Welcome!

Preserving & Passing
ASSET PROTECTION AND ESTATE PLANNING EVENT

Wednesday • March 16th, 2022

Speakers

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RJFS Registered Principal
&
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CARVER
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The TEN Questions

Determining your, your family and/or your business' requirements starts with **asking the right questions.**

Is everything you are doing (personally and/or professionally) aligned with your objectives and goals?

What are your sources and uses of cash and is it well defined?

Are the right risk management tools in place to help protect your wealth, your family's wealth and/or your business interests?

Do you have a clear purpose for your wealth and how it is managed for the short, intermediate and long term?

What do you want your wealth to accomplish?

Are the right estate and tax tools in place; and have both the plan and math been recently tested?

What do you own and how do you own it?
(Registration/Title/Location)

Have your charitable, legacy or long term family values been addressed in your plan?

Are all your advisors (financial, legal, business & tax) working together?

Is it time to expect more from Wealth Management?
One conversation can change everything!

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CARVER
FINANCIAL SERVICES

Are Your Documents High Quality?

Planning is not a one-time event, rather it is an ongoing process. Things change, people change, assets change and tax laws all change. Now more than ever, reviewing what your documents "say" and "will do" is an important step in the Wealth Management process.

As a second set of eye, we are here to help confirm and test the math, the tax, the people issues and your goals as part of a team.

HIGH QUALITY

WHAT IS HIGH QUALITY?

- High-quality estate planning documents are updated regularly.
- Reflect major life events.
- Reflect notable changes in assets.
- Reflect Major changes in the law.
- Individualized documents that reflect your unique family dynamics and goals.

UP TO DATE

HIGH QUALITY ESTATE PLANNING DOCUMENTS ARE CURRENT.

- They have current trustees. (Blood, Professional or Trusted Friend)
- Trustee(s) that will represent the best interest of the family?
- Trustee(s) that have the requisite skills to be an effective trustee?
- Trustee(s) that will be alive when they are needed?
- Trustee(s) that are a U.S. Citizen?

PROTECTED

HIGH QUALITY ESTATE PLANNING DOCUMENTS PROTECT ASSETS.

- Protection from creditors, protection from probate and protection from within.
- Reflect ownership of all assets while assets are correctly titled. (Assets in multiple states)
- Have common age distributions protects for beneficiaries. (May/Shall)
- Reflect current exemptions levels.
- Address retirement plans, digital assets and/or intangible property.

FLEXIBLE

HIGH QUALITY ESTATE PLANNING DOCUMENTS PROVIDE FLEXIBILITY FOR LIFE CHANGES.

- Future Beneficiaries "Beneficiaries and fiduciaries are often temporary"
- Change of Situs
- Decanting Provisions
- Trust Protector
- Business Ownership (e.g. S. Corporation Shares)

One Conversation can Change Everything...
Let's Talk About it Today!

Initial Attorney Meeting

Some Useful Items to Think About Prior to your Meeting

ASSETS

Please prepare a listing of assets you own in the following categories, including the information noted:

- Real Estate - how they are titled/owned or registered, present value, mortgage/note amount and location of the property. (State / Country)
- Stocks, mutual funds, bonds - how they are titled/owned and present value.
- Bank checking accounts and savings accounts - how are accounts registered, approximate balances.
- Life insurance - type (term or permanent), face amount, current beneficiary, how are premiums being paid (community property funds, separate property funds, by employer, etc.).
- Employee benefits - type of plan, beneficiary, present value of benefits (also bring along any material supplied by employer concerning benefits).
- Personal property - list of any valuable personal items (art objects, antiques, etc.).
- Business interests – ownership and type of business. (e.g. C Corporation, S Corporation, LLC, Partnership or Sole Proprietorship)
- Any other property, including individual retirement accounts, not identified above.

LIABILITIES

Please prepare a listing of your liabilities not shown in conjunction with the asset list. Ignore usual household liabilities.

OTHER INFORMATION

Please answer or consider the following questions where applicable:

- Have you or your spouse received, or do you expect to receive, assets through gift or inheritance?
- If you have already received any such assets, have they been segregated from your other assets?
- Have you or your spouse acquired assets while living outside your current resident State? If so, whose funds were used to acquire those assets and how is title held?
- Have you acquired assets outside of your resident state while living here? How are they titled or registered?
- Did you or your spouse own significant assets at the time of your marriage? Have they been segregated?
- Have you or your spouse been previously married? Are there children from prior marriages? If so, what support obligations exist (either due you or owed by you)?
- Do you have any critically important or unusual objectives or problems regarding estate planning that need to be addressed? (e.g. Equalization Issues, Business Succession)
- Do you wish to “earmark” specific items from among your personal effects for disposition to designated beneficiaries? (e.g. Business Assets, Collections, Artwork, Family Home/Land or other items.)
- Do you plan to move to another State or Country in the near future?

- At what age(s) do you think your children should receive distribution of assets (in addition to distributions to provide for care, support and education)? (e.g. 1/3 @ age 30, 50% @ age 35 and the balance @ 40.)
- Is there a desire to include incentive clauses for your children or other beneficiaries? (i.e. Trust to match W-2 income ages 23-30, provide $X for a milestone event like graduation, marriage of birthday)
- Do you wish to include other incentives and/or restrictions? (i.e. Carrot / Stick provisions)
- Do you wish to add protections in the event a child may experience a divorce or second marriage? (i.e. May vs. Shall on distributions and/or access to trust assets.)
- Are any of your beneficiaries physically or mentally handicapped, or otherwise require special consideration that should be provided in your documents? (e.g. Responsibility or maturity issues, dependencies, bad spending habits, marriage concerns or extended family issues.)
- Whom would you wish to receive your property if you, your spouse, and all your descendants were all to die?
- Do you wish to consider other, related estate planning documents, such as a durable power of attorney or a "living will"?
- Do you have specific philanthropic or social causes that are important to include in your documents?
- Are there any health issues (mental or physical) or family history that may affect you now or in the future?
- Do you travel abroad frequently and/or experience time periods where you may be not be available or able to communicate with your family and/or advisors?
- Is there a desire to keep everything private? (i.e. Out of the public eye / probate)

PERSONS WHO WILL ADMINISTER YOUR PROPERTY AND THE WILL

Your Will should name: a personal representative (to settle your affairs and administer your property after death and during probate, and to carry out the terms of your Will), a trustee (if your Will creates a trust to dispose of your property after probate is completed), and a guardian (if you have minor children). The guardian of the person of a minor is the "substitute parent" and usually the person with whom the minor child would live. Several alternatives, such as a trust or custodianship, are available to handle assets left for a minor child.

QUESTIONS FOR YOUR ATTORNEY

(Be sure to note questions that occur to you, so they can be discussed):

Testamentary CLT

> "Helping people doesn't have to be an unsound financial strategy." -Melinda Gates

SIMPLE, FLEXIBLE ESTATE PLANNING

A Charitable Lead Trusts (CLTs) is an excellent way for an individual to leverage their generosity while producing tax savings that benefit both the individual's favorite charity and their heirs.

A Charitable Lead Trust is a split-interest trust that provides a guaranteed annuity payment to one or more charitable beneficiaries, like a public charity or private family foundation, chosen by you during your life (inter vivos) or through your will/living revocable trust (testamentary). The payments to the charitable beneficiary (the "Lead") are made for a specified period of time, and at the end of that time, the remaining principal will be paid/held for a named non-charitable beneficiary such as your children or grandchildren.

HERE'S HOW THE STRATEGY WORKS:

1 The will or living revocable trust will provide for the creation of the CLAT upon the second spouse's death. As with the will or living revocable trust, everything including the lead charitable beneficiary and heirs are fully revocable until death. Testamentary CLTs allow the grantor to retain use and control of their assets until death.

2 The structure of the trust, outside the goals and beneficiaries, is determined by a number of variables including the number of payments, amount of payments, IRS tables and the Applicable Federal Rate "AFR" (§ 7520). Since the rates will not be known until the client's death, a CLAT may use a formula in its provisions to create a "zero-out" scenario. In other words, even though the total assets used to fund the trust were part of the grantor/donor's taxable estate, an equal charitable deduction can be created to eliminate the tax liability.

3 The trust can provide a fixed term and variable payout or a fixed payout rate and variable term. The lower the IRS rate in effect, the less the payout needs to be to the charitable beneficiary to obtain the appropriate tax deduction for the remaining estate. Additionally, the assets used to fund a Testamentary CLT will likely achieve a step up in basis, thus mitigating the income tax consequences of a sale and reinvestment of the CLT assets.

TYPES OF CHARITABLE LEAD TRUSTS

Charitable Lead Trusts come in two flavors, the Charitable Lead Annuity Trust (CLAT) and the Charitable Lead Unitrust (CLUT).

THE CLAT

Under a CLAT, the payment to the charitable beneficiary is based on a percentage of the trusts' underlying original asset value. The charitable beneficiary will receive the same amount each year no matter how the underlying investments perform inside the trust. CLATs work very well with hard to value assets like real estate, family limited partnership interests and assets that are expected to grow rapidly in value. CLATs are frequently used in "zero-out" situations that do not use GST exemptions. Additionally, assets cannot be added to a CLAT after its initial funding.

THE CLUT

Under a CLUT, the trust will pay the charitable beneficiary a fixed percentage of the trust's value. The payments in a CLUT will vary based on the re-determined "fair market value" of the trust's underlying assets. As such, the income to the charitable beneficiary is tied to the performance of the trust's assets. CLUTs can be harder to administer due to the revaluation required annually and are more suited for highly liquid, readily valued assets such as cash, stocks and bonds. CRUTs also lend themselves to be more suited to provisions that maximize generation skipping transfers using GST exemptions, and assets can be added to a CLUT at any time.

MOM / DAD

At death, assets are transferred into the trust.

TCLT

Annuity Interest "LEAD" | Remainder Interest

CHARITY

Received payments during term of trust.

REMAINDER BENEFICIARY

Receives remainder assets when trust terminates.

Here's How the Strategy works

FOR EXAMPLE

Peter and Lois have been very successful business owners. Last year, Peter passed away leaving everything to Lois with the exception being the creation of a Credit Shelter Trust ("Family Trust") containing $12,060,000 of selected Assets including a Survivorship Life Insurance Policy. Lois passes away shortly thereafter. Peter and Lois felt that the Death Benefit from the life insurance policy would be ample for their children and grandchildren for the next 20 years since they all participated in the family business.

As such, upon Lois' death the remainder of their estate which consisted of $24,120,000. In accordance with the terms of Lois' will/trust, the remainder of her estate above her exemption of $12,060,000 would be placed inside a Testamentary Charitable Lead Trust (TCLAT). [$10,000,000] The Trust would provide income to their favorite charities (or DAF) over the next 20 years and at the end of the 20th years, the children and grandchildren would receive the remaining assets inside the Trust.

Based on today's rates (AFR 1.60%), the trust would pay the charitable beneficiaries $588,215.22 a year for the next 20 years. Since the family business was extremely profitable and it was estimated that the shares would grow at approximately 7% a year, the children would receive $14,5MM+ at the end of the 20 years.

CREATIVE USES OF A CHARITABLE LEAD TRUST

- Leverage of the GST Exemption
- Reduction of Estate Taxes
- Source for Funding of Donor Advised Funds
- Source for Private Foundation
- Disposition of an Art Collection for Endowment Funding
- Provides a gift and estate tax sanctuary for assets expected to appreciate in value
- Allows you to donate to charity and keep trust assets within the family
- Allows you to postpone the non-charitable beneficiary's receipt of family assets
- Allows you to control the payment method, term of the trust and beneficiaries
- Helps to minimize your taxable estate which can reduce federal estate tax liabilities
- Requires an irrevocable commitment
- Requires an annual charitable payment regardless of trust performance/income
- Requires a cooperative team to put all the moving parts into action

The Family Love Letter

By: John J. Scroggin, J.D., LL.M.

"The only thing you take with you when you're gone is what you leave behind." - John Allston

As estate planners, we constantly admonish our clients to make sure they have properly planned for their incapacity and/or death. Unfortunately, our focus often begins and ends with the execution of proper documents and the titling of assets. We often fail to make sure the client's family and decision makers will have adequate information about the client's assets, liabilities and intents. For example, how many children know where a parent wants to be buried, or who the pallbearers should be? While many clients are reluctant to dis-cuss the tragedy of their death or disability with family members, they have less concern about leaving written information behind. This is the purpose of The Family Love Letter.

Estate planning is not fundamentally about the dead and the avoidance of a death tax. Instead, its most important goal should be to provide "A Legacy for the Living."

Your incapacity or death will radically impact your family. Far too many people have the perspective of Paul Simon's song, Flowers Never Bend with the Rainfall: "[I will] continue to continue to pretend that my life will never end..." Seventy percent of Americans do not have an estate plan. Failure to plan and a failure to provide basic information in virtually every case will create family conflict, cause the dissipation of assets you have spent a lifetime building or result in the payment of income and estate taxes which might have been easily avoided.

The incapacity or death of a family member is always a traumatic event. But the emotional turmoil and family pain is often magnified by the resulting confusion over the plans, assets and desires of an incapacitated or deceased family member. The mental fogginess that accompanies the family's trauma is exasperated by the inability to make basic decisions because of the lack of basic information.

A FEW EXAMPLES MAY HELP:

- In August of 1997, my father was committed to a long-term nursing facility because of Alzheimers. I spent four days going through his papers (and making endless phone calls) trying to locate basic information about his life, long-term care, health and disability insurance policies, determining whether he had filed his income tax returns, and discerning his assets, debts and benefits from military service. Even after going through the process, I was never quite sure I had a full grasp of all the things I should know. The Family Love Letter is designed to substantially minimize this lingering worry.

- Years ago I had a client who carried a significant life insurance policy. The premium was automatically paid from his bank account. The policy had long since been lost in a clutter of papers, but the automatic debiting of the account kept the policy alive. When the man was no longer able to handle his own affairs, his children terminated his bank account and transferred the father and his assets to the city of one of the sons. They had no idea that they had also inadvertently terminated (for non-payment) a significant life insurance policy on their father, until after he died a year later. If there had been a Family Love Letter, they might have kept over a half million dollars in life insurance coverage — lost as a result of the inadvertent mistake of caring children.

- Recently a widowed client came to our office for a consultation. He had no children. No one had any knowledge of his personal assets or liabilities. In his documents, he appointed an old friend as his executor. We provided him a copy of The Family Love Letter and encouraged him to create a notebook of all his important documents. When he died, his friend was able to pull out his notebook, which included The Family Love Letter, and see that he was to be buried next to a deceased wife who died 20 years before. He knew who his pallbearers were and what the memorial should read. After death, the letter gave the executor and our firm the basic information about his estate, including the ownership of several vacant tracts of land in other states — assets we might have had a difficult time locating without the list.

We have designed this Family Love Letter to provide "information in a time of confusion" and help minimize the types of inadvertent mis-takes, which often occur in these times of turmoil. While the document certainly will help save time, that is not its primary purpose. The primary purpose is to reduce the confusion and stress, which almost always accompanies the death or disability of a loved one.

We recommend that clients complete the document, keep a copy with important records and perhaps, provide a copy to family member(s) and/or professional advisor(s). In many cases, clients have provided a copy of The Family Love Letter and their other estate planning documents to their heirs. The client may call a family meeting where the advisors and heirs can discuss both the documents and the desires the client has for his or her family using a family mission statement as the catalyst. This meeting assures that those who will be making decisions upon the client's death or disability know what the client wanted. These meetings encourage a broad range of discussion on topics — including areas of potential conflict (e.g., choice of trustees), which the client might not have anticipated. It also allows the advisors to gain a greater understanding of the family dynamics which may impact the client's plans.

Because the information in The Family Love Letter is only one part of the larger estate plan, we have also provided in the form basic information on other documents the client should consider signing. Additional value-added materials can be found at our Web site: www.scrogginlaw.com.

FUNDAMENTAL ESTATE PLANNING

Estate planning consists of two principal elements: the execution of documents that properly provide for your incapacity and/or death, and detailed facts about your assets, liabilities and desires upon either event. We recommend that every client review creating each of the following documents:

1 A Will or Will substitute (e.g. a living trust), which disposes of your assets. Your will is your final declaration of how your assets and family (e.g, guardianship of minors) should be treated after your death. As such, it needs to be well thought out and deal with all of the potential issues that may face your survivors. Many clients want "simple" wills, but fail to realize the importance of a well-drafted will. For example, we represented an estate several years ago in which a woman had a child by a drug dealer who had been in and out of prison for years. The man had never seen the child or provided support. The child and the mother were injured in the same car accident. The woman died immediately and the child died 12 hours later. The lawyer who drafted her will provided that all of her assets passed to her son at her death. He held the assets for 12 hours and then, in accordance with state inheritance law, the drug dealer inherited the entire estate of his son — including several million dollars resulting from the death of the woman and her child. It was a simple will, but it certainly did not do what she would have wanted.

Your will has a number of purposes, including:

- Providing for how your assets should be disposed of at your death.
- Choosing people who will make decisions when you are gone.
- Creating trusts for heirs who may lack the maturity or talents to manage inherited assets.
- Providing for the guardians of any minor children.
- Minimizing any state and federal estate taxes.
- Reducing the state and federal income taxes of heirs.
- Minimizing the sources of potential conflicts among your family members.

Helpful Web sites on Estate Planning

- www.scrogginlaw.com
- www.naepc.org
- www.estateplanninglinks.com
- www.law.cornell.edu/topics/estate_planning.html
- www.forbes.com/estate_planning/
- www.abanet.org/rppt/public/home.html

2 A Personal Property Disposal List is critically important. We have seen more family conflict over insubstantial personal property than over any other issue. Ask your children what assets they would want if you are gone and then prepare a detailed list (perhaps with pictures) directing how the assets should pass. In many states, if properly referenced in your will, this list will be legally enforceable. If your children are too young, use the list to describe which assets (e.g., family heirlooms) you want your personal representative to hold for the children until they are more mature. If you are married, you should consider preparing a list that describes which assets belong to you and which assets belong to your spouse — especially if you have children from a prior marriage.

3 The Family Love Letter is designed to provide basic information to your family about your assets, liabilities, and personal desires upon your death or incapacity.

4 A Living Will is your declaration that you do not desire life-sustaining treatment if there is no significant hope of recovery. In the Nancy Cruzan decision, the U.S. Supreme Court ruled that to be taken off life support (including intravenous nourishment and fluids), you must have declared your desire before becoming incapacitated. A 1992 study in the Archives of Internal Medicine reported that having a living will or medical power of attorney saved more than $60,000 per patient in the final stay in the hospital. Even though you may be young and in good health, remember that Nancy Cruzan, Karen Ann Quinlan and Terri Schiavo were all young women in their late 20s/early 30s when they became incapacitated. In each case, the failure to have medical directives upon incapacity created tremendous emotional and financial costs to their families.

5 A Medical Power of Attorney (otherwise called a Durable Healthcare Power of Attorney) may also be necessary. While a living will is simply your declaration not to use life-sustaining measures, a medical power of attorney is designed to grant someone the power to make any medical decisions for you upon your incapacity. Although a living will also deals with life sustaining issues, we generally recommend signing both a medical power of attorney and a living will. Having a medical power of attorney generally assures that the family, not the doctors, have the final say in such treatment. But, if it is clear that life cannot be sustained, the power holder can step away and allow the living will to take affect. “This is his decision, not mine” can make it much easier psychologically for the power holder and the family.

If you are concerned about how medical decisions would be exercised by your power holder, you might use a Medical Directive which allows you (through a grid format) to direct the types of decisions your power holder will make. Copies of the directive can be obtained at www.Medicaldirective.org.

Helpful Web sites on Aging and Critical Care Issues

- www.critical-conditions.org
- www.abanet.org/aging/toolkit/
- www.ama-assn.org
- www.help4srs.com
- www.mag.org
- www.nolo.com
- www.caregiver.org
- www.Medicaldirective.org

6 A Durable General Power of Attorney provides for who will manage your assets upon your incapacity. In some states, such a document has to specifically provide that it survives your incapacity, so it is always wise to make sure such language is in the document. Moreover, such a document should be drafted with extraordinary detail to assure that your power holder has as much authority as possible. A short document of minimal detail that grants "all authority" to your power holder can create significant restrictions for the power holder in mak-ing decisions and in handling tax issues. In many states the document can be drafted so it is not triggered until you become incapacitated.

7 An Ethical Will. Increasingly, clients are adding ethical wills to their list of estate planning documents. An ethical will is not a form doc-ument. It has no set format or required content. Instead, it is designed to accommodate the unique personalities, family structure, values and thoughts of one generation for the next. Perhaps one of the best descriptions is: "Ethical wills are windows into the souls of those who write them. It is this that makes them so cherished by family members from generation to generation." One author has indicated three prin-cipal purposes of an Ethical Will: (1) Leaving an Intangible Legacy, (2) Personal Satisfaction and (3) Aiding the Estate Planning Process. At the end of the Family Love Letter, we have provided a place for you to begin an ethical will. Many clients will draft a more comprehensive statement and attach it to their Family Love Letter.

Materials on Ethical Wills

- Barry Baines, M.D., *Ethical Wills: Putting Your Values on Paper* (Pereus Publishing 2002). Available at www.ethicalwill.com along with other books and materials on Ethical Wills.
- Jack Riemer and Nathaniel Stampfer, *So That Your Values Live On: Ethical Wills and How to Prepare Them,* (Jewish Lights Publishing 1991)
- Elaine Tiller, *Ethical Wills, Spiritual Bequests,* (Baptist Senior Adult Ministries, Washington D.C. 1996)

8 Finding an Estate Planner. We believe you should use competent counsel to draft these documents. One place to find such attorneys is at www.martindale.com which can provide you the background of attorneys, their specialties, and how they are rated in their areas of competence by other attorneys. Another source is the National Association of Estate Planners and Councils. Information about its associated estate planners can be found at www.NAEPC.org. Because mistakes in even simple estates can create inadvertent estate taxes and income taxes, I generally advise clients to use an estate planner who regularly does estate planning and who has a working knowledge of state and federal income taxes and estate taxes.

9 Reviewing the Process. How often should you review your documents? I generally advise clients to review their documents at least every 2-3 years or when a significant change occurs, such as marriage, divorce, birth of a child or grandchild, or receipt of a significant inheritance. Remember: "Estate planning is a process, not a conclusion. The conclusion begins when you are gone." Your documents will continue to change and evolve as your personal and family situations change.

You are the only one who can leave this information and your failure to make adjustments as your life changes is potentially creating major turmoil for your family. Your death or incapacity is enough of a family tragedy, without adding to it by not updating your information and plans. Reviewing these documents every decade or so is not remotely advisable.

Tax Websites

- All State Taxes: www.taxsites.com/agencies.html
- National Tax Association: www.ntanet.org
- Tax Foundation: www.taxfoundation.org
- Tax Analysts: www.tax.com
- Tax Lists: Providing for links to tax related web sites www.taxresources.com
- Senior Law: www.seniorlaw.com
- Tax Forms: www.irs.ustreas.gov/formspubs/index.html | www.taxsites.com/forms.html
- Federal Rates: www.pmstax.com/afr
- Federal Tax Tables: www.irs.gov/individuals

Donor-Advised Fund

SUMMARY:

A donor-advised fund offers an easy way for a donor to make significant charitable gifts over a long period of time. A donor-advised fund is similar to a private foundation but requires less money, time, legal assistance, and administration to establish and maintain. A donor-advised fund also enjoys greater tax advantages than a private foundation.

WHAT IS A DONOR-ADVISED FUND?

Technically, a donor-advised fund is an agreement between a donor and a host organization (the fund) that gives the donor the right to advise the fund on how the donor's contributions will be invested and how grants to charities (grantees) will be made. Contributions may be tax deductible in the year they are paid to the fund, subject to the usual limitations, if they are structured so they aren't considered earmarked for a particular grantee. Though they can bear the donor's name, donor-advised funds are not operated as separate entities like private foundations are, but are merely accounts held by the fund. The fund owns the contributions and has ultimate control over grants.

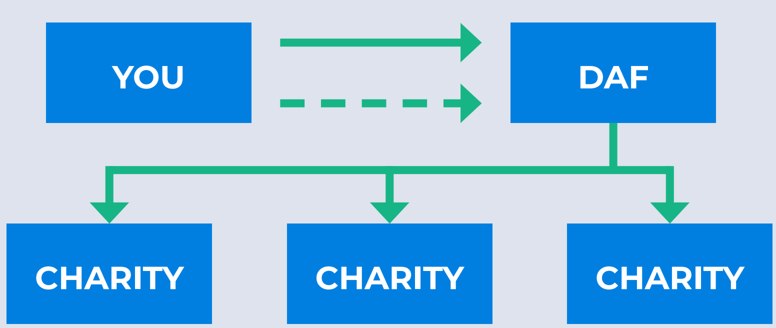
The community foundation was the first type of host organization to offer donor-advised funds but, today, many financial institutions offer them, and many public charities have funds or will create a fund upon request.

HOW DOES A DONOR-ADVISED FUND WORK?

It's easy to set up a fund account. The donor first signs a letter of understanding with the fund, establishes an account, names the account, and recommends an investment strategy. Then, the donor makes required minimum contributions of assets, which may include cash, marketable securities, and other types of assets, depending on the fund. The required minimum contributions vary from fund to fund, but are usually less than those required by private foundations.

During life, the donor (or the donor's designee) can make ongoing, non-binding recommendations to the fund as to how much, when, and to which charities grants from the fund should be made. Additionally, the donor can offer advice to the fund regarding how contributions should be invested. The donor may suggest that, upon death, grants be made to charities named in his or her will or other legal instrument such as a revocable living trust. Or, the donor may designate a surviving family member(s) to recommend grants. However, the fund is not obligated to follow any of the donor's suggestions — hence the name "donor-advised fund." As a practical matter, though, the fund will generally follow a donor's wishes. Distributions to grantees are typically identified as being made from a specific donor's account, but they can be made anonymously at the donor's request.

1 You establish and name account, recommend an investment strategy, and make contribution(s).



2 You (or you designers) can make ongoing recommendations to the fund regarding grants. The fund, however, is not obligated to follow your wishes–though it will generally do so.

DONOR-ADVISED FUNDS VS. PRIVATE FOUNDATIONS

Both private foundations and donor-advised funds allow a person to take tax deductions now and decide later to whom to give. Both donor-advised funds and private foundations can be named to honor the donor, a family member, or other person.

A donor-advised fund usually receives contributions from many unrelated donors (though donors' accounts are kept separate), while a private foundation is typically funded by one source (an individual, family, or corporation). While donors to a donor-advised fund may only offer advice regarding grants and investments, private foundations offer the donor exclusive control and direction over grants and investments, an attractive feature to some philanthropists.

However, various legal restrictions imposed on private foundations are not imposed on donor-advised funds, and the federal income tax treatment of a donation to a private foundation is less favorable than that afforded to a donor-advised fund. Because contributions to a donor-advised fund are considered gifts to a "public charity," they may allow a greater income tax deduction than contributions to a private foundation. Furthermore, private foundations are required to distribute a minimum of 5% of their assets each year. Donor-advised funds have no such minimum distribution requirement (though some funds follow the 5% rule voluntarily), and donors may be allowed to let their accounts build up tax free for many years and be distributed only upon a specified date or upon the occurrence of a specified event.

Also, donor-advised funds do not need to fulfill many of the reporting and filing requirements that are imposed on private foundations. And because the fund handles any legal, administrative, and filing requirements (including tax returns), the donor is completely freed from these responsibilities. In addition, since separate accounts within a donor-advised fund are administered as part of the larger host organization, the administrative costs borne by the donor are generally lower than those incurred by a private foundation.

ENDOWED FUNDS VS. NON-ENDOWED FUNDS

Endowed funds only distribute income, not principal. These funds invest a donor's assets in perpetuity for potential growth over time. Because they are permanent, endowed funds provide a lasting memory of the donor's philanthropic nature.

Non-endowed funds permit a donor to make ongoing recommendations for grants up to the entire fund balance (principal and income). Such funds remain non-endowed, unless the donor specifies otherwise, until such time as the donor or the donor's designees are no longer providing advice to the fund.

INCOME TAXES

A donor can generally take an immediate income tax deduction for contributions of money or property to — or for the use of — a donor-advised fund if the donor itemizes deductions on his or her federal income tax return. The amount of the deduction depends on several factors, including the amount of the contribution, the type of property donated, and the donor's adjusted gross income (AGI). Generally, deductions are limited to 50 percent of the donor's AGI. For 2018 to 2025, the limit is increased to 60% for charitable contributions of cash to public charities. If the donor makes a gift of long-term capital gain property (such as appreciated stock that has been held for longer than one year), the deduction is limited to 30 percent of the donor's AGI. The fair market value of the property on the date of the donation is used to determine the amount of the charitable deduction. Any amount that cannot be deducted in the current year can be carried over and deducted for up to five succeeding years.

Additionally, donor-advised funds are not subject to the excise taxes levied against private foundations.

GIFT AND ESTATE TAXES

There are no federal gift tax consequences because of the charitable gift tax deduction, and federal estate tax liability is minimized with every contribution since donated funds are removed from the donor's taxable estate.

SUITABLE CLIENTS

- High-net-worth individuals
- Individuals who have no children or ultimate beneficiaries
- Individuals who do not want to leave too much money to their children
- Individuals who do not want to be actively involved in the ongoing operations of their charitable plan
- Individuals with highly appreciated assets

EXAMPLE

Harry, Wilma, and their children own a business that has enjoyed financial success for many years. Harry and Wilma show their appreciation to their customers by making donations each year to many of their community's charities. Harry and Wilma would like to continue the family legacy for successive generations, but no longer want the year-end stress of selecting the charities they want to support and distributing checks.

Harry and Wilma set up a donor-advised fund with a community foundation and donate half of their shares in the business along with an investment account. To open the

donor-advised fund account, Harry and Wilma simply completed the host community foundation's 3-page application form. Within a few hours, Harry and Wilma delivered the shares to the fund, and a short time later, their investment account was electronically transferred to the fund. Harry and Wilma incurred no legal or accounting fees for the set up.

Because of the host community foundation's charitable status, Harry and Wilma can take an immediate income tax deduction for the fair market value of their shares and investment account. If Harry and Wilma had created a private foundation instead, their deduction would have been limited to their cost basis in the donated assets.

The fund subsequently sells the donated shares with no capital gains tax liability. The assets in the fund appreciate tax free, and when Harry and Wilma die, the assets will not be subject to estate taxes.

The fund will handle all the bookkeeping and tax reporting, make the ongoing investment decisions, and assume fiduciary responsibilities. Harry and Wilma can put their time and effort into running their business.

From time to time, Harry and Wilma recommend to the fund that grants be made to their favorite charities. The fund follows their recommendations whenever it is appropriate to do so, and makes the grants in Harry and Wilma's names, and sometimes in Harry and Wilma's children's names.

Harry and Wilma name their children as successor advisors after they die.

ADVANTAGES

- Lower contribution minimums (e.g., $10,000), easier and less costly to set up and maintain than private foundations or supporting organizations
- Some involvement in grantmaking
- Donors can obtain expert advice on grantmaking
- Donors may receive immediate income tax deductions
- Can reduce or eliminate capital gains, gift, and estate taxes
- No excise tax or payout requirements
- Accounts can be personalized or donors can give anonymously
- Accounts may be transferable to the next generation

DISADVANTAGES

- Contributions are irrevocable
- Lack of control over investments and grants; investment options may be limited
- Grants may be limited geographically to a particular state or community, or by the fund's charitable mission
- Assets that pass to charity do not pass to heirs
- Duration of donor's philanthropy may be limited

Donors are urged to consult their attorneys, accountants or tax advisors with respect to questions relating to the deductibility of various types of contributions to a Donor-Advised Fund for federal and state tax purposes. To learn more about the potential risks and benefits of Donor Advised Funds, please contact us.

Irrevocable Life Insurance Trust (ILIT)

An ILIT is a trust primarily set up to hold one or more life insurance policies. The main purpose of an ILIT is to help reduce federal estate tax. If the trust is drafted and funded properly, your loved ones should receive all of your life insurance proceeds, undiminished by estate tax.

One of the main reasons we buy life insurance is so that when we die, our loved ones will have enough money to pay off our remaining debts and final expenses. We also purchase life insurance to provide for our loved ones' future living expenses, at least for a while. That's why it may seem unfair that life insurance proceeds can be reduced by estate taxes. That's right — the general rule is that life insurance proceeds are subject to federal estate tax (and, depending on your state's laws, state estate tax as well). This means that as much as 40% (currently the highest estate tax rate) of your life insurance proceeds could be going to Uncle Sam instead of to your family as you intend. Fortunately, proper planning can help protect your family's financial security.

THE KEY IS OWNERSHIP

Generally, all the property you own at your death is subject to federal estate tax. The important point here is that estate tax is imposed only on property in which you have an ownership interest; so if you don't own your life insurance, the proceeds will generally avoid this tax. This begs the question: Who should own your life insurance instead? For many, the answer is an irrevocable life insurance trust, or ILIT (pronounced "eye-lit").

WHAT IS AN ILIT?

An ILIT is a trust primarily set up to hold one or more life insurance policies. The main purpose of an ILIT is to avoid federal estate tax. If the trust is drafted and funded properly, your loved ones should receive all of your life insurance proceeds, undiminished by estate tax.

HOW AN ILIT WORKS

Because an ILIT is an irrevocable trust, it is considered a separate entity. If your life insurance policy is held by the ILIT, you don't own the policy —the trust does.

You name the ILIT as the beneficiary of your life insurance policy. (Your family will ultimately receive the proceeds because they will be the named beneficiaries of the ILIT.) This way, there is no danger that the proceeds will end up in your estate. This could happen, for example, if the named beneficiary of your policy was an individual who dies, and then you die before you have a chance to name another beneficiary.

Because you don't own the policy and your estate will not be the beneficiary of the proceeds, your life insurance will escape estate taxation.

Caution: *Because an ILIT must be irrevocable, once you sign the trust agreement, you can't change your mind; you can't end the trust or change its terms.*

CREATING AN ILIT

Your first step is to draft and execute an ILIT agreement. Because precise drafting is essential, you should hire an experienced attorney. Although you'll have to pay the attorney's fee, the potential estate tax savings should more than outweigh this cost.

NAMING THE TRUSTEE

The trustee is the person who is responsible for administering the trust. You should select the trustee carefully. Neither you nor your spouse should act as trustee, as this might result in the life insurance proceeds being drawn back into your estate. Select someone who can understand the purpose of the trust and who is willing and able to perform the trustee's duties. A professional trustee, such as a bank or trust company, may be a good choice.

FUNDING AN ILIT

An ILIT can be funded in one of two ways:

1. Transfer an existing policy — You can transfer your existing policy to the trust, but be forewarned that under federal tax rules, you'll have to wait three years for the ILIT to be effective. This means that if you die within three years of the transfer, the proceeds will be subject to estate tax. Your age and health should be considered when deciding whether to take this risk.

2. Buy a new policy — To avoid the three-year rule explained above, you can have the trustee, on behalf of the trust, buy a new policy on your life. You can't make this purchase yourself; you must transfer money to the trust and let the trustee pay the initial premium. Then, as future annual premiums come due, you continue to make transfers to the trust, and the trustee continues to make the payments to the insurance company to keep the policy in force.

GIFTING TAX CONSEQUENCES

Because an ILIT is irrevocable, any cash transfers you make to the trust are considered taxable gifts. However, if the trust is created and administered appropriately, transfers of $16,000 (in 2022, $15,000 in 2021) or less per trust beneficiary will be free of federal gift tax under the annual gift tax exclusion.

Additionally, each of us has a gift and estate tax applicable exclusion amount, so transfers that do not fall under the annual gift tax exclusion will be free of gift tax to the extent of your available applicable exclusion. The gift and estate tax applicable exclusion amount is equal to the basic exclusion amount of $12,060,000 (in 2022; $11,700,000 in 2021) plus any applicable deceased spousal unused exclusion amount. Both the annual exclusion and the basic exclusion amount are indexed for inflation and may change in future years.

CRUMMY WITHDRAWL RIGHTS

Generally, a gift must be a present interest gift in order to qualify for the annual gift tax exclusion. Gifts made to an irrevocable trust, like an ILIT, are usually considered gifts of future interests and do not qualify for the exclusion unless they fall within an exception. One such exception is when the trust beneficiaries are given the right to demand, for a limited period of time, any amounts transferred to the trust. This is referred to as Crummey withdrawal rights or powers. To qualify your cash transfers to the ILIT for the annual gift tax exclusion, you must give the trust beneficiaries this right.

The trust beneficiaries must also be given actual written notice of their rights to withdraw whenever you transfer funds to the ILIT, and they must be given reasonable time to exercise their rights (30 to 60 days is typical). It's the duty of the trustee to provide notice to each beneficiary.

Of course, so as not to defeat the purpose of the trust, the trust beneficiaries should not actually exercise their Crummey withdrawal rights, but should let their rights lapse.

The key duties of an ILIT trustee include:

- Opening and maintaining a trust checking account
- Obtaining a taxpayer identification number for the trust entity, if necessary
- Applying for and purchasing life insurance policies
- Accepting funds from the grantor
- Sending Crummey withdrawal notices
- Paying premiums to the insurance company
- Making investment decisions
- Filing tax returns, if necessary
- Claiming insurance proceeds at your death
- Distributing trust assets according to the terms of the trust

The cost and availability of life insurance depend on factors such as age, health, and the type and amount of insurance purchased. Before implementing a life insurance strategy, it would be prudent to make sure that you are insurable.

The use of trusts involves a complex web of tax rules and regulations and usually involves upfront costs and ongoing administrative fees. You should consider the counsel of an experienced estate conservation professional before implementing a trust strategy.

The gift and estate tax applicable exclusion amounts are unified. Any gift tax applicable exclusion amount you use reduces the amount of the estate tax applicable exclusion amount that will be available.

Key Estate Planning Documents You Need

There are five estate planning documents you may need, regardless of your age, health, or wealth:

1. Durable power of attorney
2. Advance medical directives
3. Will
4. Letter of instruction
5. Living trust

The last document, a living trust, isn't always necessary, but it's included here because it's a vital component of many estate plans.

DURABLE POWER OF ATTORNEY

A durable power of attorney (DPOA) can help protect your property in the event you become physically unable or mentally incompetent to handle financial matters. If no one is ready to look after your financial affairs when you can't, your property may be wasted, abused, or lost.

A DPOA allows you to authorize someone else to act on your behalf, so he or she can do things like pay everyday expenses, collect benefits, watch over your investments, and file taxes.

There are two types of DPOAs: (1) an immediate DPOA, which is effective immediately (this may be appropriate, for example, if you face a serious operation or illness), and (2) a springing DPOA, which is not effective unless you have become incapacitated.

Caution: *A springing DPOA is not permitted in some states, so you'll want to check with an attorney.*

ADVANCE MEDICAL DIRECTIVES

Advance medical directives let others know what medical treatment you would want, or allows someone to make medical decisions for you, in the event you can't express your wishes yourself. If you don't have an advance medical directive, medical care providers must prolong your life using artificial means, if necessary. With today's technology, physicians can sustain you for days and weeks (if not months or even years).

There are three types of advance medical directives. Each state allows only a certain type (or types). You may find that one, two, or all three types are necessary to carry out all of your wishes for medical treatment. (Just make sure all documents are consistent.)

First, a living will allows you to approve or decline certain types of medical care, even if you will die as a result of that choice. In most states, living wills take effect only under certain circumstances, such as terminal injury or illness. Generally, one can be used only to decline medical treatment that "serves only to postpone the moment of death." In those states that do not allow living wills, you may still want to have one to serve as evidence of your wishes.

Second, a durable power of attorney for health care (known as a health-care proxy in some states) allows you to appoint a representative to make medical decisions for you. You decide how much power your representative will or won't have.

Finally, a Do Not Resuscitate order (DNR) is a doctor's order that tells medical personnel not to perform CPR if you go into cardiac arrest. There are two types of DNRs. One is effective only while you are hospitalized. The other is used while you are outside the hospital.

WILL

A will is often said to be the cornerstone of any estate plan. The main purpose of a will is to disburse property to heirs after your death. If you don't leave a will, disbursements will be made according to state law, which might not be what you would want.

There are two other equally important aspects of a will:

1 You can name the person (executer) who will manage and settle your estate. If you do not name someone, the court will appoint an administrator, who might not be someone you would choose.

2 You can name a legal guardian for minor children or dependents with special needs. If you don't appoint a guardian, the state will appoint one for you.

Keep in mind that a will is a legal document, and the courts are very reluctant to overturn any provisions within it. Therefore, it's crucial that your will be well written and articulated, and properly executed under your state's laws. It's also important to keep your will up-to-date.

LETTER OF INSTRUCTION

A letter of instruction (also called a testamentary letter or side letter) is an informal, nonlegal document that generally accompanies your will and is used to express your personal thoughts and directions regarding what is in the will (or about other things, such as your burial wishes or where to locate other documents). This can be the most helpful document you leave for your family members and your executor.

Unlike your will, a letter of instruction remains private. Therefore, it is an opportunity to say the things you would rather not make public.

A letter of instruction is not a substitute for a will. Any directions you include in the letter are only suggestions and are not binding. The people to whom you address the letter may follow or disregard any instructions.

LIVING TRUST

A living trust (also known as a revocable or inter vivos trust) is a separate legal entity you create to own property, such as your home or investments. The trust is called a living trust because it's meant to function while you're alive. You control the property in the trust, and, whenever you wish, you can change the trust terms, transfer property in and out of the trust, or end the trust altogether.

Not everyone needs a living trust, but it can be used to accomplish various purposes. The primary function is typically to avoid probate. This is possible because property in a living trust is not included in the probate estate.

Depending on your situation and your state's laws, the probate process can be simple, easy, and inexpensive, or it can be relatively complex, resulting in delay and expense. This may be the case, for instance, if you own property in more than one state or in a foreign country, or have heirs who live overseas.

Further, probate takes time, and your property generally won't be distributed until the process is completed. A small family allowance is sometimes paid, but it may be insufficient to provide for a family's ongoing needs. Transferring property through a living trust provides for a quicker, almost immediate transfer of property to those who need it.

Probate can also interfere with the management of property like a closely held business or stock portfolio. Although your executor is responsible for managing the property until probate is completed, he or she may not have the expertise or authority to make significant management decisions, and the property may lose value. Transferring the property with a living trust can result in a smoother transition in management.

Finally, avoiding probate may be desirable if you're concerned about privacy. Probated documents (e.g., will, inventory) become a matter of public record. Generally, a trust document does not.

Caution: *Although a living trust transfers property like a will, you should still also have a will because the trust will be unable to accomplish certain things that only a will can, such as naming an executor or a guardian for minor children.*

Tip: *There are other ways to avoid the probate process besides creating a living trust, such as titling property jointly.*

Caution: *Living trusts do not generally help reduce estate taxes or protect property from future creditors or ex-spouses.*

The use of trusts involves a complex web of tax rules and regulations. There are costs associated with creating and maintaining these legal documents. Consider the counsel of an experienced estate planning professional and your legal and tax advisers before implementing a trust strategy.

BENEFITS OF A WILL :

- Distributes property according to your wishes
- Names an executor to settle your estate
- Names a guardian for minor children

OTHER BENEFITS OF A LIVING TRUST :

- Gives someone the power to manage your property if you should become incapacitated
- Lets a professional manage your property for you
- May circumvent state laws that limit your ability to give to charity, or force you to leave a certain percentage of your property to your spouse

The New Estate Tax Rules and Your Estate Plan

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the 2010 Tax Act) included new gift, estate, and generation-skipping transfer (GST) tax provisions. The 2010 Tax Act provided that in 2011 and 2012, the gift and estate tax basic exclusion amount was $5 million (indexed for inflation in 2012), the GST tax exemption was also $5 million (indexed for inflation in 2012), and the maximum rate for both taxes was 35%. New to estate tax law was gift and estate tax applicable exclusion portability: generally, any gift and estate tax basic exclusion left unused by a deceased spouse could be transferred to the surviving spouse in 2011 and 2012. The GST tax exemption, however, is not portable. Starting in 2013, the American Taxpayer Relief Act of 2012 (the 2012 Tax Act) permanently extended the $5 million (as indexed for inflation) basic exclusion amount and GST tax exemption and portability of the gift and estate tax applicable exclusion amount, but also increased the top gift, estate, and GST tax rate to 40%. The Tax Cuts and Jobs Act doubled the basic exclusion amount to $11.18 million in 2018 (indexed annually for inflation). The exclusion is $12.06 million in 2022. After 2025, the exclusion is scheduled to revert to its level prior to 2018 and be cut by about one-half. You should understand how these new rules may affect your estate plan.

EXCLUSION PORTABILITY

Under prior law, the gift and estate tax exclusion was effectively “use it or lose it.” In order to fully utilize their respective exclusions, married couples often implemented a bypass plan: they divided assets between a marital trust and a credit shelter, or bypass, trust (this is often referred to as an A-B trust plan). Under the recent Tax Acts, the estate of a deceased spouse can transfer to the surviving spouse any portion of the basic exclusion amount it does not use (this portion is referred to as the deceased spousal unused exclusion amount, or DSUEA). The surviving spouse’s applicable exclusion amount, then, is increased by the DSUEA, which the surviving spouse can use for lifetime gifts or transfers at death.

Example: *At the time of Henry’s death in 2011, he had made $1 million in taxable gifts and had an estate of $2 million. The DSUEA available to his surviving spouse, Linda, is $2 million ($5 million - ($1 million +$2 million)). This $2 million can be added to Linda’s own exclusion for a total of $14.06 million ($12.06 million + $2 million), assuming Linda dies in 2022.*

The portability of the exclusion coupled with an increase in the basic exclusion amount to $12.06 million per taxpayer allows a married couple to pass on up to $24.12 million gift and estate tax free in 2022. Though this seems to negate the usefulness of A-B trust planning, there are still many reasons to consider using A-B trusts.

- The assets of the surviving spouse, including those inherited from the deceased spouse, may appreciate in value at a rate greater than the rate at which the basic exclusion amount increases. This may cause assets in the surviving spouse’s estate to exceed that spouse’s available applicable exclusion amount. On the other hand, appreciation of assets placed in a credit shelter trust will avoid estate tax at the death of the surviving spouse.
- The distribution of assets placed in the credit shelter trust can be controlled. Since the trust is irrevocable, your plan of distribution to particular beneficiaries cannot be altered by your surviving spouse. Leaving your entire estate directly to your surviving spouse would leave the ultimate distribution of those assets to his or her discretion.
- A credit shelter trust may also protect trust assets from the claims of any creditors of your surviving spouse and the trust beneficiaries. You can also include a spendthrift provision to limit your surviving spouse’s access to trust assets, thus preserving their value for the trust beneficiaries.

A-B TRUST PLANS WITH FORMULA CLAUSES

If you currently have an A-B trust plan, it may no longer carry out your intended wishes because of the increased exclusion amount. Many of these plans use a formula clause that transfers to the credit shelter trust an amount equal to the most that can pass free from estate tax, with the remainder passing to the marital trust for the benefit of the spouse. For example, say a spouse died in 2003 with an estate worth $12.06 million and an estate tax exclusion of $1 million. The full exclusion amount, or $1 million, would have been transferred to the credit shelter trust and$11.06 million would have passed to the marital trust. Under the same facts in 2022, since the exclusion has increased, the entire $12.06 million estate will transfer to the credit shelter trust, to which the surviving spouse may have little or no access. Review your estate plan carefully with an estate planning professional to be sure your intentions will be carried out under the new laws.

WEALTH TRANSFER STRATEGIES THROUGH GIFTING

Because of the larger exclusion and lower tax rates, there may be unprecedented opportunities for gifting.

By making gifts up to the exclusion amount, you can significantly reduce the value of your estate without incurring gift tax. In addition, any future appreciation on the gifted assets will escape taxation. Assets with the most potential to increase in value, such as real estate (e.g., a vacation home), expensive art, furniture, jewelry, and closely held business interests, offer the best tax-savings opportunity.

Gifting may be done in several different forms. These include direct gifts to individuals, gifts made in trust (e.g., grantor retained annuity trusts and qualified personal residence trusts), and intra-family loans. Currently, you can also employ techniques that leverage the high exclusion to potentially provide an even greater tax benefit. For example, creating a family limited partnership may also provide valuation discounts for tax purposes.

For high-net-worth married couples, gifting to an irrevocable life insurance trust (ILIT) designed as a dynasty trust can reduce estate size while providing a substantial gift for multiple generations (depending on how long a trust can last under the laws of your particular state). The value of the gift may be increased (leveraged) by the purchase of second-to-die life insurance within the trust. Further, the larger exclusion enables you to increase, gift tax free, the premiums paid for life insurance policies that are owned by the ILIT or other family members.

Premium payments on such policies are taxable gifts, so these premium payments are often limited to avoid incurring gift tax. This in turn restricts the amount of life insurance that can be purchased. But the increased exclusion provides the opportunity to make significantly greater gifts of premium payments, which can be used to buy a larger life insurance policy.

Before implementing a gifting plan, there are a few issues you should consider.

- Can you afford to make the gift in the first place?(You may need those assets and the related cash flow in the future.)
- Do you anticipate that your estate will be subject to estate taxes at your death?
- Is reducing estate taxes more important to you than retaining control over the asset?
- Do you have concerns about gifting large amounts to your heirs? Is the recipient competent to manage the asset?
- Does the transfer tax savings outweigh the potential capital gains tax the recipient may incur if the asset is later sold? The recipient of the gift gets a carryover basis (i.e., your tax basis) for income tax purposes. On the other hand, property left to an individual as a result of death will generally receive a step-up in cost basis to fair market value at date of death, resulting in potentially less income tax to pay when such an asset is ultimately sold.

Caution: *The amount of gift tax exclusion you used in the past will reduce the $12.06 million available to you in 2022. For example, a person who used $1 million of his or her exclusion in 2012 will be able to make additional gifts totaling $11.06 million during 2022 free from gift tax.*

Tip: *In addition to this opportunity to transfer a significant amount of wealth tax-free, it's important to remember that you can still take advantage of the*

$16,000 (in 2022, $15,000 in 2021) per person, per year annual gift tax exclusion. Also, gifts of tuition payments and payment of medical expenses (if paid directly to the institutions) are still tax-free and can be made at any time.

LOOKING AHEAD

The Tax Cuts and Jobs Act doubled the basic exclusion amount to $11.18 million in 2018 (indexed annually for inflation). The exclusion is$12.06 million in 2022. After 2025, the exclusion is scheduled to revert to its level prior to 2018 and be cut by about one-half.

GIFTS

The large exclusion may make it easier than ever to make large gifts, but they may also reduce the need to make large gifts in order to reduce the gross estate for estate tax purposes.

The use of trusts involves a complex web of tax rules and regulations and usually involves upfront costs and ongoing administrative fees. You should consider the counsel of an experienced estate conservation professional before implementing a trust strategy.

The cost and availability of life insurance depend on factors such as age, health, and the type and amount of insurance purchased. Before implementing a life insurance strategy, it would be prudent to make sure that you are insurable.

Benefiting from a Corporate Trustee

Learn why a corporate trustee may be a better choice than an individual trustee

When establishing a trust, one of the most important decisions you will need to make is who to select as the trustee. While choosing yourself, a family member or even a friend is an option, there are countless reasons why choosing a corporate trustee is a wiser choice.

First, managing a trust and eventually settling an estate is a complex and time-consuming responsibility that requires someone with the right expertise, capable of handling and executing an extensive and delicate process. The following provide an overview of the details to consider when appointing a trustee for your estate. Keep in mind that often an individual trustee will fall short of the expertise necessary to support and manage a trust – an important consideration when it comes to loved ones and their security.

RESPONSIBILITIES OF A TRUSTEE

Trustees are obligated to act in the best interests of both current and future trust beneficiaries – an often complex and time-consuming responsibility. They also must comply with specific trust document provisions as well as state and federal governing laws. Any breach of those fiduciary duties could result in personal liability. Given the significant implications of naming a trustee, you may wish to consider a corporate entity over a family member or personal contact.

In addition to the broader responsibilities associated with managing a trust, there are countless tasks and liabilities that are often best managed by a corporate trustee who can deliver consistent administration across the life of the trust. Here is a quick summary of responsibilities that should be expected by any trustee:

- Review the trust document and its provisions
- Meet with grantor and/or beneficiaries at certain intervals to reevaluate the purpose and performance of the trust
- Implement necessary changes
- Disburse trust income and/or principal to beneficiaries as appropriate
- Pay bills and expenses of grantor or beneficiaries as appropriate
- Make tax decisions concerning the trust
- Issue tax reports to beneficiaries and file the trust's income tax returns
- Ensure trust provisions are followed and defend trust against challenges
- Maintain records of all transactions and collect income and dividends
- Issue regular statements of account to the grantor and/or beneficiaries

Four key attributes of a corporate trustee:

1. **KNOWLEDGE**
   Generally, corporate trustees have more knowledge than an individual would on all aspects of trust administration.
2. **TIME**
   Corporate trustees have the time to manages your trust, whereas an individual with a family and full-time employment may not be able to dedicate the appropriate time.
3. **RESOURCES**
   Corporate trustees have the resources and ability needed to manage a trust, including details like managing distributions, filing tax returns and maintaining records.
4. **EXPERIENCE**
   Corporate trustees have the experience and expertise to manage a trust.

COORDINATING THE SETTLEMENT OF THE ESTATE

A corporate trustee can provide immediate and continuing access to a team of qualified professionals who specialize in estates and trusts, and that coordinate the entire complex process while keeping your legacy intact.

The coordination process can be challenging, and a corporate trustee should be expected to coordinate efforts in all of these areas and settle the estate as promptly and efficiently as the law allows, at the lowest possible cost.

WHAT TO CONSIDER IF CHOOSING AN INDIVIDUAL TRUSTEE

If selecting an individual trustee is most important to you, give your choice careful consideration. It must be someone that you can count on to interact well with other members of your personal financial team and family.

Keep in mind too that without the proper blend of talent, the individual trustee may need to hire additional expert talent not initially planned for, ultimately costing the estate more money. Worse, if the trustee tries to go at it alone, not admitting he or she doesn't know how to handle a certain issue could lead to even more costly mistakes that may result in additional court and tax fees.

Also, while this seems to go without saying, surprisingly, families carrying out estate plan objectives often encounter conflict with an individual trustee due to mismatched temperament. Select an individual who tackles any problem or task with the same work ethic as you. An effective trustee must also be objective and honest. That is imperative when dealing with such important decisions that affect your loved ones' financial future and your legacy.

With such important qualities, it may be challenging to find a fully capable individual to act as your trustee. If that's the case, you may want to consider using the support of a corporate trustee as a co-trustee to the individual contact you selected. As a co-trustee, such as Raymond James Trust, you can have more comfort with the additional corporate insight to ensure your estate and family receive the best possible service and distribution results.

Everyone wants the confidence that comes from knowing their assets are protected and will be efficiently transferred to their heirs while mitigating costs and taxes. As a result, the most prudent course, generally, is to choose an independent trust company, preferably one that is highly skilled at dealing with the intricacies of trusts – like Raymond James Trust.

IN THE END

Clearly there are a number of factors to consider and be aware of when choosing between an individual trustee and a corporate trustee. While clients may think keeping the trust "close to the family" is in their best interest, clients should also think about impartiality. When selecting an individual trustee, clients open themselves up to family bias and influence surrounding very sensitive matters. A corporate trustee may help to relieve some of that pressure.

When asked why a corporate trustee should be selected over a personal contact, Andrew Krempp, the director of business development of Raymond James Trust, says, "Many people first think of choosing their close family or friends, but in many circumstances, the task can be overwhelming or a burden. In order to be successful, the trustee should really have the three T's – time, temperament and tenure – which we've been fortunate enough to develop at Raymond James Trust."

By choosing a corporate trustee, you can help ensure that current and future generations benefit from the expertise and administrative consistency that a well-established firm can offer.

A CORPORATE TRUSTEE PROVIDES COUNSEL ON:

- The inticates of estate settlement
- Interpretation of documents
- Management of assets
- Detailed and accurate recordkeeping
- Tax issues

KEY TAKAWAYS

Managing a trust and eventually settling an estate is a complex and time-consuming responsibility that requires someone with the right expertise, capable of handling and executing an extensive and delicate process.

In addition to the broader responsibilities associated with managing a trust, there are countless tasks and liabilities that are often best managed by a corporate trustee who can deliver consistent administration across the life of the trust.

A corporate trustee can provide immediate and continuing access to a team of qualified professionals who specialize in estates and trusts, and that coordinate the entire complex process while keeping your legacy intact.

What Issues Should I Consider When Reviewing My Estate Planning Documents?

YES NO

THRESHOLD ISSUES

Have you recently changed residency? If so, ensure that you have established your domicile (i.e., legal home), and that your estate plan is valid under the laws of your domicile.

Do you need to review the applicable laws and any changes that have occurred since you executed your documents (state or federal)? If so, review how your plan may have been affected, and update it accordingly.

Do you need to confirm and share the location of your original documents? If so, ensure that your documents are kept in a safe but accessible place, known to your family and/or fiduciaries.

GENERAL POWER OF ATTORNEY

Do you need to confirm the terms of your General POA? If so, review whether the powers are effective immediately or are "springing" (contingent upon the occurrence of a factor, such as incapacity), and whether they are durable (continue beyond your incapacity).

Do you need to review your appointed agents? If so, consider the following:

- If you name multiple agents, review whether they may act individually or must act jointly. Understand the complexities that can arise when agents must act together, and consider naming individual agents under concurrent General POAs if convenience is a priority.
- Confirm that your successor agents are good back-ups for your primary agents.

Do you want to limit your agents' powers?

Is there a need or good reason to record your General POA?

Have you revoked any prior General POAs? If so, consider appropriate steps to prevent unauthorized action by your prior agents. In some cases, recording may be advisable or necessary.

HEALTH CARE POWER OF ATTORNEY & LIVING WILL

Do you need to review your appointed agents? If so, consider the following:

- Given the nature of this role, local or readily available agents may best serve your needs.
- If you name multiple agents, review whether they may act individually or must act jointly. Understand the potential inefficiencies and any disputes that could arise among co-agents with respect to your health care.
- Confirm that your successor agents are good back-ups for your primary agents.

Are you planning to undergo a health procedure? If so, consider executing the relevant medical institution's Health Care POA form, in addition to what you might have in place.

Do you need to review your Health Care POA to confirm HIPAA authorizations?

Do you need to confirm that you clearly expressed your wishes regarding your end-of-life treatment options? If so, review your Living Will Declaration and your instructions regarding the provision of artificial nutrition, hydration, palliative care, and life-prolonging medical procedures in the event of a terminal condition, vegetative state, etc.

LAST WILL AND TESTAMENT

Do you need to review your Executor/Personal Representative appointments and successors? If so, consider the following:

- Confirm that your appointed fiduciary is qualified to serve under your state laws, and consider whether they are capable of fulfilling their duties.
- If you are naming co-fiduciaries, weigh the benefits against the possible complications.

YES NO

LAST WILL AND TESTAMENT *(continued)*

Do you have minor children? If so, consider the following:

- Do you have minor children? If so, consider the following: Confirm that your plan includes trust provisions (e.g., in a testamentary trust or in a living trust) to control the timing and amount of access to funds, and to properly support and protect your children.
- Name one or more guardians, including successors, to care for your minor children in the event of the death of both parents. Consider whether the same individual(s) should serve as Trustee(s), or whether a division of responsibility would be more beneficial.
- When naming a married couple as guardians, consider whether divorce or the death of one party would affect their suitability.

If you hold any testamentary powers of appointment, have you properly exercised them under your Will?

Do you need to review the allocation of the estate and/or inheritance tax burden?

Do you have a plan for your digital assets and information?

Does your Will refer to a tangible personal property memo? If so, ensure that you have completed the memo according to your wishes.

REVOCABLE LIVING TRUST

Do you need to review your Trustee/Co-Trustee appointments and successors? If so, consider the following:

- Ensure that your appointed fiduciary is qualified to serve under your state laws, and consider whether they are capable of fulfilling their duties.
- Weigh the costs and benefits of appointing a corporate fiduciary.

Do you have beneficiaries with special needs?

Do you need to review the allocation of the estate and/or inheritance tax burden for assets passing under your trust?

Does your Will pour over into your trust?

Did you, or do you need to, fund your trust during your lifetime? If so, consider what assets to convey to your trust, and when. Trust-owned assets will avoid probate at your death.

IRREVOCABLE TRUSTS

Do you have an ILIT? If so, confirm that the Trustee is properly administering the trust, all premiums are properly paid, and any Crummey Notices are timely issued (if applicable).

Do you have a split-interest trust, such as a CRT or CLT? If so, confirm that the Trustee is properly administering the trust, and annual payments are properly calculated and made.

Do you have a SLAT or a GRAT? If so, confirm that the Trustee is properly administering the trust, and that actions do not risk inclusion in your taxable estate.

Do you have a QPRT? If so, monitor the term of the trust, and plan for the transfer of ownership and the possible need to rent back the residence, observing proper formalities.

Do you need to confirm that income tax returns are properly filed for your irrevocable trust(s)?

Are your actions consistent with the terms of your trust?

MISCELLANEOUS

If you have a premarital agreement, do you need to ensure that your estate plan is in alignment?

Do you need to review your nonprobate transfers, to ensure that they align with the planning under your Will and trust? If so, consider the following:

- Assets that are jointly owned or TOD/POD pass by survivorship. Review deeds and account titling to ensure alignment with your overall plan.
- Retirement accounts, life insurance policies, annuities, etc. pass by beneficiary designation. Confirm the status of your beneficiary designations with each institution.

Do you need to add flexibility to your plan (e.g., by designating a trust protector), to allow changes should unforeseen circumstances arise in the future?

Are you concerned about a future Will or trust contest?