

# Estate Planning

## *2021 Financial Planning Guide*

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# ESTATE PLANNING UPDATES

## Federal Estate Planning Limits

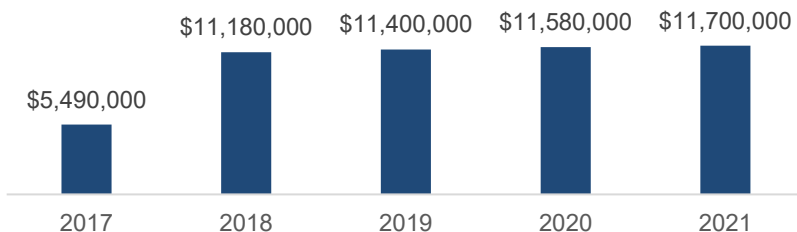
	2020	2021
Estate Exclusion	\$11,580,000	\$11,700,000
Maximum Estate Tax Rate	40%	40%
Lifetime Gifting Exemption	\$11,580,000	\$11,700,000
Maximum Gift Tax Rate	40%	40%
Annual Exclusion Gift	\$15,000	\$15,000
Annual Gifting Limit to U.S. Citizen Spouse	Unlimited	Unlimited
Annual Gifting Limit to Non-U.S. Citizen Spouse	\$157,000	\$159,000



## No Clawback

- The Tax Cuts and Jobs Act (TCJA) significantly increased the estate exclusion amount (presently \$11.70 million for 2021), though there had been concern that individuals taking advantage of the higher exclusion amount might one day owe additional tax for prior gifts, should the estate exclusion decrease after 2025.
- Last November, the Treasury Department and IRS issued final regulations that individuals utilizing the increased gift and estate tax exclusion amounts from 2018 to 2025 would *not* be adversely impacted after 2025, should the exclusion revert to pre-2018 levels.
- **Key Takeaway:** Individuals who have – or are likely to have – a taxable estate *and* who have sufficient assets for retirement may want to consider gifting additional assets to loved ones while the exclusion amount stands at an increased level.

## Estate Exclusion & Lifetime Gift Tax Exemption



# ESTATE PLANNING UPDATES

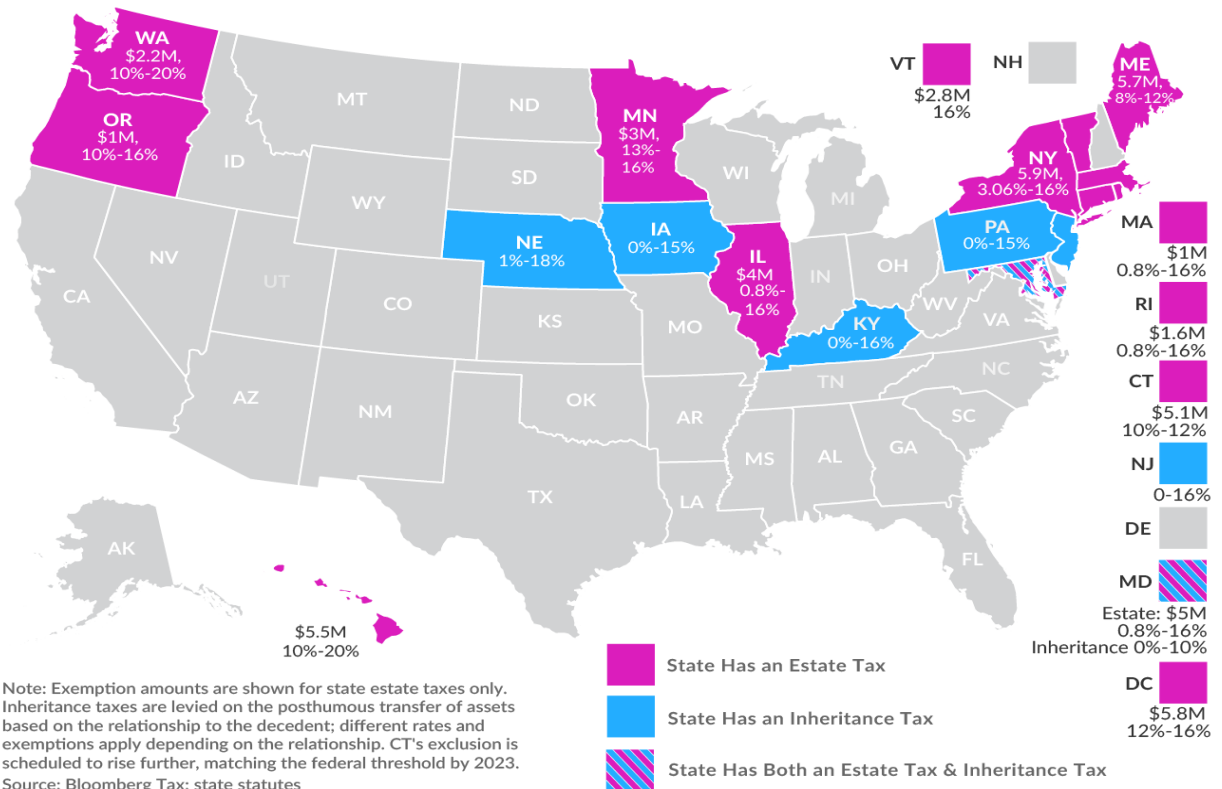
## Don't Forget Estate Tax at the State Level!

Many states have estate exclusions far below the federal level which may result in state estate taxes.

Older estate plans should be reviewed to ensure trust provisions incorporate current federal and state estate tax limits.

## Does Your State Have an Estate or Inheritance Tax?

State Estate & Inheritance Tax Rates & Exemptions in 2020



# GUIDE TO ESTATE PLANNING

## Level One (Must Haves)

***Planning for and documenting the transfer of assets with minimized tax and transfer cost. Review upon life events (marriage, divorce, birth, adoption, etc.)***

- A Will appoints guardians for your children and spells out specifically how you want your property split
- A Living Trust avoids probate, allows for privacy, and designates how assets are to be divided upon your death
- A Healthcare Power of Attorney allows you to designate a Healthcare agent to make healthcare decisions in the event you are unable to make decisions for yourself
- A Financial / Property Power of Attorney allows you to designate an agent to make financial decisions in the event you are unable to make decisions for yourself
- Joint accounts transfer to a designated person upon death, it is important to review co-ownership provisions and the titling of accounts
- Some assets (such as IRAs, Life Insurance, and Annuities) pass to your designated Beneficiaries. It is very important to periodically review beneficiary designations and coordinate with the overall estate plan.

## Level Two (Considerations)

***Further enhance the direction of assets, minimize Estate Taxes or increase Asset Protection***

- The Spousal Lifetime Access Trust (SLAT) has become a popular estate planning strategy to take advantage of current lifetime gift tax exemptions (\$11.7 million each)
- Grantor Retained Annuity Trusts (GRAT) seek to pass assets to beneficiaries free of estate and gift tax that have appreciated over the IRS Section 7520 interest rate
- Explore Charitable Trust, Donor-Advised Fund and Foundation Options
- Since Life Insurance is not necessarily estate tax-free, consider establishing an Irrevocable Life Insurance Trust
- Qualified Personal Residence Trust (QPRT)
- Intra-Family Loans can provide family members lower borrowing rates than traditional financing options
- Special Needs Trusts ensure the proper passing of assets to ensure beneficiaries with special needs are not disqualified from entitled benefits

## Level Three (Advanced)

***For Complex Estate Tax Issues or Liability Concerns***

- Domestic and Offshore Asset Protection Trusts offer those in high liability fields of work and those with high estate tax brackets options to reduce liability
- Self-Cancelling Notes allow the exchange of property for periodic payments based upon mortality
- Family Limited Partnerships and Family LLC's provide legal, financial, and tax structure to family businesses



### Concept Check: Portability

Portability allows you to use your spouse's unused estate tax exclusion. While portability was made permanent for federal estate tax purposes, you should check if your resident state also allows for portability of a deceased spouse's unused estate exclusion. In the event your resident state does not allow for portability, it may make sense for both spouses to have assets in their respective name (or trust's name) up to the resident state's estate exclusion amount.

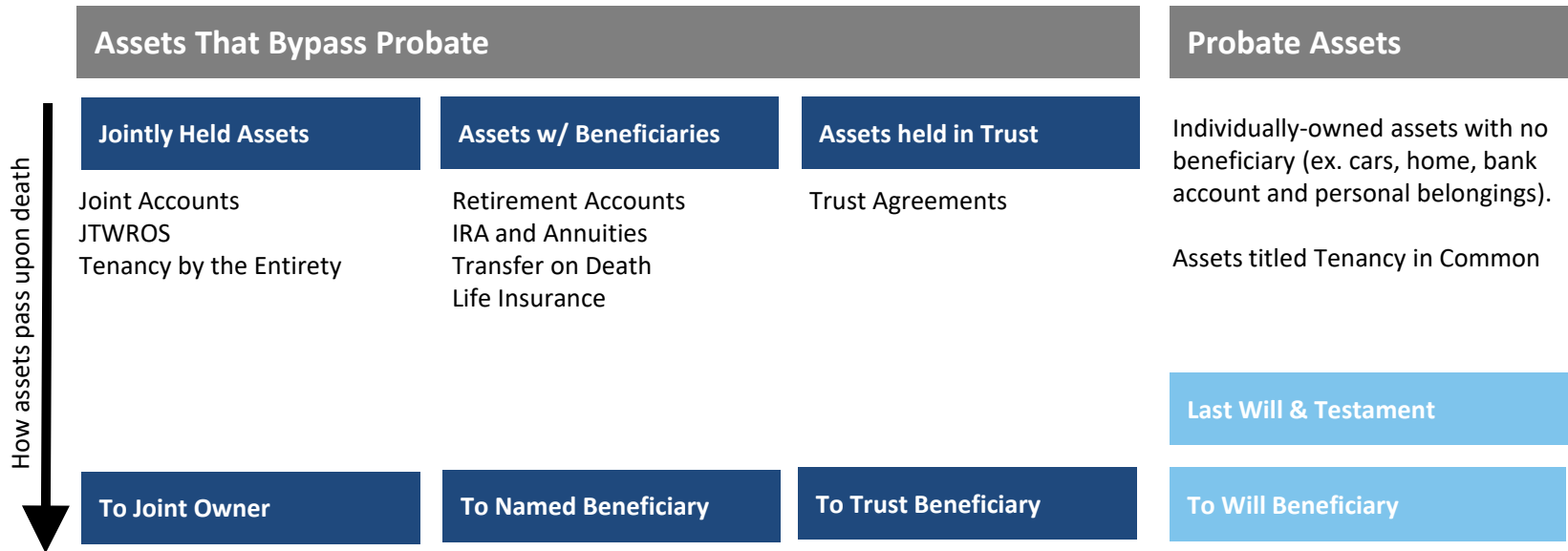
# HOW ASSETS PASS UPON DEATH



## Probate vs Non-Probate Assets

*Probate is a public-court process that helps settle legal and financial matters upon death according to a will, if written.*

*Court costs, length of time, the lack of privacy and family disagreements are all potential issues that may arise within the probate process. With proper estate planning, you can limit the amount of assets that pass through probate.*



**Digital Assets:** *Nearly all 50 states have passed a version of the Uniform Law Commission's Fiduciary Access to Digital Assets Act, Revised that legally allows for an executor, trustee, etc. to access a deceased's digital accounts. Consider discussing your digital estate with your attorney and the potential need to share online access information with your executor.*

Source: Uniform Law Commission, 2019

# HOW ASSETS PASS UPON DIVORCE



## Marital vs Non-Marital Assets

*Estate planning is not divorce planning. Without a pre- or post-nuptial agreement, marital assets are subject to equitable division in a divorce proceeding.*



*Effective for divorces finalized after January 1, 2019, alimony payments will no longer be tax-deductible by the paying spouse and will not be added to the taxable income of the receiving spouse.*

	Marital Assets	Non-Marital Assets
How assets pass upon divorce ↓	<b>Property Acquired During Marriage</b> Any property, real or personal, the couple acquires during the course of the marriage, <u>regardless of title or who paid for it.</u>  Typical examples include: <ul style="list-style-type: none"><li>• Retirement and Investment Accounts</li><li>• Pensions</li><li>• Homes and Vacation Homes</li></ul>	<b>Property Acquired Before Marriage</b> Any property, real or personal, acquired prior to the marriage, also including specific instances of property acquired during the course of the marriage by one spouse.  Typical examples include: <ul style="list-style-type: none"><li>• Inheritances</li><li>• Gifts</li><li>• Any property owned prior to marriage</li></ul>
	<b>Subject to Equitable Division</b>	<b>Not Subject to Equitable Division</b>



***Tainting of Assets:*** *Non-marital assets may be tainted during the course of a marriage and may be treated as marital assets in a divorce proceeding. For example, if a spouse deposits a personal inheritance into a joint account or uses income from an inheritance to support the couple's lifestyle, this non-marital asset may be treated as a marital asset.*

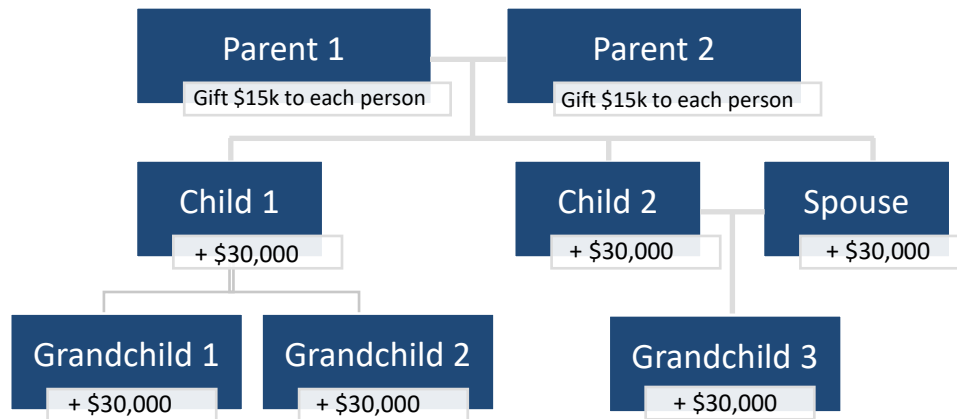
# TAX ADVANTAGES OF GIFTING



Individuals who are likely to one day have a taxable estate should consider annual exclusion gifts as a means to reduce the size of the estate.

The current annual gift exclusion enables a donor to transfer up to \$15,000 per donee; gifts above \$15,000 are allowed but may require using a portion of one's lifetime gift tax exemption and may require filing a gift tax return. Consider consulting an estate planning attorney on the proper titling of gifts and evaluate ideal savings/investing vehicles for the donee(s).

Additionally, tuition payments made directly to an educational institution and payments made directly to a healthcare provider for a person's medical care do not constitute gifts (and thus do not count toward the \$15,000 annual exclusion gift limit). Given the considerable expense often associated with private school or college, direct tuition payments can serve as a meaningful planning opportunity to reduce the size of a taxable estate.



## **Example:**

Each donor can individually gift to each donee \$15,000 per year, which equates up to \$30,000 gifted to each recipient annually (from a couple).

In this example, the parents (the first generation) are able to transfer \$180,000 tax-free each year to their heirs to reduce the size of their total estate, which may produce significant estate tax savings.

# GRANTOR RETAINED ANNUITY TRUST



Individuals with assets in excess of the estate exclusion (currently \$11.70 million per person) might consider this strategy as an opportunity to potentially transfer additional assets to beneficiaries on a gift and estate tax-free basis. The current low interest rate environment makes this a particularly attractive planning opportunity.



	Notes & Logistics
<b>Trust Funding</b>	<ul style="list-style-type: none"> <li>Grantor executes a legal document specifying the trust provisions and the term of the trust</li> <li>Grantor funds the trust ('GRAT') with cash and/or securities</li> </ul>
<b>During the Trust Term</b>	<ul style="list-style-type: none"> <li>The GRAT pays out an annuity to the grantor over the trust's specified term</li> <li>Portfolio income generated during the term of the trust flows back to the grantor</li> </ul>
<b>End of the Trust</b>	<ul style="list-style-type: none"> <li>If the GRAT outperforms the 'hurdle rate' (IRS Section 7520 rate), the GRAT will have remaining assets that will pass estate tax-free to the named beneficiaries</li> </ul>
<b>Additional Notes</b>	<ul style="list-style-type: none"> <li>The value of the gift at funding (if any) = fair market value of contributed assets <i>less</i> the actuarial present value of the annuity, as determined by the IRS Section 7520 rate (often referred to as the 'hurdle rate')</li> <li>Grantor may create a 'zeroed-out GRAT' whereby the fair market value of assets contributed to the trust matches the actuarial present value of the annuity</li> <li>If the grantor dies during the term of the GRAT, the GRAT assets revert back to the grantor's estate and would potentially be subject to estate tax</li> <li>7520 rate = 0.6% as of January 2021; for perspective, 7520 rate stood at 3.6% as of December 2018</li> </ul>



# ADDITIONAL RESOURCES

*Curious in learning more?*

- [Complete 2021 Financial Planning Guide](#)
  - [Tax Planning](#)
  - [Retirement Planning](#)
- [Additional Zuckerman Investment Group Resources](#)
- [Our Website](#)