ESTATE PLANNING FOR NON-MARRIED COUPLES

2023 Seminar Material

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ESTATE PLANNING FOR NON-MARRIED COUPLES

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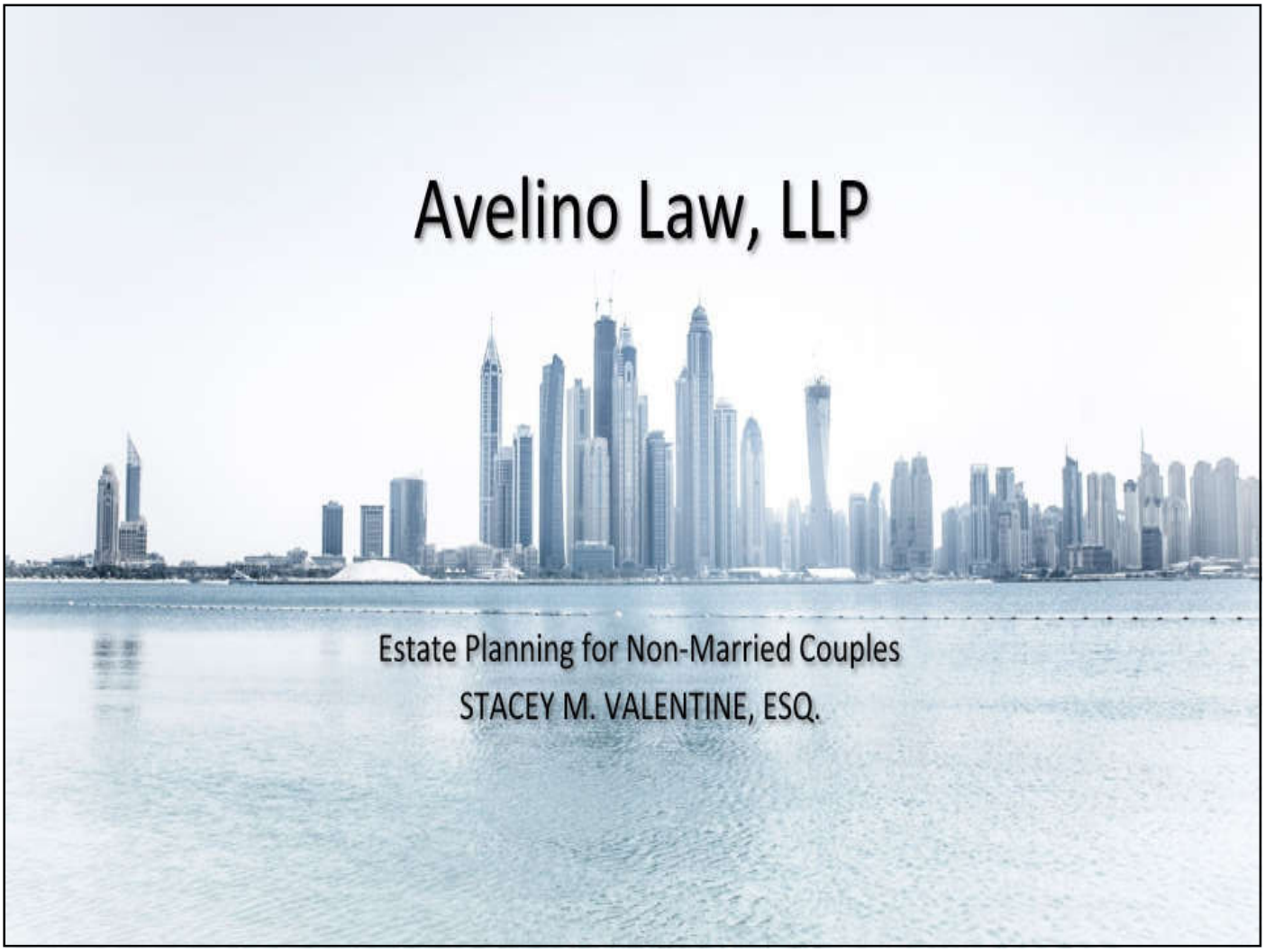
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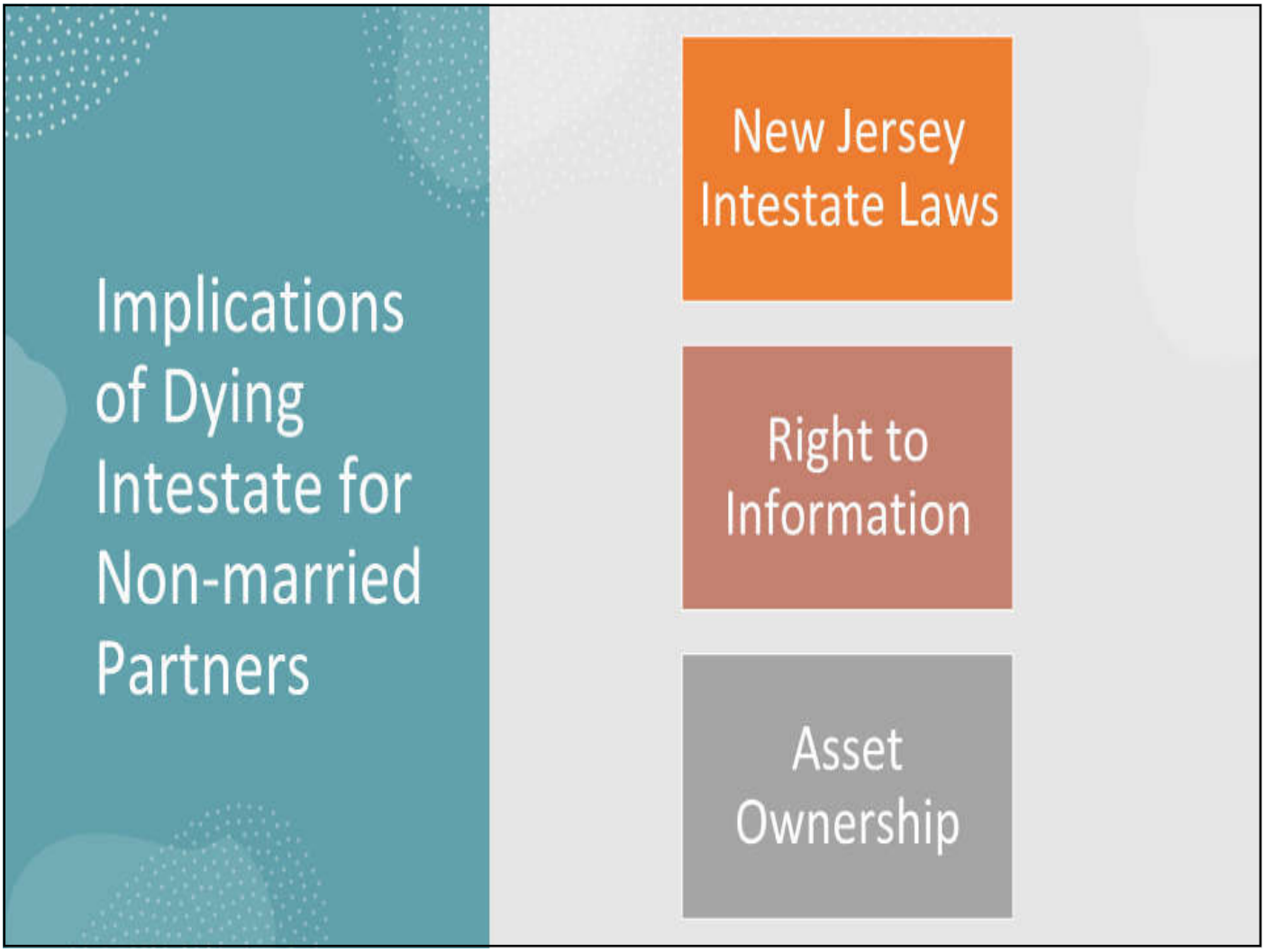
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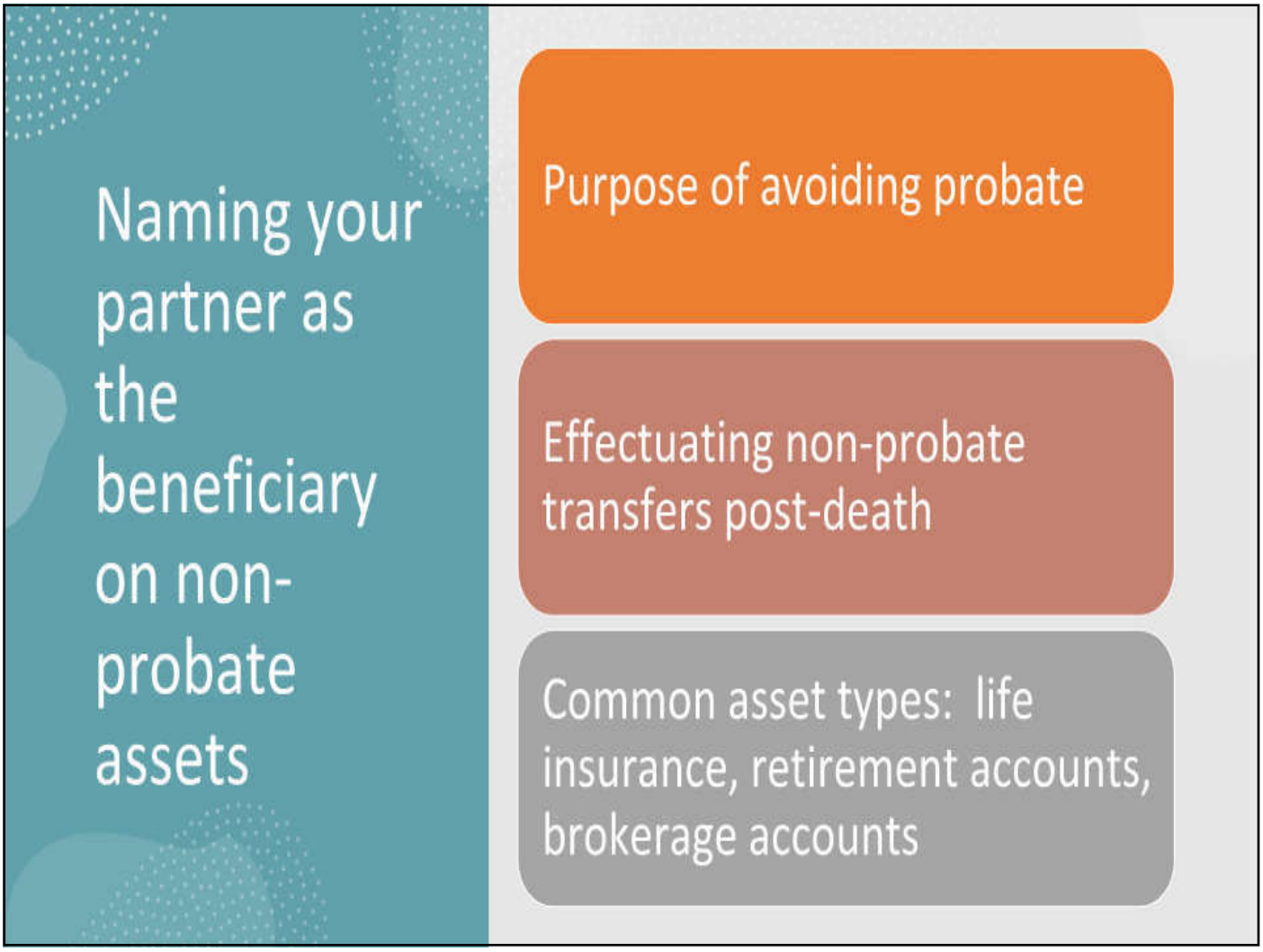

Avelino Law, LLP
Estate Planning for Non-Married Couples
STACEY M. VALENTINE, ESQ.

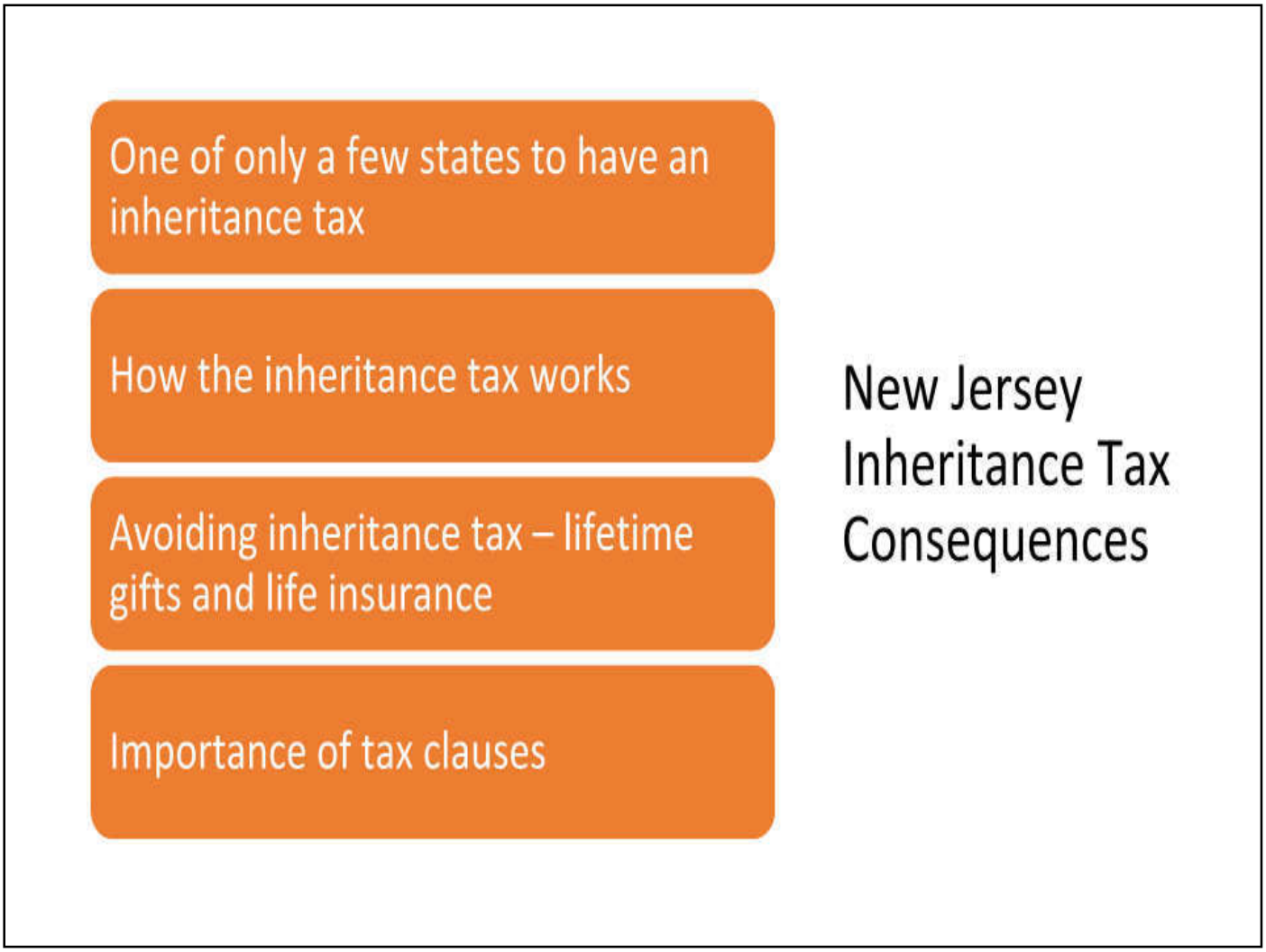

Implications of Dying Intestate for Non-married Partners
New Jersey Intestate Laws
Right to Information
Asset Ownership

Solutions for Non-Married Partners

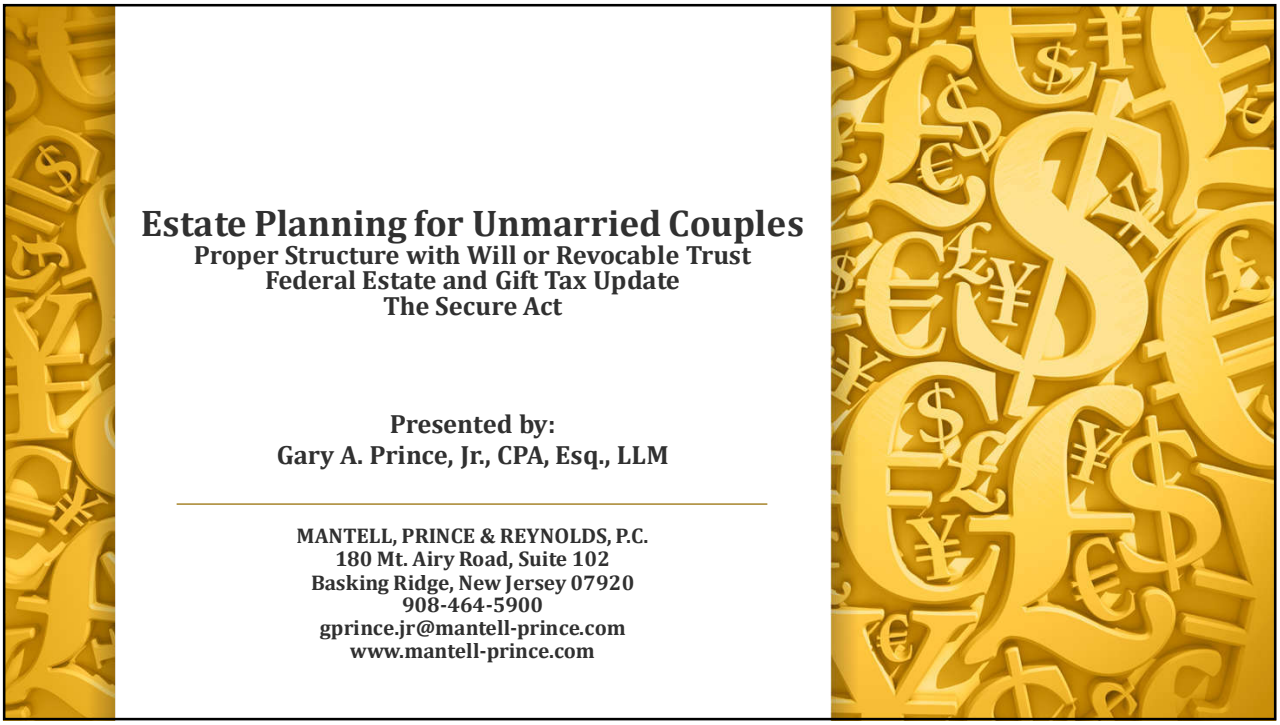
- (Other than getting married)
- Power of Attorney and Living Will
- Execute a comprehensive estate plan
- Change ownership structure on assets



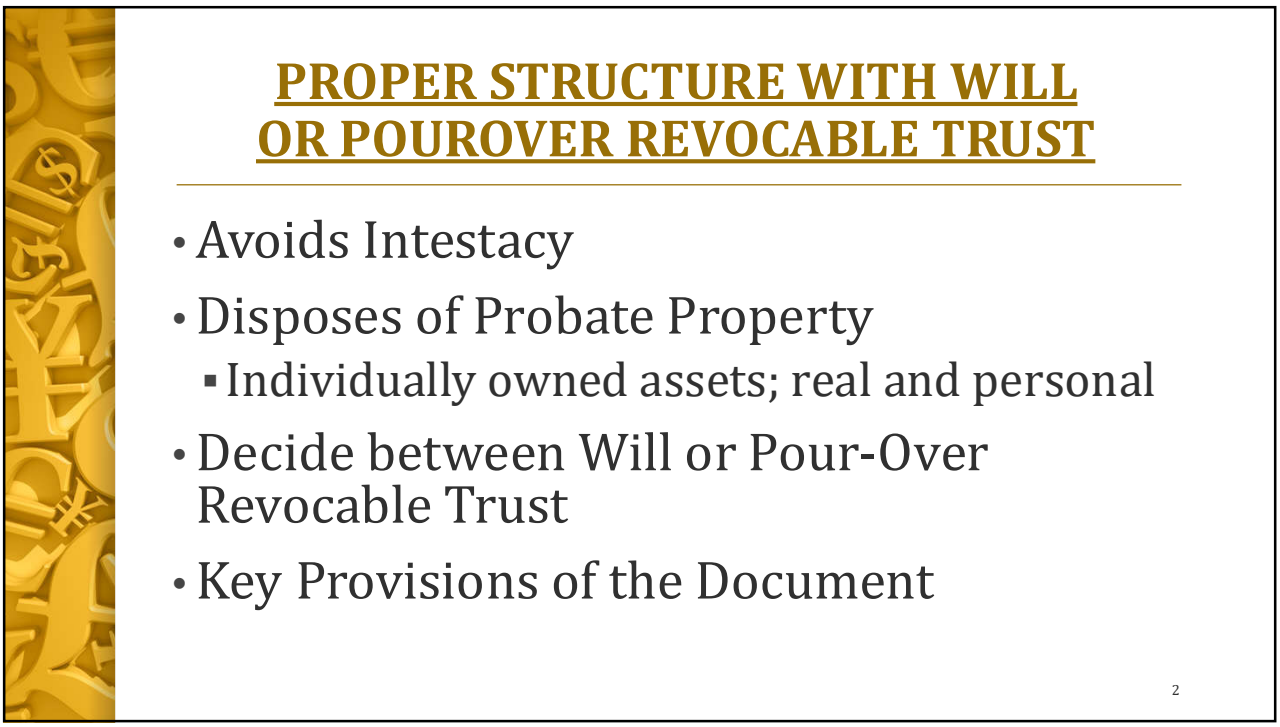

Naming your partner as the beneficiary on non-probate assets
Purpose of avoiding probate
Effectuating non-probate transfers post-death
Common asset types: life insurance, retirement accounts, brokerage accounts

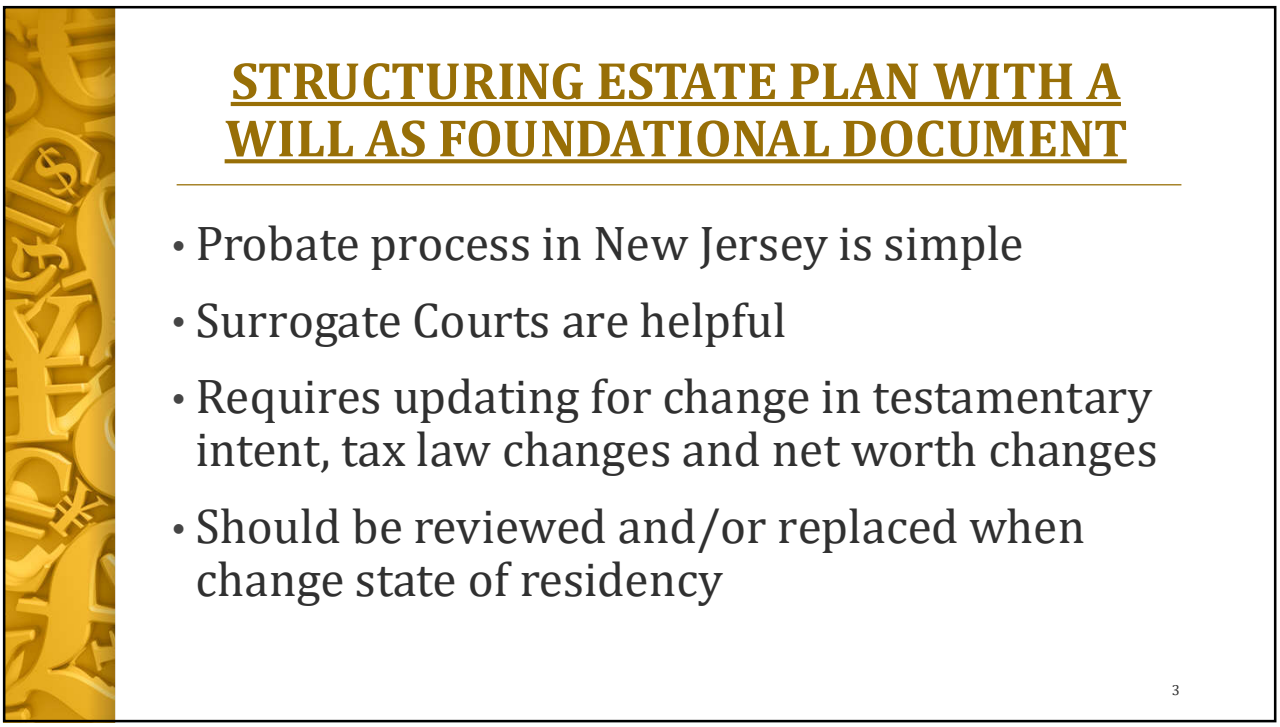

One of only a few states to have an inheritance tax
How the inheritance tax works
Avoiding inheritance tax – lifetime gifts and life insurance
Importance of tax clauses
New Jersey Inheritance Tax Consequences

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Estate Planning for Unmarried Couples
Proper Structure with Will or Revocable Trust
Federal Estate and Gift Tax Update
The Secure Act
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1


PROPER STRUCTURE WITH WILL
OR POUROVER REVOCABLE TRUST
• Avoids Intestacy
• Disposes of Probate Property
▪ Individually owned assets; real and personal
• Decide between Will or Pour-Over Revocable Trust
• Key Provisions of the Document
2


STRUCTURING ESTATE PLAN WITH A WILL AS FOUNDATIONAL DOCUMENT
• Probate process in New Jersey is simple
• Surrogate Courts are helpful
• Requires updating for change in testamentary intent, tax law changes and net worth changes
• Should be reviewed and/or replaced when change state of residency
3

3



STRUCTURING ESTATE PLAN WITH A REVOCABLE TRUST

- Avoids probate if properly funded; assets pass directly to beneficiaries at death
- Allows Grantor to be the Trustee and completely control assets while alive
- Assets can be managed for Grantor during his of her life
  - Could be important if medical/incapacity issues arise
- Requires updating for change in testamentary intent, tax law changes and net worth changes
- May not need to be replaced when change state of residency

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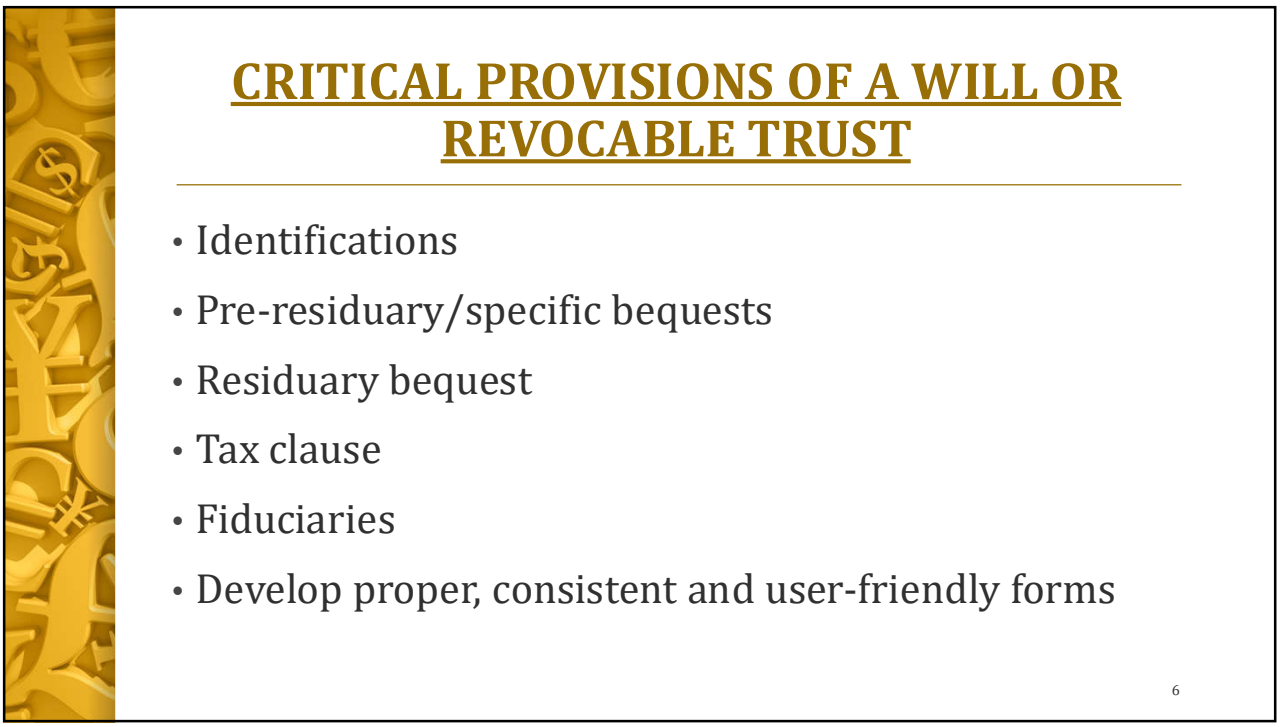


UNMARRIED COUPLES-PLAN TO AVOID A WILL OR TRUST CONTEST AFTER DEATH

- Blood relatives may have more incentive to contest a document for an unmarried person who leaves assets to a companion
- Take proper precautions
  - Should attorney represent both companions?
  - If only representing one, meet with him or her alone
  - Properly document all discussions

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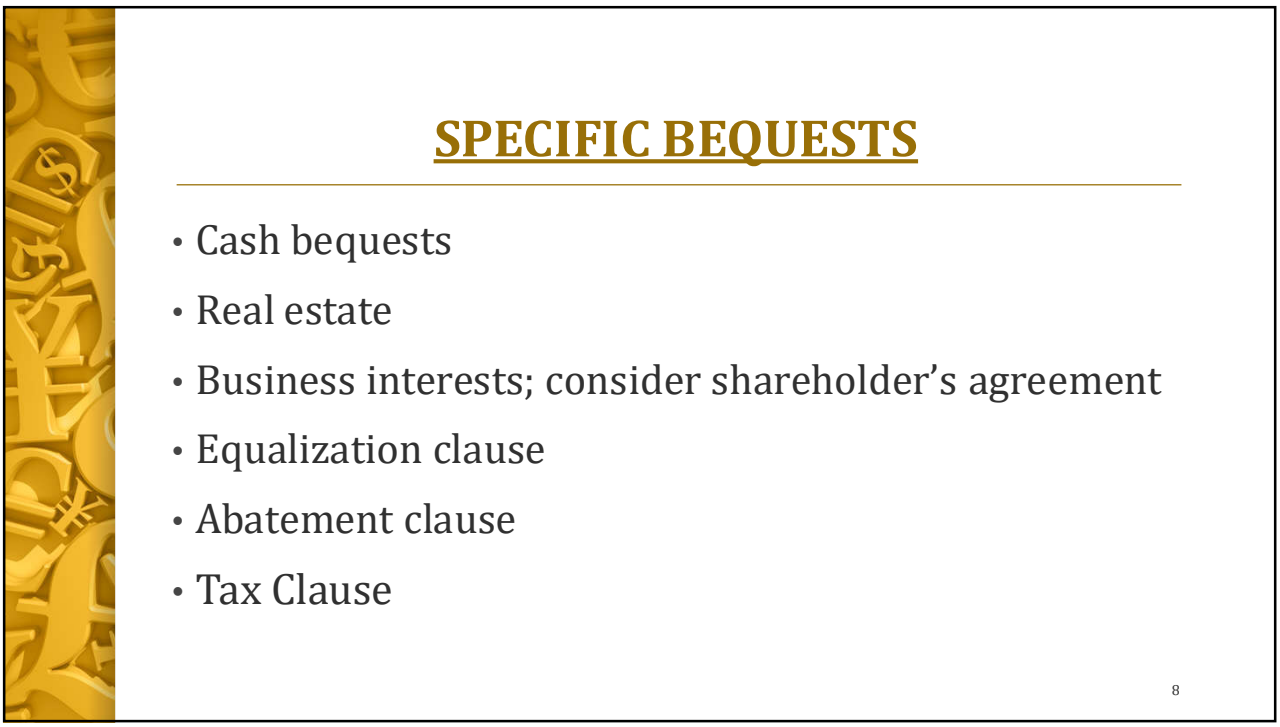

CRITICAL PROVISIONS OF A WILL OR REVOCABLE TRUST
• Identifications
• Pre-residuary/specific bequests
• Residuary bequest
• Tax clause
• Fiduciaries
• Develop proper, consistent and user-friendly forms
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TANGIBLE PERSONAL PROPERRTY

- Keep it separate-IRC 661,662 and 663

  - ***A:*** ***TANGIBLE PERSONAL PROPERTY.*** *I give and bequeath, absolutely and forever, any automobiles which I may own, all my personal wearing apparel and jewelry, any household furniture and furnishings which I may own, and all other tangible personal property owned by me, in accordance with a written statement or list, in my handwriting or signed by me, which I have prepared or may prepare and/or supplement from time to time on or after the date hereof. If no such statement or list is found within sixty (60) days after my death, it shall be conclusively presumed that there is no such statement or list and distribution may be made on that basis. All such property not passing pursuant to such statement or list, I give to my spouse, JOE SMITH, if my spouse shall survive me. Should my spouse not survive me, then I give such property to my issue who survive me, per stirpes. If no issue of mine survive me, such property shall pass together with the balance of my property pursuant to Article 3 below. I direct that the expenses of distributing, safeguarding and storing all of my tangible personal property before the distribution of such property according to the directives provided hereunder, shall be paid from my estate as administration expenses.*

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SPECIFIC BEQUESTS
• Cash bequests
• Real estate
• Business interests; consider shareholder's agreement
• Equalization clause
• Abatement clause
• Tax Clause
8



RESIDUARY BEQUEST

- Outright to companion
- Outright to companion with disclaimer
- Testamentary trust
- Split between companion and others
- Tax planning

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TAX PLANNING

- Historically, basic testamentary estate planning for "married couples" combined the use of a person's Applicable Exemption Amount for State or Federal estate tax purposes and the unlimited Marital Deduction.
- Classic "two " share plan, Part A (marital) and Part B (exemption amount)
- Exemption amount is $12,920,000 for 2023, scheduled to decrease to $5,000,000 on January 1, 2026, indexed for inflation.
- Exemption amount is available for amounts bequeathed or gifted to companion, as well as anyone else (i.e., children) without imposition of transfer tax
- Amount above Exemption Amount if left to a U.S. citizen spouse (outright or in a QTIP trust) qualifies of the unlimited Marital Deduction-this is not available to amounts left to unmarried companion
- If leaving all assets (probate and non-probate) to unmarried companion, the estate's value above the Exemption Amount will be subject to Federal Estate Tax (currently 40%)

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USE OF APPLICABLE EXEMPTION AMOUNT

- Shelter amount equal to decedent's available exemption amount
  - * Federal ($12,920,000) in 2023 (was $12,060,000 in 2022)
  - * New Jersey, unlimited-NJ Estate Tax Repealed
- Can pass outright to or in trust for benefit of a non-spouse beneficiary or in trust for the benefit of the decedent's spouse
- Trust can allow beneficiary certain rights
  - * Right to income
  - * Limited right to corpus of trust according to ascertainable standard or discretion of trustees other than surviving spouse (if the trust is for the spouse)
- NOTE: The by-pass or credit shelter trust will generally *not* be included in the estate of the surviving spouse and the assets in the trust will therefore not receive a step-up in basis.
- Portability-Available to surviving "spouses"-see discussion in Federal Estate Tax Update

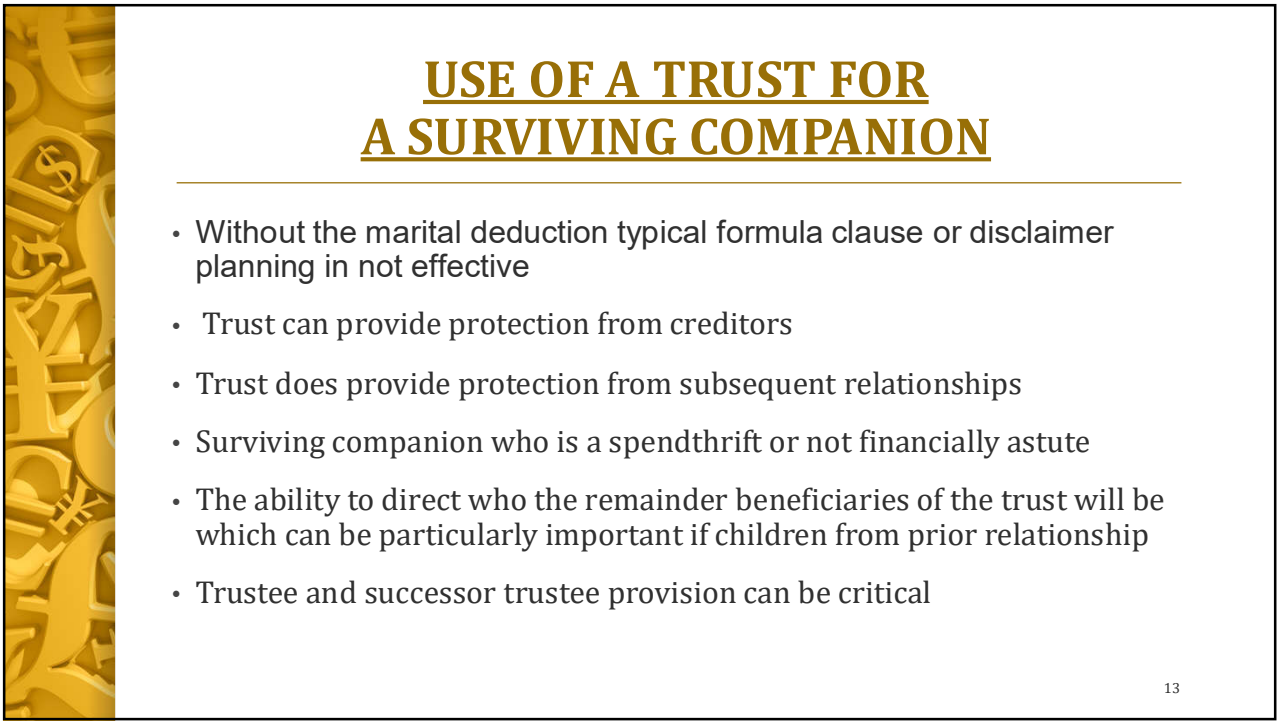
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MARITAL DEDUCTION

- All amounts bequeathed to surviving United States citizen spouse pass tax-free
- Interest must be non-terminable, i.e., cannot lapse after a term of years
- QTIP Trust
  - Included in surviving spouse's estate
  - Keeps ultimate control with decedent
  - Second marriages
- Not available to non-spouses, could be a factor for non-married couples to consider when deciding whether to marry.

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USE OF A TRUST FOR
A SURVIVING COMPANION
• Without the marital deduction typical formula clause or disclaimer planning in not effective
• Trust can provide protection from creditors
• Trust does provide protection from subsequent relationships
• Surviving companion who is a spendthrift or not financially astute
• The ability to direct who the remainder beneficiaries of the trust will be which can be particularly important if children from prior relationship
• Trustee and successor trustee provision can be critical
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USE OF A TRUST FOR CHILDREN OR GRANDCHILDREN

- Preserves the assets until the beneficiary is old enough to mange money independently
  - 25/30/35
  - Income
  - principal
- Trust can provide creditor protection
- Trust can provide some protection of assets from child's spouse in a divorce (See *Tannen v. Tannen*, 3A.3d 1229, 1243 (N.J. Super. Ct. App. Div. 2010).
- Special Needs Trust: Trust can provide for a disabled child and be designed so that its existence will not disqualify child for public assistance.
- Generation Skipping Trust: Trust may preserve more assets for your family through the generations
- Proper trustees and guardians

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TAX CLAUSES

- The provision in a Will regarding the payment of taxes is important, somewhat technical and often overlooked. The allocation of taxes in an estate plan can have a dramatic effect on what each beneficiary receives
- New Jersey Equitable Apportionment Statute
- Residuary Tax Clause
- Apportionment Tax Clause
- Attorney needs to understand client desires as to how taxes are paid
- This is particularly true where the client's Will has significant specific bequests or the client has significant non-probate assets. Estates subject to New Jersey Inheritance Tax are often problematic

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TAX CLAUSES

EXAMPLE: John, an unmarried man with no children dies with a Last Will and Testament that divides his estate equally between his brother and sister. At the time of his death, his assets consist of a residence ($300,000), bank and brokerage accounts ($700,000) and an IRA ($1,000,000). John's IRA beneficiary designation form leaves his IRA to a girlfriend. John's estate will be subject to approximately $300,000 of New Jersey Inheritance Tax ($2,000,000 x 15%).

* Residuary Tax Clause - brother and sister pay $300,000 and girlfriend pays nothing.

* Apportionment Tax Clause – brother and sister pay $150,000 and girlfriend pays $150,000.

PLANNING POINT: If there are substantial specific bequests, significant non-probate assets or an unequal distribution of property in a Will, it is often preferable to use an apportionment tax clause. The attorney should be sure to discuss the different outcomes with the client including specific computations of each such outcome.

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IRREVOCABLE LIFE INSURANCE TRUSTS (ILIT)

- Life insurance is often a significant asset that individuals and practitioners fail to consider when putting together an estate plan.
- This is particularly true since the client often does not consider a life insurance policy on their life to be an asset.
- However, without proper planning, life insurance that is owned by the insured is included in their estate and potentially subject to estate tax. This will be the case if the decedent possesses any "incidents of ownership" in the life insurance policy including the right to borrow cash value, change the beneficiary or assign the policy to another person.
- Irrevocable Life Insurance Trusts or ILITs are designed to remove life insurance proceeds from a person's taxable estate.
- Good option to provide for non-married companion

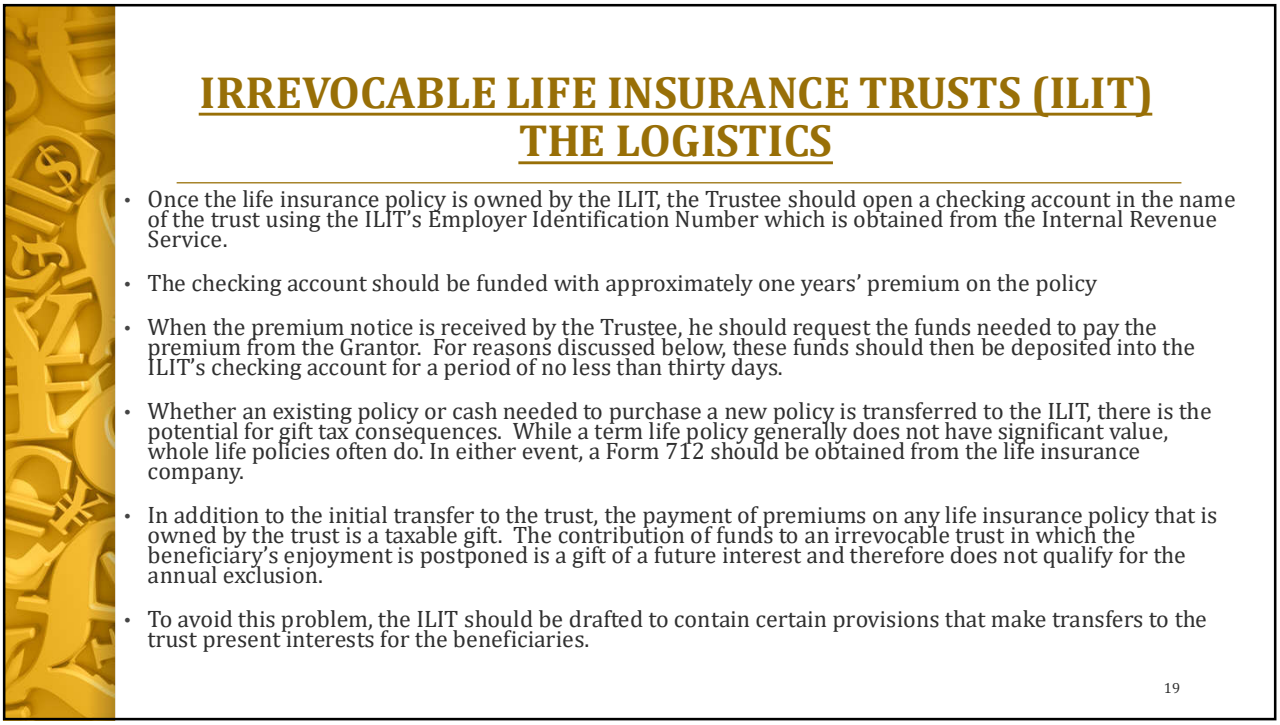
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IRREVOCABLE LIFE INSURANCE TRUSTS (ILIT) THE LOGISTICS

- Planning with an ILIT involves either (i) the transfer of an existing life insurance policy to an ILIT or (ii) the purchase by the ILIT of a new life insurance policy.
- If a new policy is being acquired, the Trust should be designated as the owner and the beneficiary on the life insurance application.
    - If an existing life insurance policy is being transferred to the ILIT, a Change of Ownership Form and Change of Beneficiary Form will need to be procured from the insurance company.
    - Where an existing policy is transferred to an ILIT, the transferor must survive the transfer by three years.
    - Failing to do so will cause the policy to be included in his estate and the benefits of the ILIT will not be realized.

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IRREVOCABLE LIFE INSURANCE TRUSTS (ILIT)
THE LOGISTICS
• Once the life insurance policy is owned by the ILIT, the Trustee should open a checking account in the name of the trust using the ILIT's Employer Identification Number which is obtained from the Internal Revenue Service.
• The checking account should be funded with approximately one years' premium on the policy
• When the premium notice is received by the Trustee, he should request the funds needed to pay the premium from the Grantor. For reasons discussed below, these funds should then be deposited into the ILIT's checking account for a period of no less than thirty days.
• Whether an existing policy or cash needed to purchase a new policy is transferred to the ILIT, there is the potential for gift tax consequences. While a term life policy generally does not have significant value, whole life policies often do. In either event, a Form 712 should be obtained from the life insurance company.
• In addition to the initial transfer to the trust, the payment of premiums on any life insurance policy that is owned by the trust is a taxable gift. The contribution of funds to an irrevocable trust in which the beneficiary's enjoyment is postponed is a gift of a future interest and therefore does not qualify for the annual exclusion.
• To avoid this problem, the ILIT should be drafted to contain certain provisions that make transfers to the trust present interests for the beneficiaries.
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IRREVOCABLE LIFE INSURANCE TRUSTS (ILIT) CRUMMEY/WITHDRAWL POWERS

- In general, the ILIT should provide that each time a contribution is made to the trust, the beneficiaries have the right to withdraw an amount not to exceed the current annual exclusion.
- Upon making a deposit into the ILIT, the Trustee should send each of the beneficiaries a so-called Crummey letter advising them of their right of withdrawal.
- The Crummey letter should provide, in pertinent part, the following language:

> *This letter serves as formal notice to you that on _____, _____, a transfer having a value of $_____ was made to the above-captioned Trust (hereinafter the "Trust"). Please be advised that you have the right, upon written request to the undersigned Trustee of the Trust, to receive payment from the principal of the Trust in an amount equal to $_____ with respect to this transfer. This right to receive payment generally lapses thirty (30) days after the date of the above contribution to the Trust. Please confirm that you have been notified of such right by signing the enclosed copy of this letter in the space provided. After the enclosed copy of this letter is fully executed, please return it directly to the undersigned at the above address. Additionally, please inform the undersigned in the event you wish to exercise your right to receive payment with respect to all or a portion of the above transfer to the Trust.*

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INCOME, ESTATE, GIFT & GST TAX UPDATE

- Income Tax Cost of Living Adjustments
- Tax Cuts and Jobs Act
- Current Administration Agenda and Proposed Legislation
- Effective Dates

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IRS PROVIDES TAX INFLATION ADJUSTMENTS FOR TAX YEAR 2023

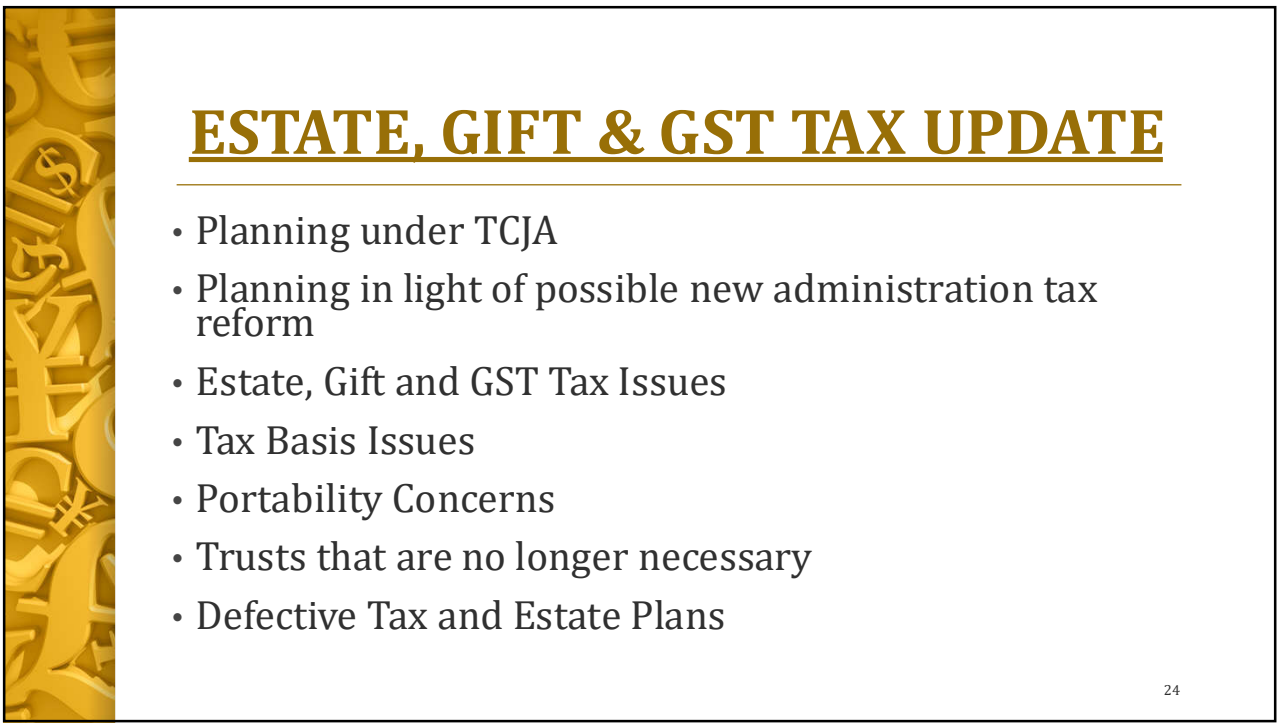
- The standard deduction of married couples filing jointly for tax year 2023 rises to $27,700. For single taxpayers and married individuals filing separately, the standard deduction rises to $13,850 for 2023, and for heads of households, the standard deduction will be $20,800 for tax year 2023.
- Personal exemption for tax year 2023 remains at 0, as it was for 2022.
- For tax year 2023, the top tax rate remains 37% for individual single taxpayers with incomes greater than $578,125 ($693,750 for married couples filing jointly).
- Estates of decedents who die during 2023 have a basic exclusion amount of $12,920,000.
- The annual exclusion for gifts increases to $17,000 for calendar year 2023, up from $16,000 for calendar year 2022

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2022 ANNUAL RETIREMENT PLAN CONTRIBUTION LIMITS

PLAN LIMITS	2023	2022
401(k) Elective Deferral Limit	$22,500	$20,500
Catch-Up Contribution Limit	$7,500	$6,500
Annual Defined Contribution Limit	$66,000	$61,000
Annual Compensation Limit	$330,000	$305,000
Annual Defined Benefit limit	$265,000	$245,000
Social Security Taxable Wage Base	$160,200	$146,700
IRA Contribution Limit	$6,500	$6,000
IRA Catch-Up Contribution Limit	$1,000	$1,000

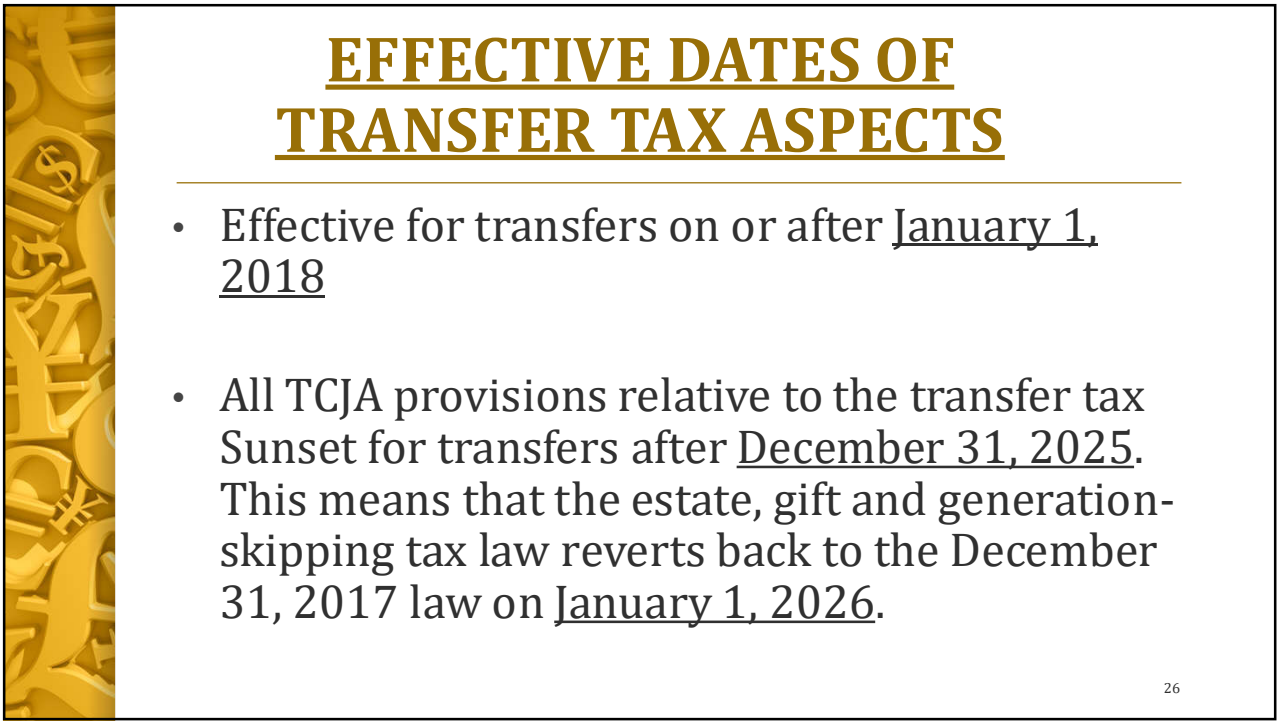
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ESTATE, GIFT & GST TAX UPDATE
• Planning under TCJA
• Planning in light of possible new administration tax reform
• Estate, Gift and GST Tax Issues
• Tax Basis Issues
• Portability Concerns
• Trusts that are no longer necessary
• Defective Tax and Estate Plans
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TAX CUTS AND JOBS ACT

- The Tax Cuts and Jobs Act (TCJA), which was signed into law by President Trump on December 22, 2017, included major changes to individual and corporate income taxes and federal estate, gift and generation-skipping tax laws.


EFFECTIVE DATES OF TRANSFER TAX ASPECTS
• Effective for transfers on or after January 1, 2018
• All TCJA provisions relative to the transfer tax Sunset for transfers after December 31, 2025. This means that the estate, gift and generation-skipping tax law reverts back to the December 31, 2017 law on January 1, 2026.
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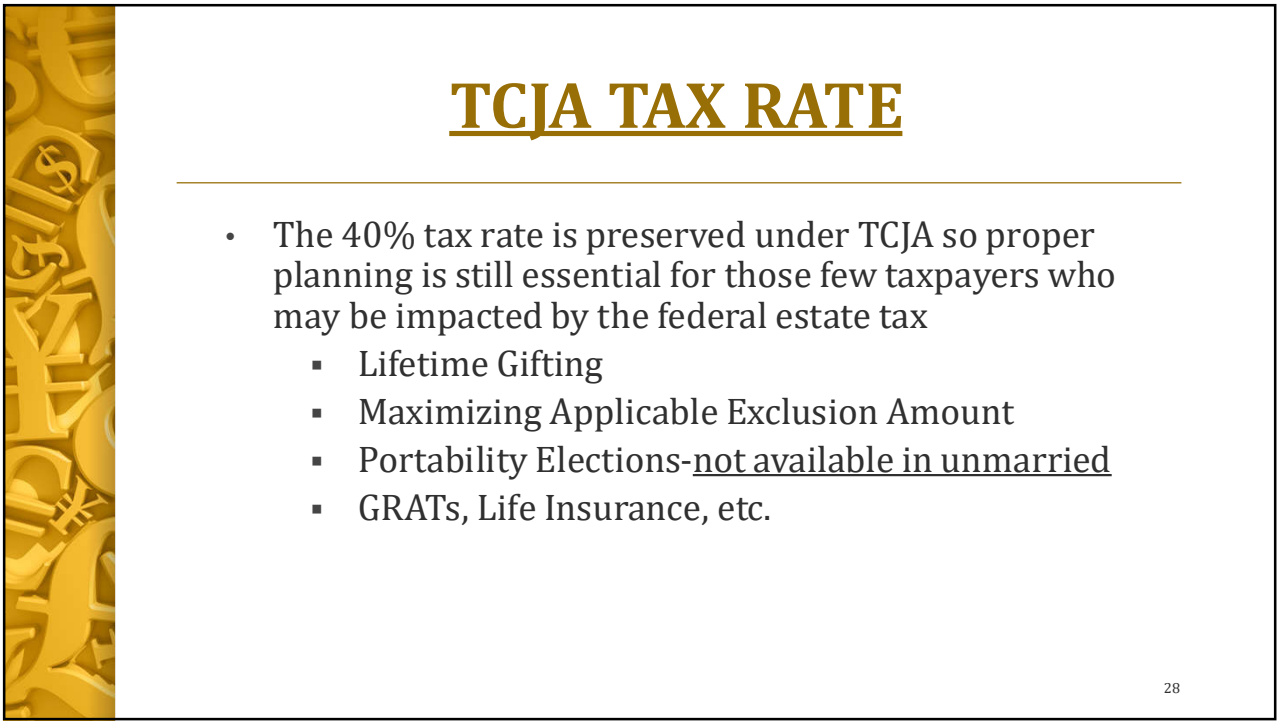


TCJA ESTATE TAX PROVISIONS

- Basic exclusion amount is increased to $10,000,000 (from $5,000,000), indexed for inflation
- Inflation based on 2010, but new Chained CPI applies
  - Inflation index accounts for different criteria than in the past
  - Apparently produces a slower rate of increase than the prior index
  - The new Chained CPI increases the basic exclusion amount to $12,920,000 in 2023 and $12,060,000 in 2022

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TCJA TAX RATE
• The 40% tax rate is preserved under TCJA so proper planning is still essential for those few taxpayers who may be impacted by the federal estate tax
▪ Lifetime Gifting
▪ Maximizing Applicable Exclusion Amount
▪ Portability Elections-not available in unmarried
▪ GRATs, Life Insurance, etc.
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TCJA GIFT TAX

- Annual exclusion for 2022 was equal to $16,000 - $32,000 for split gifts (spouses only); for 2023 it is increased to $17,000 - $34,000
- Gifts in excess of the annual exclusion will utilize a portion of a taxpayer's applicable exclusion
- For many taxpayers, this is irrelevant and the desire to gift may be increased
- CAUTION – Gifts of appreciated assets
- Gift-Splitting-Available to spouses, not unmarried couples

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PORTABILITY

- Portability and its myriad of rules are retained – spouses therefore have a combined basic exclusion amount in 2023 equal to $25,840,000 ($24,120,000-2022)– which is further indexed in future years.
- NOTE: Portability does not apply to unmarried couples

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PORTABILITY (CONT.)

- Background: Under prior law, if an individual died and failed to utilize all of his/her gift and estate tax exemption, this exemption was forever lost. Under portability, a surviving spouse is able to utilize the unused exemption of his/her "deceased spouse" if the deceased spouse died after 2010.
- EXAMPLE: If, in 2023, the first spouse to die has a $5,000,000 estate and utilizes only $1,000,000 of exemption at death, by electing portability, the surviving spouse will have a $24,840,000 ($12,920,000 + $11,920,000) exemption available for lifetime gifts or transfers at death.
- In order to elect portability, a complete Form 706 (United States Estate Tax Return) must be filed.

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OTHER ASPECTS PRESERVED

Most other transfer tax principles preserved under TCJA (e.g., unlimited marital deduction, unlimited charitable deduction, alternate valuation, state estate and inheritance tax deduction, deferral of estate taxes under IRC Section 6161 or IRC Section 6166, generation skipping transfer tax rules, etc.)

TCJA EXPIRATION DATE

Pursuant to the sunset provision of TCJA, the increase in the basic exclusion amount expires for transfers after December 31, 2025



THE CLAWBACK CONUNDRUM

- The sunset provision of TCJA has raised some issues that, to date, have not been addressed.
- What happens if prior to the Sunset an individual makes an adjusted taxable gift in excess of the pre-2018 basic exclusion of $5,490,000 and that individual dies after 2025 when his or her basic exclusion amount available on death is less than the amount of the gift?
- Is an estate tax due since the aggregate transfers exceed the basic exclusion amount as of the date of death (i.e., is the once untaxed transfer "clawed back" into creating a tax)?

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THE CLAWBACK CONUNDRUM

- This is the same concern we faced in 2012 when there was a possibility that the exemption would be reduced below the then current exclusion amount level.
- And the House Ways and Means Committee proposals in September 2021 created a frenzy of activity in the estate planning community because the thinking was that the December 31, 2025 Sunset was going to be accelerated to December 31, 2021.
- Treasury issued regulations (T.D. 9884) on November 22, 2019 and confirmed that gifts made during the period of the temporary increase in Applicable Exclusion Amount, will not be "clawed back" into a client's taxable estate upon death.

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THE CLAWBACK CONUNDRUM

- With the anticipated acceleration of the Sunset, the estate planning community was forced to take a crash course on how the Anti-Clawback regulations really worked.
- What became clear is that the gifting could not be limited to the excess TCJA amount of the exemption. Rather to take full advantage of the Anti-Clawback regulations the taxpayer needed to make a 2021 gift valued at essentially $11,700,000.
- And this was further complicated by the Portability regulations which made it clear that a taxpayer with a deceased spouse unused exemption (DSUE) amount must use the DSUE first in making gifts.

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THE ANTI-CLAWBACK RULE EXAMPLES

- **EXAMPLE 1.**
- What happens if a gift of $5,000,000 is made in 2021. Then, in 2026, after the sunset, taxpayer wants to make another gift of $5,000,000. Has taxpayer used his gift tax exemption, or was the 2021 gift taken off the top of the $11,700,000 gift tax exemption so that there is still $6,700,000 of gift tax exemption left in 2026?

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THE ANTI-CLAWBACK RULE EXAMPLES

- **EXAMPLE 2.**
- Thomas Taxpayer is a single man with net worth of $11,700,000. For some reason or another he doesn't need $11,700,000 to live comfortably. He makes a gift of $11,700,000 to his only son in 2021. He files Form 709 and pays no gift tax. He dies in 2026 after the Sunset, and the gift tax exemption has dropped to $7,000,000 (inclusive of COLA adjustments). The concern in the estate planning community was that his gross estate is 0, but the $11,700,000 gift gets added back on Form 706 and his estate is subject to $1,880,000 federal estate tax with no assets to pay the tax. The Anti-Clawback Regulation states that he did not have to add back the gifts in excess of $7,000,000, thus there is no estate tax.

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THE ANTI-CLAWBACK RULE EXAMPLES

- **EXAMPLE 3.**
- Janie Jones (83) recently lost her husband and full credit shelter trust was funded. Janie and her husband previously funded at $2M life insurance trust. Janie's estate is valued at $19M, including a $12M investment portfolio (some low basis assets) a $7M IRA. Janie has 2 children who require trust planning for different reasons. What happens if a gift of $12,000,000 is made in 2021 ? Then, in 2026 or sooner, after the sunset, Janie dies. How is Janie's taxable estate calculated ? What are the sources of liquidity for the payment of the estate tax?

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THE ANTI-CLAWBACK RULE EXAMPLES

- **EXAMPLE 4.** Thomas Taxpayer has survived his spouse, Tammy. Tammy's estate made a Portability Election of $5,450,000 at her death in 2016. Thomas is single and has 3 children. Thomas has a taxable estate of $25,000,000. Neither Thomas nor Tammy have ever made any gifts in excess of the annual exclusion. Thomas has read material from 8 separate investment houses which have all suggested the he make a gift in 2021 to assure use of the TCJA increased lifetime exemption. Accordingly, he has been advised that the $11,700,000 exemption (based upon 2021 numbers) will likely drop to $5,850,000. Hence, to use the excess exemption he is prepared to make a $5,850,000 gift to his 3 children in equal amounts. And he makes the $5,850,000 gift believing that he has captured use of the TCJA excess exemption. Thomas has made a mistake.

THE ANTI-CLAWBACK RULE EXAMPLES

- **EXAMPLE 5.** Same as Example 4., except Thomas has retained his astute accountant to assist before he makes the aforementioned gift. The astute accountant explains to Thomas that in light of a $5,450,000 DSUE, any gifts he makes must first be applied against the DSUE. Therefore, Thomas has been advised that only $400,000 of the 5,850,000 gift will be applied against the excess exemption, not the full $5,850,000. Thomas has still made a mistake.

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THE ANTI-CLAWBACK RULE EXAMPLES

- **EXAMPLE 6.** Same as Example 4. and Example 5. Thomas' head is beginning to spin. He has lost confidence in the 8 articles he read from the investment houses and he is not certain that his astute accountant is correct, so he retains another accountant for a second opinion. The second accountant is very astute and an expert in estate and gift matters. He explains to Thomas that not only must the DSUE be utilized first when making a gift, but the gifts made above the DSUE first come out of the exemption that would have been in effect if the TCJA has not been passed. The very astute second accountant explained that the gift in excess of the DSUE amount ($400,000) gets offset against the $5,850,000 exemption amount that would have applied if not for the TCJA. Therefore, Thomas now realizes that he will have to make a gift of over $11,300,000 ($5,450,000+$5,850,000) before he can begin to utilize the excess exemption of the TCJA. In other words, Thomas would need to make a gift of $17,150,000 ($5,850,000 + $5,850,000 + $5,450,000) to fully utilize the excess exemption.

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THE ANTI-CLAWBACK RULE EXAMPLES

- **EXAMPLE 7.** Same as Examples 4. , 5. and 6., except Thomas decides that he cannot afford to make a $17,150,000 gift and maintain his current lifestyle. So, he decides to make no gift at all.

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BIDEN ADMINISTRATION PROPOSALS AND AGENDA

- Reducing the Applicable Exclusion Amount-$3.5M ? $1M for gift tax ?
- Increasing the transfer tax rate from 40% to 45% ?
- Reform regarding GRATs, discounts and family limited partnerships
- Elimination of Step-Up in Basis and/or Capital Gain at Death
  - March 2021 Van Hollen/Sanders/Warren Proposal
- Increase in Capital Gains Tax Rate
- Increase in Top Income Tax Rate from 37% to 39.6%
- Increasing Corporate Income Tax Rate from 21% to 28%

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BIDEN ADMINISTRATION PROPOSALS AND AGENDA

- Phasing out the IRC §199A deduction for Qualified Business Income
- Eliminating Like-Kind Exchanges

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HOUSE WAYS AND MEANS COMMITTEEE PROPOSALS (SEPTEMBER 2021)

- Effective January 1, 2022 the Estate, Gift and GST Exemption will be $5,000,000 plus cost of living increases since 2010 (approximately $6,030,000)
- Grantor Trusts will he includable in taxable estate
- All valuation discounts for non-business entities would be eliminated
- Roth conversions eliminated if taxable income over $400,000
- Eliminate Back Door Roth conversions
- Higher Income Tax Rate increased to 39.6%
- Higher Capital Gain rate increased to 25.0%

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HOUSE WAYS AND MEANS COMMITTEEE PROPOSALS (SEPTEMBER 2021)

- 3% tax surcharge to taxable income over $5,000,000 for individuals and $100,000 for trusts
- Large retirement plans would require 50% minimal distribution (RMD) if account balance over $10,000,000 and 100% RMD if account balance over $20,000,000
- Limit investments in IRA's
- 3.8% Medicare surtax applies to all pass-through entity income
- IRC Section 199A Deduction Limitations
- IRC Section 1202 benefit limited to 50% if adjusted gross income is over $400,000

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HOUSE'S BUILD BACK BETTER ACT, H.R. 5376 (PASSED BY HOUSE ON 11/19/2021)

- **Income Tax Rates.** No change to 37% top tax rate on ordinary income or 20% top tax rate on long-term capital gains and qualified dividends
- **New Surtaxes.**
  - Additional 5% surtax on modified adjusted gross income for individual taxpayers in excess of $10,000,000 (same limit applies to single and married filing jointly) and for non-grantor trusts and estates in excess of $200,000
  - Additional 3% surtax on modified adjusted gross income for individual taxpayers in excess of $25,000,000 (same limit applies to single and married filing jointly) and for non-grantor trusts and estates in excess of $500,000
- **3.8% Surtax.** The 3.8 % surtax will apply to active business income from passthrough entitles such as S corporations and partnerships for taxable income in excess of $400,000 (if single), $500,000 (if married filing jointly), and just over $13,000 for non-grantor trusts and estates
- **State and Local Tax (SALT).** SALT deduction limit increased to $80,000 through 2030, with a $10,000 limit in 2031, and no cap starting in 2032

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HOUSE'S BUILD BACK BETTER ACT, H.R. 5376 (PASSED BY HOUSE ON 11/19/2021)

- **IRAs and Roth IRAs.** Contribution limitations and new minimum distribution requirements for 10+ million IRAs and Roth IRAs
- **Qualified Small Business Stock (QSBS).** The 100% exclusion mount for QSBS under Internal Revenue Code section 1202 reduced as of 9/14/2021 to 50% for all non-grantor trusts and estates and 50% for individuals with adjusted gross income above $400,000
- **Gift, Estate and Generation-Skipping Transfer (GST) Tax.** No change to gift, estate, or GST tax exemption amounts or rates
  - Current exemption amount is $11,700,000 per person ($23,400,000 per married couple), set to increase in 2022 to $12,060,000 per individual ($24,120,000 million per married couple)
  - Exemption amount is still scheduled to be cut roughly in half after 2025
  - Current annual gift tax exclusion amount is $15,000 per person, set to increase in 2022 to $16,000 per person

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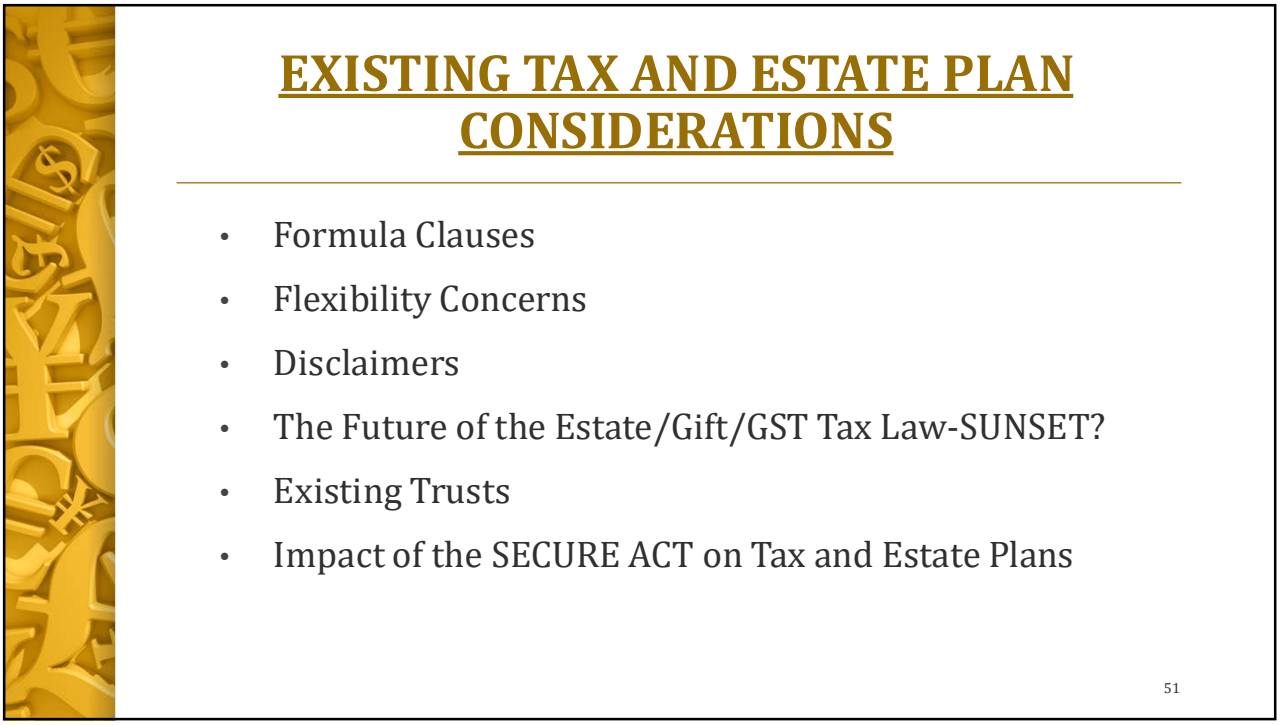


HOUSE'S BUILD BACK BETTER ACT, H.R. 5376 (PASSED BY HOUSE ON 11/19/2021)

- **Grantor Trust Proposal Removed.** No change to grantor trust rules – such as irrevocable life insurance trusts(ILITs), spousal lifetime access trusts (SLATs), intentionally defective grantor trusts (IDGTs), grantor retained annuity trusts (GRATs), qualified personal residence trusts (QPRTs), and charitable lead annuity trusts (CLATs)
- **Valuation Discount Proposed Removed.** No change to valuation discounts – such as discounts for lack of marketability and lack of control for family limited partnerships (FLPs) and family LLCs
- **Qualified Business Income Deduction Proposal Removed.** No change to 20% qualified business income deduction under Internal Revenue Code Section 199A

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EXISTING TAX AND ESTATE PLAN CONSIDERATIONS
• Formula Clauses
• Flexibility Concerns
• Disclaimers
• The Future of the Estate/Gift/GST Tax Law-SUNSET?
• Existing Trusts
• Impact of the SECURE ACT on Tax and Estate Plans
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MANY WILLS ARE DRAFTED WITH FORMULA CLAUSES

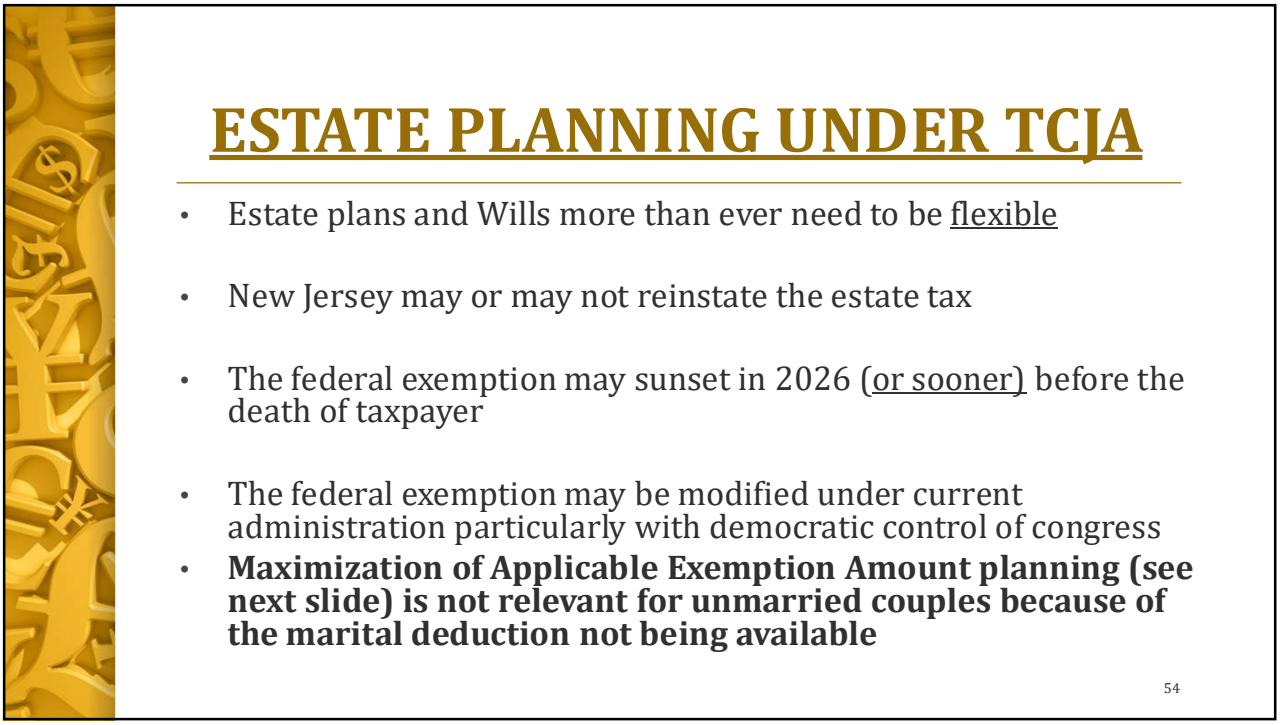
- Funding the non-marital share with the maximum amount exempt from the federal estate tax; trust can be for unmarried companion
- Funding the non-marital share with the maximum amount exempt from the New Jersey estate tax
- Funding the non-marital trust with $12,920,000 may be the desired result. It exempts the assets and the growth from estate tax on the death of the surviving spouse and could provide creditor protection
- However, taxpayer (and companion or surviving spouse) may not be comfortable with $12,920,000) in trust
- In addition, potential basis step-up issues may outweigh estate tax exemption
- Taxpayers who funded the non-marital share with bequests to children and/or grandchildren to the exclusion of the companion or surviving spouse are dramatically affected.

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EXAMPLE

- Husband dies with assets valued at $3 million. His will, which was drafted in 2006 when the federal estate tax exemption was only $1.5 million, provides (via formula) that the maximum amount possible without creating a federal estate tax should pass to his children from a prior relationship and the balance of his estate should pass to his companion. In light of the increased federal estate tax exemption, Husband's children will receive his entire estate and nothing will pass to his companion.

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ESTATE PLANNING UNDER TCJA
• Estate plans and Wills more than ever need to be flexible
• New Jersey may or may not reinstate the estate tax
• The federal exemption may sunset in 2026 (or sooner) before the death of taxpayer
• The federal exemption may be modified under current administration particularly with democratic control of congress
• Maximization of Applicable Exemption Amount planning (see next slide) is not relevant for unmarried couples because of the marital deduction not being available
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ESTATE PLANNING UNDER TCJA

- Solutions: Draft the document to defer the decision of how much to fund the non-marital share until the first spouse dies
- Use of disclaimers – defers the decision until 9 months after death of first spouse
- Disclaimer planning has its risks – surviving spouse refuses to disclaim or unwittingly accepts the assets and circumvents a proper disclaimer
- Disclaimer planning in second marriages – simply does not work because taxpayer usually does not want surviving second spouse to inherit the estate outright

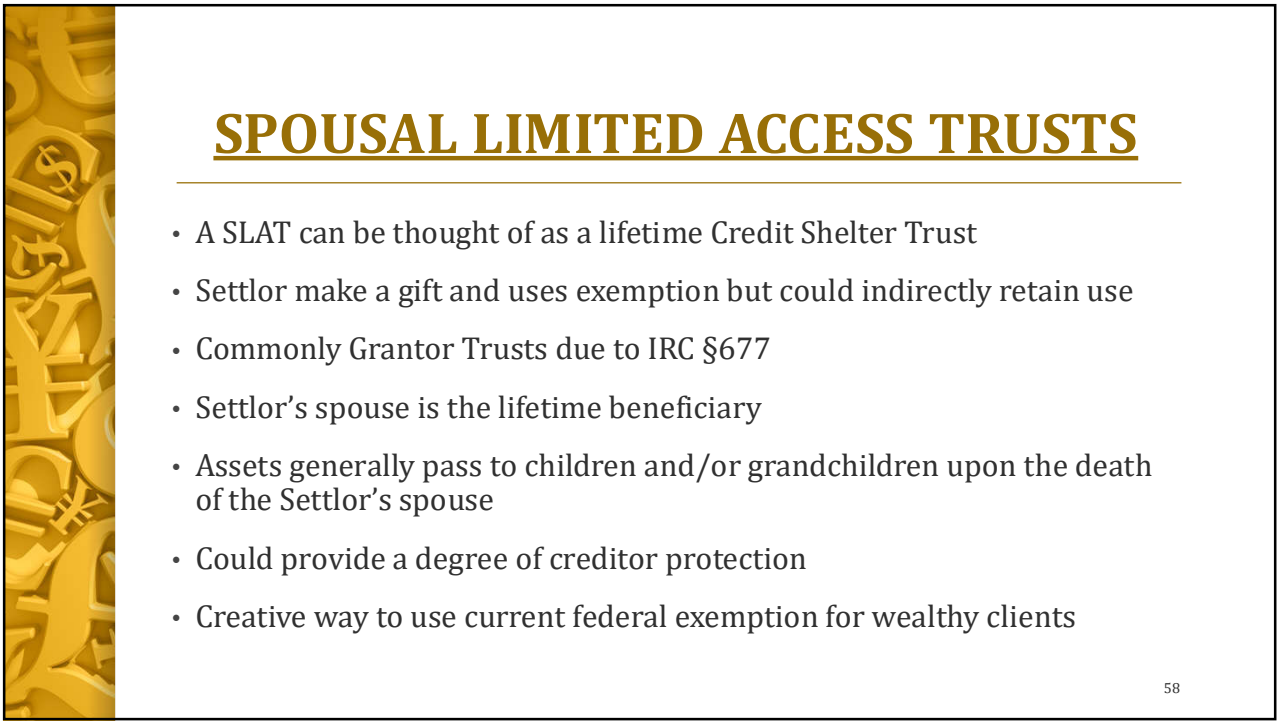
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TAKING ADVANTAGE OF THE CURRENT EXCLUSION AMOUNT

- Window of Opportunity-November 22, 2019 Anti-Clawback Regulation
- Upon death, higher Exclusion Amount can be used with respect to lifetime gifts, notwithstanding what Exclusion Amount is upon death
- Is your client in a position to make current gifts of this magnitude ?
- Outright Gifts
- Family Limited Partnerships (FLPs)
- Grantor Retained Annuity Trusts (GRATs)
- Spousal Limited Access Trusts (SLATs)
- Late Generation-Skipping Transfer Allocation


FACTORS TO CONSIDER BEFORE MAKING SIGNIFICANT GIFTS
• Age
• Net Worth
• Character of assets; investments, real estate, retirement plans
• Uncertainty of transfer tax law
• Philosophy
• Donor comfort level-future financial needs
• First or second marriage and related issues
• Beneficiaries and use of trusts
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SPOUSAL LIMITED ACCESS TRUSTS
• A SLAT can be thought of as a lifetime Credit Shelter Trust
• Settlor make a gift and uses exemption but could indirectly retain use
• Commonly Grantor Trusts due to IRC §677
• Settlor's spouse is the lifetime beneficiary
• Assets generally pass to children and/or grandchildren upon the death of the Settlor's spouse
• Could provide a degree of creditor protection
• Creative way to use current federal exemption for wealthy clients
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SLATS-IMPORTANT CONSIDERATIONS

- Reciprocal Trust Doctrine could apply if both spouses establish SLATS
- If both spouse do establish SLATS consider varying trust terms, trustees, dates established, etc. to avoid Reciprocal Trust Doctrine
- Consider implications to donor spouse in the event of divorce
- Funding of SLAT should be from donor spouse (and not transferred to the donor spouse immediately before)
- Impact upon lifestyle of both spouses and/or donor spouse in the event donor spouse survives
- Making SLAT QTIPable buying time to decide if taxable gift

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SLAT-COMMON TRUST TERMS

- INCOME-Automatically paid to spouse or paid to spouse on a discretionary basis
- PRINCIPAL-Can be paid to spouse based on an ascertainable standard (HEMS) or at the complete discretion of the Trustee (other than the spouse)
- TRUSTEES-Spouse could be the Trustee but distributions have to be limited to HEMS; consider non-spouse Trustee as conservative approach
- "5&5" Power is an option
- Special Power of Appointment is an option

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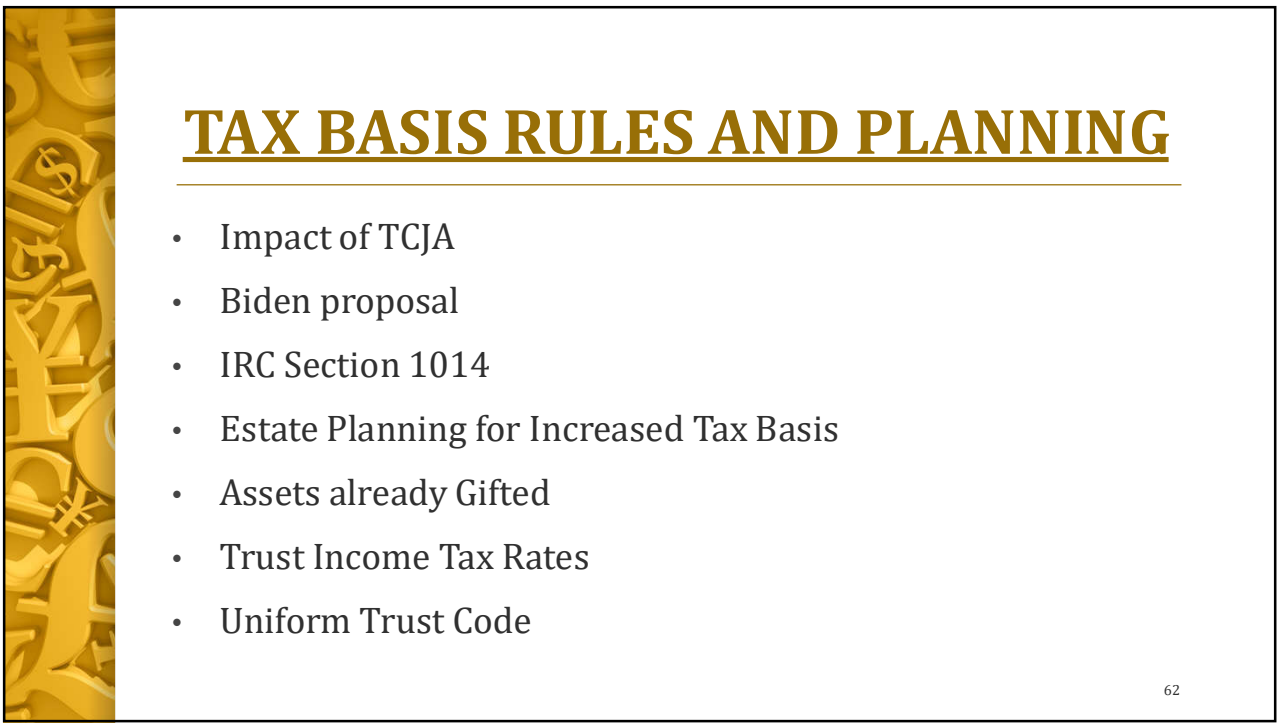


THE SECURE ACT-ESTATE AND GIFT TAX OVERLAP

- Existing Tax and Estate Plans
- Conduit Trusts
- Accumulation Trusts
- QTIP Trust for Surviving Spouse
- Trusts for Children and Grandchildren
- Charitable Remainder Trust and/or Life Insurance

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TAX BASIS RULES AND PLANNING
• Impact of TCJA
• Biden proposal
• IRC Section 1014
• Estate Planning for Increased Tax Basis
• Assets already Gifted
• Trust Income Tax Rates
• Uniform Trust Code
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BASIS ADJUSTMENT UNDER IRC SECTION 1014

- Is this sustainable in light of high estate tax exemptions?
- Record keeping has improved-1099s
- Realization at Death proposal
- In many cases, the step-up in tax basis is now the crux of estate planning

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IRC Section 1014(e)

- Section 1014(e) Limitation if Donee of Gifted Appreciated Assets Dies Within a Year and the Assets Pass Back to the Donor.
- In light of the indexed large estate tax exemption, most estates will not be subject to federal estate tax.
- Nevertheless, assets included in a decedent's estate will receive a basis adjustment at the donee's death without causing any estate taxes to be paid (assuming the exemption covers all of that decedent's assets).
- The transfer of low basis or appreciated assets to a soon to be decedent therefore has tax-savings potential

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IRC Section 1014(e)

- Section 1014(e) provides that if a gift of appreciated property is made to a donee who dies within one year of the gift, and if the property passes from the decedent "to" the original donor (or his or her spouse), no basis adjustment will occur at the donee's death.
- EXAMPLE: Husband receives a bad medical diagnosis. Wife therefore transfers highly appreciated assets to Husband who dies six (6) months later. No basis step-up will be received if Wife inherits those assets from Husband.

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IRC Section 1014(e) and Trusts

- Section 1014(e) arguably does not apply if the assets do not return "to" the donor but remain in trust for the benefit of the donor.
- One possibility is that only the percentage of the trust assets represented by the actuarial value of the donor's continuing interest would be caught by §1014(e). (See PLR 9026036, reversed as to other issues and reissued as PLR 9321050.)
- If the continuing interest is just a life interest in income, the life factor for a 65-year old is 31% and for a 75-year old is 21%.

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ESTATE PLANNING UNDER TCJA FOR INCREASED TAX BASIS

- With higher exemptions, planning to include assets in an estate and obtain date of death basis may be more important than avoiding estate tax
- With marital trusts, consider electing QTIP treatment even for the portions of the estate which do not require the marital deduction to save estate taxes
- I.R.S. Notice 2016-49 now allows marital treatment and use of the DSUE by surviving spouse even if federal estate taxes are not saved via the election

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ESTATE PLANNING UNDER TCJA FOR INCREASED TAX BASIS

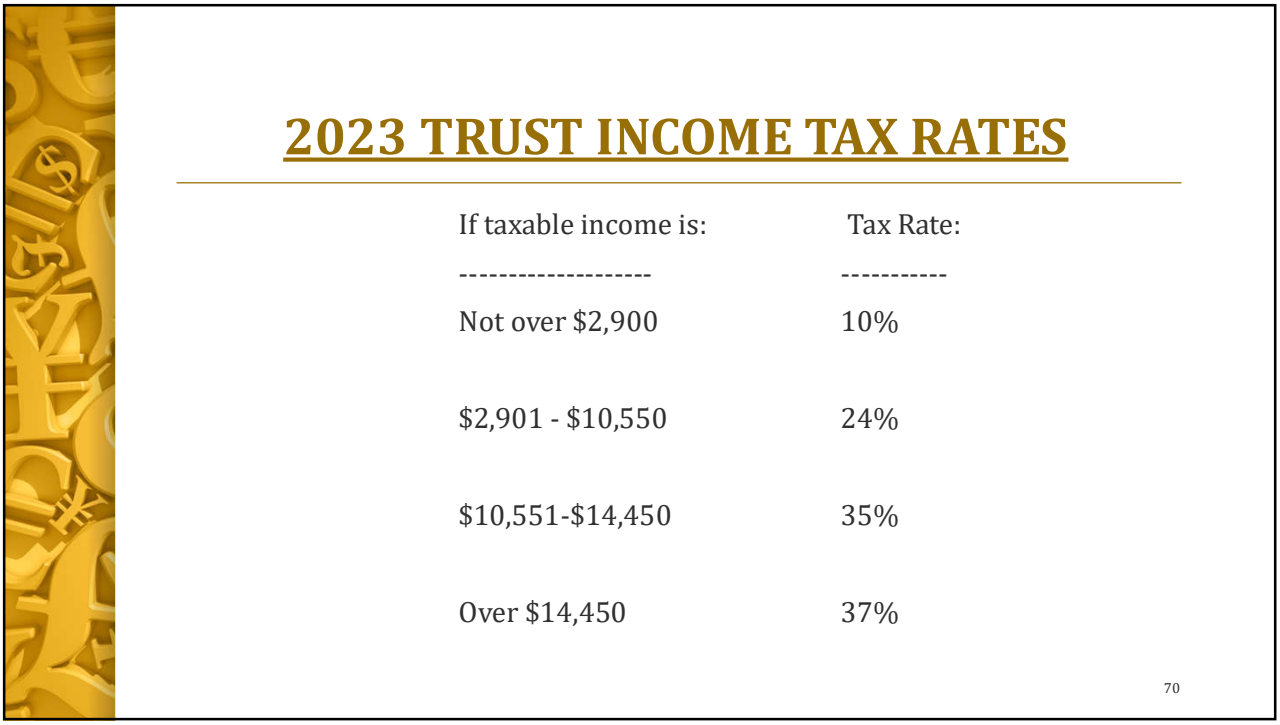
- Draft trusts with flexibility to permit distributions to cause inclusion in the estate
- Provide trustee with the ability to make distributions not subject to an ascertainable standard
- If beneficiary and trustee are the same, limit the distribution to an ascertainable standard; however:
  - have a co-trustee whose sole authority is to make distributions above the ascertainable standard amount
  - grant the beneficiary a 5% and $5,000 power to at least withdraw a portion of the trust without limits
- Additionally, consider providing a third party with the authority to grant a general power of appointment to a beneficiary, perhaps limited to appreciated assets

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UNIFORM TRUST CODE

On January 19, 2016, New Jersey enacted the Uniform Trust Code, N.J.S.A. 3B:31-27 which allows a non-charitable irrevocable trust to be modified or terminated without court approval if all parties to the trust agree, in writing, and the modification and termination is not contrary to a material intention of the Grantor

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2023 TRUST INCOME TAX RATES
If taxable income is:
Tax Rate:

Not over $2,900
10%
$2,901 - $10,550
24%
$10,551-$14,450
35%
Over $14,450
37%
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3.8% NET INVESTMENT INCOME TAX

- §1411(a)(2) imposes 3.8% tax on undistributed Net Investment Income, for estates and trusts after $12,950 of income. This results in a combined rate of 40.8% (37% + 3.8%).
- Applies to investment income which generally includes passive income such as dividends, interest and capital gains.

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2023 CAPITAL GAIN RATES TRUSTS AND ESTATES

- Tax on capital gains and qualified dividends of trusts and estates – the 20% rate applies at $13,700 taxable income whereas individuals hit the 20% rate at $553,850 for married couples and $492,300 for singles:

CAPITAL GAIN	TAX RATE
Less than $2,800	0%
$2,800 to $13,700	15%
Over $13,700	20%

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ESTATE PLANNING UNDER TCJA FOR INCREASED TAX BASIS – ASSETS ALREADY GIFTED

- Gifts made in prior years to minimize transfer taxes in many cases no longer need estate tax exemption in light of the higher exemption and estate inclusion would provide basis benefit
- If transfer was to a grantor trust, use swap power if available
- If transfer was outright to lower generation, consider gift back to higher generation, even at the expense of use of the basic exclusion amount
- Consider transfer of appreciated property to trust(s) for lower generations in typical plan, but provide a general power of appointment to the higher generation beneficiary

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ESTATE PLANNING UNDER TCJA FOR INCREASED TAX BASIS – ASSETS ALREADY GIFTED

If prior transfer was an entity interest:

- Liquidate the entity and distribute the assets if income tax friendly
- Use IRC Section 2036(a)(1) or IRC Section 2036(a)(2) as a "weapon" to cause inclusion in the estate

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THE BOTTOM LINE

- In light of the increased federal exclusion amount and the repeal of the New Jersey Estate Tax, existing estate plans should be reviewed to determine whether modifications need to be made.
- For some individuals, the larger exemption creates an opportunity to increase gifting and/or engage in additional estate planning without creating a gift tax liability.
- Others may benefit from unwinding some of the estate planning that was implemented when the federal estate tax exemption was much lower and the prospect of significant New Jersey Estate Tax liability existed.

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NON-TAX BENEFITS OF TRUSTS

The use of a trust(s) also offers other, non-tax advantages such as:

- Protection from creditors
- Protection from subsequent marriages
- Surviving spouse who is a spendthrift or is not financially astute
- The ability to direct who the remainder beneficiaries of the trust will be which can be particularly important for second marriages
  - The QTIP Trust
- Special Needs Trusts
- Trusts for "financially disabled" beneficiaries

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Example
$20MM NET WORTH
SINGLE WITH COMPANION

- 67 Year old surviving spouse
- Living with companion and three children from previous marriage
- $4MM Credit Shelter Trust
- $20MM of assets
- Assets include $8MM Individual Retirement Account
- Lifetime Trust Planning required for one child
- Full $12,920,000 currently available

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Example (CONTINUED)
$20MM NET WORTH
SINGLE WITH COMPANION

- Gifting options
- How to leave assets to companion
- Trust planning options
- Comfort Level/Depletion of Assets
- Secure Act Implications-Individual Retirement Account
- Basis Considerations
- GRATs, Family Limited Partnerships, etc.

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GENERAL CONCEPTS

- Disposition Not Controlled by Will
- Income Tax
- Estate Tax
- Designated Beneficiary - There is a difference between "Beneficiary" and "Designated Beneficiary", within the meaning of IRC 401(a)(9)(E)
- Beneficiary Designation Forms
- Required Beginning Date – Deadline for participant's first Required Minimum Distribution

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SECURE ACT

- Purpose of Change
- Old Rules Still Relevant
- Designated Beneficiary - There is a difference between "Beneficiary" and "Designated Beneficiary"
- Pre-Secure Act Designated Beneficiary
- Post Secure Act Designated Beneficiary and Eligible Designated Beneficiary
- Now Three types of possible beneficiaries
- RBD moved to age 72 (if reach 701/2 after 12/31/19)
- Proposed Treasury Regulations issued in February of 2022



LIFETIME REQUIRED MINIMUM DISTRIBUTIONS

- Timing – Required Beginning Date
- Amount – Uniform Distribution Period Multiple-Post-2021 Change
- Multiple Plans – Aggregation Rule
- Roth IRAs – no participant lifetime required distribution but beneficiaries are required to take distributions

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Example 1. Sam Smith an IRA owner is 75 years old in 2021 and his wife, Sally Smith (age 69 in 2021), is designated as his beneficiary. The balance in Sam's IRA as of December 31, 2020 is $3,000,000. Sam's 2021 RMD would be $131,004 ($3,000,000/22.9). The applicable divisor is determined using the Uniform Lifetime Table.

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QUALIFIED CHARITABLE DISTRIBUTION IRC §408(D)(8)

- QCD allows individual to transfer up tp $100,000 of RMD directly from IRA to a charity
- Amount is excluded from gross income and still counts towards RMD for the year of the gift
- Excluded amounts are reduced by deductible IRA contributions
- Reported as a distribution on Form 1040, but taxable amount is zero with line on Form 1040 marked “QCD”

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INHERITING AN IRA

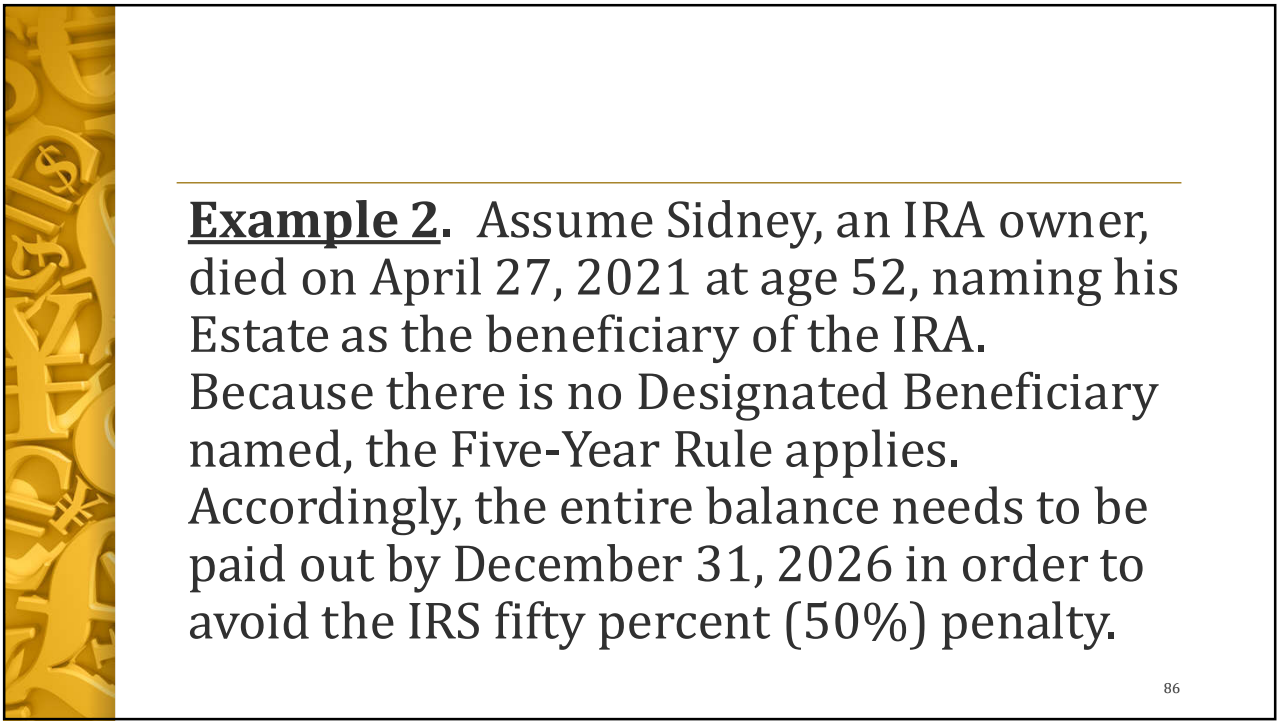
- Year of Death Required Minimum Distribution
  - Portion not taken by participant prior to death must be taken by the beneficiary-could be short notice
  - Calculated based on retirement plan owner's lifetime RMD requirement
  - If retirement plan owner dies before the RBD, beneficiary does not have an obligation to take the RMD even if the owner took a portion before death

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IF THE PARTICIPANT DIES WITH NON-DESIGNATED BENEFICIARY

- Before the RBD-Five Year Rule. The entire benefit must be paid in full by the last day of the fifth year following the Participant's death. (Five-Year Rule)
- After the RBD-Remaining Life Expectancy-Ghost Rule.
- Practice Alert-Depending on owner's age at death, this could be longer than 10 years.

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Example 2. Assume Sidney, an IRA owner, died on April 27, 2021 at age 52, naming his Estate as the beneficiary of the IRA. Because there is no Designated Beneficiary named, the Five-Year Rule applies. Accordingly, the entire balance needs to be paid out by December 31, 2026 in order to avoid the IRS fifty percent (50%) penalty.
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Example 3. Assume Wayne an IRA owner died on April 27, 2021 at age 75, naming his Estate as the beneficiary of an IRA. The IRA had a balance of $3,000,000 as of December 31, 2020. Wayne did not take his 2021 RMD. The Estate is required to take the 2021 RMD of $131,004 ($3,000,000/22.9) based upon Wayne's age of 75 in 2021. The Single Life table reveals a life expectancy of a 75 year old equal to 13.4. This however needs to be reduced by one (1) because 2021 was the year of death and the 2021 RMD was based upon the Uniform Lifetime Table. The applicable divisor for the 2022 RMD is 12.4 (13.4 (age 75 using Single Life Table) minus 1), which is reduced by 1 for each year thereafter.

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IF THE PARTICIPANT DIES WITH DESIGNATED BENEFICIARY BUT NOT ELIGIBLE DESIGNATED BENEFICIARY

- Pre-Secure Act. The "Stretch" IRA based on Designated Beneficiary's (DB) life expectancy.
  - Pre-2020 death with Stretch, "10 Year Rule" applies upon death of DB
- Post-Secure Act. The "10 Year Rule"
  - 10 Year Rule applies whether retirement plan owner dies before or after RBD, however Proposed Regulations impact how the 10 Year rule is applied.
  - If death is before RBD, there is no annual payment requirement pursuant to the Proposed Regulations.
  - If death is after RBD, annual RMDs are required in years one through 9 pursuant to the Proposed Regulations and 10 Year Rule still applies.
  - In either case, entire account must be distributed by 12/31 of 10th year following death.

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IF THE PARTICIPANT DIES WITH DESIGNATED BENEFICIARY BUT NOT ELIGIBLE DESIGNATED BENEFICIARY

- Post-Secure Act. The "10 Year Rule"
  - Remember RMD must be taken for year of death based on retirement plan owner's lifetime RMB requirement.
  - If death occurs after RBD annual RMDs are required commencing in year following death over the greater of beneficiary's life expectancy or retirement plan owner's remaining life expectancy (ghost rule).
  - If death occurs after RBD the 10 Year Rule could be shortened if beneficiary's life expectancy is less than 10 years.
  - IRC 4797 50% penalty will apply to any RMDs not taken
  - IRS Notice 2022-53 (October 7-2022) stating final regulations will be issued that provide for waiver of the 50% penalty for 2021 or 2022 missed RMDs

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Example 4. Samuel, an IRA owner, died on January 1, 2021 at age 52, naming his son, Alex, as the beneficiary of the IRA. Alex was born on June 15, 1995. Alex is required to receive the entire IRA balance on or before December 31, 2031. Alex would not be required to receive any distributions before December 31, 2031, although he could elect to do so. Pre-Secure-Act Alex was required to commence distributions in the year following his father's death, but was able to stretch them out over his 58.2 year life expectancy. If Samuel had died after RBD, annual RMDs would have been required with ballon payment by the end of 10th year.

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ELIGIBLE DESIGNATED BENEFICIARIES

- Surviving Spouse
- Child who has NOT reached "Age of Majority"; Note: Ten Year Rule will kick in at Age of Majority
- Disabled Beneficiary; specifically defined/documentation requirement
- Chronically Ill Beneficiary; specifically defined/documentation requirement
- Individual Less than Ten Years Younger

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ELIGIBLE DESIGNATED BENEFICIARIES

- Age of Majority-before the 2022 Proposed Regulations were issued was considered a child under the age of 25 and who has not completed a "specified course of education".
- The 2022 Proposed Regulations establish that the Age of Majority is 21.

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IF THE PARTICIPANT DIES WITH ELIGIBLE DESIGNATED BENEFICIARY

- EDB is granted an exception to the Ten-Year Rule and can use their life expectancy for calculating RMDs of inherited retirement plans
- Same methodology for DB Pre-Secure Act
- Applies whether retirement plan owner dies BEFORE or AFTER RBD

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	Non-Designated Beneficiary Pre-SECURE	Non-Designated Beneficiary Post-SECURE	Designated Beneficiary (DB) Pre-SECURE	Designated Beneficiary (DB) Post-SECURE	Eligible Designated Beneficiary (EDB) Post-SECURE only
Death Before RBD	5 Year Rule	5 Year Rule	Life Expectancy (However-10 Year Rule for Successor Beneficiary when DB dies after 2019)	10 Year Rule No Annual RMDs	Life Expectancy for EDB Upon death of EDB or Minor becoming a Major converting to 10 Year Rule
Death After RBD	Remaining Life Expectancy (Ghost)	Remaining Life Expectancy (Ghost)	Life Expectancy (However-10 Year Rule for Successor Beneficiary when DB dies after 2019)	10 Year Rule Required Annual RMDs	Life Expectancy for EDB Upon death of EDB or Minor becoming a Major converting to 10 Year Rule

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TRUSTS AS BENEFICIARIES

- Successfully using a trust as a beneficiary of a retirement plan in not without complication. As previously discussed, there are many income tax benefits to naming the surviving spouse and/or children as the direct beneficiary. However, there are often many non-tax reasons to utilize a trust for retirement plan benefits, including QTIP trusts, special needs trusts and testamentary trusts addressing the needs of children and grandchildren.
- Two sets of rules to consider; (i) Qualified Trust Rules and (ii) See Through Rules

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QUALIFIED TRUST RULES

- Qualified Trust Requirements:
  i. The trust is valid under state law, or would be but for the fact that there is no corpus.
  ii. The trust is irrevocable, or will, by its terms become irrevocable upon the death of the participant
  iii. The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the participant's benefit are identifiable from the trust instrument.
  iv. The trustee of the trust that is named as the beneficiary must supply certain documentation, including a copy of the trust, to the plan administrator by October 31st of the year after the participant's death.

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SEE-THROUGH REQUIREMENT

- Satisfying the Qualified Trust Rule is a threshold requirement. The next step is to look at the trust's identifiable beneficiaries and apply the RMD rules
- The critical question was which trust beneficiaries will be considered in the pool when determining the shortest life expectancy. In other words, did the trust qualify as a "See-Through Trust". Generally, two (2) categories of trusts were, and still are, used, and tested to determine if they qualify as a See-Through Trust (Conduit Trust or Accumulation Trust). Even after the enactment of the SECURE Act, this analysis is still necessary for pre-2020 deaths and possibly in certain cases regarding EDBs.



CONDUIT TRUST

- A trust is considered a Conduit Trust if all amounts received by the trust from the retirement account are required to be distributed to the beneficiary. The trustee cannot have the discretion to accumulate any distribution from the retirement plan inside the trust. A Conduit Trust automatically qualifies as a "See-Through Trust". Prior to the SECURE Act, the conduit beneficiary's life expectancy was able to be used for the RMD calculation as if such beneficiary were the sole direct beneficiary of the retirement plan.
- A Conduit Trust can no longer use the life expectancy of the beneficiary for purposes of calculating RMDs unless one of the EDB exceptions apply. Instead the Ten (10) Year Rule is the default rule for a Conduit Trust. For example, if a Conduit Trust is for the benefit of a minor/EDB, the minor's life expectancy can still be used for purposes of calculating RMDs, however, upon the child reaching the age of majority the Ten (10) Year Rule would apply.

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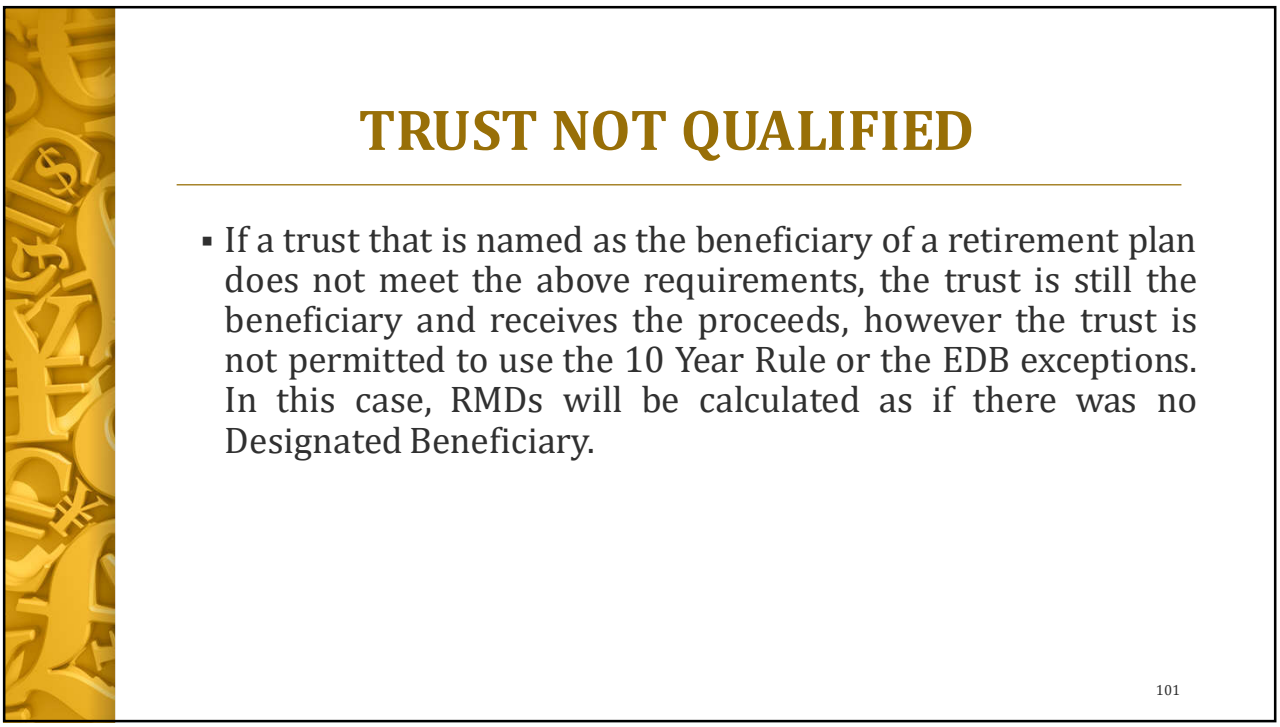
ACCUMULATION TRUST

- The requirements of the Conduit Trust may not always be consistent with the objectives of the retirement plan owner's testamentary intent. For example, the retirement plan owner may want all amounts to accumulate inside of the trust for the benefit of a child and only be distributed to (or for the benefit of) the child at the discretion of the trustee, notwithstanding any negative income tax consequences. In this case, from a pre-SECURE Act RMD perspective, the key issue was whether this type of trust can qualify as a See-Through Trust and use the life expectancy of the beneficiary with the shortest life expectancy for purposes of computing RMDs. This often became complicated because all potential beneficiaries are part of the "pool" to be considered for purposes of determining RMDs.
- This analysis is still necessary for pre-2020 deaths and in certain cases regarding EDBs.
- **Impact of the SECURE Act**. An Accumulation Trust can no longer use the life expectancy of the beneficiary for purposes of calculating RMDs. Instead the Ten (10) Year Rule is the default rule for an Accumulation Trust, except in the case of a trust properly for the benefit of a disabled or chronically inn individual.

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ACCUMULATION TRUST EXAMPLE

- **Example 5.** An IRA is payable to an Accumulation Trust with discretionary distributions to daughter (age 30) and outright to her at age 40. The daughter does not survive the owner. Owner dies after 2020 at age 70, at which time identifiable beneficiaries include a 26 year old granddaughter (life expectancy 57.2) and a 90 year old grandmother (life expectancy 5.5). In this case the Ten (10) Year Rule applies, no other ages matter. Note how much more flexibility exists in designing Accumulation Trust when not trying to meet the See- Through Trust requirement and stretch the RMDs under prior law.


TRUST NOT QUALIFIED
▪ If a trust that is named as the beneficiary of a retirement plan does not meet the above requirements, the trust is still the beneficiary and receives the proceeds, however the trust is not permitted to use the 10 Year Rule or the EDB exceptions. In this case, RMDs will be calculated as if there was no Designated Beneficiary.
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MODIFYING RMD REQUIREMENTS AFTER DEATH

- **Shake-Out Period/Post-Mortem Modification.** If there are more than one beneficiary of a retirement plan on the last day of the calendar year following the Participant's death, then (absent corrective action) withdrawals after the Participant dies will be based on the life expectancy of the beneficiary or beneficiaries who remain beneficiaries on **September 30** of the year following the Participant's death.

MODIFYING RMD REQUIREMENTS AFTER DEATH

- **Separate Account Rule.** If there are multiple beneficiaries of a retirement plan, and separate inherited IRA accounts are established by December 31st of the year following the year of death. The separate account concept does not apply to trusts.



ROLLOVER TO INHERITED IRA BY NON-SPOUSE BENEFICIARY

- The Pension Protection Act of 2006 permits a non-spouse beneficiary to roll over (not really a rollover) to an IRA any portion of a distribution from an "eligible retirement plan" received on the death of the employee.
- The rollover must be accomplished by a direct trustee-to-trustee transfer to an individual retirement account established for the purpose of receiving the distribution on behalf of the individual who is a designated beneficiary, which means that the IRA is only permitted to hold death benefits.
- The individual retirement plan receiving the rollover is treated as an "inherited" IRA or individual retirement annuity, which means that the beneficiary cannot roll over any distributions, but may only effect further rollovers by a trustee-to-trustee transfer.

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NEW WORLD OF TAX AND ESTATE PLANNING

- Existing Tax and Estate Plans. Many Wills, Trusts and BDFs are structured to achieve various tax and non-tax planning objectives. Additionally, these plans may incorporate RMD planning based upon Pre-SECURE-Act law. As such, it is important that these plans, including BDFs, should be reviewed to determine whether they are still functioning as originally intended and to avoid unintended consequences as a result of the law change.

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NEW WORLD OF TAX AND ESTATE PLANNING

- Conduit Trust/QTIP Trust for Surviving Spouse. An estate plan may have been structured to provide that a Conduit Trust/QTIP Trust is the Designated Beneficiary of a large retirement plan asset, and the surviving spouse is required to receive the greater of the RMD or the income for marital deduction purposes. Because the surviving spouse is an EDB, this will still function as planned using the surviving spouse's recalculated life expectancy. However, upon the surviving spouse's death, the Ten (10) Year Rule will apply. Please note that paying a retirement plan to a QTIP Trust should be given careful thought. The longer the surviving spouse lives, the more the surviving spouse will receive by way of RMDs, which could substantially deplete the retirement plan.

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NEW WORLD OF TAX AND ESTATE PLANNING

- Conduit Trust for Child. Assume the Conduit Trust is for the benefit of a 25 year-old child because of concern about the child's ability to prudently manage funds. As such, the plan was structured for the RMDs to be paid over the life expectancy of the 25 year-old child, or 58.2 years. Without modification to this plan, upon the retirement plan owner's death, the entire account will have to be paid to the Conduit Trust and in turn the child directly within ten (10) years. It may be worthwhile to consider changing the Conduit Trust to an Accumulation Trust.
- Conduit Trusts may have been a viable solution when the RMDs could be stretched, resulting in modest amounts being distributed through the trust to the beneficiary and thereby subject to income tax. The Conduit Trust may still be acceptable when the beneficiary is in a low income tax bracket and outright distributions to the beneficiary are not a real concern. However, when there are serious outright disposition/asset protection concerns, an Accumulation Trust may be a more suitable option notwithstanding any negative income tax consequences.

NEW WORLD OF TAX AND ESTATE PLANNING

- Trust for Grandchild. A plan may have been structured to provide that a trust is the Designated Beneficiary of a large retirement plan asset, and the trust (Accumulation or Conduit) is for the benefit of a 10 year-old grandchild. As such, the plan was structured for the RMDs to be paid over the life expectancy of the 10 year-old grandchild, 72.8 years. Upon the retirement plan owner's death, the Ten (10) Year Rule will now apply. Is there a more suitable option for the family in light of the loss of the 72.8 year stretch?

NEW WORLD OF TAX AND ESTATE PLANNING

- Special Needs Trust. A Conduit Trust is not a good option when planning with a Special Needs Trust as it may disqualify the disabled beneficiary from certain need-based assistance. An Accumulation Trust is more appropriate for special needs planning. Pursuant to IRC §401(a)(9)(E)(iv), in the case of a trust for the benefit of a disabled or chronically ill EDB, (i) notwithstanding that there may ultimately be multiple beneficiaries of the trust and (ii) as long as no other individual has a right to the Retirement Plan Account until the death of the disabled or chronically ill EDB, the disabled or chronically ill EDB's life expectancy can be used for calculating RMDs. Accordingly, existing Accumulation Trusts that were drafted to qualify as a See-Through Trust, may no longer need to be as restrictive.
- Practice Alert: New law (IRC §401(a)(9)(H)(iv&v)) goes out of its way to qualify Accumulation Trusts for disabled/chronically ill individuals as an EDB, notwithstanding the fact that they are not Conduit Trusts. Does this confirm that only Conduit Trusts can now qualify as See-Through Trusts and achieve EDB status unless the disabled/chronically ill exception applies?

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Age	Current RMD Factor	New RMD Factor
70	27.4	29.1
71	26.5	28.2
72	25.6	27.4
73	24.7	26.5
74	23.8	25.5
75	22.9	24.6
76	22	23.7
77	21.2	22.9
78	20.3	22
79	19.5	21.1
80	18.7	20.2
81	17.9	19.4
82	17.1	18.5
83	16.3	17.7
84	15.5	16.8
85	14.8	16
86	14.1	15.2
87	13.4	14.4
88	12.7	13.7
89	12	12.9
90	11.4	12.2

UNIFORM LIFETIME TABLE

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Age	Current RMD Factor	New RMD Factor
91	10.8	11.5
92	10.2	10.8
93	9.6	10.1
94	9.1	9.5
95	8.6	8.9
96	8.1	8.4
97	7.6	7.8
98	7.1	7.3
99	6.7	6.8
100	6.3	6.4
101	5.9	6
102	5.5	5.6
103	5.2	5.2
104	4.9	4.9
105	4.5	4.6
106	4.2	4.3
107	3.9	4.1
108	3.7	3.9
109	3.4	3.7
110	3.1	3.5
111	2.9	3.4

UNIFORM LIFETIME TABLE (cont.)

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ESTATE PLANNING FOR NON-MARRIED COUPLES

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GROUNDS FOR CONTESTING A WILL

1. The testator lacked testamentary capacity:
   - Does testator comprehend the property he is about to dispose of, the natural objects of his bounty, the meaning of the business in which he is engaged, the relation of each of the factors to the others and the distribution that is made by the will?
2. The testator was unduly influenced.
   - Mental, moral or physical exertion which has destroyed the free agency of the testator by preventing the testator from following the dictates of his own mind and will and accepting instead the domination and influence of another.
   - A presumption of undue influence arises where the contestant puts forth sufficient evidence of:
     1. Confidential relationship between the decedent and a benefitted party; and
     2. Suspicious circumstances
   - Once presumption of undue influence arises, burden shifts to will proponent to rebut the presumption by a preponderance of the evidence

GROUNDS FOR CONTESTING A WILL

3. The will was procured by fraud.
   - Testator is misled by another's representation, but the act the individual performs because of the fraudulent misrepresentation is the product of his own volition. It deceives the individual's free agency and involves bad faith on the part of the perpetrator.

GROUNDS FOR CONTESTING A WILL

4. The will was the result of mistake: An individual is misled without representation or coercion on the part of another and misleads free agency without bad faith of another. The mistake must go to the identity of the document executed by the individual.

5. The will was revoked. If such a will last seen in the custody of the testator, or he or she had access to it, the fact that is cannot be located after his or her death raises a presumption that he or she destroyed the will. This presumption may be rebutted by clear and convincing evidence. The burden is on the proponent of the will.

6. Lack of testamentary intent. The intention of a testator as expressed in his will controls the legal effect of his dispositions unless the probable intent of the testator, as indicated by the will and relevant circumstances, is contrary.

7. The will was not executed properly.

NO-CONTEST CLAUSES

- Common clause in will to provide for disinheritance if Will's validity is challenged.
- New Jersey law provides that no-contest clauses are generally unenforceable if probable cause exists for the will contest.
- A no-contest clause can be enforced for nuisance claims with no basis in fact or law
- No-contest clause would not be enforceable if legitimate claims are made based upon lack of testamentary capacity, undue influence, etc.

CASE STUDIES: THE COMPANION

- Decedent died intestate survived by a two children. One child was appointed as administrator of Decedent's estate.
- Decedent died having a long-term, live-in companion. They never contemplated marriage. She was entitled to nothing as heir or pursuant to any beneficiary designations.
- The companion alleged Decedent promised to support her for life and she was detrimentally induced to continue her relationship in reliance on his promise.
- Heirs argued Decedent could have prepared a will or trust or made a beneficiary designation in favor of companion, but did not do so.
- Couple kept separate accounts, companion did not provide for Decedent in her estate either.
- Companion made quantum meruit claim alleging promissory estoppel and unjust enrichment, but really she was making palimony claim and there was no substantiated or credible evidence of a promise to support.

CASE STUDIES: THE MISTRESS

- Decedent was married and died testate leaving everything to his wife- or so she thought.
- Decedent left valuable non-probate asset to mistress by beneficiary designation.
- Wife receives letter from inheritance tax division seeking payment of inheritance taxes based upon distribution of non-probate asset to mistress.
- Decedent's will had allocation clause stating all taxes were paid for residuary estate.
- Result was that mistress got non-probate asset tax-free and wife took the hit for the taxes owed.
- Be wary of boilerplate tax allocation clauses, particularly if there are significant non-probate designations.

CASE STUDIES: THE PARTNER V. THE FAMILY

- Two partners were in a long-term relationship, but never married.
- One partner died intestate, meaning his partner received nothing from his estate. He had no legal claim to the estate and attempted negotiations with blood relatives failed.
- When one partner was on his deathbed, his relatives, who had never met or known about the partner, asserted their blood relationship to exclude the partner from medical decision-making and information
- Partner was also excluded from funeral by family.

HOW DO WE AVOID A WILL CONTEST?

- Transparency (if appropriate)
- Careful estate planning
- Considering modest bequests/designations to relatives
- Trust planning that results in wealth returning to family after death of partner

WHO WILL MAKE DECISIONS?

- All adults, regardless of marital status, should execute a Power of Attorney and Healthcare Directive so an agent may make personal, financial and medical decisions for them in the event of a crisis or incapacity.
- These documents should be kept in a safe location accessible to agent. Agent should be made aware of them to they are easy to access in a crisis.
- If a crisis or incapacity occurs and these documents have not been executed, no one is empowered to make decisions, it is likely that a guardianship will be necessary

WHO WILL MAKE DECISIONS?

- A guardian is appointed by a court to act on behalf of an individual
- Guardianships are commenced by a Verified Complaint filed in the Superior Court of New Jersey seeking
  - An order declaring a person to be incapacitated and
  - The appointment of a person as guardian
- Verified Complaint must be supported by certifications of two doctors who find that person is unfit and unable to manage their affairs
- Court will appoint attorney for alleged incapacitated person to render a report
- Possible appointed of a guardian ad litem to opine as to alleged incapacitated person's best interests in the event of a conflict, contested guardianship, etc.
- Guardianship may be contested

WHO WILL MAKE DECISIONS?

- Who can be appointed as guardian?
- Spouse
- Next of Kin
- Office of the Public Guardian for Elderly Adults
- If none of the above will accept appointment, or it is shown that appointment of any of the above is not in the best interests of the incapacitated person, guardianship can be granted to another person
- Note that POA does not have special priority, nor does unmarried partner

WHO WILL MAKE DECISIONS?

- In New Jersey, you have the right to choose who makes decisions for your funeral and disposition
- Default rule as to who makes these decisions
  - Spouse or NJ registered domestic or civil union partner
  - Majority of children over 18
  - Parent (s)
  - Majority of siblings over 18
  - Other relatives
  - If there are no known living relatives, funeral director may accept written authorization of other parties
  - If cremation is south, need consent of all next of kin
  - If there are disagreements, may need court order

WHO WILL MAKE DECISIONS?

- Designate a funeral agent in your Will
- Pre-plan your funeral

2020 New Jersey Revised Statutes
Title 45 - Professions and Occupations
Section 45:27-22 - Control of funeral, disposition of remains; priority classes.

Universal Citation: NJ Rev Stat § 45:27-22 (2020)

45:27-22 Control of funeral, disposition of remains; priority classes.

22. a. If a decedent, in a will as defined in N.J.S.3B:1-2, appoints a person to control the funeral and disposition of the human remains, the funeral and disposition shall be in accordance with the instructions of the person so appointed. A person so appointed shall not have to be executor of the will. The funeral and disposition may occur prior to probate of the will, in accordance with section 40 of P.L.2003, c.261 (C.3B:10-21.1).

On or after the effective date of P.L.2019, c.187, a decedent may appoint a person to control the funeral and disposition of the human remains in writing, and if a decedent so appoints a person it shall be in the presence of no less than two witnesses, on a form approved by the board. The written form appointing a person to control the funeral and disposition shall include the signatures of the decedent and witnesses, and shall be notarized. Nothing in this section shall be construed as prohibiting a decedent from appointing a person to control the funeral and disposition on the form approved by the board who is also named as the executor of the decedent's will.

The appointment of a person to control the funeral and disposition of the human remains made in the most recently dated and properly executed will as defined in N.J.S.3B:1-2 or board approved form as provided by P.L.2019, c.187 shall supersede any similar appointment made in any previously executed document.

A person appointed or in a priority class with a right to control the funeral and disposition of the human remains under this subsection shall have the right to relinquish control of the funeral and disposition. Whenever a person relinquishes control pursuant to this subsection, the right to control the funeral and disposition of the human remains shall transfer to the next available priority class as enumerated in this subsection.

No officer, partner, member, shareholder, owner, representative, or employee of the funeral home, cemetery, or crematory providing any goods or services related to the decedent's funeral and disposition of the human remains shall be the person appointed by the decedent, under this subsection, to control the funeral and disposition, unless that person is a relative of the decedent.

In the case of an active duty service member who died while on active duty in any branch or component of the United States Armed Forces, including the New Jersey National Guard called to federal active duty, the person designated by the decedent as authorized to direct disposition, as listed on the decedent's United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, shall be the person appointed to control the funeral and disposition of the remains of the decedent.

If the decedent has not appointed a person to control the funeral and disposition of the remains, or the United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, is not applicable, the right to control the funeral and disposition of the human remains shall be in the following order of priority class, unless other directions have been given by a court of competent jurisdiction:

(1) The surviving spouse of the decedent or the surviving civil union or domestic partner.

(2) A majority of the surviving adult children of the decedent.

(3) The surviving parent or parents of the decedent.

(4) A majority of the brothers and sisters of the decedent.

(5) Other next of kin of the decedent according to the degree of consanguinity.

(6) If there are no known living relatives, a cemetery may rely on the written authorization of any other person acting on behalf of the decedent.

The right to control the funeral and disposition of the remains shall be granted to the next available priority class, as enumerated in this subsection, if the decedent had a temporary or permanent restraining order issued pursuant to P.L.1991, c.261 (C.2C:25-17 et seq.) against the person or persons in the highest priority class, or the person or persons in the highest priority class are charged with the intentional killing of the decedent.

If the decedent has not appointed a person to control the funeral and disposition of the human remains, or the United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, is not applicable, the person or persons in the highest priority class of the right to control the funeral and disposition shall exercise the right to control within 72 hours after the decedent's death. If the person or persons in the highest priority class fail to exercise the right to control within 72 hours after the decedent's death, or if the person or persons in the highest priority class are unable to be notified after a reasonable attempt to notify within 72 hours after the decedent's death, the right to control the funeral and disposition shall transfer to the person or persons in the next highest priority class, as enumerated in this subsection. If the person or persons who would otherwise retain the right to control the funeral and disposition are deemed

medically incapable or medically incapacitated by a licensed physician, the right to control shall transfer to the person or persons in the next highest priority class, as enumerated in this subsection.

If more than one person is deemed to have equal right to control the funeral and disposition of the human remains, a majority of the persons with the equal right to control is required to authorize the funeral and disposition. In instances where the parents of the decedent retain the right to control the funeral and disposition, both parents are required to authorize the funeral and disposition, if both parents are living and both parents are able to be notified after a reasonable attempt to notify. If only one parent is living or if only one parent is notified after a reasonable attempt to notify both parents, the authorization of one parent shall be sufficient to proceed with a funeral and disposition.

Notwithstanding any law, rule, or regulation to the contrary, the divorce, annulment, or dissolution of a marriage, civil union, or domestic partnership shall remove the right of control of the funeral and disposition of the human remains from the former spouse or former partner of the decedent, unless the former spouse or partner serves as an other interested party.

For purposes of this subsection:

"Domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

"Reasonable attempt to notify" shall mean a good faith effort to contact the person or persons with the right to control the funeral and disposition via correspondence sent by registered mail or electronic mail to his or her last known address, or a telephone call placed to the last known telephone number, by a family member, personal representative of the decedent, or any other interested party. If a reasonable attempt to notify is unsuccessful, the person or persons assuming the right to control the funeral and disposition shall attest in writing that a good faith effort was made to contact any person or persons with a higher priority right to control.

b. A cemetery may permit the disposition of human remains on the authorization of a funeral director handling arrangements for the decedent, or on the written authorization of a person who claims to be, and is believed to be, a person who has the right to control the disposition. The cemetery shall not be liable for disposition pursuant to this authorization unless it had reasonable notice that the person did not have the right to control the disposition.

c. A cemetery shall not bury human remains of more than one person in a grave unless:

(1) directions have been given for the burials in accordance with this section on behalf of all persons so buried; or

(2) the rights to be buried in the grave were sold by the cemetery with explicit provision allowing separate sales of rights to burial at different depths in the grave.

d. A person who signs an authorization for the funeral and disposition of human remains warrants the truth of the facts stated, the identity of the person whose remains are disposed and the authority to order the disposition. The person shall be liable for damages caused by a false statement or breach of warranty. A cemetery or funeral director shall not be liable for disposition in accordance with the authorization unless it had reasonable notice that the representations were untrue or that the person lacked the right to control the disposition.

e. An action against a cemetery company relating to the disposition of human remains left in its temporary custody may not be brought more than one year from the date of delivery of the remains to the cemetery company unless otherwise provided by a written contract.

L.2003, c.261, s.22; amended 2005, c.324, s.1; 2005, c.331, s.29; 2009, c.290; 2013, c.268; 2019, c.187.

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4:86-6. Hearing; Judgment

(a) Trial. Unless a trial by jury is demanded by or on behalf of the alleged incapacitated person, or is ordered by the court, the court shall, after taking testimony in open court, determine the issue of incapacity. The court, with the consent of counsel for the alleged incapacitated person, may take the testimony of a person who has filed an affidavit or certification pursuant to R. 4:86-2(b) by telephone or may dispense with oral testimony and rely on the affidavits or certifications submitted. Telephone testimony shall be recorded verbatim.

(b) Motion for New Trial. A motion for a new trial shall be served not later than 30 days after the entry of the judgment.

(c) Appointment of General or Limited Guardian. If a general or limited guardian of the person or of the estate or of both the person and estate is to be appointed, the court shall appoint and letters shall be granted to any of the following:

(1) the incapacitated person's spouse, if the spouse was living with the incapacitated person as husband or wife at the time the incapacity arose;

(2) the incapacitated person's next of kin; or

(3) the Office of the Public Guardian for Elderly Adults within the statutory mandate of that office. If none of them will accept the appointment, or if the court is satisfied that no appointment from among them will be in the best interests of the incapacitated person or estate, then the court shall appoint and letters shall be granted to such other person who will accept appointment as the court determines is in the best interests of the incapacitated person. Such persons may include registered professional guardians or surrogate decision-makers chosen by the incapacitated person before incapacity by way of a durable power of attorney, health care proxy, or advance directive.

(d) Judgment.

(1) The judgment of legal incapacity and appointment of guardian shall be in such form and include all such provisions as promulgated by the Administrative Director of the Courts, except to the extent that the court explicitly directs otherwise.

(2) Unless expressly waived therein, the judgment appointing the guardian shall fix the amount of the bond. If there are extraordinary reasons justifying the waiver of a bond, that determination shall be set forth in a decision supported by appropriate factual findings.

(3) A proposed judgment of legal incapacity and appointment of guardian shall be filed with the Surrogate not later than ten days prior to the hearing.

(e) Duties of Guardian.

(1) Not later than 30 days after entry of the judgment of legal incapacity and appointment of guardian, the guardian shall qualify and accept the appointment in accordance with R. 4:96-1. The acceptance of appointment shall include an acknowledgment that the guardian has completed guardianship training as promulgated by the Administrative Director of the Courts in accordance with R. 4:86-5(b). The acceptance of appointment shall also include an acknowledgment of compliance with any background screening policy for proposed guardians of incapacitated adults promulgated by the Administrative Director of the Courts, including but not limited to fingerprinting and disclosure of any changes to the guardian's criminal or civil judgment history through any required periodic reporting.

(2) Unless expressly waived in the judgment, the guardian of the estate shall file with the Surrogate, and serve on all interested parties, within 90 days of appointment an inventory in such form as promulgated by the Administrative Director of the Courts specifying all property and income of the incapacitated person's estate.

(3) Unless expressly waived in the judgment, the guardian of the estate shall file with the Surrogate reports of the financial accounting of the incapacitated person as required by N.J.S.A. 3B:12-42 and in such form as promulgated by the Administrative Director of the Courts. The report shall be filed annually unless otherwise specified in the judgment.

(4) Unless expressly waived in the judgment, the guardian of the person shall file with the Surrogate reports of the well-being of the incapacitated person as required by N.J.S.A. 3B:12-42 and in such form as promulgated by the Administrative Director of the Courts. The report shall be filed annually unless otherwise specified in the judgment.

(5) The judgment shall also require the guardian to keep the Surrogate reasonably advised of the whereabouts and telephone number of the guardian and of the incapacitated person, and to advise the Surrogate within 30 days of the incapacitated person's death or of any major change in his or her status or health. As to the incapacitated person's death, the guardian shall provide written notification to the Surrogate and shall provide the Surrogate with a copy of the death certificate within seven days of the guardian's receipt of the death certificate.

(6) A guardian shall cooperate fully with any Court or Surrogate staff or volunteers until the guardianship is terminated by the death or return to capacity of the incapacitated person, or the guardian's death, removal or discharge.

(7) The guardian shall monitor the capacity of the incapacitated person over time and take such steps as are necessary to protect the interests of the incapacitated person, including but not limited to initiating an action for return to capacity as provided in N.J.S.A. 3B:12-28.

(f) Duties of Surrogate.

(1) The Surrogate shall provide the entire complete guardianship file to the court for review no later than seven days before the hearing.

(2) At the time of qualification and issuance of letters of guardianship, the Surrogate shall review the acceptance of appointment and letters of guardianship with the guardian in such form as promulgated by the Administrative Director of the Courts.

(3) The Surrogate shall issue letters of guardianship following the guardian's qualification. The Surrogate shall record issuance of all letters of guardianship. Letters of guardianship shall accurately reflect the provisions of the judgment.

(4) The Surrogate shall record receipt of all inventories, reports of financial accounting, and reports of well-being filed pursuant to paragraphs (e)(3) through (e)(5) above.

(5) The Surrogate shall notify the court, and shall issue notices to the guardian in such form as promulgated by the Administrative Director of the Courts, in the event that:

(A) the guardian fails to qualify and accept the appointment within 30 days after entry of the judgment of legal incapacity and appointment of guardian in accordance with paragraph (e)(1) above; or

(B) the guardian fails to timely file inventories, reports of financial accounting, and/or reports of well-being filed in accordance with paragraphs (e)(3) through (e)(5) above.

(6) The Surrogate shall immediately notify the court if they are informed through oral or written communication, or become aware by other means, of emergent allegations of substantial harm to the physical or mental health, safety and well-being, and/or the property or business affairs, of an alleged or adjudicated incapacitated person. However, the Surrogate shall have no obligation to review inventories, periodic reports of well-being, informal accountings, or other documents filed by guardians, except for formal accountings subject to audit by the Surrogate.

(7) The Surrogate shall record the death of the incapacitated person.

Note: Source – *R.R.* 4:102-6(a) (b) (c), 4:103-3 (second sentence). Paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (c) of former *R.* 4:83-6 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended, text of paragraph (c) redesignated as paragraphs (c) and (d) and amended, paragraph (c) caption amended, and paragraph (d) caption adopted July 9, 2008 to be effective September 1, 2008; paragraphs (a) and (c) amended, new paragraph (d) added, former paragraph (d) amended and redesignated as paragraph (e), and new paragraph (f) added August 1, 2016 to be effective September 1, 2016; by order dated August 25, 2016 effective date of paragraph (f)(5) extended to March 1, 2017; subparagraphs (f)(4) and (f)(5)(B) amended July 31, 2020 to be effective September 1, 2020; subparagraph (e)(1) amended March 15, 2021 to be effective May 15, 2021.

About the Panelists…

Shawna A. Brown is an associate with Mandelbaum Barrett P.C. in Roseland, New Jersey, in the firm's Elder Law, Trusts & Estates and Special Needs Practice Groups. She focuses her practice in estate administration and litigation, including contested and uncontested probate, administration and accounting proceedings.

Ms. Brown is admitted to practice in New Jersey and New York. Prior to joining the firm she was an associate at a New York City law firm for more than eight years, where she counseled the Public Administrator of New York County, a city agency which administers the estates of decedents, in connection with estate administration.

Ms. Brown received her B.A. from Rutgers College, Rutgers University, and her J.D. from New York Law School.

Gary A. Prince, Jr. is a Shareholder in Mantell, Prince & Reynolds, P. C. in Basking Ridge, New Jersey, where he concentrates his practice in tax, business planning and business transactions, corporate law, estate and trust planning, estate administration, and serving as an expert and as an expert witness in tax and estate related litigation. He also represents families in matters including gifting strategies, marital agreements, income tax preparation and other personal and business issues; and counsels fiduciaries, beneficiaries and corporate shareholders, officers and directors on how litigation can be avoided or minimized.

Admitted to practice in New Jersey and Pennsylvania, and before the United States District Court for the District of New Jersey and the United States Tax Court, Mr. Prince is a member of the New Jersey Bar Association's Taxation, Small Firm and Probate and Trust Sections as well as the Union County Bar Association and the Taxation Section of the American Bar Association. He is also a Certified Public Accountant and a member of the American Institute of Certified Public Accountants and the New Jersey Society of Certified Public Accountants. A Fellow of the American College of Trust and Estate Counsel (ACTEC), he is a frequent lecturer on tax, business and estate-related topics for several legal and accounting organizations, and the recipient of several honors.

Mr. Prince received his B.S. from Fairleigh Dickinson University-Madison, his J.D, *cum laude*, from Seton Hall University School of Law and his LL.M. in Taxation from New York University School of Law.

Stacey M. Valentine is a Partner in Avelino Law, LLP with offices in Summit, New Jersey, and New York City, and co-leads the Trusts and Estates Practice Group. With a practice encompassing all aspects of trusts and estates law, she handles income, estate, inheritance, gift, and generation-skipping transfer tax issues, and helps clients maximize the benefits of charitable giving. Ms. Valentine assists estate and trust beneficiaries and fiduciaries in enforcing their rights and adhering to their obligations in the event of a dispute, and serves as legal counsel to numerous financial institutions and corporate trustees, assisting those entities in the implementation of their fiduciary duty while addressing the risks inherent to the role of executor or trustee. She also advises clients in general corporate matters arising in closely-held family businesses and has experience working with individuals with special needs.

Ms. Valentine is admitted to practice in New Jersey and New York. She has been a member of the New Jersey State, New York State and Morris County Bar Associations, and the Board of the Estate Planning Council of Northern New Jersey. She has also sat on the Board of the Women's Association for the Morristown Medical Center and the Young Professionals Board of Eva's Village.

Ms. Valentine received her B.A., *magna cum laude*, from Colgate University and her J.D., *cum laude*, from Washington & Lee University School of Law.