



SENIOR LIVING FOUNDATION
OF THE AMERICAN FOREIGN SERVICE

PLANNING FOR CHANGE 2022 SEMINAR

ESTATE PLANNING

WILLS & TRUSTS

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ESTATE PLANNING TOOLS

- Powers of Attorney
- Living Will/Advance Medical Directive
- Wills
- Trusts
- Titling of Property
- Gifting
- Life Insurance



GENERAL DURABLE POWER OF ATTORNEY

- Power to undertake any action relating to your assets that you could do personally
- Effective immediately or effective in the event of disability (“Springing”)
- Avoids guardianship proceedings
- Null/void upon your death
- Requirements differ from state to state



ADVANCED HEALTH CARE DIRECTIVE OR “LIVING WILL”



ESTABLISHES INDIVIDUAL PREFERENCES

Use of oxygen

Nutrition/hydration

Pain management

Organ donation: driver’s license is best



IDENTIFIES INDIVIDUALS TO
MAKE HEALTH CARE DECISIONS
FOR YOU IF YOU ARE UNABLE TO
DO SO

TITLING OF PROPERTY

- Overrides the will
- Examples
 - Joint ownership (with survivorship)
 - Transfer on death and pay on death accounts
 - Revocable or irrevocable trust
 - Insurance
 - Retirement accounts
 - VA and DC permit Transfer on Death Deeds (not yet permitted in MD. Bills proposed and Bills defeated)



WILLS



Effective at death



Funeral and other arrangements



Specific bequests



Appoints an Executor and outlines Executor's duties



May appoint Guardian for minor children



May establish trusts



Without a will – state law applies as to distribution of assets and care of children

TRUSTS

Testamentary

- Established by your will
- Assets do not avoid probate
- Yearly accounting requirement



TRUSTS CONT'D

Inter Vivos

- Established during your life
- Revocable vs. irrevocable trusts
- Irrevocable life insurance trusts
- Bypass trusts – aka credit shelter trust
- Qualified terminal interest property trust
- Personal residence trust
- Charitable trust
- Kiddie trusts and grandchildren's trust



ESTATE TAXES – TAX CUTS AND JOBS ACT



Transfer between spouses who are U.S. citizens are tax-free



Qualified Domestic Trust must be established for non-U.S. citizen spouse. Can be established after the death of the deceased U.S. citizen spouse if provided for in the U.S. citizen's Will or Trust



**Federal Estate Tax
"Exemption" amount:**

Approx. \$12.06M/individual and \$24.12M/married couple with election of portability (reverts to approx. \$6M/\$12M in 2026)

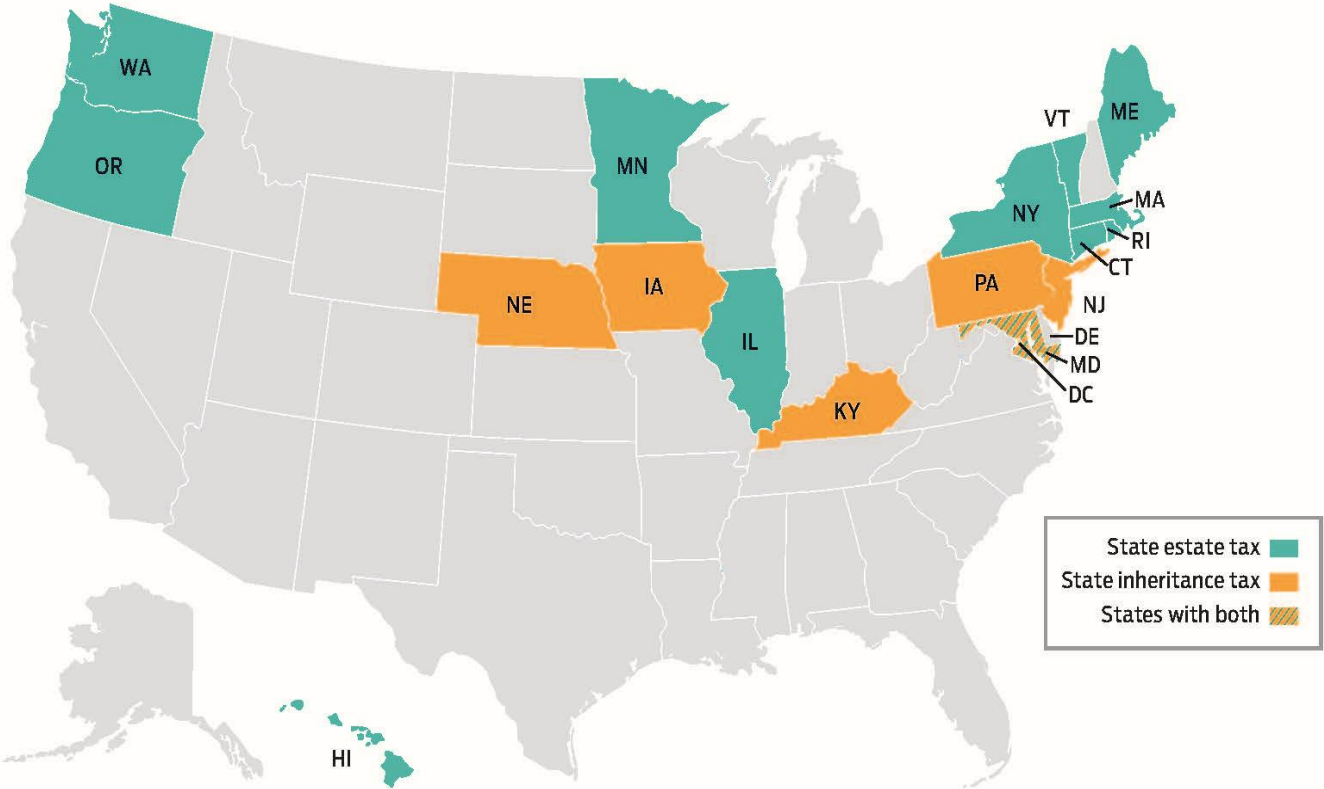
Current tax rate = 40% of amount over the "exemption"



PORTABILITY

- January 2013, Congress passed American Tax Relief Act of 2012 (ATRA) – made portability *permanent*
- A surviving spouse can use deceased spouses (unused) exemption for his/her gift or estate tax purposes
- Must file a tax return upon death of first spouse to reserve right to *elect* portability

ESTATE AND INHERITANCE TAX



SEPARATE STATE ESTATE TAXES

- In 2022, 12 states and the District of Columbia have their own state estate tax
- Virginia – no estate tax
- Maryland - \$5M in 2022, adopted portability in 2020 (tax rate up to 16%)
- District of Columbia - \$4M in 2022, no portability in DC (tax rate up to 16%), annual adjustments are expected

INHERITANCE TAXES

- Approx. 6 states have their own inheritance tax which is normally paid by the recipient
- Virginia – no inheritance tax
- Maryland – up to 16%, generally payable by collateral (non-lineal heirs)
- District of Columbia - no inheritance tax

FEDERAL GIFT TAXES



LIFETIME EXEMPTION OF
\$12.06M (TIED TO OVERALL
EXEMPTION)



ANNUAL GIFT EXEMPTION
OF \$16K PER INDIVIDUAL
(\$32K IF SPOUSE JOINS IN
GIFT)



UNLIMITED NUMBER OF
GIFTS TO DIFFERENT
INDIVIDUALS



ANNUAL TRANSFERS TO A
NON-U.S. CITIZEN SPOUSE
ARE TAX-FREE UP TO
\$159,000 IN 2021 (ADJUSTS
ANNUALLY)

GIFTING STRATEGIES



Cash,
appreciating/appreciated
property



Uniform Gifts to
Minors
Act/Uniform
Transfers to
Minors Act



Medical
expenses/tuition

Unlimited yearly
if gifted directly
to educational or
health care
institution



Intra-Family
Installment
sales or loans



Charitable
giving

SECURE ACT CHANGES TO RETIREMENT BENEFITS

- Eliminated ability of children and grandchildren to maintain inherited IRA, 401(k) and 403(b) accounts over their individual lifetimes
- Spouses, individuals with disabilities and individuals who are less than 10 years younger than the deceased may maintain the inherited retirement account over their respective lifetimes
- All others, including children, grandchildren and individuals more than 10 years younger than the deceased, must take all funds from the inherited retirement account within 10 years



SPOUSAL RIGHTS – FOREIGN SERVICE SPOUSES

Foreign Service Benefit Default Plan

- Unless otherwise provided by court order or spousal agreement, a Former Spouse (FS) of a FSPS or former FSPS is entitled to both pension and survivor benefits, unless waived, if the following conditions are met:
 1. The FS divorced participant after February 15, 1981;
 2. Before commencement of payments of any benefits, the FS did not remarry before age 55; and
 3. FS was married to FSPS or former FSPS for at least 10 years and during at least 5 of such years, the participant was a member of the Foreign Service.

SPOUSAL RIGHTS GENERALLY

Spousal Elective Share for Decedent dying on or after 12/1/2017:

- Cannot disinherit a spouse without their consent in Virginia
- Surviving spouse may make a claim against estate regardless of whether any provision for the spouse is made in a decedent's will or if the decedent dies intestate (without a will);
- Six months to file
- Moves from “support” based theory to an “economic partnership” theory.
 - Old Model: looked only at Deceased spouses assets
 - New Model: looks at both spouses assets
- Takes into account length of marriage – 15 year “earn in” period
- Maximum elective share is 50% of all marital assets (sliding scale based on length of marriage).
- No longer matters if children or no children are living.
 - Can be waived by writing
 - Statutory rights are barred by desertion or abandonment
- **Virginia's Omitted Spouse Statute** – Applies to wills executed prior to marriage, which omit a spouse. Unless evidence of intentional omission, surviving spouse shall receive intestate share of estate.

INTRA-FAMILY LOANS

- Historically low applicable federal rate, published monthly by the IRS
- Short-term rate: loans with terms <3 years
- Mid-term rate: loans with terms >3 years but <9 years
- Long-term rate: loans with terms >9 years

Annual AFRs for May 2022

Short-term	1.85%
Mid-term	2.51%
Long-term	2.66%

WHEN TO REVIEW AN ESTATE PLAN



Major life events

Inheritances
Career changes
Move out of state
Birth of a child
Marriage, divorce, death



Tax law changes



Significant changes in values of assets



Every 5 years



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THANK YOU



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