

# INTRODUCTION

- **Three factors:**
  - **Family consequences**
  - **Business consequences**
  - **Tax consequences**
- **The examples are offered only to demonstrate the purpose and conceptual use of various *tools*.**

# JOINT OWNERSHIP

- Tenancy by the Entirety
- Joint tenancy with the right of survivorship
- Tenancy in common
  
- There is a difference between the “estate for probate purposes” and the “estate for tax purposes.”

# TESTATE VS. INTESTATE

- “Testate” means dying with a will.
- “Intestate” means dying without a will.

# PROBATE

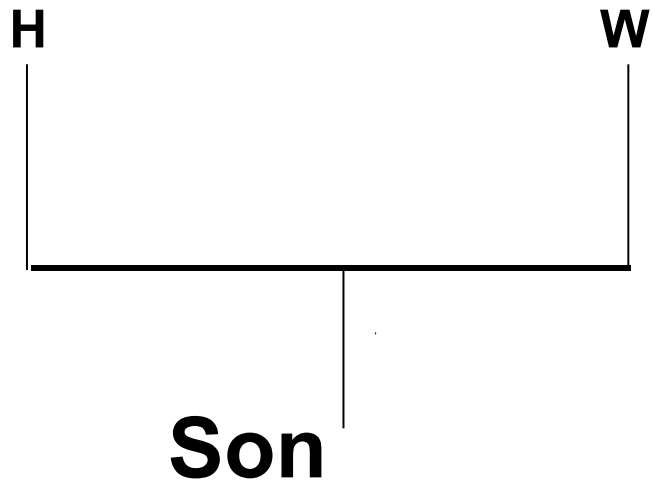
- Probate is a process
- The personal representative
  - Collects the assets,
  - Pays the bills, and
  - Passes out what is left.

# EXAMPLE 1

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# **CURRENT SITUATION:**

## **EXAMPLE 1**

- **Husband and Wife own several tracts as tenants by the entirety, no liens**
- **Equipment, no titles, no liens**
- **Business is sole proprietorship**
- **Value is under \$2,000,000**
- **Husband and Wife have no will**
- **One Son, who wants to take over and is capable.**
- **Husband and Wife want Son to have business, equipment and land.**

# BASIC “SIMPLE” WILL

- All property to spouse.
- If spouse is deceased, all to children.
- If a child is deceased, to grandchildren.
- Minor’s interest into a trust.

# POWER OF ATTORNEY

- Permission to use the Grantor's signature.
  - Limited
  - General
  - Terminates automatically upon the Grantor's death.

# BASIC TRUST

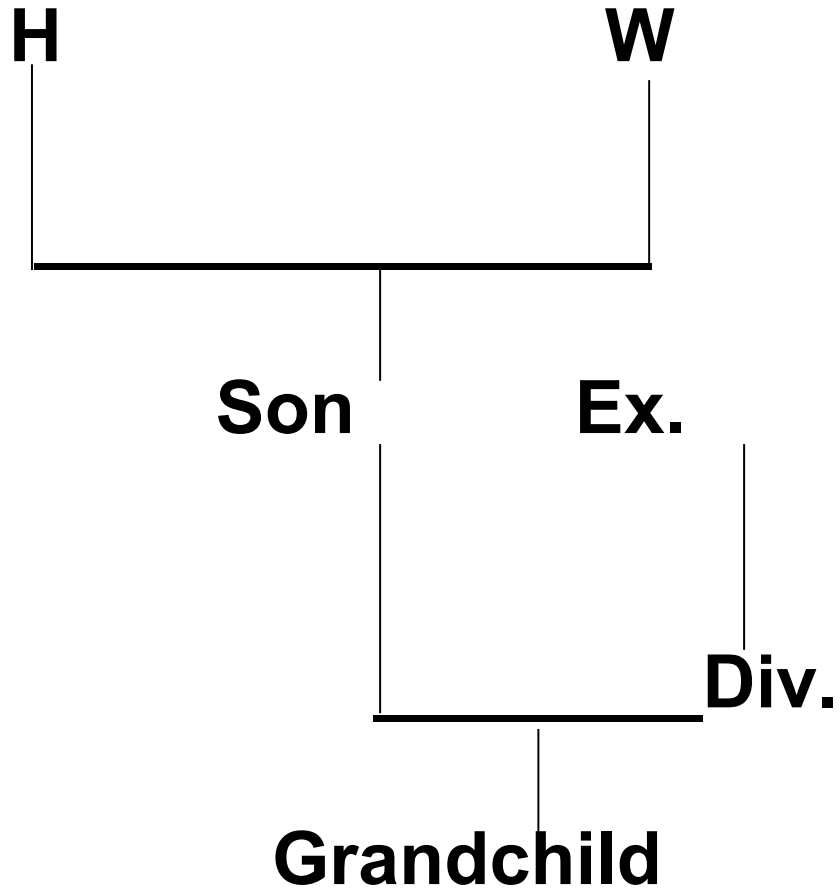
- A trust is an agreement between three people.
  - Grantor
  - Trustee
  - Beneficiary
  - A Trust has instructions
- Selection of the proper trustee is critical

# REVOCAABLE LIVING TRUST

- The Grantor (you) gives property to the Trustee (also you) to take care of the Beneficiary (you again).
- If the Trustee (you) becomes mentally incompetent, the Successor Trustee takes over.
- If the Beneficiary dies (you), the Successor Trustee distributes the Trust property as the Grantor (you) directed.
- The work required for a Revocable Living Trust is almost identical to that required to probate a will.
- With a Revocable Living Trust, the owner does most of the work before he/she dies.
- With a will, the Personal Representative does most of the work after the person dies.

# EXAMPLE 2

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# CURRENT SITUATION:

## EXAMPLE 2

- Husband and Wife own several tracts as tenants by the entirety, no liens
- Equipment, no titles, no liens
- Business is sole proprietorship
- Value is under \$2,000,000
- One Son, who wants to take over and is capable.
- Husband and Wife want Son to have business, equipment and land.
- Husband and Wife have no will.
- **Son is divorced and has minor child.**

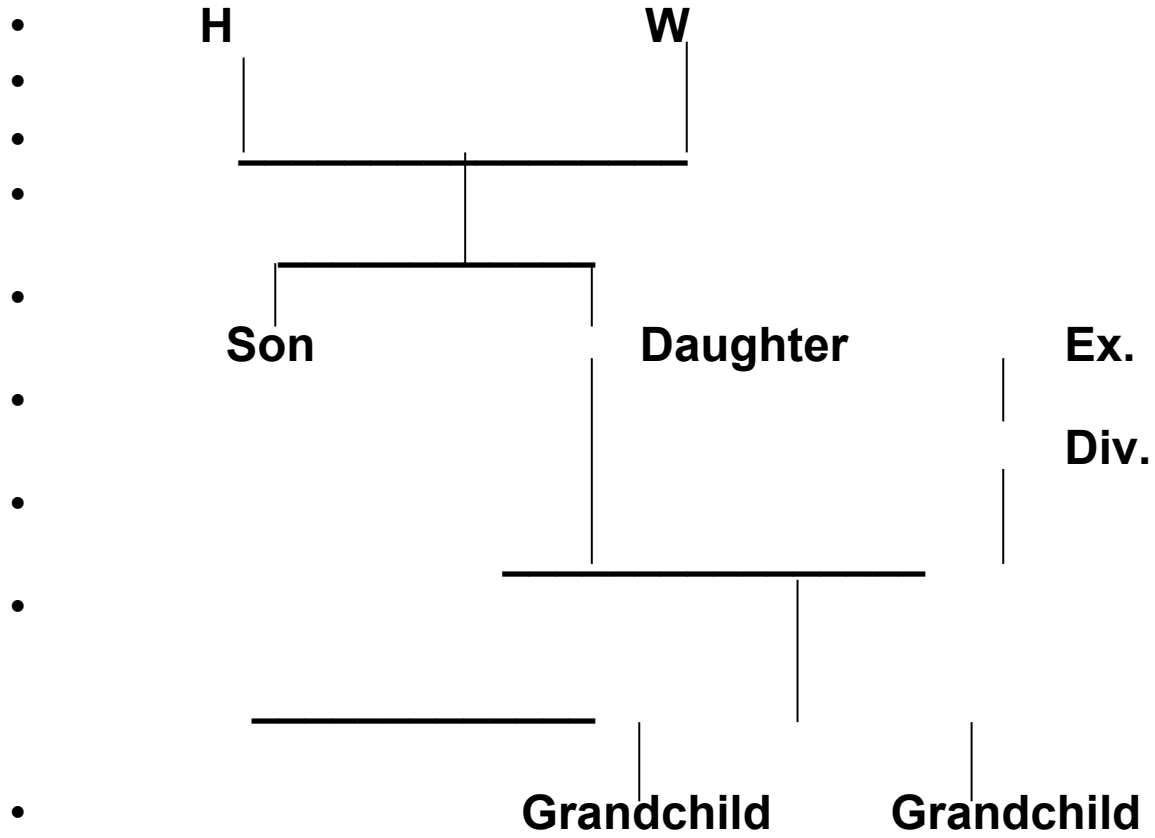
# BUSINESS ENTITIES

- Sole Proprietor
  - One person
  - Full, unlimited liability
- Partnership
  - All partners fully liable for the acts of the other partners
  - Partners can force their way out
- Limited Partnership
  - General partners are fully liable
  - Limited partners are not liable if they stay inactive
  - General partners can force their way out
  - Limited partners can get out as the written partnership agreement allows
- Corporation
  - Stockholders have limited liability
  - Corporation is controlled by the majority
  - Minority stockholders usually cannot get out
- LLC – Limited Liability Company
  - Owners have limited liability
  - Owners can force their way out

# AGENCY

- Wrongdoer never escapes liability
- Employer is liable for his employee's negligence occurring while acting within the scope of his employment

# EXAMPLE 3



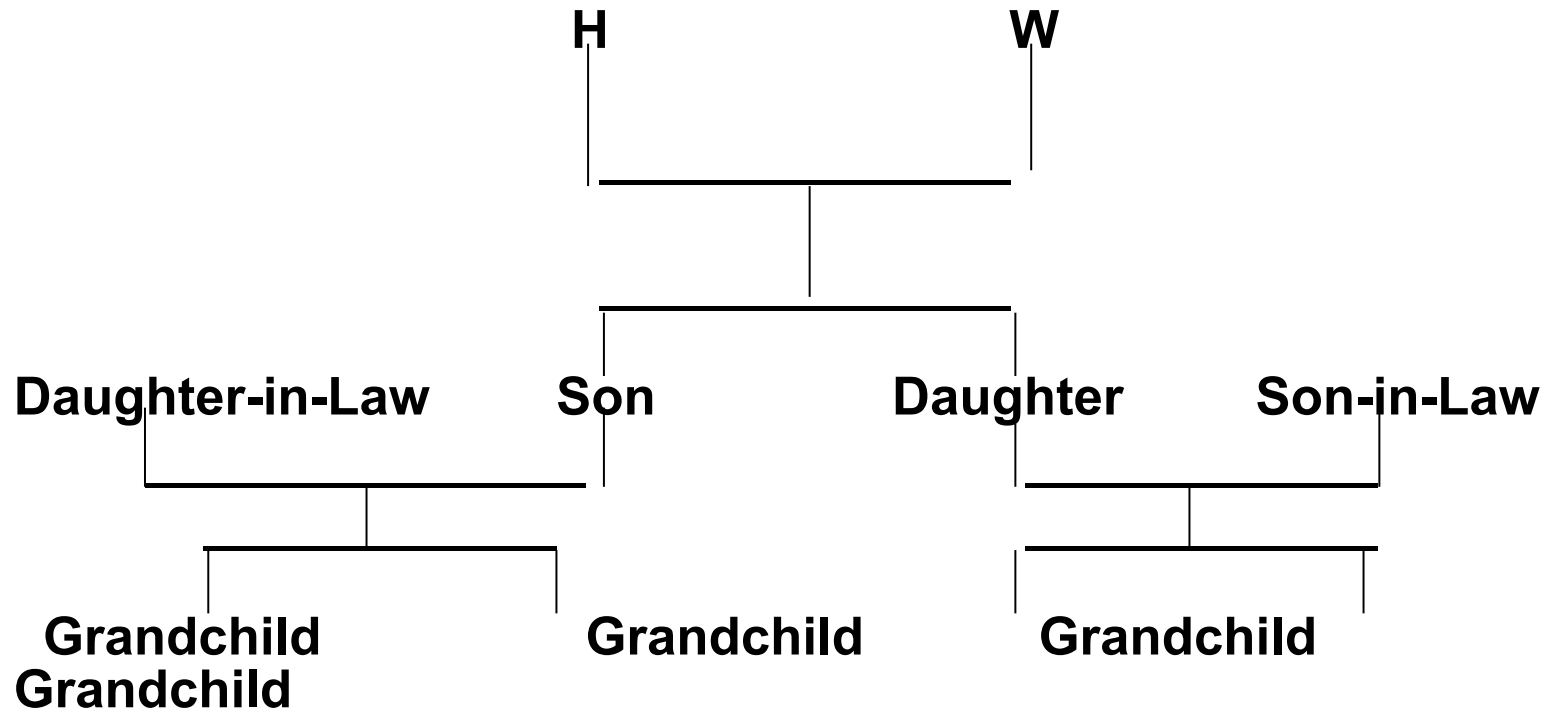
# CURRENT SITUATION:

## EXAMPLE 3

- Husband and Wife own several tracts as tenants by the entirety, no liens
- Equipment, no titles, no liens
- Business is sole proprietorship
- Value is under \$2,000,000
- Husband and Wife have no will.
- **One Son, who wants to take over and is capable.**
- **One Daughter, who does not want to take over, but has two children in college and needs cash now.**

# EXAMPLE 4

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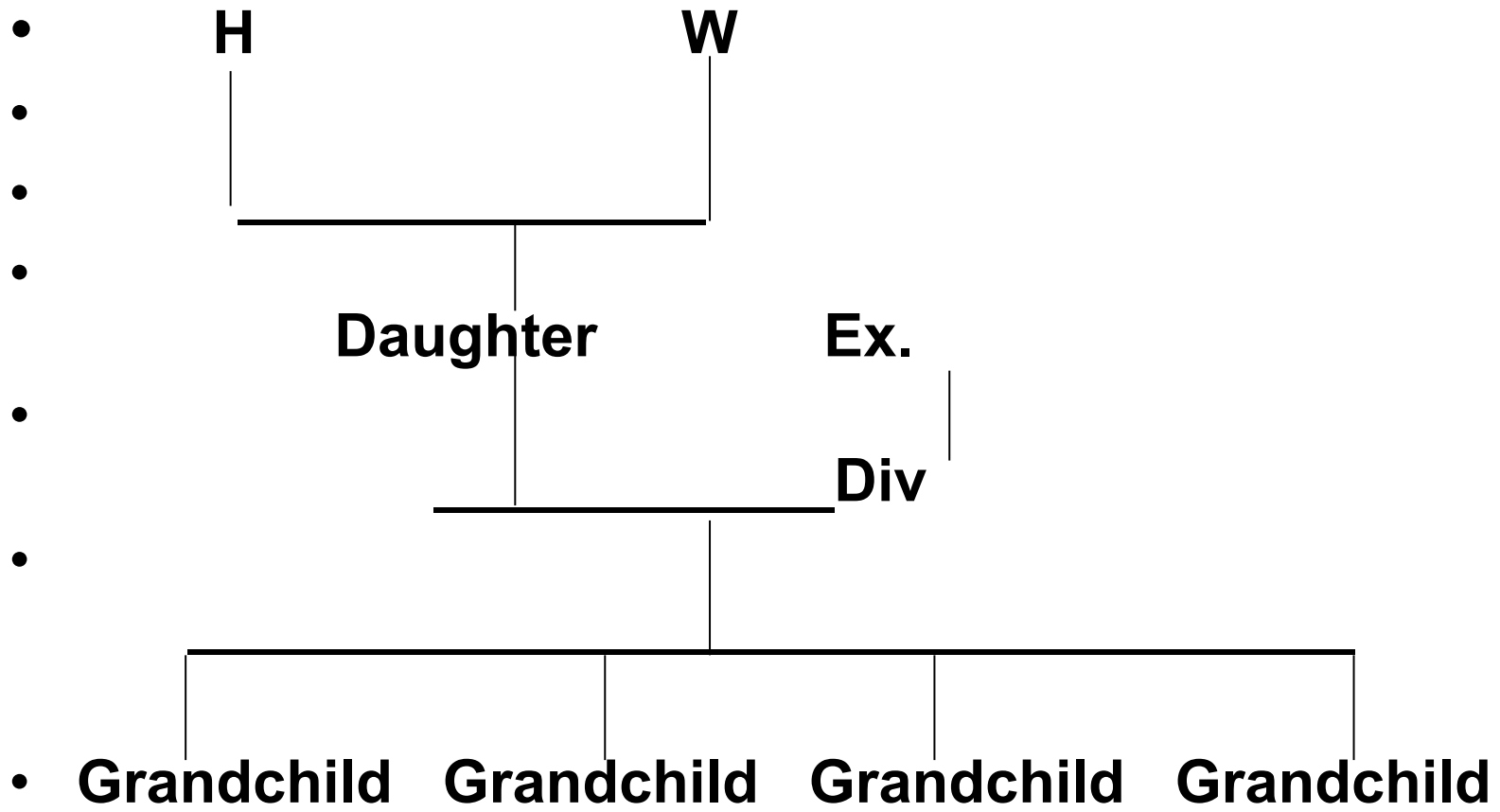


# CURRENT SITUATION:

## EXAMPLE 4

- Husband and Wife own several tracts as tenants by the entirety, no liens
- Equipment, no titles, no liens
- Business is sole proprietorship
- Value is under \$2,000,000
- Husband and Wife have no will.
- **One Son, who is “having some problems”, age 40, can’t keep a job, can’t handle money, has kids and can’t keep them fed.**
- **One Daughter, who wants to take over and is capable.**

# EXAMPLE 5



# CURRENT SITUATION:

## EXAMPLE 5

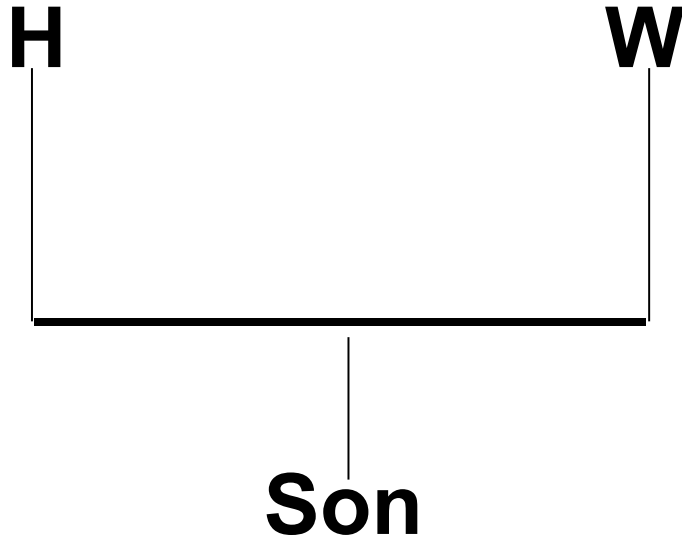
- Husband and Wife own several tracts as tenants by the entirety, no liens
- Equipment, no titles, no liens
- Business is sole proprietorship
- Value is under \$2,000,000
- Husband and Wife have no will.
- **One Daughter, divorced, raising four children on her own. Receives no support from ex. Does not have the time or the capability of running the business, but needs income.**
- **Husband and Wife want to “keep the land in the family”.**
- **Given the limited local opportunities, the current best security for everybody is to keep the business operating.**

# ESTATE TAX

- Future effect of federal estate and gift tax is uncertain at best
- “...the discussions in the following paragraphs (of the book) will apply only to the estates of decedents dying, or gifts made, before January 1, 2011.

# EXAMPLE 6

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# CURRENT SITUATION:

## EXAMPLE 6

- Husband and Wife own several tracts as tenants by the entirety, no liens
- Equipment, no titles, no liens
- Business is sole proprietorship
- **Value is above \$3,500,000**
- Husband and Wife have no will
- One Son, who wants to take over and is capable
- Husband and Wife want Son to have business, equipment and land

# STEPPED UP “BASIS”

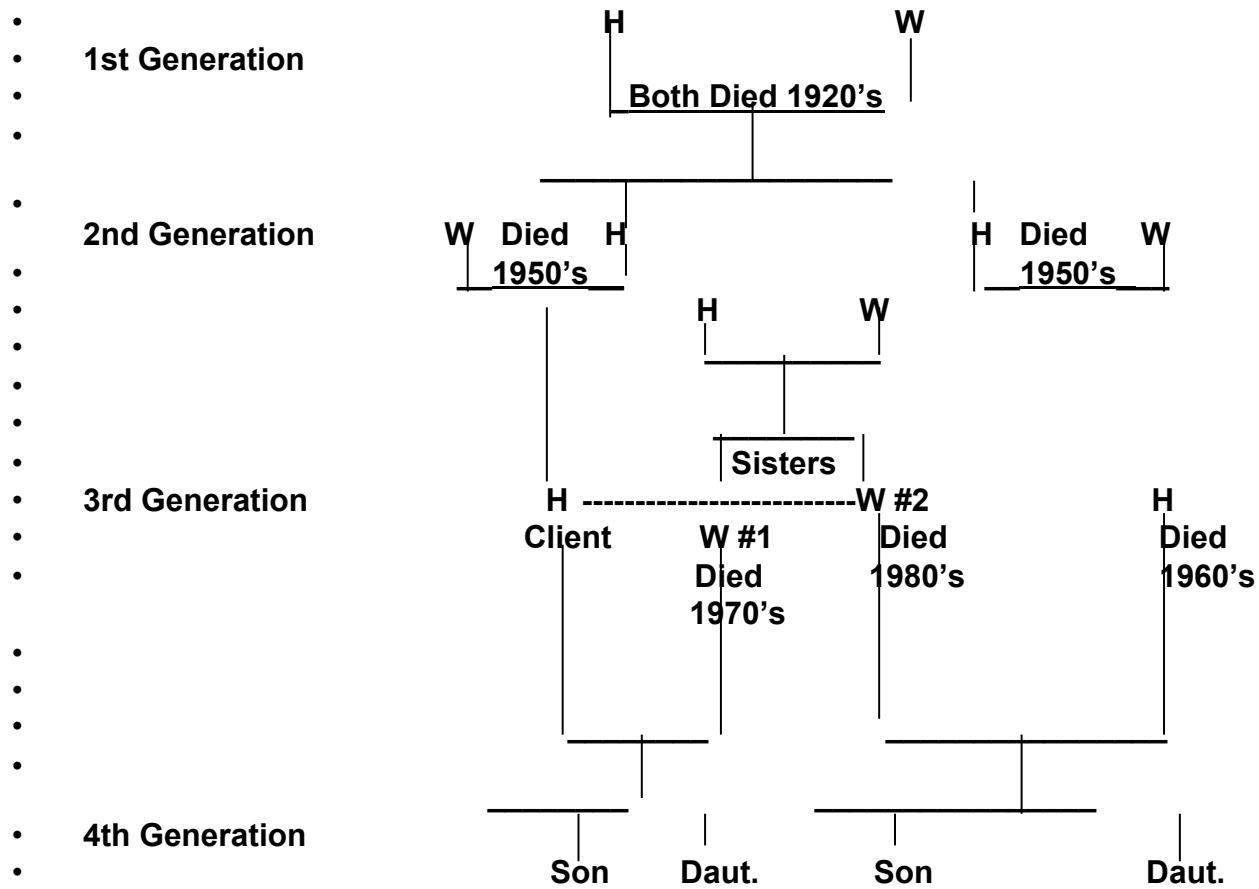
- “Basis” describes what is subtracted from the sales price of your property
- If sold while you are living, you pay tax on the “gain”
- If sold shortly after your death, your “basis” changes and you pay no tax

# EXAMPLE 7 (Actual Case)

- Husband owned several parcels of land in his name alone.
- One lot had a building that was leased out as a body shop.
- The body shop Tenant wanted to immediately install a \$300,000 paint room, but only if he could buy the lot and building.
- The Husband decided to sell and the parties agreed on the sales price. He was willing to pay capital gains tax.
- Then Husband discovered he had inoperable brain cancer and was terminal.

# EXAMPLE 8

## SECOND FAMILY (ACTUAL CASE)



# EXAMPLE 8 (ACTUAL CASE)

## CURRENT SITUATION

- By 1950's client had inherited from his father and uncle approximately 5,000 acres, now held in his name alone, at a very low tax basis.
- Client and first Wife had two children, first Wife died in the 1970's.
- Client then married second Wife, who happened to be the sister of first Wife.
- Second Wife had two children by a prior marriage.
- Client and second Wife raised the four children as their own, but there were many "problems".
- Children of the first marriage "never quite got along" with their cousins.
- Second Wife died in 1980's.
- By 2002, Client had two natural children and two stepchildren who were also his niece and nephew. He was close to all four and all four thought of him as "father".
- Of the four, only the Son of the first marriage wanted the timberland and knew how to take care of it.
- The other three had no interest whatsoever in the property.
- The client's question was, "What do I do?"

# WHAT SHOULD YOU DO?

- Set your priorities
- Decide what your goals are
- Then select the tools
- Do the “dirty work” now
- Remember: The plan is just that.....A plan.
- If you do anything at all, your family and business will be better off than they are now