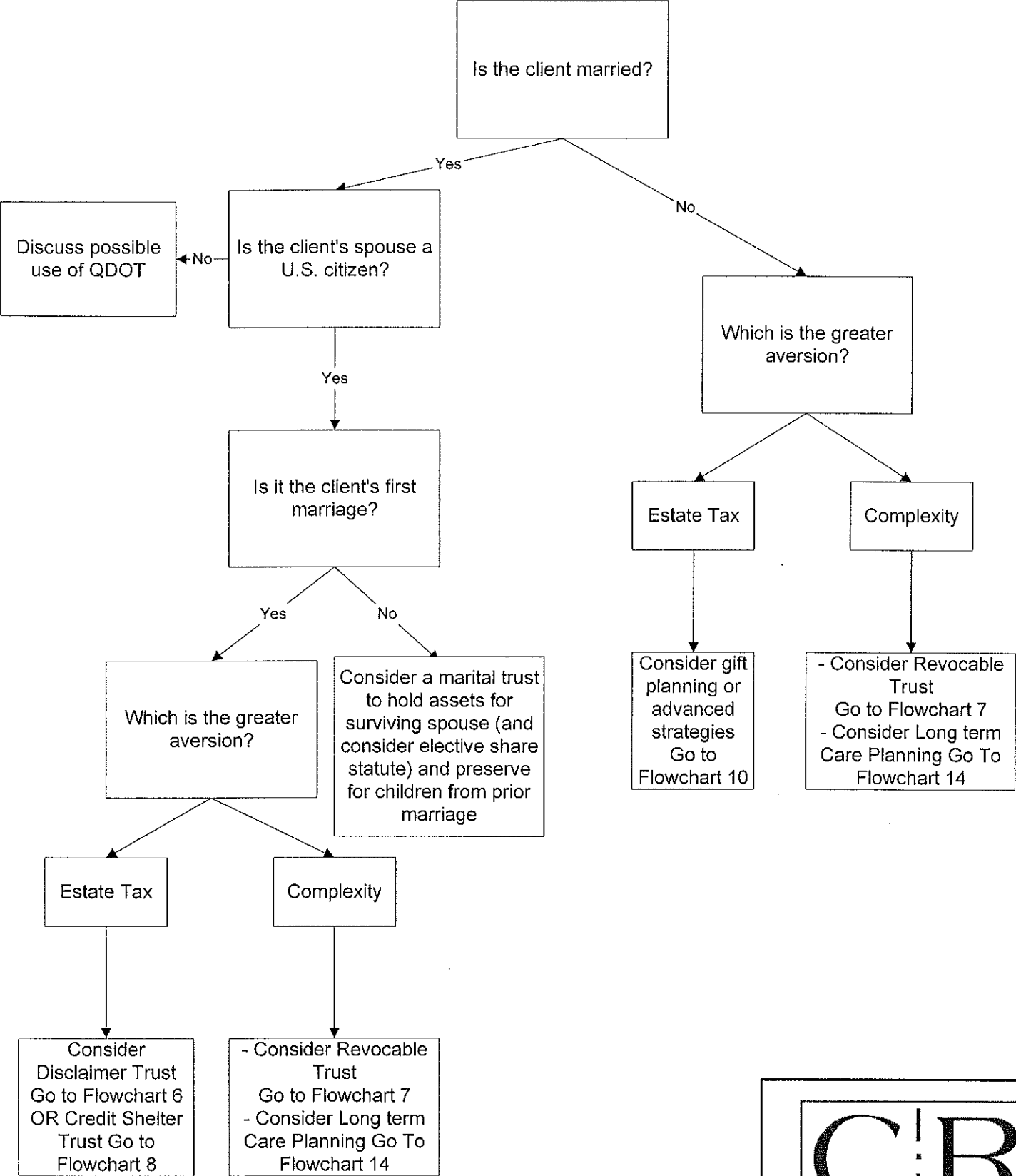
Flowchart for Estates Under \$1 Million

Flowchart 2



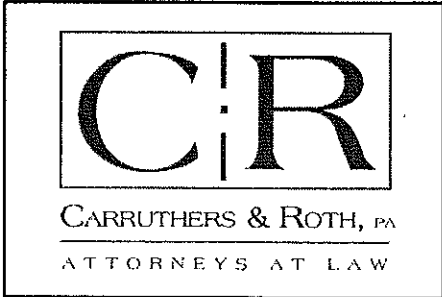
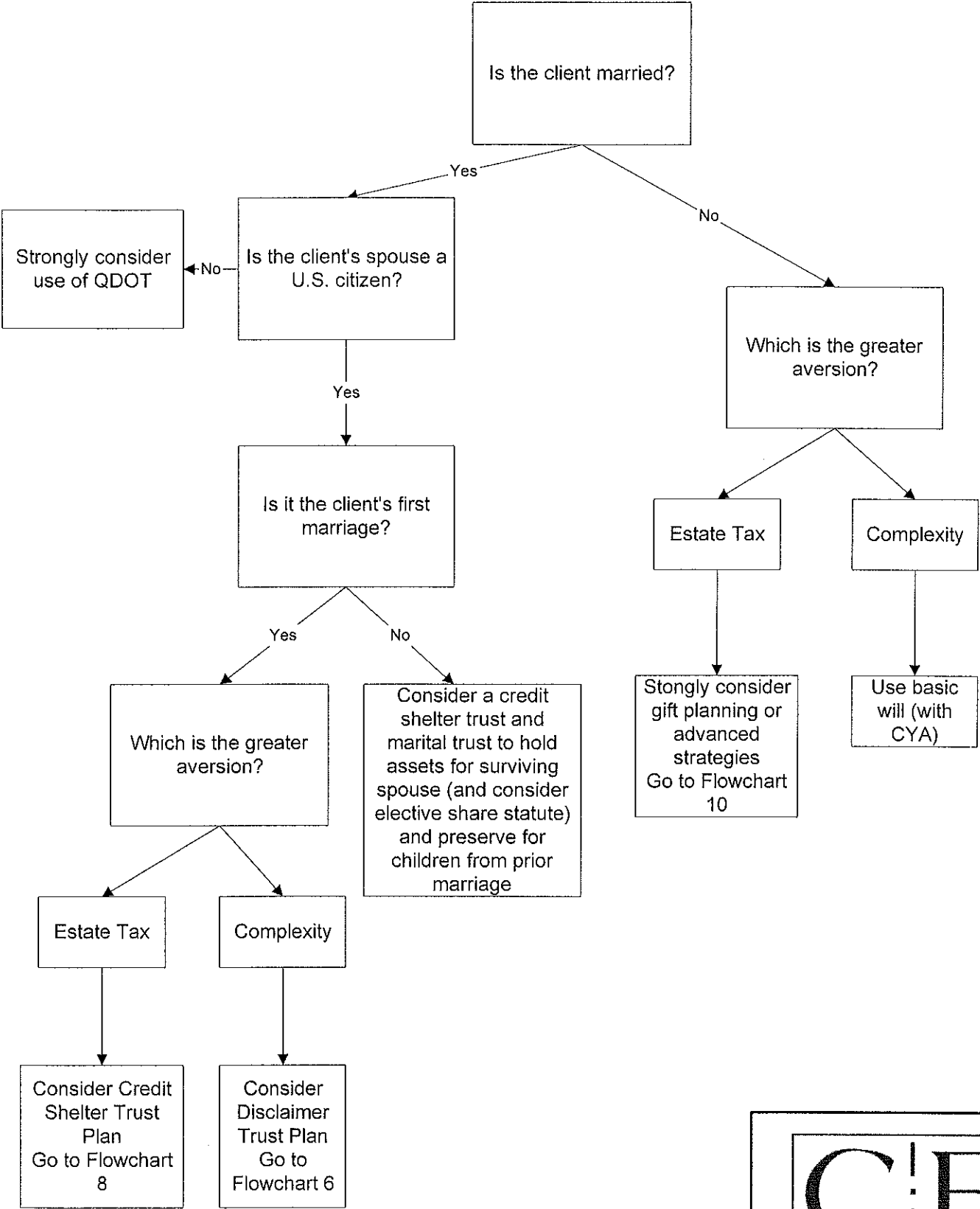
Flowchart for Estates Between \$1 Million and \$3.5 Million

Flowchart 3



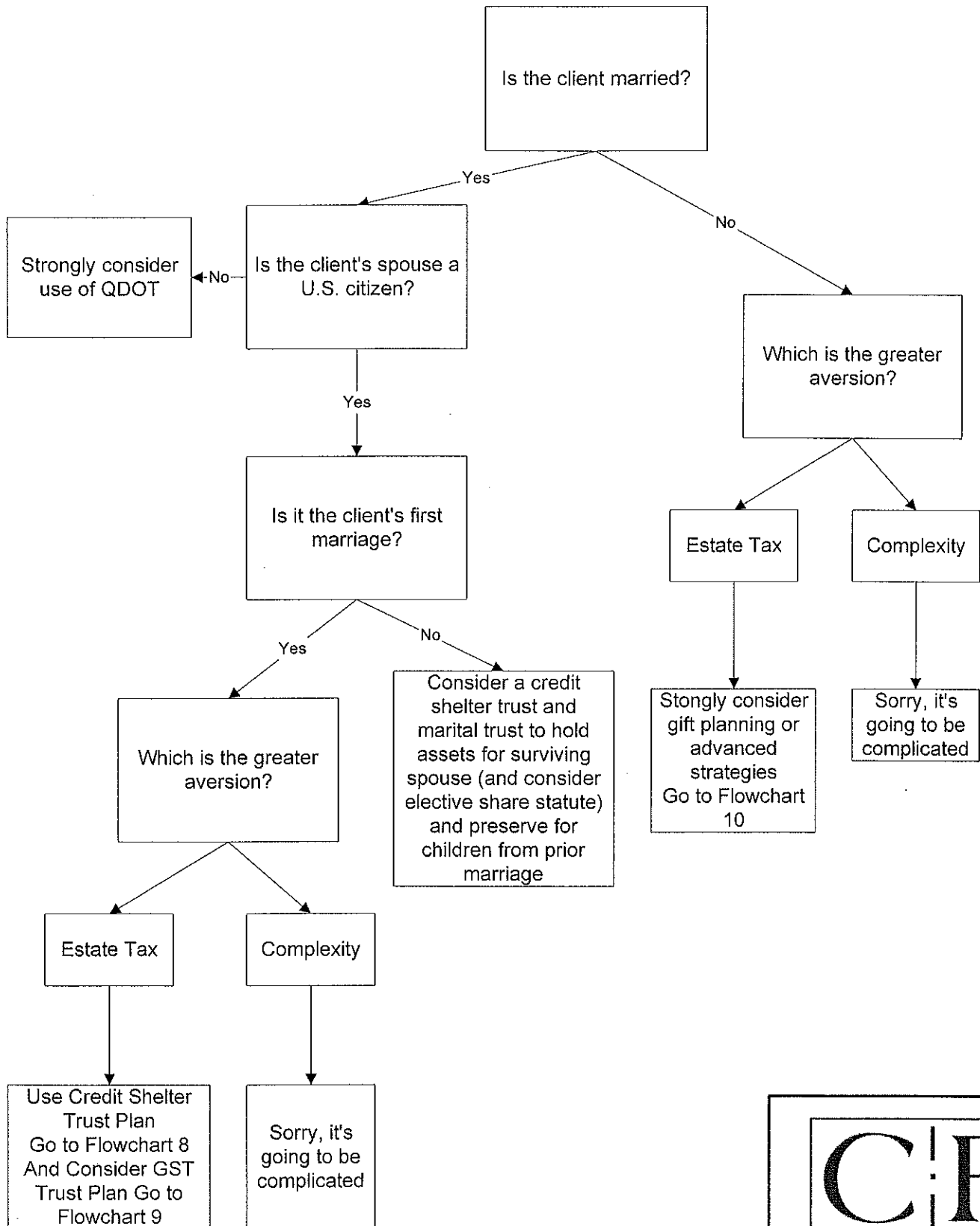
Flowchart for Estates Between \$3.5 Million and \$7 Million

Flowchart 4



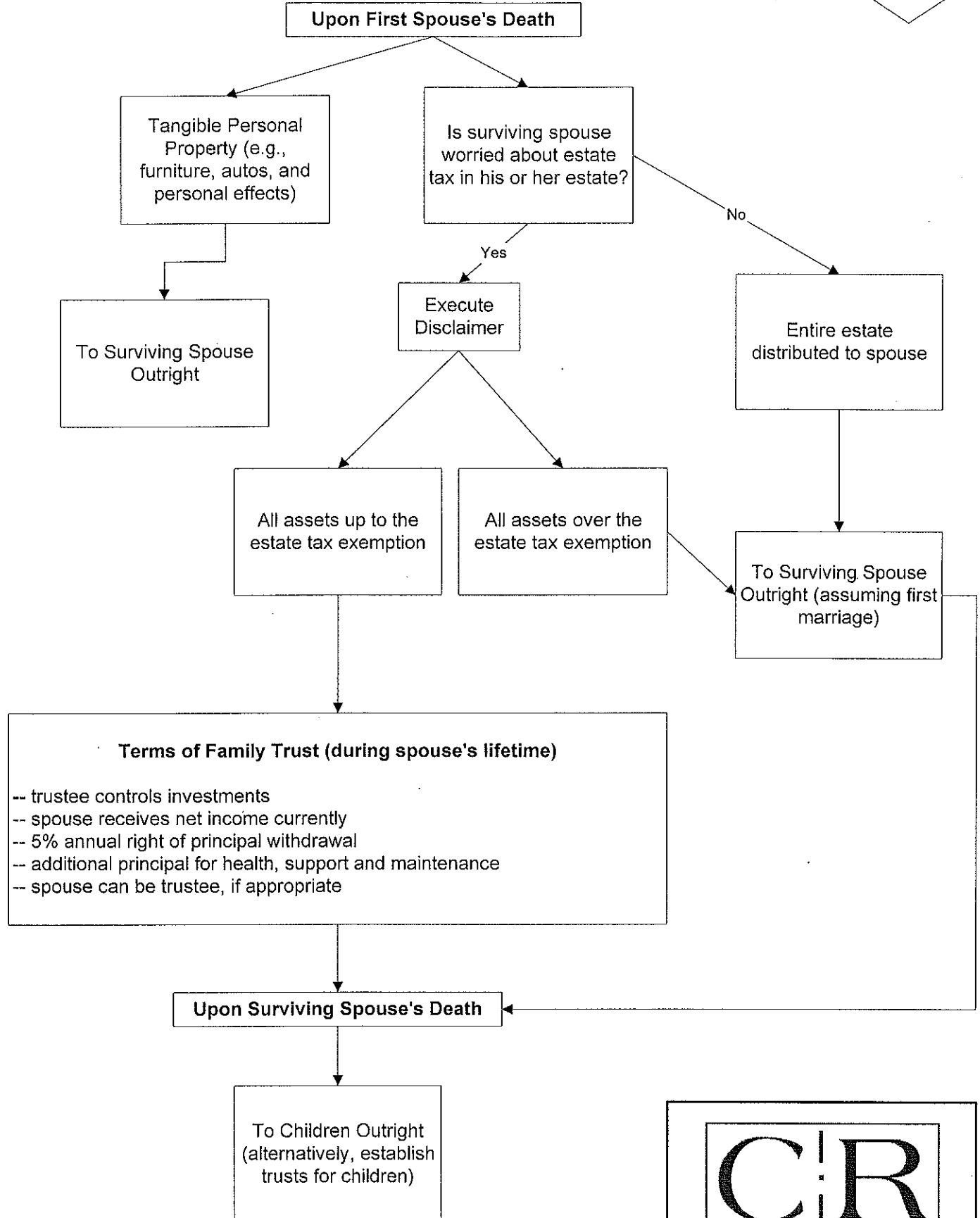
Flowchart for Estates Over \$7 Million

Flowchart 5



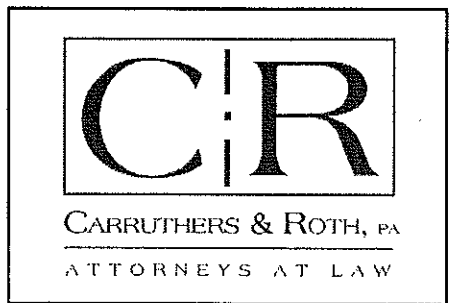
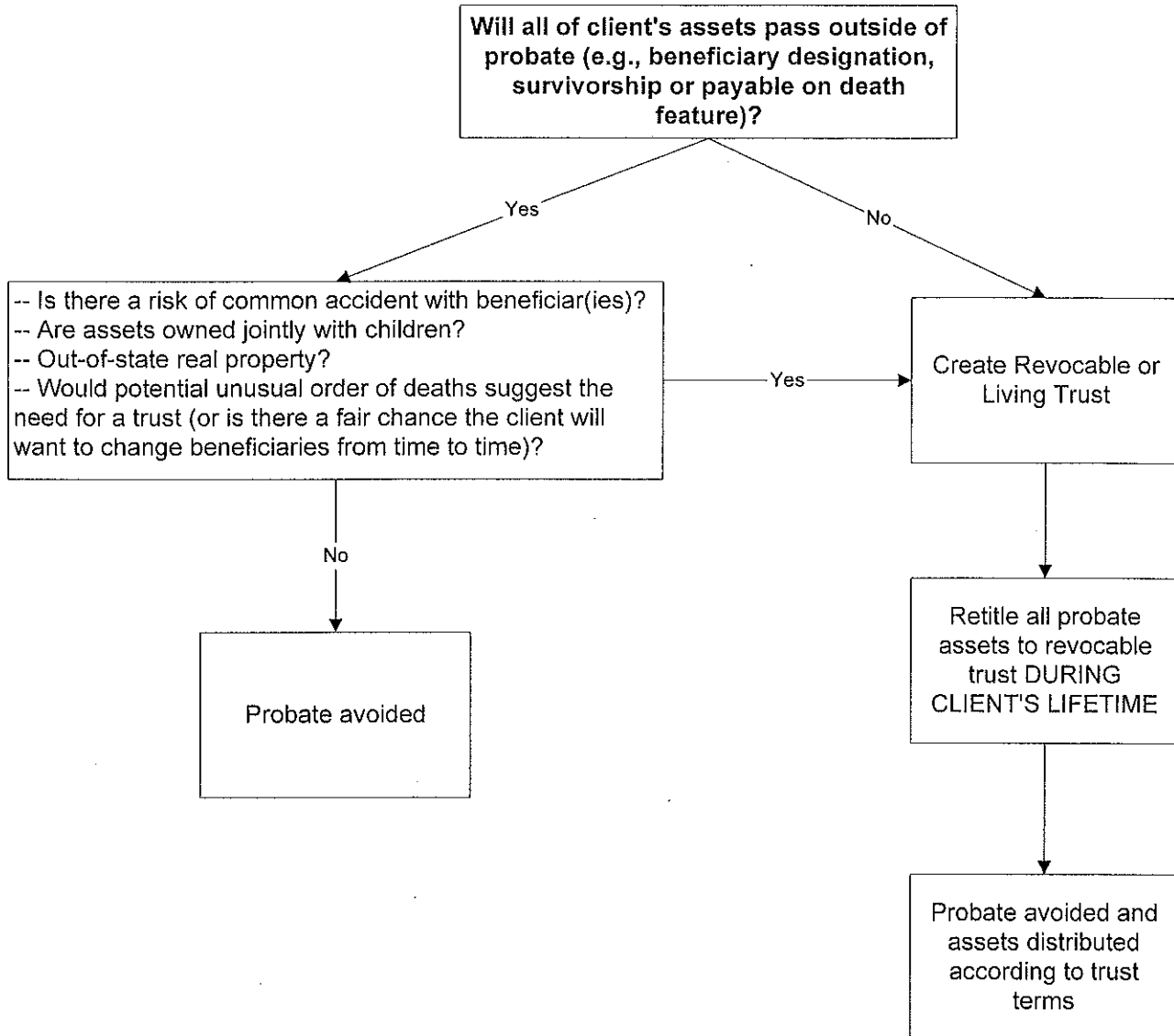
Disclaimer Trust Plan (with Children's Shares Outright)

Flowchart 6



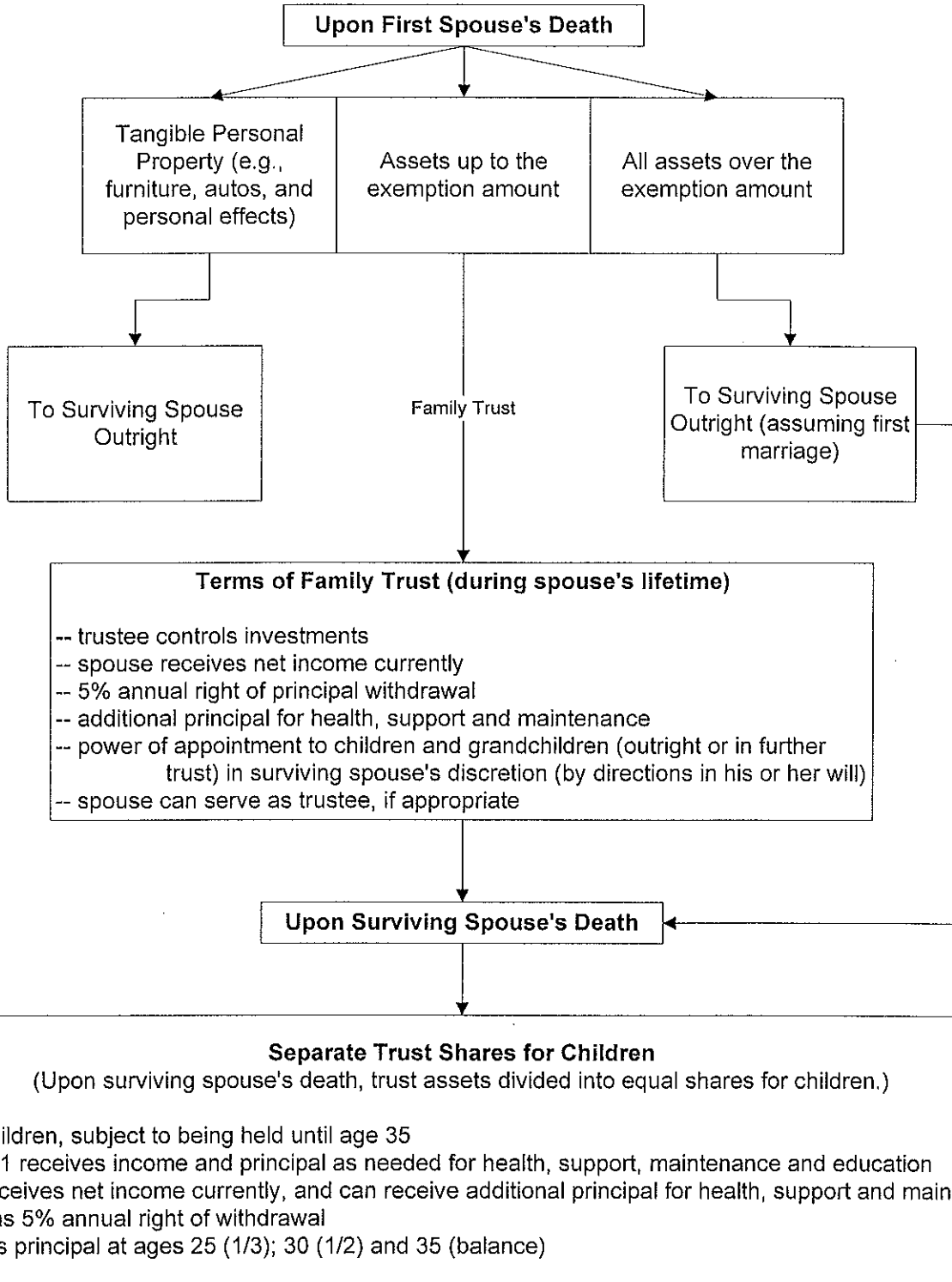
Probate Avoidance Planning (including the use of Revocable Trusts)

Flowchart 7



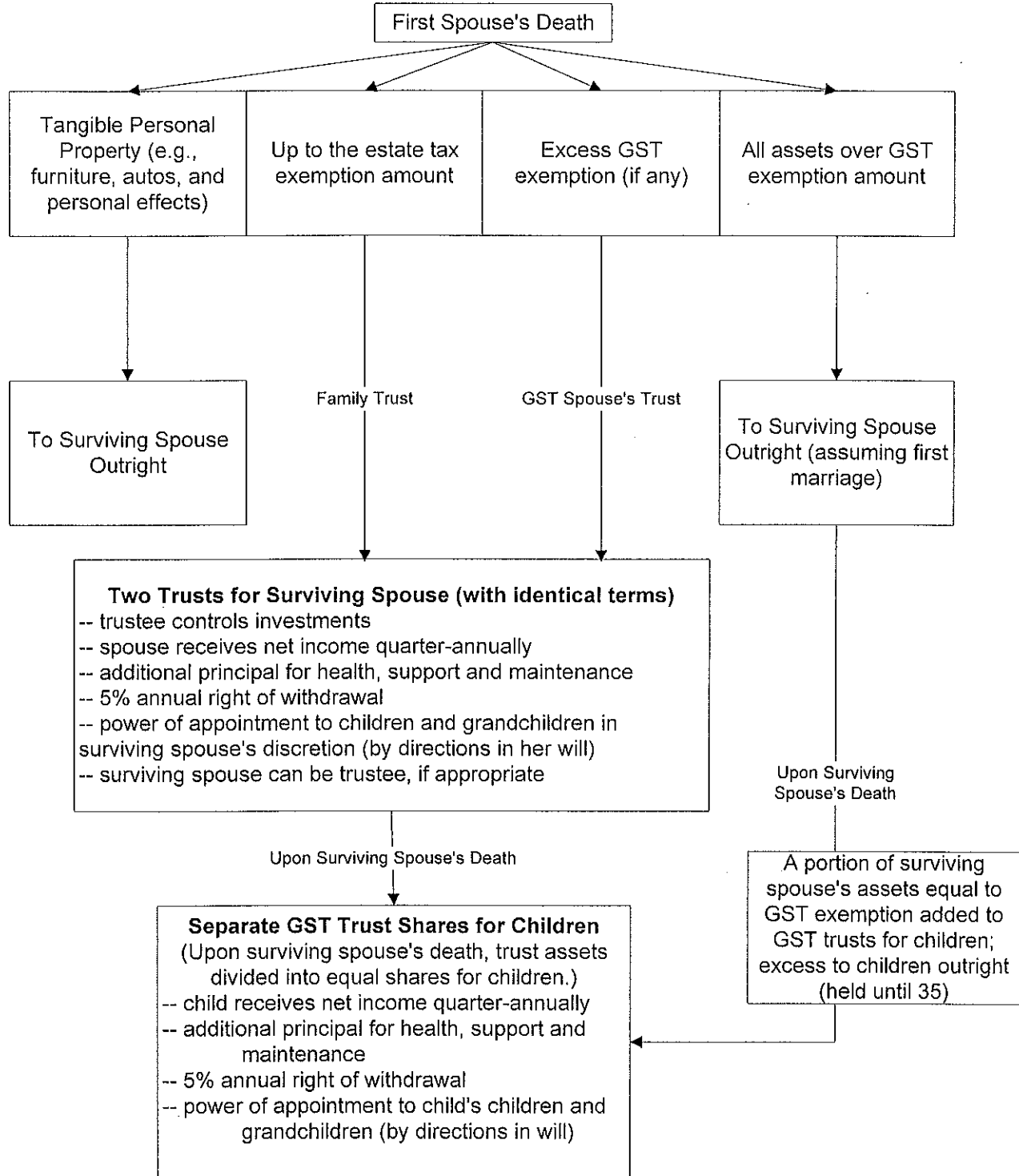
Credit Shelter Plan (with Marital Share Outright and Children's Shares In Trust)

Flowchart 8



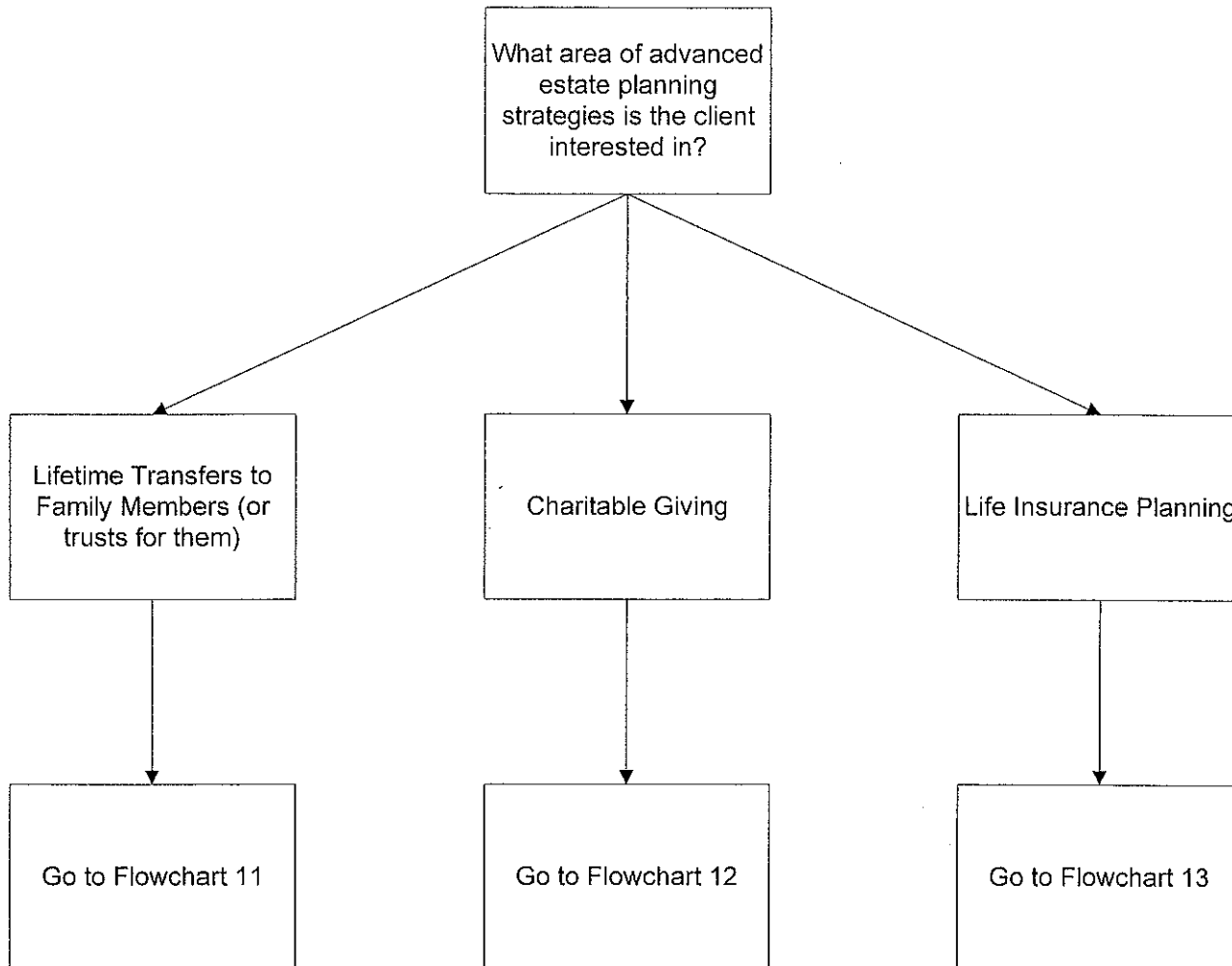
Generation Skipping Estate Plan

Flowchart 9



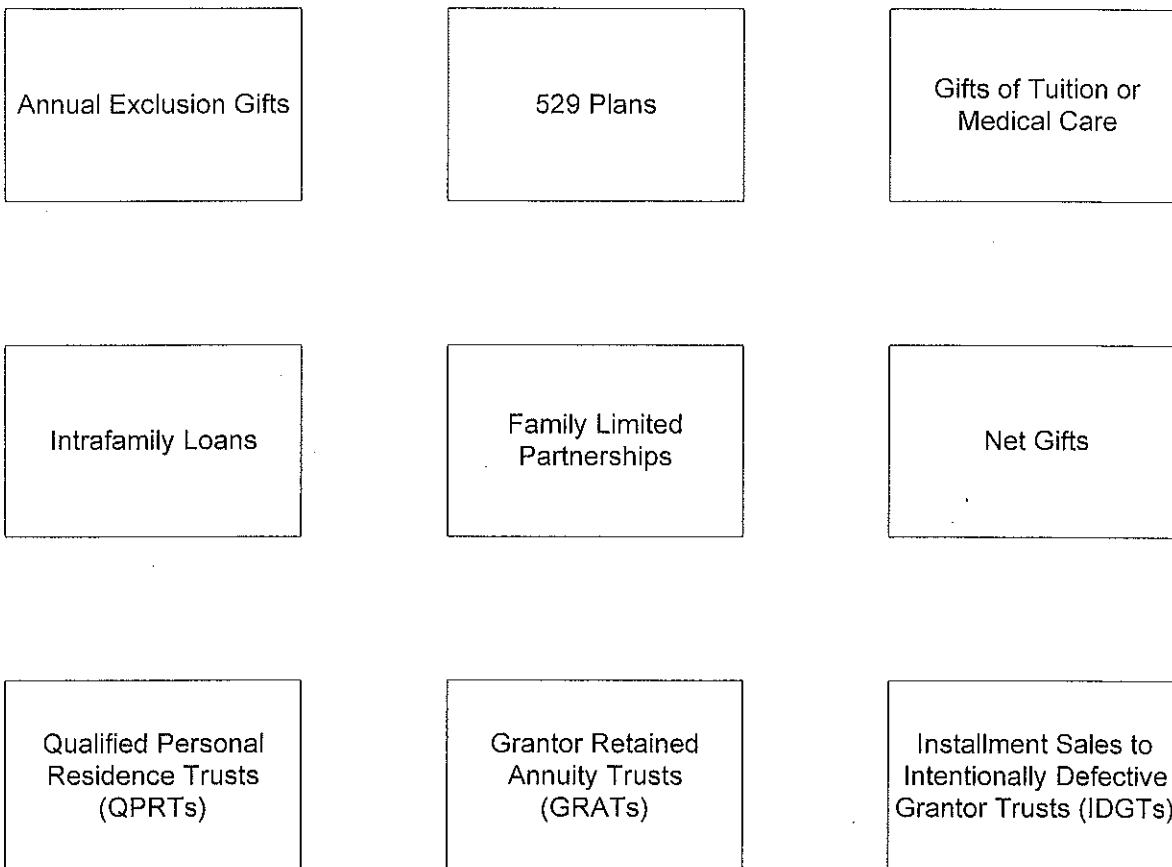
Advanced Estate Planning Strategies

Flowchart 10



Advanced Strategies Related to Lifetime Transfers to Family Members

Flowchart 11



Advanced Strategies Related to Charitable Giving

Flowchart 12

Annual gifts of cash or marketable securities

Charitable Bequest in will

Donor-advised Fund

Charitable IRA Rollover?

Charitable Remainder Trust (CRT)

Charitable Lead Trust (CLT)

Charitable Gift Annuity or Pooled Income Fund

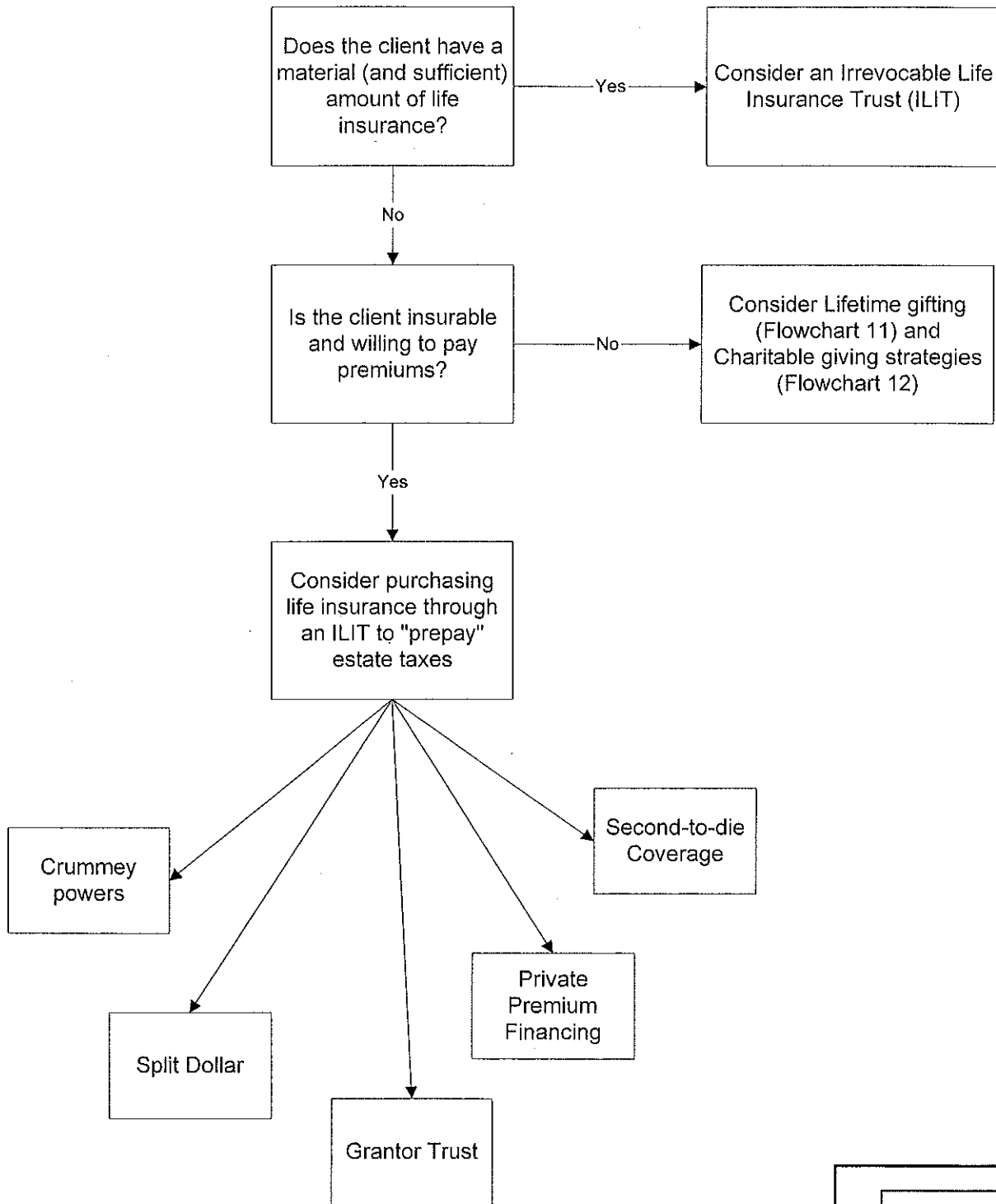
Qualified Conservation Easements

Private Foundation or Supporting Organization



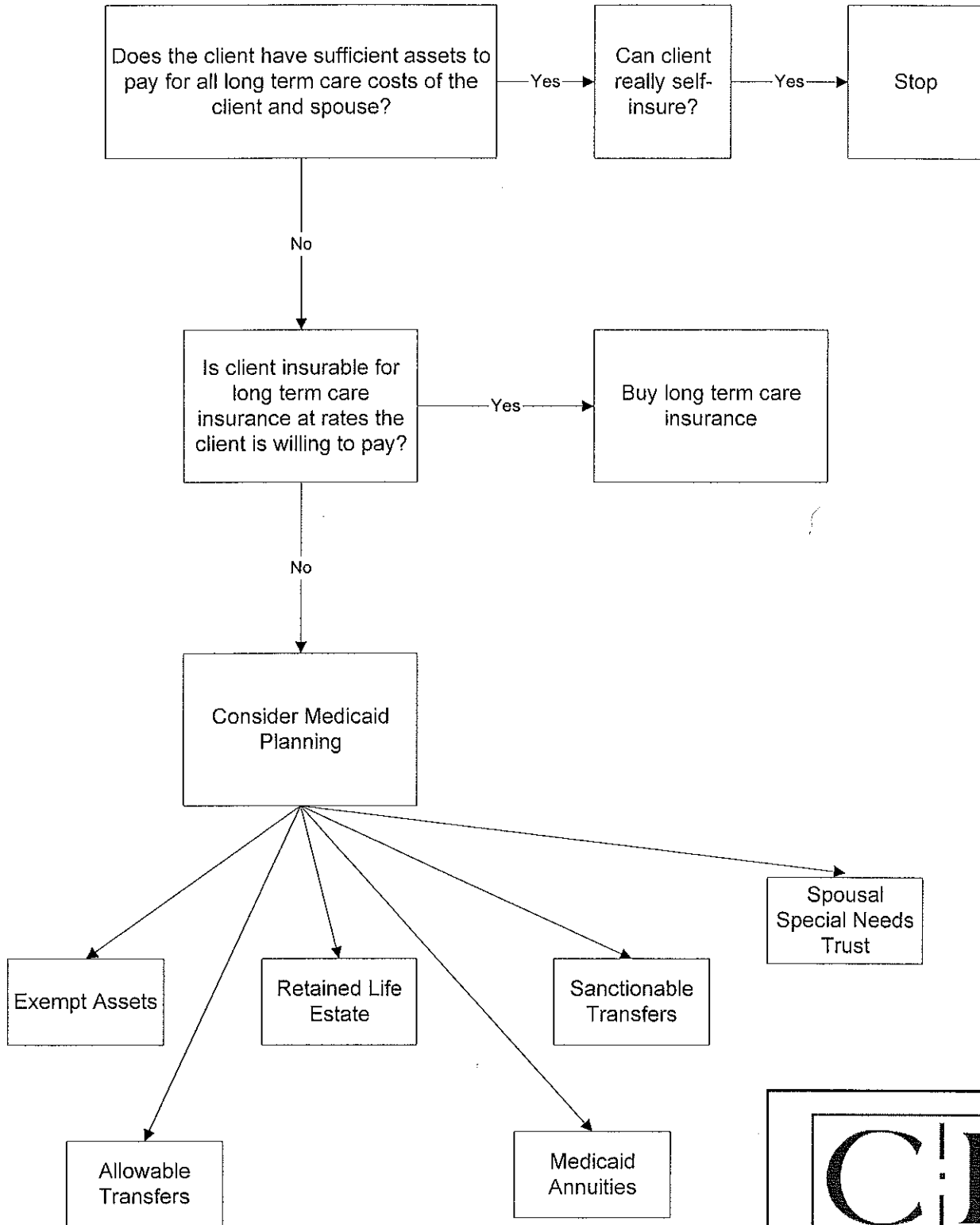
Advanced Strategies Related to Life Insurance

Flowchart 13



Long Term Care Planning

Flowchart 14



Appendix A
Selected Glossary of Estate Planning Terms

1. **Taxable Estate** – Federal estate tax law term describing the amount against which the estate tax is computed. Generally speaking, it is obtained by deducting from the gross estate (including all property in which the decedent had an interest) all allowable deductions (including debts, expenses, taxes, charitable transfers and marital transfers).
2. **Probate** – A legal process whereby (1) the clerk of superior court determines whether or not the decedent's Will is valid; (2) a personal representative is appointed to (a) collect the decedent's assets in his or her probate estate, (b) pay the decedent's legal debts, and (c) distribute the remaining assets in the decedent's probate estate to the individuals or entities entitled to the assets in accordance with the Will or laws of intestacy; and (3) the clerk approves the transfer of the decedent's assets to the individuals and entities designated in the Will or the laws of intestacy. The probate court will also determine the rights, if any, of a spouse and children to the decedent's property.
3. **Long Term Care Planning** – Establishing a plan to pay for potential future nursing home costs. Options include self-insuring, long term care insurance and Medicaid planning.
4. **Revocable or Living Trust** – A trust established during a person's lifetime into which she or he places property. The trust is subject to amendment or revocation by the grantor (as long as the grantor is living and competent). Primarily used to avoid probate upon the grantor's death, guardianship and conservatorship actions during the grantor's lifetime, and to maintain the grantor's privacy both during the grantor's lifetime and upon the grantor's death. Usually contains the same provisions as a will for the disposition of the grantor's estate upon the grantor's death.
5. **Elective share** – An elective share (formerly called spousal dissent rights) is a term used to describe a proportion of an estate which the surviving spouse of the deceased may claim in place of what they were left in the decedent's will.
6. **QDOT** – A trust created upon the death of an individual and qualifying for the federal estate tax marital deduction where the decedent's surviving spouse is not a United States citizen. A qualified domestic trust is the only form of transfer that will qualify for the marital deduction for a decedent survived by an alien spouse. In addition to satisfying the normal marital deduction rules, the trust instrument must require that at least one trustee be an individual who is a citizen of the United States or a domestic corporation, and that no trust distributions may be made without the consent of that trustee. An appropriate election on the estate tax return is also required.
7. **Marital Trust (e.g., QTIP)** – A trust that will qualify for the marital deduction if an appropriate election is made by the donor or executor. In order to qualify as a QTIP

trust, the surviving spouse must be entitled to all of the income of the trust property during the spouse's life and no person, including the spouse, may have the right to appoint the trust property to anyone other than the spouse during the spouse's life. The major benefit of a QTIP marital trust to a grantor is that, at the surviving spouse's death, the remaining trust property is not subject to a general power of appointment in the spouse, but instead passes to beneficiaries selected by the grantor.

8. **Disclaimer** – An irrevocable and unqualified refusal by an individual, to accept the ownership of an interest in property. If a person makes a "qualified disclaimer" in accordance with Internal Revenue Code § 2518, the disclaimed interest is treated as never having been transferred to the person making the disclaimer for federal estate, gift, and generation-skipping transfer tax purposes. Instead, the statutes treat the person disclaiming the asset or interest as if they predeceased the person making the gift. The property interest is considered as passing directly from the transferor of the property to the person now entitled to receive the property as a result of the disclaimer. The requirements of both the Internal Revenue Code and North Carolina's disclaimer statutes must be taken into account when considering the use of a qualified disclaimer. If it is not qualified, the disclaimer is disregarded for federal transfer tax purposes and the disclaimant is treated as having received the property.
9. **Disclaimer Trust** – A kind of bypass trust that gives the surviving spouse the option of not splitting the trust after the first spouse's death if it's not necessary to save on estate tax. A surviving spouse may disclaim (decline to accept) some trust property; that property goes into the bypass trust. Note that disclaimer trusts require the survivor to act according to the wishes of the deceased, and disclaim ownership of some of the assets bequeathed to the survivor by the deceased.
10. **Applicable Exclusion Amount (or "exemption amount")** – An amount of assets that can pass without imposition of an estate tax or gift tax on the transfer. The amount of assets equates to a credit against the estate tax or gift tax. The federal lifetime gift tax exemption is currently \$1,000,000. The federal estate tax exemption was \$3,500,000 in 2009.
11. **Credit Shelter Trust** (variously referred to as bypass trust, family trust, cutback trust, etc.) – A type of trust that allows a married client to avoid estate taxes when passing assets on to heirs. The trust is structured so that upon the death of the client, the assets specified in the trust agreement (up to a specified maximum proportion or amount) are transferred to a trust for the beneficiaries named in the trust (normally the client's spouse and/or children). A key benefit to this type of trust is that the spouse typically maintains rights to the trust assets and the income they generate during the remainder of his or her lifetime.
12. **Generation Skipping Transfer (GST) tax** – A transfer tax imposed at a rate equal to the highest estate tax rate (45% in 2009) on gifts or estate transfers where the transferred assets pass, or will pass, to recipients two or more generations below the donor, without being subject to the imposition of estate tax at the intervening

generations. Each donor has (had?) a generation skipping transfer tax exemption that can pass free of the GST tax (\$3,500,000 in 2009).

13. **Annual Gift Tax Exclusion** – Each individual can give away up to \$13,000 per recipient per year without gift taxes. Not all gifts qualify for the annual exclusion; only outright gifts or gifts to certain types of trusts qualify.
14. **529 Plan** – A college savings account program which the Internal Revenue Code permits states to establish. Such plans, also known as 529 Plans, provide income, estate, and gift tax benefits. A person can establish a 529 Plan in any state, regardless of residence in a different state.
15. **Gift tax exclusion for gifts of Tuition or Medical Care** – Pursuant to §2503(e), any amount paid on behalf of an individual as tuition to an educational organization described in §170(b)(1)(A)(ii) for the education or training of such individual is not treated as a transfer by gift for purposes of the gift tax. The exclusion provided in §2503(e) is unavailable for amounts paid for books, supplies, dormitory fees, board, or other similar expenses that do not constitute direct tuition costs. A §2503(e) amount paid (a qualified transfer) is exempted from the gift tax inasmuch as it is excluded in determining the total amount of gifts by a donor in a calendar year. The exclusion is available regardless of the relationship between the donor and the donee, and the §2503(e) exclusion is in addition to the per donee annual exclusion provided in §2503(b). Section 2503(e) also allows an unlimited gift tax exclusion for amounts paid on behalf of a donee directly to a provider for medical care. The exclusion is available for payments for medical insurance paid on behalf of an individual, but not with respect to medical expenses previously paid by the donee that are reimbursed by the donor. The exclusion also does not apply to amounts paid for a donee's medical care that are reimbursed by the donee's insurance. Thus, if a donor pays a medical expense and the donee is reimbursed by the donee's medical insurance, the donor's payment, to the extent of the reimbursement, is not eligible for the §2503(e) exclusion. In this situation, the donor is treated as having made a gift on the date the reimbursement is received by the donee.
16. **Intrafamily Loans** – A variety of structures for the loan of assets from the senior generation to a younger generation, usually with the expectation that the appreciation and/or cashflow would exceed the applicable federal interest rate.
17. **Family Limited Partnerships (FLPs or FLLCs)** – A limited partnership or limited liability company that is used to manage family property or investments. Useful for passing interests to other family members and possibly receiving discounts for gift and estate tax purposes. If set up and managed properly, an FLP can also provide asset protection for a family's wealth.
18. **Net Gifts** – Sometimes, a gift is made, subject to the condition that the donee pays the gift tax. In such a case, the amount of the gift is the gross amount transferred, less the gift tax owed by the donee. The transfer is treated for income tax purposes as a sale,

resulting in a gain if the amount of gift tax for which the donee agrees to be liable exceeds the basis of the property transferred. Example -- Dad gives Blackacre to Son, on condition that Son pays the gift tax. Blackacre has a value of \$100, and a basis of zero. If Dad is in the 35% gift tax bracket, the gift tax payable on the transfer will be \$25.93. (\$100 value of Blackacre less \$25.93 tax = \$74.07 received by donee. $35\% \times \$74.07 = \25.93 .) Dad will also have a taxable gain of \$25.93, resulting in federal capital gains tax at 15 percent of \$3.89. Algebraically, the formula for determining the amount of the net gift tax is: net gift tax = [gift tax rate/(1 + gift tax rate)] (gross gift). Here, $\$25.93 = [.35/1.35 (\$100)]$.

19. **Qualified Personal Residence Trusts (QPRTs)** – An inter vivos trust pursuant to which a grantor transfers his/her interest in a personal residence to the trustee to hold for the grantor's use and occupation during a specified term, and, upon expiration of the term, the residence passes to the remainder beneficiary or beneficiaries. Primarily used to gift the residence to the remainder beneficiary that is susceptible to application of valuation discounts and actuarial discounts based on the grantor's age and the term of the trust, and is most beneficial if the residence is expected to appreciate in value. If the grantor survives the term, the principal will be excluded from the grantor's estate for death tax purposes.
20. **Grantor Retained Annuity Trusts (GRATs)** – An irrevocable inter vivos trust under which a grantor transfers his or her interest in real or personal property to the trustee to hold during a specified term. During each year of the term, the grantor receives an annuity amount based upon the value of the assets at the creation of the trust. Upon expiration of the term, the trust property passes to the remainder beneficiary or beneficiaries. This type of trust is primarily used to transfer property to a remainder beneficiary that is amenable to application of valuation discounts and actuarial discounts based on the grantor's age and the term of the trust, and is most beneficial if the property is expected to appreciate in value.
21. **Intentionally Defective Grantor Trusts (IDGTs)** – An irrevocable inter vivos trust created by a grantor for the benefit of beneficiaries other than the grantor that attributes all income tax incidents to the grantor. Typically used where the grantor desires to irrevocably gift the property to the beneficiaries and exclude the property from the grantor's taxable estate for estate tax purposes, but intends that the transfer be ignored for income tax purposes. This type of trust is often used in conjunction with a sale of discounted assets by the grantor to the trust, to avoid capital gain on the sale of the assets.
22. **Donor-advised Fund** – A donor-advised fund is a charitable giving vehicle administered by a third party and created for the purpose of managing charitable donations on behalf of an organization, family, or individual. A donor-advised fund offers the opportunity to create an easy-to-establish, low cost, flexible vehicle for charitable giving as an alternative to direct giving or creating a private foundation. Donors enjoy administrative convenience, cost savings, and tax advantages by conducting their grantmaking through the fund. Because the fund is housed in a public

charity, donors receive the maximum tax deduction available, while avoiding excise taxes and other restrictions imposed on private foundations. Since the maximum tax deduction is received by the donor at the time of the gift, the foundation administering the fund gains full control over the contribution, granting the donor advisory status. As such, they are not legally bound to the donor, but make grants to other public charities upon the donor's recommendation. Most foundations that offer donor advised funds will only make grants from these funds to other public charities, and will usually perform due diligence to verify the grantee's tax-exempt status.

23. **Charitable IRA Rollover** – A charitable IRA rollover is a distribution made by someone age 70½ or older directly from an IRA to a qualified charity. These charitable IRA distributions aren't considered part of adjusted gross income, so they do not trigger income tax. However, the current provision that created this opportunity expired on January 1, 2010. In 2009 someone over 70 ½ could have made a gift to charity from your IRA of up to \$100,000 and not paid income taxes on the distribution. Unfortunately, while there is the definite possibility that the provision will be extended by upcoming legislation, currently it's not possible to make this type of charitable IRA rollover in 2010.
24. **Charitable Remainder Trust (CRT)** – A trust under which a charitable beneficiary receives the remainder of the trust after payment of amounts over time to a non-charitable beneficiary. This type of trust can be used to facilitate diversification of single low-basis stock holdings, and to maximize charitable gifts and deductions, while providing income payments to the grantor.
25. **Charitable Lead Trust (CLT)** – A trust under which a non-charitable beneficiary receives the remainder of the trust after payment of amounts over time to a charitable beneficiary.
26. **Charitable Gift Annuity** – A contract between a donor and a charity, whereby the donor transfers cash or property to the charity in exchange for a partial tax deduction and a lifetime stream of annual income from the charity. When the donor dies, the charity keeps the gift. The amount of the income stream is determined by many factors including the donor's age and the policy of the charity. Most charities use payout rates defined by the American Council on Gift Annuities.
27. **Pooled Income Fund** – These are funds from several donors that are pooled and invested by a charity. Donors get a tax deduction and annual income based on their units of participation in the fund. When a donor dies the portion of the fund assets donated by the deceased go to the charity.
28. **Qualified Conservation Easement** – A conservation easement is an encumbrance — sometimes including a transfer of usage rights (easement) — which creates a legally enforceable land preservation agreement between a landowner and a government agency (municipality, county, state, federal) or a qualified land protection organization (often called a "land trust"), for the purposes of conservation. It restricts real estate

development, commercial and industrial uses, and certain other activities on a property to a mutually agreed upon level. The property remains the private property of the landowner. Landowners who donate a "qualifying" conservation easement to a "qualified" land protection organization under the regulations set forth in 170(h) of the Internal Revenue Code may be eligible for a federal income tax deduction equal to the value of their donation. The value of the easement donation, as determined by a qualified appraiser, equals the difference between the fair market value of the property before and after the easement takes effect.

29. **Private Foundation** – A trust or non-profit corporation that provides for distributions only to charitable recipients during its term. May be a perpetual trust or corporation. In general, all charitable foundations except those deriving substantial support from the public are consider private foundations.
30. **Supporting Organization** – A supporting organization is a tax-exempt charitable organization. The founding individual or institution creates a supporting organization as a charitable trust or nonprofit corporation under state law, and designates one or more public charities, such as a university, symphony orchestra or museum, and identifies them in the organizing instrument as the recipients of the new organization's support. Because the supporting organization is treated as a "public charity," rather than as a private foundation, many of the disadvantages of the private foundation format are absent, and a number of other advantages are created through the use of a supporting organization. Gifts to the supporting organization are deductible up to 50% of adjusted gross income, as is the case for contributions to other public charities. Supporting organizations are frequently created by charitable organizations for purposes of autonomy or limitations on liability. In the case of a supporting organization created by individuals, the organization may be named for the individual or family who creates it. Certain supporting organizations, or distributions to certain supporting organizations, are subject to provisions in the §§4942, 4943, 4945, and 4958 excise taxes. Supporting organizations are not subject to the §4941 excise tax on acts of "self-dealing." Depending upon the structure of the supporting organization, the format can provide the founder and his or her family with opportunities for long-term influence over the management of the charitable assets. Supporting organizations are not common in large part because of the length and complexity of the regulations that the IRS promulgated governing the organization and activities of such institutions.
31. **Irrevocable Life Insurance Trust (ILIT)** – An irrevocable trust designed to hold life insurance policies on the life of the grantor to exclude those policies from the grantor's taxable estate for estate tax purposes. This type of trust typically includes provisions for rights of withdrawal by beneficiaries to qualify premium payments as annual exclusion gifts, as well as provisions for continuing testamentary trusts after the grantor's death for the grantor's spouse, children and other beneficiaries.
32. **Crummey Powers** – Rights of beneficiaries to withdraw contributions of money to an irrevocable trust (often an ILIT). The beneficiaries have a period of time to withdraw the funds once notification from the trustee is given. Use of a Crummey letter

(notification) can avoid certain potential tax problems arising from the gift of a future interest and is a record of the amount of gifts given for purposes of the annual gift tax exemption of \$13,000 per person.

33. **Split Dollar Life Insurance** – A variety of structures for the payment of insurance premiums on life insurance. In the employment context, split-dollar arrangement is generally defined as a sharing of the costs and benefits of a life insurance policy between an employer and an employee (and his or her beneficiaries) while the employer provides the employee with life insurance protection for his or her family, as a part of an employee benefit plan. Economically, the employer is advancing the premiums due on a permanent policy insuring the employee (or someone selected by the employee), for the benefit of the employee's (or the insured's) named beneficiary(ies) or for the policy owner(s). The employer's advances are returned, without interest, at the insured's death out of the death proceeds of the policy or upon earlier termination of the arrangement during the insured's lifetime out of the policy's cash value. Over time, split dollar use has broadened to situations outside of the employment concept.
34. **Private Premium Financing** – The concept of loaning money to the owner of a life insurance policy for the purpose of financing the payment of premiums.
35. **Medicaid Planning** – A medical insurance program funded by state and federal funds, whose benefits are based on need. Medicaid is often used to pay for nursing home and rest home care.
36. **Exempt Assets** – Exempt assets are not counted as resources in determining whether an applicant is eligible to receive Medicaid.
37. **Allowable Transfers** – In general, transfers of real or personal property by an applicant in return for money, goods, or services equal to or greater than the applicant's equity in the transferred asset are not subject to sanctions. In addition, certain transfers in special situations are not subject to sanctions (e.g., transfer of personal residence to spouse or disabled child).
38. **Retained Life Estate** – While a home is an exempt asset, if it is in the Medicaid recipient's estate at the time of his or her death, the state may recover the benefits it paid for the care of the Medicaid recipient by making a claim against the home. On the other hand, a "life estate" is not currently included in the recoverable estate. A "life estate" is an interest allowing an individual to use real estate during his or her lifetime. The life estate holder possesses the property and practically serves as owner, paying all taxes, insurance, and regular maintenance of the property. The benefit of the life estate interest is the security it gives to a donor who wishes to continue using the property he or she has gifted. Life estate interests are excluded in determining Medicaid eligibility. However, a gratuitous transfer of property and retention of a life estate is a sanctionable transfer that will trigger a penalty if it occurred during the applicable look-back period.

39. **Medicaid Annuities** – Annuities are used in transactions to artificially impoverish a Medicaid applicant. In order to discourage the use of annuities to shelter funds, legislation now requires applicants to (1) name the State as remainder beneficiary, or secondary beneficiary where there is a community spouse or minor, for an amount at least equal to the amount of the Medicaid benefits provided; and (2) purchase such annuity as part of a bona fide retirement plan or be irrevocable, non-assignable, actuarially sound, and provide for equal monthly payments.
40. **Sanctionable Transfers** – A transfer that is not allowable and that would create a penalty period if made during the "look back period". The "look back period" is the period of time a state will review for gifts or transfers of assets for people applying for Medicaid. The time period is currently 60 months. A person may be ineligible for Medicaid if assets have been given away or transferred during this period.
41. **Spousal Special Needs Trust** – A type of trust set up in the will of a spouse to provide a benefit to the surviving spouse in a way that will not disqualify the surviving spouse from qualifying for Medicaid.