

# Planning for Your Estate & Business Succession



# Estate & Business Succession Planning

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# Protect Your Legacy

We've found that most people have only scratched the surface of their true estate and legacy planning needs.

## Why Create an Estate Plan?

### PROPER ESTATE PLANNING CAN:

- Ensure financial security for you and your family during your lifetime and after your death.
- Make certain your estate is passed on – intact – to your heirs and according to your wishes.
- Reduce or eliminate taxes, administrative expenses, and delays in connection with the transfer of your estate.
- Provide liquidity to cover taxes, debts, and expenses you may owe.
- Provide the peace of mind that comes with knowing steps have been taken to protect the people who depend on you and everything you've worked a lifetime to build.

### WITHOUT AN ESTATE PLAN:

- State law will determine who inherits your assets — even if it means they pass to distant relatives or to children who lack the maturity to properly care for them.
- The court appoints administrators whose management style and priorities may not be compatible with your desires.
- You may pay unnecessary taxes and expenses.
- The court appoints a guardian for your children.
- Your family could be forced to sell your assets at less than market value to pay the estate taxes you owe.

# Wealth Transfer Costs

Without an estate plan, there can be additional or unnecessary costs associated with transferring wealth.

## PROFESSIONAL FEES AND PROBATE COSTS

Legal fees, accounting fees, and probate costs can deplete your estate, particularly if your estate is contested amongst heirs (as may be the case in an intestacy situation, where there is no valid will or binding declaration).

## INCOME TAXES

Most assets receive a step-up in basis at death. Please note, some qualified accounts (IRAs, 401(k)s, for example), and annuities are subject to ordinary income tax after death.

## GIFT AND ESTATE TAXES

For individuals with substantial wealth, federal estate taxes will take the largest chunk out of their estate. Each person subject to the estate tax has the ability to transfer a certain amount of property, during life or at death, without incurring any gift or estate taxes. This amount is commonly referred to as the “lifetime exemption.” Transfers made during life or at death in excess of this exemption are taxable at a rate of 40%.

As part of the Tax Cuts and Jobs Act of 2017, the lifetime exemption increased from \$5 million (indexed for inflation) to \$10 million (also indexed for inflation) — the exemption for 2019 is \$11.4 million. Note that this increase is scheduled to expire after December 31, 2025, and will revert to a \$5 million exemption level, taking into account inflation adjustments from 2011 – 2025.

## STATE ESTATE AND INHERITANCE TAXES

In addition to federal estate taxes, each state has its own estate and inheritance laws. Currently, 12 states and the District of Columbia levy an estate tax separate from the federal estate tax. In addition, several states levy an inheritance tax in conjunction with, or as an alternative to, a state-level estate tax. State estate and inheritance tax rates can go as high as 20% and can vary depending upon the state, the size of the estate, and the beneficiaries of the estate. The amount exempt from state estate and inheritances taxes also varies by state law, and several states have much lower exemptions than the current federal rates.

## GENERATION-SKIPPING TRANSFER TAX

In addition to gift and estate taxes, another tax to consider is the generation-skipping transfer (GST) tax, which imposes a tax on transfers to persons two or more generations below the transferor (“skip-persons”), including transfers from grandparents directly to grandchildren. The GST tax also affects transfers to, and distributions from, certain trusts.

Similar to the lifetime exemption, a GST tax exemption exists to shelter transfers to skip-persons from tax. The GST tax exemption is currently \$10 million, indexed each year for inflation (\$11.4 million in 2019). This amount is also scheduled to be reduced to \$5 million, indexed for inflation, after 2025. Transfers that exceed the GST tax exemption are taxed at a flat 40% rate.

For individuals with substantial wealth, federal estate taxes will take the largest chunk out of their estate. Each person subject to the estate tax has the ability to transfer a certain amount of property, during life or at death, without incurring any gift or estate taxes.

# Basic Estate Planning Tools

An effective estate plan should seek to minimize transfer costs and ensure liquidity to pay the costs that arise at your death. There are numerous non-estate tax reasons for estate planning as well. A basic understanding of the tools available can help to ensure that your estate is distributed and administered in the most efficient manner possible.

## LAST WILL AND TESTAMENT

Your will is an important document that contains your instructions on who will receive your assets. Without a will, state law dictates to whom a decedent's property will pass. Your will can also establish who the executor of your estate will be (the person who administers your estate), and who will serve as guardians of your minor children (if applicable). A will does not typically affect the transfer of assets that are held jointly, or contracts that have beneficiary designations, such as life insurance, annuities, and retirement benefits. Assets passing under a will must be transferred through the probate process.

## LIVING WILL/HEALTH CARE PROXY

A living will is a document that provides instructions for your family members and doctors regarding the type of medical care you do (or do not) want if you are no longer able to express informed consent. A living will becomes effective only when you are incapacitated and unable to make your own medical decisions. Some states also allow you to create a power of attorney for health care, also known as a health care proxy, to appoint another individual to make health care decisions on your behalf if you are incapacitated.

Often overlooked, your child(ren) should also execute a health care proxy upon turning eighteen. The Health Insurance Portability Accountability Act (HIPAA) provides safeguards to protect the privacy of personal health information. Thus, physicians and nurses are hesitant to discuss the medical condition of an adult with anyone who has not been authorized, in writing, to receive this information.

## DURABLE POWER OF ATTORNEY

A durable power of attorney is a document that authorizes one or more persons to act on your behalf if you are not able to act on financial, legal, and administrative matters yourself. A durable power of attorney can enable your family members to manage your affairs, without having a guardian or conservator appointed by a probate court. There are significant legal, administrative, privacy, and cost benefits to executing a durable power of attorney, which will take effect if you are absent or mentally incapacitated.

## REVOCABLE TRUSTS<sup>1</sup>

A trust is legal structure that allows a fiduciary (a "trustee") to hold a property right for a beneficiary. Trusts can be revocable or irrevocable. A revocable trust (or a "living trust") allows the trust creator (the "grantor") to make changes to or revoke the trust. Because there is no loss of control for tax purposes, a revocable trust is treated as still belonging to the grantor. Assets in a revocable trust are considered part of the grantor's estate. Revocable trusts become irrevocable upon the death of the grantor.

Revocable trusts are a commonly used estate planning tool because assets owned in a revocable trust avoid probate, often allowing beneficiaries to receive assets more quickly while affording the grantor's estate more privacy. Revocable trusts also allow for individuals to control how their wealth is managed and distributed during life (such as during incapacity) as well as control the timing and manner of distributions after death.

## IRREVOCABLE TRUSTS

An irrevocable trust is a trust whereby the grantor has given up all rights to revoke or amend the trust. When properly drafted and administered, property transferred to an irrevocable trust during life is removed from the grantor's estate for estate tax purposes.

In addition to estate tax exclusion, the irrevocable trust structure has many distinct benefits, including:

- Enhanced privacy: Unlike wills, which can be viewed by the public after death, trusts are not a matter of public record.
- Ongoing control over the distribution of assets.
- The ability to hold various assets, including cash, bonds, and life insurance.
- Protection from creditors of the grantor and of the beneficiaries.
- The ability to last for many years (or in perpetuity, depending on state law).

# Marital Planning Considerations

Special estate planning techniques are available to married couples.

## UNLIMITED MARITAL DEDUCTION

If you are married, you may transfer unlimited assets to your spouse, during your lifetime or at death, without any federal estate or gift tax liability. This is known as the “unlimited marital deduction.” Note that if your spouse is not a United States citizen, other restrictions apply. You can take advantage of the marital deduction by making an outright gift to your spouse or by using a marital trust. A qualified terminable interest property (QTIP) trust is a common type of marital trust that lets you determine the final trust beneficiaries after your spouse dies. However, because marital deduction property is subject to estate taxes at the death of the surviving spouse, you may need to use other tax-saving techniques as well.

## PORTABILITY

A portability election allows a surviving spouse to use a deceased spouse’s unused federal lifetime exemption. If portability has been elected upon the first spouse’s death, the surviving spouse’s total exclusion from gift and estate taxes will equal their remaining exemption plus the deceased spouse’s unused exemption amount (“frozen” as of the date of death). As long as certain formalities are followed, portability is a simple and effective way to ensure that both spouses’ estate tax exclusions are fully utilized, effectively allowing a married couple to shelter \$22,800,000<sup>2</sup> (in 2019) from estate taxes.<sup>3</sup> Note: There is no portability for purposes of the GST tax.

## CREDIT SHELTER TRUST

A credit shelter trust (also called a “bypass trust” or a “B trust”) is a trust funded with the remainder of a decedent’s unused lifetime exemption and usually benefits the decedent’s surviving spouse and children. Typically, this kind of trust is drafted to ensure that the amounts transferred remain outside of the surviving spouse’s and/or children’s estate to avoid further estate taxes in the future.

Although portability has reduced the need for traditional credit shelter trusts, these trusts are still a valuable and necessary estate planning tool in many cases. The trust structure allows for greater control over the disposition of assets and allows assets to appreciate outside of the surviving spouse’s taxable estate. Because portability does not apply for GST tax purposes, use of a credit shelter trust may be important to preserve GST tax exemption. (See page 9 on dynasty trusts for more information.)

If a credit shelter trust will be utilized, married couples should consider titling assets in a way that equalizes individual ownership between spouses so that both spouses can fully use their applicable exclusion amounts, regardless of who dies first.

If you are married, you may transfer unlimited assets to your spouse, during your lifetime or at death, without any federal estate or gift tax liability. This is known as the “unlimited marital deduction.” Note that if your spouse is not a United States citizen, other restrictions apply.



# Estate Planning Through Gifting

Gifting during your life can remove assets and their future appreciation from your estate, and help you establish a legacy. When deciding which assets to give away, you should generally choose assets that you believe will appreciate over time, and/or assets that can be given away at a discounted gift tax value. However, with the higher federal estate tax exemption amount and the “step-up” cost basis rules, it may be advantageous to personally own assets at your death. “Capital gain” assets that are owned by you at your death receive a step-up in cost basis to the asset’s current fair market value. If the asset is transferred prior to your death, the asset may not be eligible for a step-up in cost basis. If you have substantial low-cost basis assets, it may make sense to retain ownership of these assets until death in order to minimize the impact of capital gains tax if the asset is later sold by your heirs.

## ANNUAL EXCLUSIONS GIFTS

You can gift up to \$15,000 in cash or other assets each year to as many individuals as you wish without paying any federal gift taxes.<sup>4</sup> If both spouses use their annual exclusions, a married couple can transfer \$30,000 per year to each recipient. An annual gift-giving strategy may help to reduce your total estate tax liability.

## TRUSTS WITH CRUMMEY POWERS

Gifts to a trust can qualify for the annual gift tax exclusion if the trust provides its beneficiaries with the right to withdraw gifts from the trust for a certain time after the gifts are made. These withdrawal powers are known as Crummey powers. Crummey trusts can also be established to benefit minors and to provide for their future expenses, such as education.

## LIFETIME EXEMPTION GIFTS

In addition to annual exclusion gifts, transfers made during life up to the lifetime exemption amount (\$11.4 million in 2019) do not result in any gift tax being due. Because the lifetime exemption amount is indexed annually for inflation, consider gifting the increases as they occur.

## GIFTS PAID DIRECTLY TO MEDICAL OR EDUCATION PROVIDERS

If you are interested in paying certain educational or medical expenses on behalf of another individual, such as a child or grandchild, consider paying the provider directly. Qualifying payments do not count against the annual gift tax exclusion or your applicable exclusion amount, and they are not subject to gift tax or GST tax.

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## Irrevocable Life Insurance Trusts

An irrevocable life insurance trust (ILIT) is an irrevocable trust that contains provisions specifically designed to facilitate the ownership of one or more life insurance policies. The ILIT is both the owner and the beneficiary of the life insurance policies, typically insuring the life of the grantor. If the trust is structured and managed properly, the life insurance death benefit received by the ILIT will not be subject to income tax or estate tax.<sup>5</sup>

When funded with life insurance, an ILIT can help:

- Provide cash for your beneficiaries, usually free of income and estate taxes, to pay estate taxes and other transfer costs
- Create a pool of assets to increase your beneficiaries' total inheritance
- Protect the trust assets from your beneficiaries' creditors
- Provide for the effective management of assets after your death
- Take advantage of the annual gift tax exclusion
- Effectively leverage your GST tax exemption
- Provide liquidity for estate equalization among heirs, especially when the estate is made up of assets that may be hard to divide, such as business interests, real estate, art, or other collectibles

### ILIT TRUSTEE

The trustee of an ILIT can generally be anyone other than the insured, although naming an "independent trustee" may offer greater flexibility for distribution of trust assets. If a trust beneficiary is also a trustee, distributions should generally be subject to an "ascertainable standard" such as health, education, maintenance, or support.



# Adding Flexibility and Longevity to Irrevocable Trusts

## DYNASTY TRUSTS

A dynasty trust is a long-term trust created to maximize the transfer of wealth from generation to generation while minimizing (or eliminating) the impact of the GST tax and estate tax. To minimize or eliminate continual exposure to estate and GST tax, a dynasty trust generally provides beneficiaries with access to the trust assets (such as for health, education, maintenance, and support) with no set date for termination. Accordingly, dynasty trusts are meant to last for as many generations as is allowed under state law.<sup>6</sup> (See page 4 for more information on the GST tax.)

**Given how high the current GST tax exemption is (\$11.4M in 2019), funding a dynasty trust with this increased exemption presents a tremendous multigenerational tax planning opportunity.<sup>7</sup>**

## SPOUSAL LIFETIME ACCESS TRUSTS

A spousal lifetime access trust (SLAT) is a type of ILIT that names the grantor's spouse as a beneficiary of the trust, thus providing the spouse with access to trust assets, including life insurance cash value if applicable. If drafted and administered properly, an ILIT with SLAT language will not cause inclusion in either spouse's estate. ILITs with SLAT provisions provide an enhanced level of control and flexibility over the assets because the trustee can make distributions to the spouse should the spouse need access to the trust funds in the future.

A SLAT can be set up using either a single life or a survivorship life insurance policy. It can be a good way to supplement retirement income or provide emergency cash while getting the benefits of owning life insurance inside an irrevocable trust. A SLAT can also be a way to hedge against the possibility of tax law changes by providing financial security for your family through the ILIT, as well as offering increased flexibility and indirect access to trust assets.

## GRANTOR TRUSTS

A grantor trust – also commonly referred to as an “intentionally defective grantor trust” (IDGT) – is a type of irrevocable trust that contains certain provisions or powers that cause the grantor of the trust to be treated as the owner of the trust assets, but only for income tax purposes. For estate tax purposes, assets held inside the trust remain outside of the grantor's taxable estate. Consequently, the trust is referred to as being “defective” because the grantor must pay all income taxes associated with trust assets even though the grantor does not actually own these assets or control them.

A grantor trust, in addition to owning life insurance, can also own income-producing assets such as stock or real estate. The income generated by the assets will be taxed at the grantor's income tax rate, which is typically lower than the trust's income tax rate. Moreover, because the trust income is attributed to the grantor individually, rather than to the trust, no trust assets need to be spent to pay income taxes, which can allow them to grow more rapidly inside of the trust.

A grantor trust can incorporate one or more of these special provisions to meet a client's needs. For example, a particular ILIT could be structured as an intentionally defective grantor trust with both spousal access and dynasty trust provisions.



## Sophisticated Planning Options

### **FAMILY LIMITED PARTNERSHIPS**

You can use a family limited partnership (FLP) or a limited liability company (LLC) to consolidate ownership and management of family assets and shift income or appreciation to other family members. These entities allow parents to make discounted gifts of limited partnership interests to children and grandchildren, or to trusts for their benefit, without surrendering control of a business or property. Such gifts may qualify for valuation discounts because they are not marketable assets and are often minority interests subject to transfer restrictions.

### **GRANTOR RETAINED ANNUITY TRUSTS**

A grantor retained annuity trust (GRAT) is a sophisticated estate planning tool that can help you reduce or avoid gift and estate taxes on certain assets. A GRAT is an irrevocable trust into which you transfer assets, such as stocks, to an irrevocable trust and retain a right to receive an annual annuity payment from the trust. The annuity payment is calculated using an interest rate determined monthly by the IRS known as the 7520 rate. At the end of the trust term, all other assets and any appreciation on those assets remain in the trust for the benefit of the trust beneficiaries.

With a GRAT, because you have retained an interest in the trust assets, there may be a substantial gift tax discount on the original transfer to the trust. Any appreciation on the trust assets that occurs during the trust term will also pass to the beneficiaries, free of additional estate or gift tax. However, if you die during the term of the GRAT, its value will be included in your gross estate for estate tax purposes. Life insurance can help offset this potential increase in estate tax.

## **QUALIFIED PERSONAL RESIDENCE TRUST**

Qualified personal residence trusts (QPRTs) function similarly to GRATs, except that the asset you transfer into the trust is a qualifying personal residence or vacation home. You retain the right to live in the residence for a specific number of years. If you survive the trust term, the ownership of the residence passes to your beneficiaries at the end of the term, free of additional gift or estate tax. Note: The QPRT may be drafted to permit the grantor to continue to occupy the property after the term of the trust expires in return for payments of market rent to the QPRT.

Similar to a GRAT, a gift tax discount on the original transfer to the trust may be available. If you outlive the QPRT term, the residence and all appreciation will pass to the trust beneficiaries free of additional estate or gift tax.

## **PRIVATE LOAN TO A TRUST**

In lieu of making gifts to a trust, entering into a private finance arrangement with your ILIT can be an efficient way to fund an irrevocable trust using little to no gifting. Under a private financing arrangement, you loan cash to your trust in exchange for a promissory note with interest charged at or above the applicable federal rate (AFR). Your ILIT trustee can then use the borrowed funds to purchase life insurance or other assets in the trust as well as repay the interest due on the note. At the end of the loan term, the trust repays the debt using assets held in the trust and all remaining assets will be retained in the trust and appreciate out of your taxable estate.

## **SALE TO AN INTENTIONALLY DEFECTIVE GRANTOR TRUST <sup>8</sup>**

Another effective technique to remove assets from your estate using minimal gifting is by selling an asset to an intentionally defective grantor trust (IDGT). In this technique, you will make an initial “seed” gift to an irrevocable trust with grantor trust provisions (usually the gift is at least 10% of the value of the assets that will be sold). Afterwards, you will then sell assets to the trust in exchange for a promissory note bearing an interest rate at or above the AFR. Once the asset is in the trust, all appreciation and income stays (and grows) in the trust for the benefit of the trust beneficiaries and is removed from your estate. By selling the asset, you are able to “freeze” the value of the asset in your estate and move the appreciation of the asset outside of your estate with minimal gifting required. Moreover, because the trust is a grantor trust and you are responsible for paying the income taxes for the trust each year, assets within the trust can accumulate and compound at a faster rate.

The trustee may use some of the seed gift and/or income generated off the asset to purchase a life insurance policy on your life to provide additional leverage or liquidity to help repay the note. Trust income can also be used to pay the interest on the note each year and may help with repaying the principal on the promissory note prior to death. Income-producing assets, such as commercial real estate, securities, or limited partnership interests, and assets that are expected to appreciate are ideal for this technique.

## **SPLIT-DOLLAR ARRANGEMENTS**

A split-dollar arrangement is a plan in which a permanent life insurance policy’s premiums, cash value, and death benefit are split between two parties — usually the grantor of the trust and the trust itself. One of the greatest benefits of this type of split arrangement is the opportunity for you to fund a permanent life insurance policy outside of your taxable estate while minimizing exposure for gift and GST taxes. As part of the arrangement, the trust generally will be required to repay you (or your estate) some portion of the death benefit, usually equal to premiums paid, or in some cases, cash value; however the excess death benefit will be held in trust for the benefit of your family and will generally be received income and estate-tax free.

This technique offers the opportunity to fund significant amounts of life insurance outside the estate with very minimal use of gifting when compared to making gifts of the full premium to the trust each year.





## Estate Planning and the Family Business

If you own a family business, coordinating your estate planning and business planning is critical. Because many business owners fail to plan for the future, only 30% of family businesses make a successful transition to the next generation.<sup>9</sup>

### **PLAN FOR YOUR SUCCESSOR**

At your retirement, disability, or death, who will run the business? Have you designated your successor? Does your successor have the maturity, training, experience, and desire to run the business? These are important questions to address as part of your estate planning process.

### **DECIDE HOW TO TRANSFER OWNERSHIP**

Will your successor own all or part of the business? How will ownership be transferred — through gift or sale?

If you wish to sell all or part of your business to provide cash for yourself or for other beneficiaries, it is often advisable to create a buy-sell agreement, which designates the date, method, and price for the future purchase of your business. Buy-sell agreements, and the funding for them, can be structured in many ways to suit the needs of the involved parties.

### **PLAN FOR ESTATE TAXES**

How much is your business worth? How will your estate pay the estate taxes when your business is transferred at your death, or after the death of you and your spouse?

Many estates do not have enough liquid assets to pay estate taxes, and generating cash by selling assets in an emergency can destroy a business. Talk with your advisors now to determine how to minimize your projected estate tax liability and pay the remaining estate taxes.

### **PROVIDE FOR KEY EMPLOYEES**

As a business owner, you need to structure competitive compensation and benefit packages to attract and retain key employees. Due to annual contribution limits, many highly compensated professionals find that they cannot save enough in IRAs and qualified plans to maintain their style of living during retirement. Non-qualified deferred compensation is an excellent way to provide supplemental retirement savings to select employees.

# Charitable Planning

You can transfer an unlimited amount of assets to qualifying charitable organizations during your lifetime or at death without paying any estate or gift taxes. Charitable gifts may be made outright (during life or at death) to charitable organizations, or via charitable trusts.

## OUTRIGHT GIFTS TO CHARITY

Making outright charitable gifts (during life or at death) can provide a number of benefits, including:

- Helping a charity continue or expand its charitable purpose
- Avoiding or minimizing federal estate tax exposure
- Receiving an income tax deduction (when applicable) on charitable transfers made during life. Please note that there are formalities and rules pertaining to gifts during life. Please work with your tax and legal experts to understand charitable planning deductions.

## CHARITABLE LEAD TRUST

A good vehicle for people who wish to make current gifts to charity is a charitable lead trust (CLT). A CLT provides an income stream to a selected charity or charities during the donor's life or for a specified time period. After the trust term ends, the remaining trust assets pass to the donor or to the non-charitable beneficiaries named in the trust.

## CHARITABLE REMAINDER TRUST

You can also create a charitable remainder trust (CRT) during your lifetime or at death. With this technique, you irrevocably transfer an asset to the CRT, and retain the right to receive payments from the CRT for a certain period, such as for your lifetime and your spouse's lifetime. Typically, a portion of the payments is a tax-free return of principal. At your death (or after you and your spouse are deceased), the assets remaining in the CRT will be transferred to one or more charities that you name in the trust.

A CRT may be particularly beneficial if you have any assets — such as stock or real estate — that have appreciated greatly since you acquired them.

The benefits of a CRT may include:

- Minimization of capital gains tax
- Charitable income tax deduction
- Reduced estate taxes
- Increased income stream
- Substantial benefit to charity

## WEALTH REPLACEMENT TRUST

To replace the assets given to charity, the CRT is often coupled with an ILIT known as a wealth replacement trust. You can use a portion of the income stream from the CRT to make gifts to the wealth replacement trust. The trustee can then purchase life insurance on you, or survivorship insurance on you and your spouse, to benefit your family.

You can also create a charitable remainder trust during your lifetime or at death. With this technique, you irrevocably transfer an asset to the CRT, and retain the right to receive payments from the CRT for a certain period, such as for your lifetime and your spouse's lifetime.

# The Role of Life Insurance

Life insurance is widely used in estate and business planning because it provides an important source of liquidity when it is needed most — at the death of the insured. Death benefits are usually received free of income tax. And, with proper estate planning, insurance proceeds can be free of estate tax as well.

## PERSONAL USES FOR LIFE INSURANCE

- Supply family members with an income source after the death of an income earner or caregiver
- Provide cash to pay estate taxes
- Pay mortgages and other expenses at death
- Create an estate for your beneficiaries
- Equalize inheritances among children
- Leverage your annual gift tax exclusion, lifetime exemption, and GST tax exemption

## LIVING BENEFITS OF LIFE INSURANCE

Life insurance offers much more than just an income tax-free death benefit.<sup>10</sup> A permanent life insurance policy, along with optional riders, can provide the following benefits:

- Potential ability to accumulate cash value inside the policy, and access the policy's value on an income tax free basis.<sup>11</sup>
- Ability to accelerate death benefit during life to pay for qualified long-term care expenses.
- Ability to receive a one-time lump sum in the event that you experience a critical illness. The critical illnesses are defined in the optional riders and often include cancer, stroke, and heart attack.

## LIFE INSURANCE AND BUSINESS PLANNING

- Informal funding vehicle for deferred compensation arrangements
- Provide death benefits to a key employee's family
- Finance the replacement of a key employee
- Replace lost revenues after losing a key employee
- Finance the purchase of the business (buy-sell planning)

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# Keeping Your Estate Planning on Track

## RE-EXAMINING YOUR PLAN

Maintaining your estate plan is as important as creating it. You should review your estate plan periodically with your advisors to make sure it still meets your current goals, especially if a change in any of the following has occurred:

- Marital status
- Immediate family (such as a birth, special needs, marriage, or death)
- Business arrangements
- Tax laws
- Residence (especially if you've moved to a new state)
- The amount or type of your assets

## BUILDING YOUR ADVISORY TEAM

Your team of advisors should work together to achieve your estate planning goals. Your team may include:

- Attorney
- Accountant
- Financial advisor
- Life insurance representative
- Trust officer/professional trustee



## References

<sup>1</sup> Trusts should be drafted by an attorney familiar with such matters in order to take into account income and estate tax laws (including the generation-skipping transfer tax). Failure to do so could result in adverse tax treatment of trust proceeds.

<sup>2</sup> The lifetime exemption is \$10M, indexed for inflation (\$11.4M in 2019). This amount is scheduled to revert to a \$5M exemption, indexed for inflation, after 2025.

<sup>3</sup> The amount of exclusion is indexed for inflation and is only available for federally recognized married couples who are US citizens. If a married decedent's applicable exclusion amount is not fully used, then the decedent's executor may elect to allow the surviving spouse to use the unused exclusion amount upon the subsequent death of the surviving spouse. The election is automatically made by timely filing of the married decedent's estate tax return (IRS Form 706), unless the executor opts out of the automatic elections.

<sup>4</sup> The annual gift tax exclusion is indexed annually for inflation in increments of \$1,000. In 2019 it is \$15,000.

<sup>5</sup> Whether the proceeds of a life insurance contract are included in the gross estate of the insured depends on whether, at the time of death (or within the three-year period prior to death) the insured held any incidents of ownership with respect to the policy. IRC §§2042 and 2035(d)(2).

<sup>6</sup> Over 20 states have abolished the common law "rule against perpetuities," which traditionally limited the duration of trusts. Consult your tax advisors to determine the law for your state.

<sup>7</sup> Clients making annual exclusion gifts to a dynasty trust should generally allocate GST tax exemption to these gifts unless the gifts qualify under IRC Section 2642(c). When annual exclusion gifts are made to a dynasty trust, some estate planners suggest limiting these gifts to the greater of \$5,000 or 5% of the trust estate per beneficiary. See IRC Section 2514(e). The gift may also avoid the GST tax if (1) the gift qualifies for the predeceased ancestor exception in IRC section 2651(e) or (2) the transfer meets the IRC section 2642(c) exception. Section 2642(c) provides that certain "direct skips" to a trust created for the benefit of a single beneficiary will not be subject to GST tax if the trust estate will be included in the beneficiary's gross estate at death, and the transfer qualifies for the annual gift tax exclusion or the qualified tuition or medical expense exclusion under IRC Section 2503.

<sup>8</sup> The IRS has determined that the transfer of assets between a grantor and his grantor trust will not be treated as a "sale" for income tax purposes. See Revenue Ruling 85-13.

<sup>9</sup> Family Business Institute. Succession Planning. Retrieved July 2018. <https://www.familybusinessinstitute.com/consulting/succession-planning/>

<sup>10</sup> Life insurance death benefit proceeds are generally excludable from the beneficiary's gross income for income tax purposes. There are a few exceptions such as when a life insurance policy has been transferred for valuable consideration. Comments on taxation are based on NFP's understanding of current tax law, which is subject to change. Neither NFP nor its subsidiaries or affiliates offer tax or legal advice. The services of an appropriate professional should be sought regarding your individual situation.

<sup>11</sup> Loans and withdrawals will reduce the death benefit and the cash surrender value, and may cause the policy to lapse. Lapse or surrender of a policy with a loan may cause the recognition of taxable income. Withdrawals in excess of the cost basis (premiums paid) will be subject to tax and certain withdrawals within the first 15 years may be subject to recapture tax. Additionally, policies classified as modified endowment contracts may be subject to tax when a loan or withdrawal is made. A federal tax penalty of 10% may also apply if the loan or withdrawal is taken prior to age 59½. Withdrawals are available after the first policy year.

Our thanks to the carrier partners who provided their technical assistance in preparing this guide.



For more information on achieving your estate planning goals,  
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