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Still Need a Trust?

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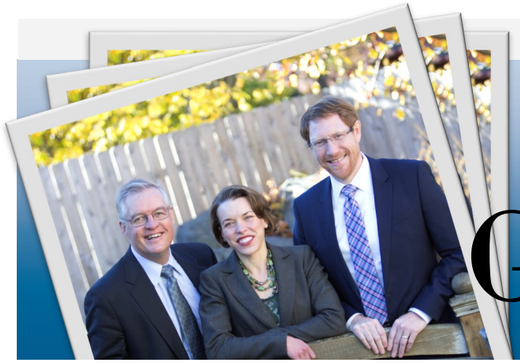
that it is a process that plays out over many years, often requiring family members to step in and help aging parents with managing financial resources. A Living Trust provides an excellent tool for "sharing" authority over financial assets between the Trust-maker and a trusted family member or friend when aging starts to cause diminished capacity. You can name a trusted individual as your Co-Trustee when handling finances becomes difficult or confusing. We have many clients who have named a child as their Co-Trustee while they are still alive and have mental capacity, so that the child can take over more and more duties as aging increasingly impacts the Trust-maker's mental and physical abilities.

A Living Trust Can Protect You from Elder Fraud

Elder fraud and elder abuse is becoming an increasing problem as the population ages. Sophisticated crooks now use the internet and phones to obtain personal information and money from senior citizens by fraudulently posing as bankers, credit card companies, internet retail companies, cell phone companies, and internet providers. If you have a Living Trust and have named a Co-Trustee who is monitoring bank and investment accounts, there is an increased opportunity to catch elder fraud.

In addition, unscrupulous family members often exercise "undue influence" on parents with diminished capacity, encouraging them to sign over accounts, create joint accounts, sign Powers of Attorney, or even sign a Will that gives them most, if not all, of the estate. When you have all of your assets held in the name of a Living Trust that is being reviewed on a regular basis by an attorney or other family members, it is harder for devious people to take over control.



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Generations

FOLEY, FOLEY & PEARSON NEWSLETTER

Estate Planning Workshops

Foley, Foley & Pearson offers two workshops every month for people who want to know more about wills, trusts, insurance, children's trusts, probate, estate taxes, and more.

There is no charge and no obligation.

You can check our schedule, times, and location online at www.foleyfoley.com

Call us to RSVP at 522-2272.

Estate and Gift Tax Exemption Increased to $11.2 Million

By: Richard H. Foley, Jr.

What a difference two decades makes. In 1998, the federal estate and gift tax lifetime exemption was only $600,000. With a home, a modest IRA, and a life insurance policy, many middle class Americans had estates subject to estate taxes in the late 1990s.

Today, as a result of the tax cuts enacted by Congress late last year, the exemption has ballooned to $11.2 million. What's more, a couple can pass $22.4 million to their heirs free of federal estate taxes by taking advantage of the "portability" election available upon the death of the first spouse.

Good News for Estates

This means that most people will no longer have to worry about paying any federal estate taxes when they die. In fact, statistics show that less than 0.1 percent of the U.S. population has an estate that is large enough to pay estate taxes under the current exemption amount. So if your estate is below $11.2 million when you die as a single taxpayer, or below $22.4 million for a couple, there are no federal estate taxes to be paid.

Good News for Lifetime Gifts

The growing lifetime exemption also means that you can give more money away during your lifetime to family members without having to worry about paying gift taxes. In 2018 the annual gift tax exemption rose to $15,000. (The current lifetime exemption is tied to inflation and will continue to grow each year until

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Tax Exemption

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2025.) This means that you can gift up to $15,000 per person without having to file a federal gift tax return, Form 709. If, however, you want to give more than $15,000 to one person, you can "cash in" some of your $11.2 million exemption now and not pay any gift taxes. That is because the lifetime exemption is like a coupon, allowing you to utilize the exemption to make large gifts and not pay any gift tax. The only rule is that you have to report gifts over $15,000 and advise the IRS that you have used up some of your lifetime exemption.

The Bad News

The bad news is that the $11.2 million exemption will expire in 2025, and in 2026 the amount will revert back to the old law, which was a $5 million exemption tied to inflation back to 2010. The actual number will probably be someplace between $6 million and $7 million. Still, at $6 million, the vast majority of Americans will not have to worry about estate taxes.

Beware of State Estate Taxes

While the federal government has been phasing out estate taxes, a number of states have taken advantage of the vacuum by implementing their own estate or inheritance laws. In 2018, the following states have some sort of estate or inheritance law: CT, DC, HI, IL, IA, KY, ME, MD, MA, MN, NE, NJ, NY, OR, PA, RI, VT, and WA. The lowest threshold for paying estate taxes is $1 million in Oregon and Massachusetts. Hawaii and Maine use an exemption of $11.2 million, the same as the federal exemption.

Currently Alaska does not have an estate or inheritance law. While the Alaska State Legislature has been contemplating some combination of new revenue sources, including income or sales taxes, so far there does not seem to be any push to implement an estate or inheritance tax.

> The bad news is that the $11.2 million exemption will expire in 2025 and revert back to the old law.

If you retire and change residency to another state, you should talk with a CPA or tax attorney to determine if your estate will be subject to taxation when you die.

Do I Still Need Tax Planning Provisions in My Trust?

If you are married and have a Revocable Living Trust that was originally signed eight or more years ago, you may have estate tax planning provisions in your Trust that are no longer applicable to your financial situation. When the threshold for estate taxes was much lower, many of our married clients included a provision in their Living Trust that would establish a new Family Trust (sometimes called a Credit Shelter Trust) for the benefit of the surviving spouse after the first death. The Family Trust can provide bloodline protection for your assets and creditor protection for your spouse. However, many people have included a Family Trust primarily to avoid or reduce estate taxes. If you are married and have a Family Trust provision in your estate plan, it might be prudent to review your Trust to see if the Family Trust is still appropriate for you. Feel free to contact our office to schedule an appointment.

Do I Still Need a Trust?

By: Richard H. Foley, Jr.

Foley, Foley & Pearson has been assisting people with their estate planning for over 30 years. During that time, we have seen major changes in tax laws and the accumulation of wealth by our clients. We have also seen changes to the families of our clients, including births, deaths, marriages, divorces, and adoptions. All of this change means most estate plans have become outdated or obsolete.

The need to update and maintain estate plans is one reason we are a pioneer in offering legal services for a flat annual fee. Our ***Generations*** Trust Maintenance Program provides a practical way for our clients to maintain and update their estate plans as changes occur.

Do I Need a Trust?

With the major changes to the estate tax law (see related article on the $11.2 million estate tax exemption), we regularly get the question, "Do I still need a Trust?" This is a valid question and the answer might vary from client to client. This article is intended to identify some of the important issues that help determine if a Trust is still the best option for you and your family.

Your Living Trust is Intended to Avoid Probate

Many clients who have been with the firm for over a decade originally chose to utilize a Trust for their estate planning because they wanted to avoid federal estate taxes when they died. These clients equate "trust planning" with "tax planning." Since they no longer have a taxable estate under current law, they want to know if they can scrap the Trust.

The essence of a Living Trust is NOT tax planning, even though tax planning is often included in the Trust instrument. Rather, at its most basic level, a Living Trust provides an alternative to Will-based planning and the need to go through the Probate process, which is the court-supervised process of winding up a decedent's financial affairs.

By titling all assets in the name of your Trust and making sure that beneficiary designations on life insurance and retirement plans are properly in place, your Successor Trustees will not have to initiate probate proceedings in order to take control of the estate. Instead, your Successor Trustees are able to take control of Trust assets under the contractual terms of the Trust. This is particularly valuable when you own real estate in multiple states, which could require a probate action in each state where you own property. Moreover, recent budget cuts have radically impacted the Alaska Court System, which is now taking 60 days or more to issue paperwork, even when the probate case is not contested.

> Trusts are particularly valuable if you own property in multiple states.

When You are Incapacitated

In many cases, the problem isn't how hard it will be to administer your estate when you die. The problem is what happens if you don't die. The reality of aging is

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