

1/20/24: Reviewing your Estate Plan is of Heightened Importance in Light of 2025 Sunset Changes

Without intervening action on the part of Congress, significant changes affecting the estate, gift and generation-skipping transfer taxes (“Transfer Taxes”), are scheduled to occur December 31, 2025. A review of your estate planning is in order to make sure the planning you have in place is still appropriate and up to date, particularly in light of these scheduled changes. This review additionally needs to confirm your beneficiary designations and the ownership designations made regarding your financial accounts are consistent with and coordinated with your estate plan.

The following describes the changes referenced above with respect to Transfer Taxes, provides a list of some of the items you should consider in reviewing your estate plan and gives a brief explanation of the importance of beneficiary designations and the ownership designation on your bank and other financial accounts:

1. ***Transfer Tax Exemptions.*** Currently, the amount an individual can transfer during life or at death free of Transfer Taxes is \$11,000,000, indexed for inflation, or in Year 2024, \$13,610,000. These exemption amounts became effective January 1, 2018. However, these large exemption amounts are only good for tax years 2018 through 2025. Absent further Congressional action, these exemption amounts will then revert to \$5 million, indexed for inflation. With the inflation adjustment, it is estimated that the new exemption amounts will be around \$7 million starting in 2026. However, there is always a possibility that Congress will reduce the exemption further.

This scheduled reduction of the exemptions amounts means there is a limited window to plan for and implement estate planning strategies and devices to capture these large exemption amounts. The recommended course of action is (1) be aware of this impending deadline, (2) investigate options available to you and (3) make informed decisions with sufficient time to implement any action required by such decisions.

From another perspective, complicated tax planning has been prepared for clients in the past who no longer want or need the extra complication because of the increased exemptions. Remember, virtually everything you own, including proceeds from life insurance policies and retirement plans, may be included in calculating the size of your estate and as a result, your estate may be larger than you might otherwise think.

2. ***Beneficiary Designations.*** Certain assets, such as retirement plans, individual retirement accounts, life insurance policies and annuities are governed by beneficiary designation forms. As a result, these assets will pass in accordance with the beneficiary designation you have made with the company or financial institution which maintains these types of assets for you. These assets will **not** pass in accordance with your Will since they are governed by a beneficiary designation. In addition, if a minor is named as a beneficiary of an asset of this type, his or her share will not be held in trust as specified in your Will,

since the beneficiary designation will take precedence over the Will. As a result, it is important to coordinate the beneficiary designations of these type assets with your overall estate plan. Beneficiary designation issues regarding retirement plans and IRAs are very complex and so you should consult a tax professional before making changes to the beneficiary designations for those assets.

3. ***Joint Tenants with Right of Survivorship and Payable on Death Accounts.*** Assets that you own as joint tenants with right of survivorship or with a payable on death designation present the same types of issues as assets governed by beneficiary designation. The most common types of accounts of this sort are bank accounts, certificates of deposit and stock and other brokerage accounts. If these accounts have been established as joint tenants with right of survivorship accounts or payable on death or transfer on death accounts, they will **not** pass in accordance with your Will but will instead pass to the individuals named to receive those accounts on the account designation. As a result, you may defeat the overall structure of your estate plan provided in your Will, including tax planning contained in your Will, if you maintain significant assets in accounts owned as joint tenants with right of survivorship or with a payable on death or transfer on death designation. Again, it is important to coordinate these accounts with your overall estate plan to make sure they are being disposed of in accordance with your wishes.
4. ***Changed Circumstances.*** Your personal or financial circumstances may change which could result in a need to change the provisions of your Will. The beneficiaries of your estate may change or the way in which you wish for them to receive the assets of the estate may change. The individuals or entities you have named as executors and trustees in the Will may no longer be the appropriate choices. In addition, if your estate increases substantially or decreases substantially after the execution of your Will, this could change the structure or strategy contained in your Will.
5. ***Trusts for Children or Descendants.*** Your Wills may be designed so that all of your estate will be distributed to your children or other descendants at the death of the last of you to die. As a result, your children or other descendants could have outright ownership of those assets and will be free to dispose of them as they choose at their deaths. If any of your children or other descendants were to have a sizeable estate, these assets would increase the size of his or her estate further and could result in the payment of estate taxes on the value of those assets at the death of such child or other descendant. Some of the increase in tax might be avoided or eliminated through use of trusts for the benefit of your children or other descendants that would last for the lifetime of the child or descendant. In addition, creating a trust could have asset protection benefits for a child as discussed in paragraph 8, below. In many instances, the child can serve as trustee of his or her own trust and have some control of his or her share of the assets of your estate. Creating trusts for your children and other descendants may be more complexity than you desire for your Will and estate plan but it is an idea you may want to consider.

6. ***Use of estate planning strategies and devices, and changes in the law.*** In addition to a Will, there are other estate planning strategies and devices that you may need to consider as part of your estate plan. Through the use of these strategies and devices, you may be able to reduce the tax burden that may be imposed on you or your estate upon the transfer of your estate to your loved ones. To take advantage of these ideas usually requires you to take certain actions and enter into certain agreements during your life. If you would like to explore these ideas and strategies for reducing transfer taxes, particularly in light of the scheduled reductions in the amounts of the Transfer Tax exemption amounts, attorneys in this firm would be happy to discuss them with you further. In addition, there may be changes in the future in the law, especially regarding the gift and estate tax laws, and changes in estate planning strategies that may impact your overall estate plan and Will. There are always new developments and changes in the laws, especially gift and estate tax laws. These changes may have an impact on the way in which your Will was structured or on new or additional strategies that may be available as part of your estate plan. These sorts of changes are especially important the larger the size of your estate.
7. ***Income Tax Planning.*** Income tax planning is of equal importance to planning for Transfer Taxes. Accordingly, your estate plan may need to be reviewed to determine if it should be modified to consider the income tax consequences of the plan's current structure.
8. ***Asset Protection Planning.*** One area of the law that is receiving increased attention is asset protection planning. Our society has become more litigious over the years. Claims can arise and lawsuits can be instituted giving rise to substantial liability endangering your financial wellbeing. Through the use of certain asset protection planning strategies, some of the risk can be lessened. In addition, your wills may provide that all your estate will vest in your descendants at the death of the last of you to die. As a result of owning these assets outright, these assets would be subject to any claims of creditors of your children and possibly could be commingled with other assets in a child's estate in such a way that a spouse of the child might have a claim to some of the assets in the event of a later divorce. Through the use of trusts, and other mechanisms, the assets you transfer to your heirs may receive added protection from the claims of creditors and others if properly structured. Trusts can also be designed to provide supplemental needs of a disabled child without disqualifying the child for government benefits.
9. ***Directives to Physicians, Medical Powers of Attorney and Durable Powers of Attorney.*** Changes may also occur that would necessitate changes in the documents ancillary to your Will. The individuals you have named to make financial and health care decisions for you in the event of your incapacity may no longer be appropriate. In addition, the Texas statutes that govern these documents have been changed a number of times over the years and it may be advisable to update your documents to consider these changes. These documents should be reviewed periodically by you to make sure their provisions are still appropriate.

10. ***Annual Gifts.*** One effective way to reduce the size of your estate without incurring gift or estate taxes is through use of the gift tax annual exclusion. Currently, the gift tax annual exclusion is \$17,000 per donor, per donee. This means a donor can make gifts not to exceed \$17,000 per year to as many donees as the donor chooses. This amount is indexed for inflation and so should increase in years to come. However, to qualify for the exclusion, the donee must have the present use and benefit of the gift and so in certain instances gifts to trusts or other arrangements may not qualify for the exclusion. In addition, the gift tax does not apply to amounts paid on behalf of an individual directly to a qualifying educational organization as tuition for that individual or payments on behalf of an individual directly to a provider of medical care as payment for that medical care.

In summary then, reviewing your Will and estate plan sooner than later in light of the changes scheduled to occur December, 2025, in the Transfer Tax exemption amounts would be in good order. Our firm cannot review your estate plan for you or keep you informed of all changes or provisions of the law, and any such responsibility or liability is expressly disclaimed.