



**PLANNING FOR CHANGE**  
2020 *virtual* seminar

# ESTATE PLANNING

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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”



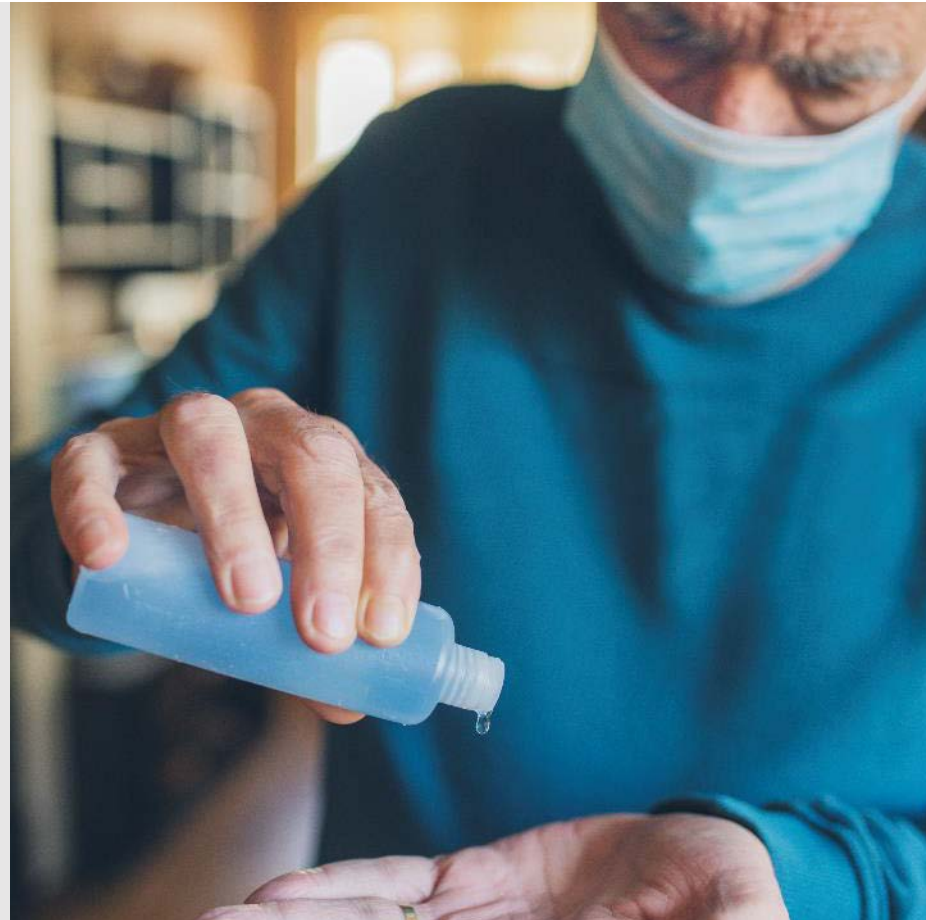
## ESTABLISHES INDIVIDUAL PREFERENCES

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

## 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. \$11.58M/individual and \$23.6M/married couple with election of portability (reverts to approx. \$6M/\$12M in 2026)

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





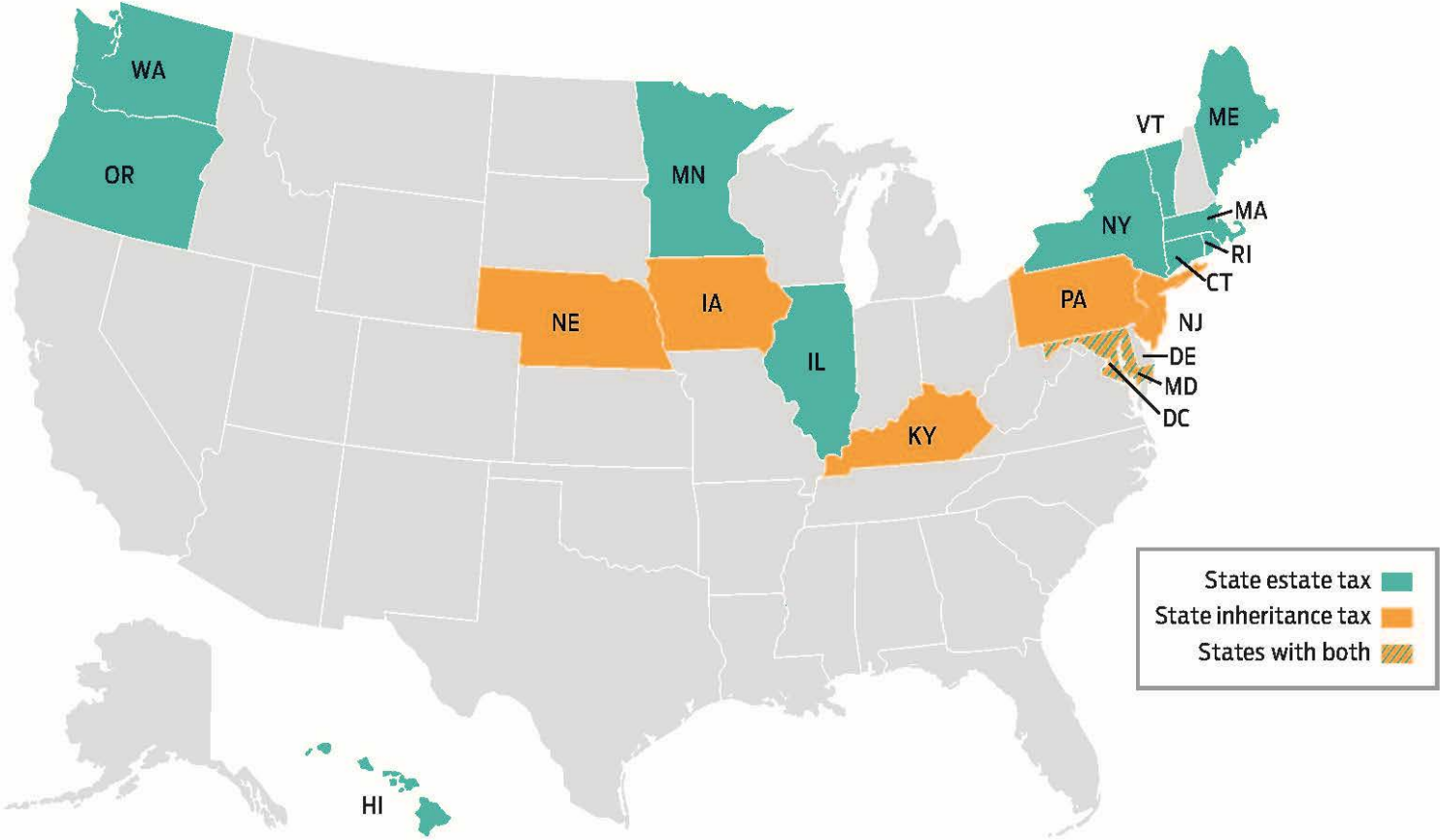
# PORTABILITY

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

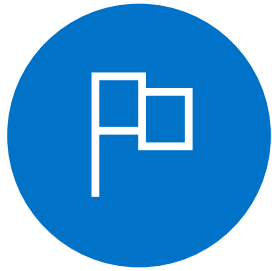
- In 2020, 12 states and the District of Columbia have their own estate tax with differing exemption amount
- Virginia – no estate tax
- Maryland - \$5M exemption amount in 2020, adopted portability in 2020 (tax rate up to 16%)
- District of Columbia - \$4M exemption amount in 2020, no portability in DC (tax rate up to 16%)



# 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 \$11.58M (TIED TO OVERALL EXEMPTION)



ANNUAL GIFT EXEMPTION OF \$15K PER INDIVIDUAL (\$30K 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 \$157,000 IN 2020 (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 September 2020

Short-term	0.14%
Mid-term	0.35%
Long-term	1.00%



# 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



# QUESTIONS & THANK YOU!

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