ESTATE PLANNING GUIDE

PROTECTING WHAT MATTERS

A thorough overview of the documents and strategies needed to secure your financial legacy.

Lutz

MIND WHAT MATTERS

ESSENTIAL ESTATE PLANNING DOCUMENTS

Estate planning is a crucial aspect of financial and personal security, yet many individuals are unsure if they need estate planning documents. In this article, we will delve into the common topics for basic estate planning and highlight the essential forms that everyone should consider having. Whether you have a sizable estate or modest assets, estate planning documents are necessary to ensure that your wishes are carried out after your passing. By understanding the significance of these items, you can make informed decisions about your estate and protect the interests of your loved ones.

HOW DO I KNOW IF I NEED ESTATE PLANNING DOCUMENTS?

First, let's define your estate. Your estate is everything you own: home, vehicle, bank accounts, investment accounts, businesses, life insurance, personal belongings, real estate, etc. Estate planning involves determining how you would like these assets to flow to your intended beneficiaries during your life or upon your passing. Assets can pass one of three ways upon a person's passing:

1. Operation of Law

A joint account will be passed to the surviving person.

2. Contract or Beneficiary

A specific person is named on the asset or account as the beneficiary upon your passing.

It is commonly used on retirement accounts and life insurance but can be added to many other account types.

If a trust is in place, it can name the successor owners and provide specific language for the distribution of assets.

3. Probate

This is the court process of following a person's will if they have one.

If someone doesn't have a will, then probate is the process of following the specific state intestacy laws (meaning dying without a will). Each state has rules for people who die without a will (see Nebraska Intestate laws).

Next, an important step is understanding your personal situation. Are you single, married, or divorced? Do you have children? Are they minors? Do you intend to pass assets to other family members, charities, or anyone else?

A phrase often referenced in our office is to think of five-year increments when working on estate planning. Thinking about setting up a document that will last forever can be overwhelming and cause indecision or procrastination. However, doing nothing also has consequences and very likely isn't how you would have structured the flow of your estate (as seen in the Intestate Laws). Remember, these documents can be updated as life changes, kids age, and your balance sheet grows.

COMMON TOPICS FOR BASIC ESTATE PLANNING

1. Will

A will is a legal document that provides instructions for your wishes upon your passing. It can direct the flow of assets and appoint guardians for minor children. It also names the executor (or personal representative) who becomes in charge of helping administer your estate.

2. Durable Powers of Attorney (POA)

These additional legal documents are put into place to give someone the authority to act on your behalf. Specifically for durable POAs, these remain in force if you become unable to act on your own behalf due to incapacitation.

> **Durable Financial Power of Attorney** has the power to make financial decisions on your behalf in the event of incapacitation.
>
> **Durable Medical Power of Attorney** has the power to make medical decisions on your behalf in the event of incapacitation, allowing the medical POA to access HIPAA-protected information.
>
> **Living Will** states your wishes on medical treatment in the event of a terminal illness.

3. Testamentary Trust

A testamentary trust is a trust that is created as part of your last will and testament. The trust details are outlined in your will, and it springs open upon your passing. Your will includes instructions for the executor on how assets must be managed by the trustee and distributed to your beneficiaries.

4. Revocable Trust (Living Trust)

A revocable trust is a legal structure created during your lifetime that you can name as the owner of certain assets. As the name states, these can be "revoked" or amended during your lifetime as your life changes. As with testamentary trusts, these include language in the trust document stating your desired flow of assets, management by the trustee, and distribution to beneficiaries. Revocable trusts are generally created to help the individual avoid probate but require that all property be correctly titled in the trust or with the trust as beneficiary to avoid probate.

5. Minor Children

Generally, the top priority for parents of minor children is determining who will be their legal guardian in the worst-case scenario where both parents pass. Once decided, we recommend having that conversation with the person who you wish to have listed as guardian.

The next step is determining the proper structure of leaving assets to minor children. Even if your financial situation isn't complex enough to warrant a revocable trust, your will can have a testamentary trust. Who will be the financial trustee of these assets, and what age should your minor children reach before having more control of and access to these funds?

Financial Trustee: The trustee will be responsible for managing the assets in the trust over time. While it is possible to designate the same person as both the guardian and trustee, we recommend keeping these roles separate. This approach can benefit your children and the guardian by avoiding any conflicts of interest in deciding how to use the funds. Additionally, it will enable the guardian to avoid being put in the difficult position of having to deny your children's requests as minors (such as wanting an expensive car at 16), which may not be in their best interest.

The trustee can be a third-party institutional trust company if that is the best fit, but it would come with additional costs. Also, the trust should have language determining the length of time a trustee will act and directions to the trustee.

Disposition of Assets to Your Children: Using a trust, you can set ages that you deem the kids ready to access a portion or all the assets left in your estate. There is no exact science behind this, but some aspects to consider are the number of assets that will likely be left for children and the potential growth of these assets by the time they reach the intended distribution ages.For estates that could potentially leave your children millions of dollars by their age of distribution, it is becoming more common for assets to remain in trust for longer, potentially even for your child's lifetime. Keeping these assets in a trust adds a few extra safeguards for your children, like protection from creditors and potential future divorce.

- For example, let's say assets are split into equal shares for your children. At age 35, each child becomes their own trustee of the trust assets and can pull funds for specified expenses (commonly health, education, maintenance, and support).

- Neither of these strategies has to be only for minor children. This could even be for children who are young adults, knowing that a large inheritance would meaningfully change their lives and could impact the decisions they make.

- Lastly, it was mentioned briefly above, but we feel it is worth expanding on – the growth of assets that could be inherited. For some, it is apparent that assets will be significant and additional planning is needed, but for others, it might not be as clear.

- For example, let's assume that a couple has one young child (we'll use age three for this illustration). The couple might be early in their careers and not have significant liquid balance sheets. However, let's assume each has a two-million-dollar term life insurance policy. If this couple were in a fatal car accident, there would be four million dollars in their estate left to their only child. If they didn't have proper planning documents in place, their child would inherit these assets in Nebraska at age 19. These assets could be close to $10 million at the age of 19, using a conservative growth rate of 6%.

MARITAL STATUS

Whether you are single, married, divorced, widowed, or remarried can impact how you view your estate and how you would like your assets to flow. There are legal structures that can accomplish your specific intentions.

Family/marital trusts can give your surviving spouse limited access to your assets upon your passing while still protecting your children or intended beneficiaries. Trusts can also be put in place for specific assets – a common use is for a primary home. Again, one of the key factors here is being proactive and putting the proper documentation in place, knowing you can alter documents as your life and intentions change.

Even for a single individual who doesn't have children, having an estate plan can still help you accomplish your specific intentions. You may have charitable causes you are passionate about that you want formally written into your estate plan. Or potentially other family members that you wish to receive your assets upon your passing. A will is still essential to ensure your assets reach your desired beneficiaries. Additionally, powers of attorney (POAs) carry significant importance for single individuals.

COORDINATING ASSET TITLING AND ESTATE PLANNING DOCUMENTS

One of the last critical components of estate planning is the coordination of estate planning documents with your asset and beneficiary titling.

You can have the greatest estate plan in place, but if assets are titled incorrectly, they can unintentionally direct the flow of assets away from your intended heirs.

For example, you just updated your will to state that all assets should flow equally to your two children. Since this is the most recent document you have completed, you think you've done your part in ensuring the proper flow of assets.

However, if you have an old retirement account you haven't checked in years, and your sister is listed as the primary beneficiary, that beneficiary designation will supersede your will.

Or, if you have a sizable joint checking account titled joint with rights of survivorship with one child because they were helping you pay bills. Upon your passing, they become the owner of all those funds – potentially inadvertently disinheriting your other child.

A beneficiary of a retirement plan has substantially different rules for spouse vs. non-spouse.

- Spouses can claim the retirement assets as their own, which is more tax-favorable.
- Non-spouses must take distribution within ten years, which is less tax-favorable.

**Some exceptions apply.*

KEY POINTS TO REMEMBER

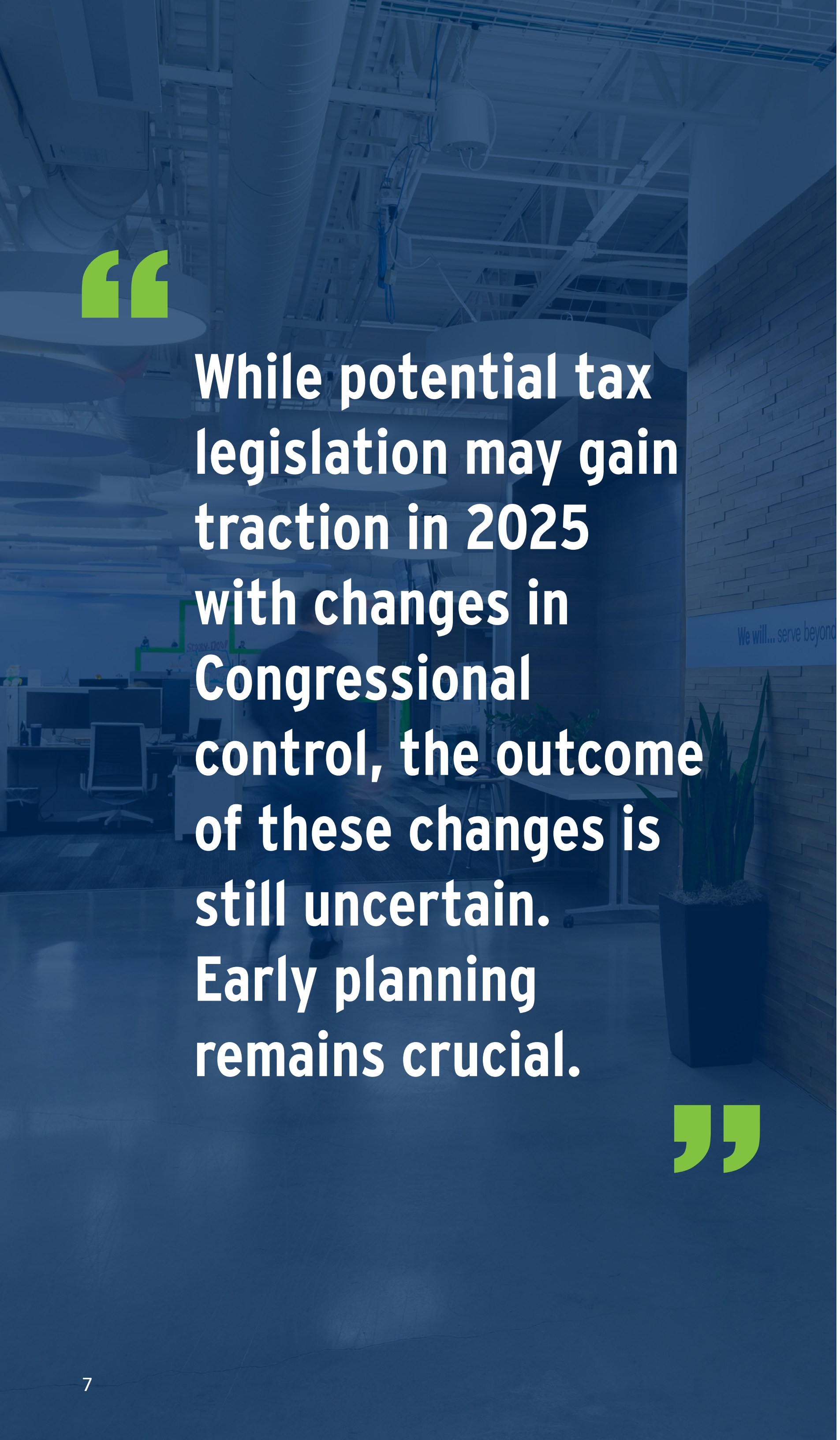
1. **Plan Ahead:** We hope these documents aren't needed for a long time, but having them in place helps ensure your intentions are followed.
2. **Review Periodically:** As life changes, so can your documents.
3. **Coordination is Key:** Make sure all your assets are properly titled with correct beneficiary designations and are updated as your estate plan changes.

ADVANCED ESTATE PLANNING: WHAT TO KNOW BEFORE 2026

The approaching deadline of January 1, 2026, is drawing closer, bearing significant implications for individuals and families regarding their estate. On this date, the current estate and gift tax exemptions are slated to revert to pre-2017 levels, necessitating a closer look at strategic planning. Presently, the exemption amount stands at a substantial $13.99 million per person. However, by 2026, this figure is expected to be halved, potentially settling closer to $7 million post-inflation adjustment. Below is the full chart for the last 20+ years:

Year	Estate Exemption	Highest Estate + GST Tax Rate	Gift Exemption	Highest Gift Tax Rate
2000-’01	$675,000	55%	$675,000	55%
2002	$1,000,000	50%	$1,000,000	50%
2003	$1,000,000	49%	$1,000,000	49%
2004	$1,500,000	48%	$1,500,000	48%
2005	$1,500,000	48%	$1,500,000	48%
2006	$2,000,000	48%	$2,000,000	48%
2007-’08	$2,000,000	48%	$2,000,000	48%
2009	$3,500,000	45%	$3,500,000	45%
2010	N/A (Tax Repealed)	N/A (Tax Repealed)	N/A (Tax Repealed)	N/A (Tax Repealed)
2011	$5,000,000	35%	$5,000,000	35%
2012*	$5,120,000	35%	$5,120,000	35%
2013*	$5,250,000	40%	$5,250,000	40%
2014*	$5,340,000	40%	$5,340,000	40%
2015*	$5,430,000	40%	$5,430,000	40%
2016*	$5,450,000	40%	$5,450,000	40%
2017*	$5,490,000	40%	$5,490,000	40%
2018*	$11,180,000	40%	$11,180,000	40%
2019*	$11,400,000	40%	$11,400,000	40%
2020*	$11,580,000	40%	$11,580,000	40%
2021*	$11,700,000	40%	$11,700,000	40%
2022*	$12,060,000	40%	$12,060,000	40%
2023*	$12,920,000	40%	$12,920,000	40%
2024*	$13,610,000	40%	$13,610,000	40%
2025*	$13,990,000	40%	$13,990,000	40%
2026*	Sunset***	40%	Sunset ***	40%

* Portability | *** Sunsets back to inflation-adjusted pre-2018 amounts



> **While potential tax legislation may gain traction in 2025 with changes in Congressional control, the outcome of these changes is still uncertain. Early planning remains crucial.**

Portability, introduced in 2011, allows a surviving spouse to file a form and claim their deceased spouse's unused estate exemption. For example, if John and Jane are married, and John never used his exemption before passing, Jane will be allowed to add John's exemption amount to her own.

So, instead of being left with only $13.61 million of exemption, Jane will have a $27.22 million exemption by claiming portability.

While the current estate and gift exemptions could be extended (or reduced) before sunsetting in 2026, this would require new legislation to pass Congress and get signed by the President. This is uncertain now and likely even more uncertain in an election year.

WHAT CAN BE DONE PRIOR TO 2026?

If you want to protect the current exemption amount, you can utilize some or all of your current exemption by gifting assets before 2026. Gifts made before the sunset are grandfathered in even if the exemption amount drops in the future. However, the gift amount is important to the full usage of the exemption.

Example:

John gifts $13,610,000 to an irrevocable trust in 2024, and in 2026, the federal estate exemption is reduced to approximately $7,000,000. The full amount of his 2024 gift remains outside of his personal (taxable) estate. However, it is worth noting that this only applies to amounts above the future exemption amount. If, in this same example, John had only decided to gift $6,000,000 and then the exemption amount dropped to $7,000,000, he would only have a $1,000,000 remaining exemption.

**Example is based on 2024 exemption amounts*

STRATEGIC ESTATE PLANNING OPPORTUNITIES

Married couples with two exemptions have options.

Example:

Sam and Sally are married and have a net worth of $25 million.

They have determined that based on their retirement goals, they can comfortably live on $15 million and view the remaining $10 million of their net worth as a legacy asset for their children and grandchildren.

These charts show the estate tax impact of three scenarios: no gift today, each gifting $5 million today, or one spouse gifting $10 million today.

**Example is based on 2024 exemption amounts*

NO GIFT SCENARIO	Values (2024)	Values (2026)
Personal Estate*	$25,000,000	$28,090,000
Sam Irrevocable Gift**	$0	$0
Sally Irrevocable Gift**	$0	$0
Sam Remaining Exemption***	$13,610,000	$7,219,425
Sally Remaining Exemption***	$13,610,000	$7,219,425
Personal Estate minus Remaining Exemption	**$0**	**$13,651,151**
Estate Taxes 40% (if Sam & Sally passed)	$0	$5,460,460

EACH GIFT $5 MILLION	Values (2024)	Values (2026)
Personal Estate*	$15,000,000	$16,854,000
Sam Irrevocable Gift**	$5,000,000	$5,618,000
Sally Irrevocable Gift**	$5,000,000	$5,618,000
Sam Remaining Exemption***	$8,610,000	$2,219,425
Sally Remaining Exemption***	$8,610,000	$2,219,425
Personal Estate minus Remaining Exemption	**$0**	**$12,415,151**
Estate Taxes 40% (if Sam & Sally passed)	$0	$4,966,060

ONE GIFTS $10 MILLION	Values (2024)	Values (2026)
Personal Estate*	$15,000,000	$16,854,000
Sam Irrevocable Gift**	$0	$0
Sally Irrevocable Gift**	$10,000,000	$11,236,000
Sam Remaining Exemption***	$13,610,000	$7,219,425
Sally Remaining Exemption***	$3,610,000	$0
Personal Estate minus Remaining Exemption	**$0**	**$9,634,576**
Estate Taxes 40% (if Sam & Sally passed)	$0	$3,853,830

**Assumed a growth rate of 6%* ***Irrevocable gift is outside of Sam & Sally's taxable estate* ****Assumed average inflation of 3%*

ONE PERSON GIFTING VS. GIFT SPLITTING

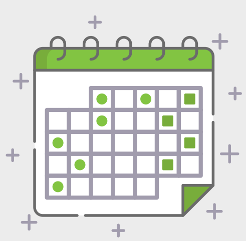
The key takeaway is that Sam & Sally would avoid the most estate tax if one person irrevocably gifted $10 million vs. each gifting $5 million into separate trusts. More variables would factor into the outcome, but this compares the benefit of one person using the exemption and splitting the gift.

TAX BASIS

The tax basis of gifted assets is carried into the trust. If an asset had a $1 million unrealized gain before the gift, it keeps that $1 million unrealized gain inside the trust. One downside of making gifts to irrevocable trusts is the assets do not receive a step up in cost basis upon your passing, whereas assets in your taxable estate do (under current law). There are estate planning strategies that can be used to mitigate this, such as asset swapping.

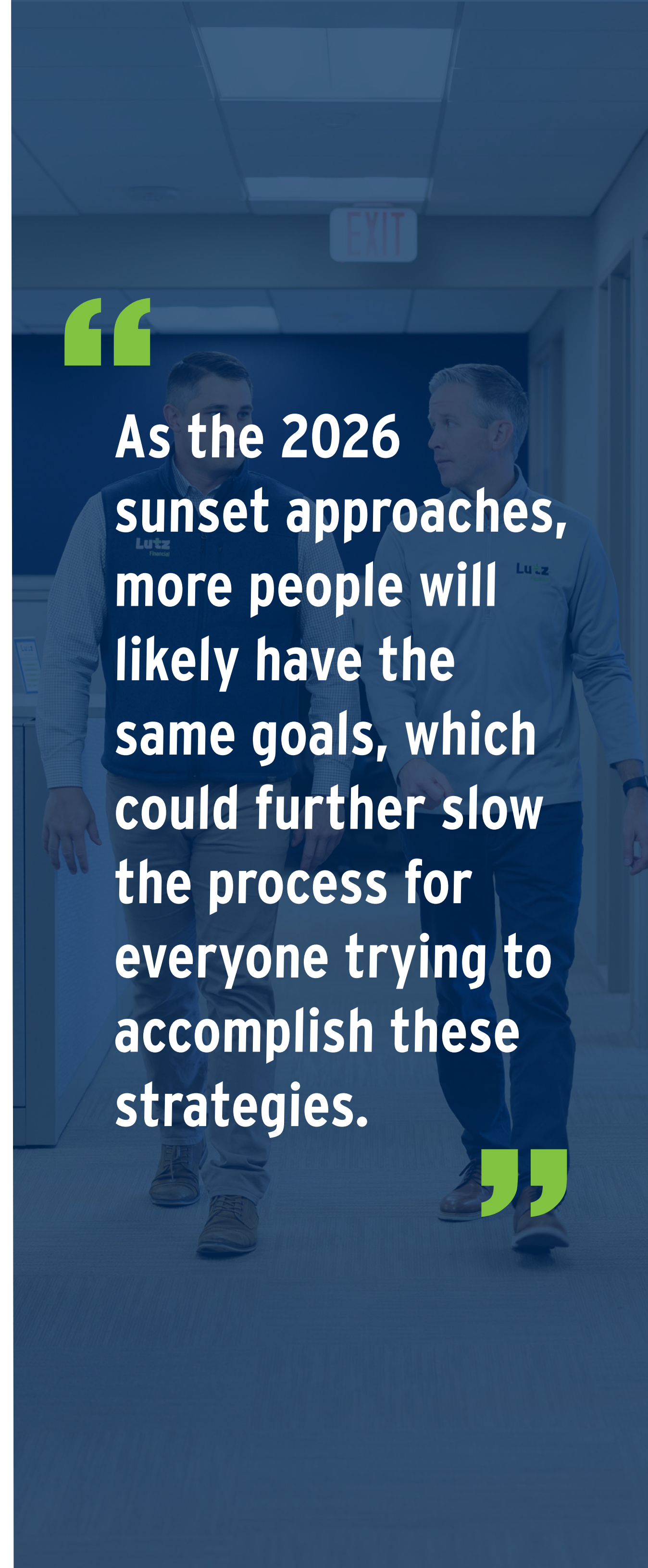
GRANTOR RESPONSIBILITIES

Under current law, grantor status would allow for payment of the trust taxes by the grantor. This is equivalent to allowing the grantor to make additional "gifts" to the irrevocable trust, as it will enable the trust to grow tax-free while the grantor continues to pay the trust tax bill. This is not considered a gift to the estate tax exemption limits, but it does continue to minimize the grantor's personal estate. The grantor has a one-time option to change the taxes from being paid personally to being paid out of the trust. Once this is triggered, it can't be undone. However, it may get to a point where the individual feels the trust is large enough to accomplish their estate planning goals, or taxes may get to a point where they are causing concern to the grantor's personal financial picture. Many variables are worth factoring into the estate planning decision before determining the best fit for your situation.



WHY NOW?

There is always the uncertainty of changes to the tax laws in the future. As recently as 2021, there were discussions to potentially lower the estate tax exemption to somewhere between $3.5 million and $5 million per person. A precedent has been established in the past that gifts already made would be exempt from reduced limits. Additionally, estate planning strategies take time to have the legal documents properly structured and put in place (including potentially retitling assets that are being gifted). As the 2026 sunset approaches, more people will likely have the same goals, which could further slow the process for everyone trying to accomplish these strategies.



"As the 2026 sunset approaches, more people will likely have the same goals, which could further slow the process for everyone trying to accomplish these strategies."

BEYOND THE BASICS: SOPHISTICATED ESTATE PLANNING

In the previous segment of our Estate Planning Series, we discussed the 2026 sunsetting of estate tax exemptions. This change is most impactful for anyone with a net worth above the estimated sunset limit of approximately $7 million per person or $14 million per married couple. However, that doesn't mean anyone with an estate less than those amounts doesn't have concerns about the future estate tax exemption. What if I (we) don't feel comfortable gifting away a large portion of our net worth to maximize current estate exemptions? Various estate planning strategies can be considered, and all should be well thought out before rushing into any of them. This blog examines three tax-efficient solutions.

1. SPOUSAL LIFETIME ACCESS TRUST (SLAT)

One solution includes making a gift that the grantor still has indirect access to. An irrevocable trust that accomplishes this that we commonly see used is a Spousal Lifetime Access Trust (SLAT).

> **How does a SLAT work?** Spouse A makes a gift to an irrevocable trust that Spouse B is the beneficiary of (would also have secondary beneficiaries listed, such as children). Since Spouse B can pull funds for their own benefit, this provides indirect access to the funds for Spouse A should the funds be needed.
>
> The goal in using this strategy is ultimately not to pull the funds out using the indirect access, as this would undo the estate tax benefit that was trying to be captured. However, accessing the funds when they are needed helps provide some peace of mind.
>
> The potential downside to a SLAT is you could lose indirect access at some point in the future. This would result from Spouse B predeceasing Spouse A or the couple's divorce. In the divorce scenario, Spouse B's interest could be terminated, but the indirect access for Spouse A would also be lost.

Gifting

Another important factor to consider is the future potential growth of gifted assets. Making a gift today that removes assets from your estate allows for future growth of those assets outside of your taxable estate. For this reason, it may still make sense to make a gift even if it is not over the estimated sunset exemption level.
This can be especially true for highly appreciable assets. If there are assets that you are not planning to rely on for retirement goals, they make an ideal candidate for gifting. Other examples may be a family business or farm intended to be passed to the next generation. Entities such as LLCs can be used and potentially receive a discounted valuation when making gifts if properly structured.

Dynasty Trust

You may also consider adding dynastic provisions to the SLAT. This type of trust is considered a dynasty trust. A dynasty trust is an estate planning tool that allows a person to control the distribution of his or her wealth for multiple generations in the future. Rather than providing for beneficiaries to receive trust assets outright at a certain age or a certain point in time, a dynasty trust limits beneficiaries' access to trust assets in order to preserve them with an eye toward the long-term (and potentially indefinite) sustainability of the trust. When adequately funded and properly managed by the trustee, dynasty trusts can provide financial support to multiple generations without estate or transfer tax liability and without the uncertainty of not knowing what your beneficiaries will do with the assets they receive from the trust.

Along with tax savings and long-term wealth preservation for multiple generations, another benefit of using a dynasty trust is that it can shield trust assets from liabilities that may arise during your beneficiaries' lifetimes. For example, suppose your grandchild gets divorced. If he or she receives trust assets outright, those assets could become subject to division during the divorce process. However, by keeping assets within the dynasty trust, they avoid any chance of becoming part of your grandchild's marital estate. The same principle applies to creditor claims and civil judgments. Using a dynasty trust can effectively serve as an asset protection plan for your immediate beneficiaries as well as generations down the line.

2. INTENTIONALLY DEFECTIVE GRANTOR TRUSTS (IDGT)

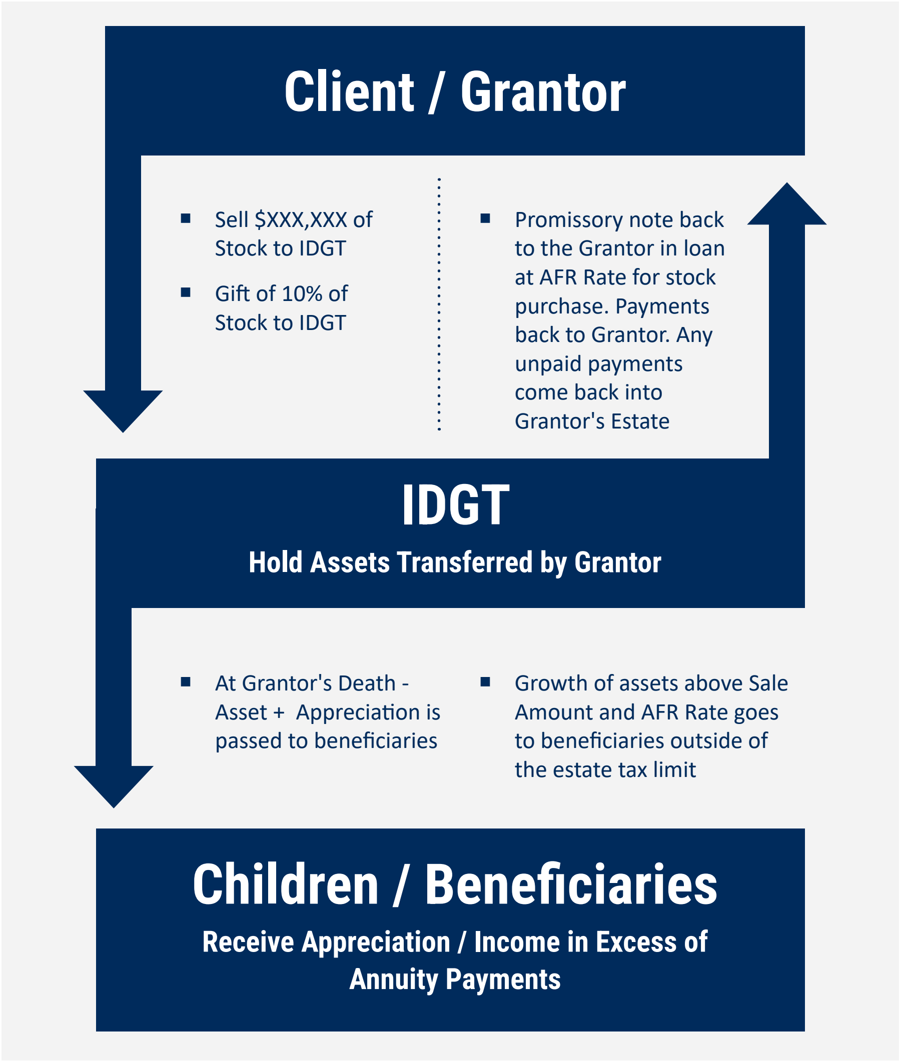
Where a grantor has income-producing assets (e.g., commercial real estate subject to a long-term lease) that the grantor expects to appreciate significantly in value, a sale of that property to an income tax "defective" grantor trust on an installment basis is an attractive estate planning technique. Such a trust is deemed "defective" for income tax purposes because the grantor is considered to be the owner of the trust for income tax purposes, with the result that the grantor and the trust are deemed to be the same "person" with respect to income tax issues. Accordingly, the sale of assets to the trust by the grantor does not result in any taxable capital gain. While the grantor would be deemed the owner of the trust for income tax purposes, the trust would be designed so that the trust assets are not includable in the grantor's taxable estate for estate tax purposes.

Typically, such a transaction takes the form of an installment sale over an extended period of time, with the trust's payment obligation to the grantor being evidenced by a promissory note. For tax reasons, the term of the note should not exceed the grantor's actuarial life expectancy. However, the note may contain a provision providing for the termination of the repayment obligation if the grantor dies prematurely. This "death-terminating" feature presents the opportunity for a windfall to the grantor's beneficiaries in the event of an untimely death. However, the use of this feature requires that a premium be attached to the promissory note, either in the form of an increased principal amount or an above-market interest rate. This is known as a self-canceling installment note or SCIN.

This technique is useful when the property being sold will generate sufficient income to offset wholly or substantially the promissory note payments. It is generally wise to combine such a sale with a concurrent gift of other assets to the trust to give the trust another means of repaying the note. At a minimum, a gift of 10% of other assets is required.

The benefit of this technique is that it presents the opportunity to transfer assets at no gift or estate tax cost to the beneficiaries, while having the asset pay for its own transfer by applying the income stream to the promissory note payments. Moreover, since all of the income produced by the asset is taxed to the grantor, the grantor's payment of that income tax liability is, in essence, an additional tax-free "gift" to the trust beneficiaries.

Again, this is an estate freeze concept. The installment sale is attractive during lower interest rate environments and the expected rate of return on the asset is higher. Thereby producing more value to the beneficiaries of the trust. The installment sale has the same effect as a GRAT and is easier to administer.



3. GRANTOR RETAINED ANNUITY TRUST (GRAT)

In the conversation of future growth, we should also discuss a Grantor Trust strategy that is commonly used – Grantor Retained Annuity Trust (GRAT). In basic terms, this trust is an annuity back to yourself, but the growth of assets funding it that is captured inside the trust by the end of the GRAT term stays outside your taxable estate.

How does a GRAT work? You are required to pay an interest rate to yourself (Section 7520 Interest Rate), so again, the best assets to use in a GRAT are those with the most appreciation potential. If the assets do not grow above the interest rate required during the term, then the entire balance comes back into your estate, and you're out the legal costs to set up these structures. Since this is a loan back to yourself, this does not use any of a person's estate exemption amount, making it enticing to people who aren't quite ready to irrevocably gift away assets (or those who have already fully utilized their estate exemption).

Below is an example of a 5-year GRAT using the September 2023 Section 7520 Interest Rate (5.3%) and a highly appreciable asset valued at $5 million and a 10% assumed growth rate:

	Principal	10% Growth	Required Payments	Remainder
YEAR 1	$5,000,000	$500,000	($1,164,468)	$4,335,532
YEAR 2	$4,335,532	$433,553	($1,164,468)	$3,604,617
YEAR 3	$3,604,617	$360,462	($1,164,468)	$2,800,611
YEAR 4	$2,800,611	$280,061	($1,164,468)	$1,916,205
YEAR 5	$1,916,205	$191,620	($1,164,468)	$943,357
			Annual Annuity Payments Back to Grantor	Growth Outside of Estate

Gifting

Since this is a grantor trust, the trust owner can choose to continue paying the taxes generated by the assets that are now outside of their estate. This is the equivalent of an additional “gift” as the trust will grow without tax drag that would otherwise be associated with a taxable account (i.e., dividends, interest, capital gains). However, paying the tax bill is not considered a gift for exemption or annual gift exclusion purposes.

Another item to note regarding taxes is that the grantor has a one-time option to change the taxes from being paid personally to being paid out of the trust. Once this is triggered, it can’t be undone. However, it may get to a point where the individual feels the trust is large enough to accomplish their estate planning goals, or taxes may get to a point where they are causing concern to the grantor’s financial picture.

4. OTHER COMMON ESTATE REDUCTION STRATEGIES

Additional methods can be used to remove assets from your taxable estate without making a large irrevocable gift.

Annual Gift Exclusion

Everyone can use the Annual Gift Exclusion, which is currently $19,000 per person to any individual (spouses each have their own exclusion, effectively doubling this amount to any individual). This can add up quickly if someone is really trying to minimize their estate.

529 Education Savings Plan

Contributing to a 529 Education Savings Plan is another way to lower your taxable estate, allowing the 529 owner to maintain control of the asset (this would count toward the annual exclusion amount).

While this is not an exhaustive list, it is intended to show additional ways that someone could lower their taxable estate without making a large gift.