



# Estates and Trusts

A Guide to Planning



## LEVEL ONE

### Must Haves

**Goal:** Plan for and document the transfer of assets with minimized tax and transfer cost.

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#### A Will

A will appoints guardians for your children and spells out specifically how you want your property split.

#### A Living Trust

A living trust avoids probate, allows for privacy, and designates how assets are to be divided upon your death.

#### A Healthcare Power of Attorney

Designate a healthcare agent to make decisions in the event you are unable to make them for yourself.

#### A Financial/ Property Power of Attorney

Designate an agent to make financial decisions in the event you are unable to.

#### Review co-ownership provisions & account titling

It is important to review joint accounts that transfer to a designated person upon death.

#### Periodically review beneficiary designations

This is important as some assets (such as IRAs, Life Insurance, and Annuities) pass to your designated beneficiaries.

Upon life events (marriage, divorce, birth, adoption, etc.), be sure to review these aspects of your estate planning to ensure all information is up-to-date.



## LEVEL TWO

### Considerations

**Goal:** Further enhance the direction of assets, minimize estate taxes or increase asset protection

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#### Grantor Retained Annuity Trusts

Grantor Retained Annuity Trusts (GRAT) seek to pass assets to beneficiaries free of estate and gift tax that have appreciated over the IRS Section 7520 interest rate.

#### Explore Charitable Options

Explore Charitable Trust, Donor-Advised Fund and Foundation Options.

#### Irrevocable Life Insurance Trust

Because life insurance is not necessarily estate tax free, consider establishing an Irrevocable Life Insurance Trust.

#### Qualified Personal Residence Trust

A Qualified Personal Residence Trust (QPRT) is a type of trust that allows its creator to remove a personal home from his or her estate.

#### Spousal Lifetime Access Trusts

Spousal Lifetime Access Trusts (SLATs) seek to allow spouses to pass assets to each other and other loved ones free of estate and gift tax while maintaining limited, indirect access to the assets.

#### Intra-Family Loans

Intra-Family Loans can provide family members lower borrowing rates than traditional financing options.

#### Special Needs Trusts

Ensure the proper passing of assets to ensure beneficiaries with special needs are not disqualified from entitled benefits.

## LEVEL THREE

### Advanced

Goal: Options for Complex Estate Tax Issues or Liability Concerns

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#### Self-Cancelling Notes

Self-Cancelling Notes allow the exchange of property for periodic payments based upon mortality.

#### Trust-Friendly Jurisdictions

Certain states, including Delaware, have favorable trust statutes, offering the potential to pass assets across generations without incurring transfer taxes (Dynasty Trusts), delegate responsibilities to non-trustees (Directed Trusts), protect assets and more.

#### Family LLPs & LLCs

Family Limited Liability Partnerships and LLCs provide legal, financial, and tax structure to family businesses.



#### What is portability?

Portability allows you to use your spouse's unused estate tax exclusion. While portability was made permanent for federal estate tax purposes, you should check if your resident state also allows for portability of a deceased spouse's unused estate exclusion. In the event your resident state does not allow for portability, it may make sense for both spouses to have assets in their respective name (or trust's name) up to the resident state's estate exclusion amount.

## How Assets Pass Upon Death

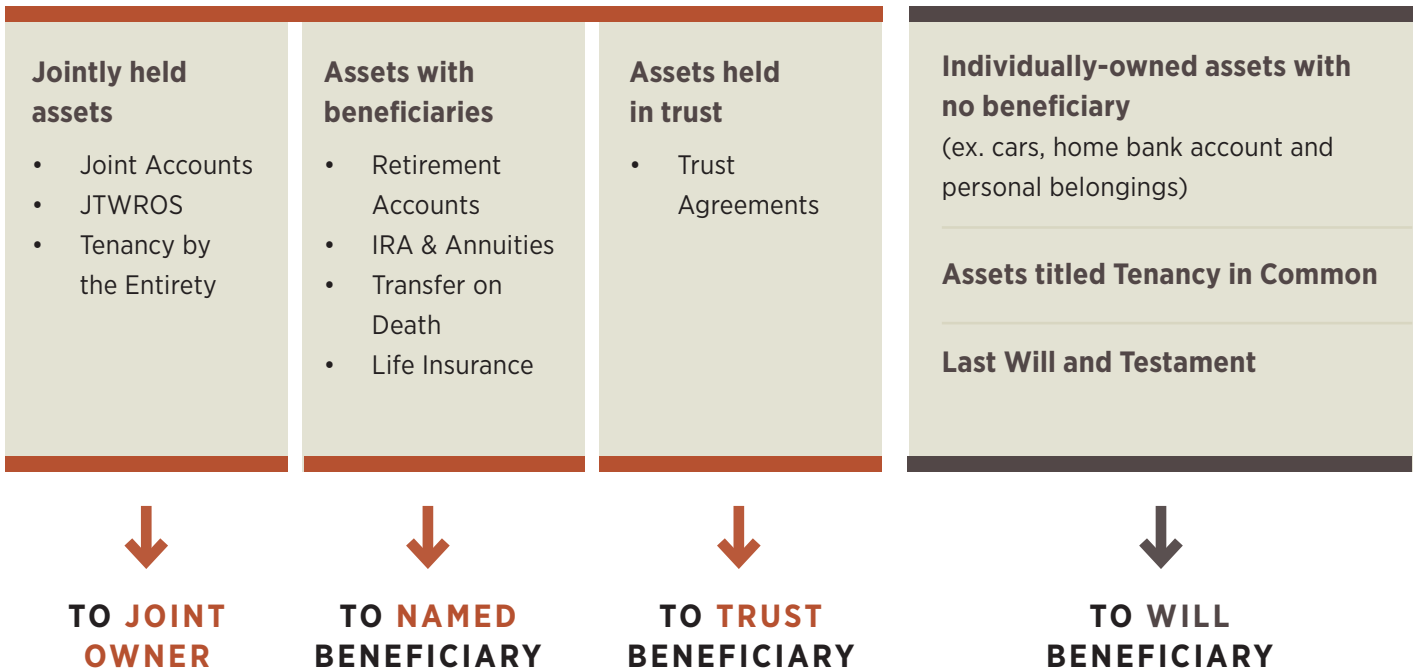
### Probate vs Non-Probate Assets

Probate is a public-court process that helps settle legal and financial matters upon death according to a will, if written.

Court costs, length of time, the lack of privacy and family disagreements are all potential issues that may arise within the probate process. With proper estate planning, you can limit the amount of assets that pass through probate.

### ASSETS THAT BYPASS PROBATE

### PROBATE ASSETS



### Digital Assets

Nearly all 50 states have passed a version of the Uniform Law Commission's Fiduciary Access to Digital Assets Act, Revised that legally allows for an executor, trustee, etc. to access a deceased's digital accounts. Consider discussing your digital estate with your attorney and the potential need to share online access information with your executor.



# How Assets Pass Upon Divorce

## Marital vs Non-Marital Assets

Estate planning is not divorce planning. Without a pre- or post-nuptial agreement, marital assets are subject to equitable division in a divorce proceeding.

Effective for divorces finalized after January 1, 2019, alimony payments will no longer be tax-deductible by the paying spouse and will not be added to the taxable income of the receiving spouse.

### MARITAL ASSETS

Property Acquired During Marriage

Any property, real or personal, the couple acquired during the course of the marriage, regardless of title or who paid for it.

Retirement & Investment Accounts	Pensions	Homes & Vacation Homes
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**SUBJECT TO EQUITABLE DIVISION**

### PROBATE ASSETS

Property Acquired Before Marriage

Any property, real or personal, acquired prior to the marriage, also including specific instances of property acquired during the course of the marriage by one spouse

Inheritance	Gifts	Any property owned prior to marriage
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**NOT SUBJECT TO EQUITABLE DIVISION**

### Tainting of Assets

Non-marital assets may be tainted during the course of a marriage and may be treated as marital assets in a divorce proceeding. For example, if a spouse deposits a personal inheritance into a joint account or uses income from an inheritance to support the couple's lifestyle, this non-marital asset may be treated as a marital asset.

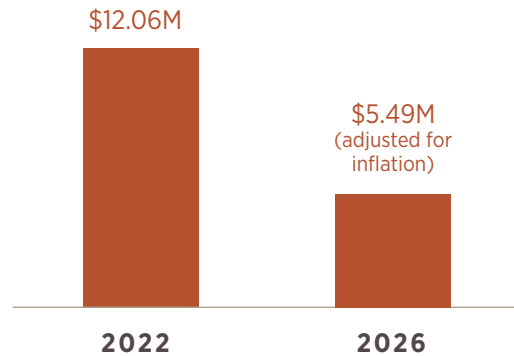


## Estate Planning Updates

### A Window of Opportunity

- The Tax Cuts and Jobs Act (TCJA) of 2017 significantly increased the estate exclusion amount (presently \$12.06 million for 2022), though there had been concern that individuals taking advantage of the higher exclusion amount might one day owe additional tax for prior gifts, should the estate exclusion decrease after 2025.
- The Treasury Department and IRS later issued final regulations that individuals utilizing the increased gift and estate tax exclusion amounts from 2018 to 2025 would not be adversely impacted after 2025, should the exclusion revert to pre-2018 levels.
- Key Takeaway: Individuals who have – or are likely to have – a taxable estate and who have sufficient assets to fund expenses during their lifetime may want to consider gifting additional assets to loved ones while the increased exclusion amount still stands.

### INCREASED ESTATE EXCLUSION & LIFETIME GIFTING AMOUNT



	2021	2022
Estate Exclusion / Lifetime Gifting Exemption	\$11.7M	\$12.06M
Maximum Estate Tax Rate	40%	40%
Maximum Gift Tax Rate	40%	40%
Annual Exclusion Gift	\$15,000	\$16,000
Annual Gifting Limit to U.S. Citizen Spouse	Unlimited	Unlimited
Annual Gifting Limit to Non-U.S. Citizen Spouse	\$159,000	\$164,000

### Irrevocable Trusts

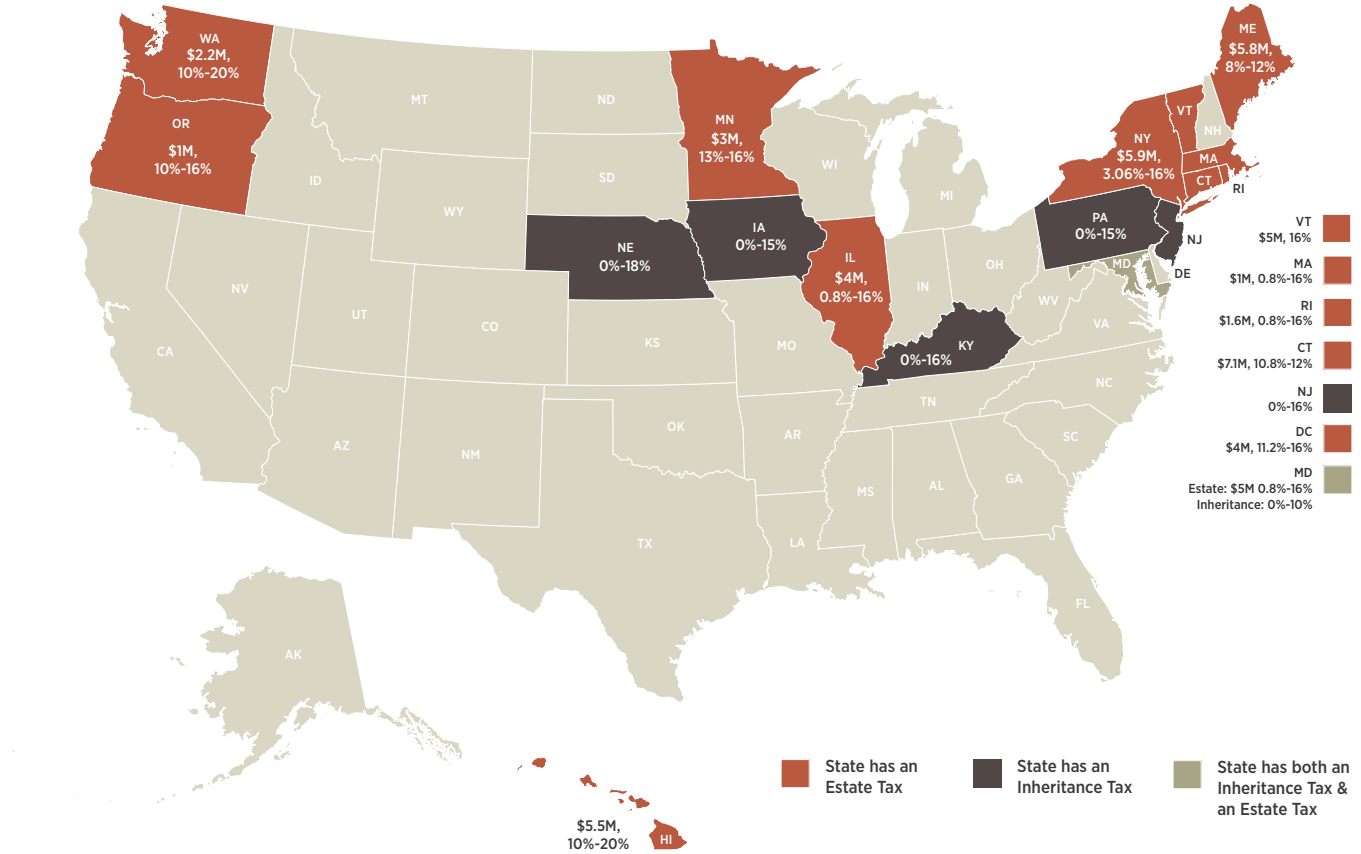
An irrevocable trust is a type of trust where its terms can't be modified, amended, or terminated without the permission of the grantor's named beneficiary or beneficiaries. These types of trusts have many applications but are typically used in planning for the preservation and distribution of an estate. Some specific uses may include:

- To take advantage of the estate tax exemption and remove taxable assets from the estate. Property transferred to an irrevocable living trust does not count toward the gross value of an estate.
- To prevent beneficiaries from misusing assets, the grantor can set conditions for distribution.
- To remove appreciable assets from the estate while still providing beneficiaries with a step-up basis in valuing the assets for tax purposes.
- To gift a principal residence to children under more favorable tax rules.
- To house a life insurance policy that would effectively remove the death proceeds from the estate.

Keep in mind, an irrevocable trust is a more complex legal arrangement than a revocable trust, mainly because of the tax implications. Be sure to seek a professional's guidance when setting up an irrevocable trust.

## Don't Forget Estate Tax at the State Level!

Many states have estate exclusions far below the federal level which may result in state estate taxes. Older estate plans should be reviewed to ensure trust provisions incorporate current federal and state estate tax limits.



Source: Waggoner, J. "17 States With Estate or Inheritance Taxes," AARP, March 11, 2022, <https://www.aarp.org/money/taxes/info-2020/states-with-estate-inheritance-taxes.html>. Accessed April 13, 2022.



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