



Garfunkel Wild

2023 Year-End Estate Planning Opportunities

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Introduction

- Estate planning has been challenging in recent years. Drastic changes were proposed, but not enacted, and a major reduction to the Federal estate tax exemption is scheduled for 2026.
- What we do know is that the sooner you act the more options you have to save estate taxes for your family.
- 2024's election and 2025 may bring some clarity to the future with respect to the Federal exemption.
- This webinar will provide a brief overview of estate planning, important considerations for making sure your plan is up to date as we enter 2024, and the incoming tax law changes that can affect your planning.

Anatomy of an Estate Plan

Your estate plan should consist of the following documents to ensure your wishes are followed in the event of your incapacity or death, and to make the administration of your estate less costly and time consuming.

- Will
- Revocable Trust
- Power of Attorney
- Health Care Documents
- Disposition of Remains

Revocable Trusts Simplify Estate Administration

- Just like a Will, a Revocable Trust (sometimes called a “Living Trust”) is a document that directs how your assets will pass upon your death.
- You retain access and control over assets in the Revocable Trust during your lifetime, and can amend or revoke your Revocable Trust at any time.
- You can transfer assets to your Revocable Trust during your lifetime so that, upon your death, your Trustee can access the assets right away and distribute them according to your wishes.
- Using a Revocable Trust avoids the need to probate your Will, and saves your family the delay and expense of a probate proceeding in court.
- A Revocable Trust also eliminates the need for additional court filings for the administration of any continuing trusts created for a beneficiary, resulting in an immense saving of time and expenses.

Advance Directives

- A Power of Attorney allows you to designate an agent to handle your legal and financial affairs. Executing a Power of Attorney ensures that your chosen Agent can handle your affairs for you if you incapacitated or are unable to handle your own financial affairs.
- A Health Care Designation Form is a legal document that allows you to name someone as your health care representative to make healthcare decisions on your behalf in the event you are unable to make such decisions for yourself.
- A Living Will is a document in which you provide specific guidance and instructions to your health care representative regarding your health care decisions, including, but not limited to, your specific wishes about whether you want life sustaining treatment in certain specific situations.
- A Disposition of Remains Form states your specific funeral instructions and appoints an agent to dispose of your remains.

Is your Estate Plan Up to Date?

- If any changes occurred in your family or to your assets, your estate planning documents should be updated to reflect these developments.
- Changes may be warranted if, for example, a marriage ended, you sold a major asset or business, you became a grandparent, you received an inheritance, or you retired. Other considerations include:
 - Appointing a Guardian for your minor children;
 - The person you named as an Executor, Trustee, or power of attorney or health care agent should no longer be in that role; and
 - You have concerns about whether a certain beneficiary can manage his or her inheritance.
- Existing Trusts should be reviewed to determine if adjustments should be made to its terms or distributions need to be made for income tax planning reasons.
- Don't forget to coordinate account titles: custodial, joint, "TOD," "POD," and "ITF" and beneficiary designation forms with your estate plan. Wills/Trusts do not override beneficiary designations.

Federal Estate Tax Exemption Will Be Cut in Half in 2026

- The “Federal Gift and Estate Tax Exemption” is the maximum amount you can give without paying federal gift or estate tax.
- The Federal Exemption is \$12,920,000 for 2023, increasing to \$13,610,000 for 2024, but it is scheduled to be cut in about half in 2026.
- Wealthy individuals can take advantage of the historically high Federal gift and estate tax exemption by making a large gift and thereby removing assets and their future appreciation from the taxable estate.
- As the Federal tax rate on amounts exceeding the Federal Exemption is 40%, those whose assets exceed the reduced future exemption amount should take action before 2026.

Don't Forget Exposure to State Estate Tax

- Some states (New York) do not track the Federal exemption and have a much lower exemption (New York's current exemption is \$6,580,000, increasing to \$6,940,000 in 2024), some states (New York and Connecticut) do not allow your spouse to inherit your unused state exemption and some states (New Jersey) have no estate tax on immediate family relatives, but do impose a tax on other relatives.
- In New York, if your estate exceeds New York's exemption by a small amount, there is no exemption at all and your entire estate, not just the excess, is taxed ("New York's Cliff"). New York's top tax rate is 16%.
 - Because of New York's cliff, for married New Yorkers, it is critical that each spouse's estate to be poised to take advantage of the New York exemption. If the estate of the first spouse to die doesn't use that spouse's exemption, the estate of the surviving spouse is limited to the survivor's exemption. As a result, if the survivor's assets are over the New York exemption, the entire estate of the survivor is taxed. With proper planning, the couple can instead pass more than \$13,000,000 to children free of New York estate tax.
 - If you are a New Yorker and your estate is just slightly over the NY exemption you can include a "Santa Clause" in your estate plan to give the excess to charity to avoid estate tax. It won't take away from your family, only from NYS estate tax authorities.

Reduce Your Estate Taxes by Making Tax-Free Gifts

- To reduce your estate tax, you can make annual tax-free gifts to as many people as you would like before 2023 is over. For future years, make your annual gifts each year in January to allow future growth to accrue out of your hands.
- You can give \$17,000 per recipient in 2023 (or you can give \$34,000 as a married couple). In 2024, this annual tax-free gift amount will be increased to \$18,000 (or \$36,000 for a married couple).
- These annual gifts, as well as direct tuition and medical payments, do not use up your Federal estate and gift exemption.
- Gifts can be made outright, in trust, or to a 529 college savings plan. You can “front-load” a 529 plan with five years’ worth of gifts to supercharge the gift.
- Making annual gifts to a “Grantor Trust” -- you pay the Trust income taxes – is a further tax-free gift technique used by wealthy families.

Irrevocable Trusts for Reducing Estate Taxes

- Irrevocable Trusts are a popular method of reducing your estate taxes.
- You must give up complete control and enjoyment of the assets transferred.
- Giving assets to an Irrevocable Trust will shelter assets from gift and estate tax, and removes future appreciation from your estate.
- You cannot be a beneficiary or a Trustee, but your spouse and/or children can be.
- There are many different types of Irrevocable Trusts. Some Irrevocable Trust techniques are more attractive in our current higher interest rate environment.

Spousal Lifetime Access Trust (SLAT)

- You can set up a Spousal Lifetime Access Trust for your spouse and/or your children's benefit and add up to the Federal exemption amount without paying Federal gift tax.
- Your spouse can be a Trustee and access/use SLAT funds if desired.
- Even though you cannot access SLAT funds directly, you can enjoy the funds indirectly through your spouse.
- Once property is in the SLAT, all future appreciation is exempt from tax in your estate.
- If you pay the income taxes on Trust assets ("Grantor Trust"), the Trust can grow even more.

Irrevocable Life Insurance Trust (ILIT)

- Life insurance proceeds are not exempt from estate tax.
- You can create an Irrevocable Life Insurance Trust to prevent your life insurance proceeds from being taxed.
- You must transfer ownership of your life insurance policy to the Trust.
- You must live three years from gift to qualify for estate tax exemption.
- Premium payments once ownership is transferred are considered taxable gifts. You can use your annual gift tax exclusion to make premium payments tax free gifts.

Other Irrevocable Trusts for Estate Tax Planning

- Certain estate planning strategies that work better in a high interest rate environment, such as the Qualified Personal Residence Trust (QPRT) and Charitable Remainder Annuity Trust (CRAT).
- Certain estate planning strategies that work better in a low interest rate environment, such as a sale to an Intentionally Defective Grantor Trust (IDGT), a Grantor Retained Annuity Trust (GRAT), and Charitable Lead Annuity Trust (CLAT).

Charitable Giving

- To reduce your 2023 taxable income, consider charitable giving.
- You can create a donor advised fund at a charity of your choice and receive an immediate deduction, but defer distributions to charities of your choice until the need for a contribution arises.
- Consider giving appreciated stock instead of cash to avoid realizing capital gains on the sale of low basis tax assets.
- If you have an IRA and are over age 70 ½ and write significant checks to charity you are missing a valuable tax deduction. If you are taking annual required minimum distributions (RMDs) from your IRA, you can instead give up to \$100,000 of your RMD to charity from your IRA (“Qualified Charitable Distribution”) and pay no income tax on the distribution.
 - Married couples filing jointly can donate \$200,000 annually and neither can contribute more than \$100,000.
 - Your taxable income is reduced by the amount of the QCD.
 - These payouts do not add to your adjusted gross income (as your RMDs would), which is used by Medicare to determine the cost of your monthly premiums.



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QUESTIONS?

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Doris (“Dede”) L. Martin heads the Trusts, Estates, and Private Client Services Group. Dede advises clients on estate planning, administration, and litigation, charitable giving, elder law, tax-exempt organizations, and qualified retirement plans.

Since joining the firm in 1994, Dede’s practice has encompassed all aspects of estate planning, including wills, revocable trusts, charitable trusts, insurance trusts, qualified personal residence trusts, grantor retained annuity trusts, family limited partnerships, retirement plans, and asset protection; all aspects of estate and trust administration, including probate post-mortem planning, and estate tax returns; Medicaid and elder law planning, and the establishment and operation of tax-exempt organizations for individual clients and tax-exempt organizations. She also works with families of special needs individuals, establishing Supplemental Needs Trusts and advising families on Medicaid matters and other governmental benefits. She also has represented organizations devoted to working with special needs children.

Dede has particular experience in estate planning for physicians. Dede frequently writes and lectures on estate planning.

Kristen M. Walsh

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Kristen M. Walsh concentrates her practice on complex estate planning, asset protection and wealth preservation, trust and estate administration, and elder law.

Kristen designs and implements estate plans that are specifically tailored for the needs and objectives of each of her clients. She drafts estate planning documents from the simple to the complex, including wills, revocable and irrevocable trusts, family agreements, and advance directives. Kristen's estate plans address estate and gift tax planning, elder care and special needs concerns, business succession planning, and lifetime and charitable giving.

In trust and estate administration matters, Kristen is involved in the preparation of gift and estate tax returns and the preparation of both informal and formal accountings. She advises executors and trustees on their fiduciary duties and advises beneficiaries on their rights. Kristen also represents clients in both contested and uncontested Surrogate's Court matters, including probate, administration, and accounting proceedings, and other trust and estate litigation matters.

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Bianca DeLeon is a recent graduate of the Elisabeth Haub School of Law at Pace University. She concentrates her practice on estate planning and trust and estate administration.

Bianca drafts a variety of estate planning documents, including, but not limited to, living wills, health care proxies, durable power of attorneys, Wills, and revocable and irrevocable trusts.

In trust and estate administration matters, Bianca is involved in the preparation and filing of probate and administration petitions as well as the preparation of estate tax returns. She also assists clients with the collection and distribution of estate assets.

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