

Estate Planning News

WINTER 2019

Estate and Gift Tax Update

The Tax Act that passed at the end of 2017 dramatically increased the federal estate tax exemption amount. This year the federal estate tax exemption is \$11,400,000 per person (\$22,800,000 per married couple), and the top estate tax rate on amounts over the exemption amount is 40%. In 2020, the exemption amount rises to \$11,580,000 per person (\$23,160,000 per married couple). However, these changes sunset after December 31, 2025, and the exemption amount returns to \$5,000,000 per person (indexed for inflation). The annual gift tax exclusion amount is \$15,000 per person or \$30,000 per married couple.

How to Make Your Estate Planning More Flexible

When the estate tax exemption was lower (for example \$675,000 per person in 2001), it was necessary to include a family trust (also called a credit shelter trust) in wills and revocable trusts so that both spouses' exemptions would be sheltered from estate tax at the second spouse's death. Now that the estate tax exemption is much higher (\$11,400,000 per person) and the surviving spouse has the ability to preserve the deceased spouse's unused exemption amount, the family trust may no longer be necessary and may actually have a downside for income tax purposes in some situations.

When someone dies, the deceased person's assets receive a "step-up" in cost basis. This means that the assets are revalued based on current prices rather than the price at which the assets were originally purchased. The step-up in basis reduces or eliminates any capital gains tax that an heir might owe when he or she sells the inherited asset in the future.

When a deceased spouse's assets pass to the surviving spouse, those assets receive a step-up in basis upon the death of the first spouse and another step-up in basis upon the surviving spouse's death. Similarly, when assets are transferred to a family trust upon the first spouse's death, those assets receive a step-up in basis. However, when the surviving spouse dies, the family trust assets do not receive a second step-up in basis. Therefore, the beneficiaries of the family trust assets could owe a capital gains tax on a future sale of those assets.

While a couple may no longer need to create a family trust for estate tax reasons, non-tax reasons may warrant the creation of a trust for the surviving spouse, which is called a marital trust. A marital trust can (1) ensure that the deceased spouse's assets pass to his or her children if the surviving spouse remarries, and (2) protect trust assets from the surviving spouse's creditors. Unlike the family trust, marital trust assets receive a step-up in basis at the death of both spouses. Further, the surviving spouse retains the ability to create a family trust for estate tax reasons if there is a change in family wealth, or in the federal estate tax exemption.

In light of the possible downsides to mandatory funding of a family trust, some clients should consider updating their estate plans. Optional funding of a family trust upon the death of the first spouse may provide a more desirable and flexible alternative. **If you are interested in learning more about the advantages and disadvantages of a family trust or marital trust in your will, please contact us.**

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Goddard Hawkins partners with clients on estate planning, and trust and estate administration matters, including related issues in real estate, business and tax law, and charitable planning.

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Top 10 Reasons to Update Your Estate Plan

1. Birth or adoption of a child
2. Death of a family member
3. Marriage or divorce
4. Child becoming a responsible adult
5. Retirement
6. Purchase of a second home
7. Illness
8. Inheritance
9. Change in business structure
10. Win the lottery!

If you are wondering if any of these changes impact your estate plan, please contact us.

Firm News

Miranda K. Hawkins is the President-Elect of the Colorado Women's Bar Association (CWBA) for 2019-2020. The CWBA is the largest diversity bar association in Colorado and is one of the biggest and most influential women's bar associations in the country. The CWBA's mission is to promote women in the legal profession and the interests of women and children generally.

Susan B. Goddard is actively involved with the Mi Casa Resource Center and is on the Professional Advisors Council of The Denver Foundation.

Goddard Hawkins is pleased to announce **Kate Kostolansky** has become a paralegal with the firm and **Jennifer A. Gordon** just celebrated her two-year anniversary with the firm.