

The Tax Cuts and Jobs Act

Happy New Year! Two years ago we wrote about how the federal estate tax exemption had ballooned from \$1.5 million in 2006 to \$5.45 million (adjusted for inflation) in 2016. Last year a new congress and president were elected and we now have a new tax bill, the Tax Cuts and Jobs Act (“the Act”). The Act contains significant changes to tax law that may impact your income taxes and your estate planning.

As of January 1, 2018, the estate, gift and generation-skipping transfer (GST) tax exemptions doubled from \$5 million to \$10 million. For 2018, the exemption is now just shy of \$11.2 million per person (\$22.4 million for a married couple). The exemption will continue to adjust for inflation each year. However, it sunsets December 31, 2025, and the exemptions revert to the \$5 million level (indexed for inflation). The Annual Gift Tax Exclusion was not part of the Act, but it too is indexed for inflation and is now \$15,000.

The need for estate tax planning has drastically decreased for the vast majority of the population. Today income taxes are the most common taxes we plan for. Specifically, income taxes associated with retirement plans and capital gain. Whether it is planning for long-term care, preparing a Medicaid application or protecting assets through the use of trusts, these taxes are frequently a concern.

Tax scenarios to review:

1. You are married, you created separate trusts solely for the purpose of minimizing or eliminating estate taxes and you are now confident your estate will not be subject to the estate tax at the death of the survivor of you and your spouse, you may want to revise your plan.
2. You are the beneficiary of an irrevocable trust that holds appreciated assets, you may want to amend or decant the trust to eliminate the capital gain tax exposure at your death.
3. You have high medical costs and a retirement account, you may want to take larger than required distributions from the account and offset some of the income with the medical deduction.
4. You have a retirement plan and you want to make charitable gifts during and after your death, consider using the retirement account to satisfy those gifts.
5. You have a taxable estate, consider gifting up to \$5 million prior to December 31, 2025.

Remember, tax planning is only one aspect of estate planning. Incapacity issues, protecting financially imprudent heirs from themselves, asset protection for you and for beneficiaries, planning for long-term care, including Medicaid, minimizing income taxes, and avoiding probate are all other common goals that can be achieved with proper planning.



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2018 Special Events Schedule

Funding Workshops: March 14 & June 13
Classicopia: April 13
Annual Client Meeting: May 10
Helper Trainings: June 6 & November 21
AVA Art Gallery: October 23

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The Importance of Beneficiary Designations in Funding

“Oh, I’ll just name my niece as the beneficiary of my life insurance policy at work.” Looking back, it was almost an afterthought. That was 10 years ago on your first day of new employee orientation, when you were right out of school. You now have a spouse, one child and another on the way. You have not thought about updating the beneficiary designation in light of your changed circumstances.

Beneficiary designations are important and can have serious consequences. Thinking about your intended beneficiaries, consider worst case scenarios. On the one hand, the lump-sum payment of life insurance to your niece may be just enough to fuel her last drug and alcohol bender in Vegas. At the same time, your widowed spouse and minor children will default on the mortgage and struggle to make ends meet. Unfortunately, this could happen.

Naming Beneficiaries

Make sure your primary and secondary beneficiary designations are up-to-date and are coordinated with your estate plan. Do not forget to designate a secondary beneficiary, in case your primary beneficiary predeceases you. Otherwise, the proceeds will become subject to probate. In most instances, this is best avoided, unless done by design as part of a comprehensive estate plan.

Did you know designating a beneficiary for your life insurance policy has absolutely no effect on your retirement plan designation? A separate beneficiary designation form is required for each of your life insurance policies and retirement accounts. This provides considerable flexibility. For example, you could have the same primary (your spouse) and the same secondary (your children) designated on each. Alternatively, you could designate any other combination of family, friends or charities.

In addition, if you have more than one primary or secondary beneficiary, you will need to determine the percentage of the proceeds each is to receive. For example, if your two sons are your primary beneficiaries, you might split the proceeds at 50 percent to each. Keep in mind if your two sons are minors, policy proceeds and plan distributions typically will not transfer directly to them, until the age of majority. As a result, the probate court will appoint a guardian to manage the accounts until each child comes of age.

Your Will, Your Trust or the Trust(s) under Your Will or Trust

Did you know that assets controlled by beneficiary designations pass independently of distributions directed under your Will or Trust? In our example above, the niece would inherit the life insurance proceeds, even though a Will provides for all assets to be distributed to your surviving spouse. If you have minor children or loved ones with special needs, then you may want to designate the trust created under the terms of your Will or Trust as the beneficiary. In that way, the proceeds will be administered and distributed according to the terms of your trust. If you have created a trust(s) under your Will or Trust, you may want to designate the Trustee of the Trust(s) as the beneficiary of your life insurance proceeds or retirement accounts.

Keep Them Up-to-Date

As you can see, it is critical to keep your beneficiary designations up-to-date and aligned with your overall estate planning goals. A good rule of thumb is to review your beneficiary designations and your estate plan at least every two years or after any major life event, such as marriage, death of a parent or spouse, divorce, or the birth or adoption or divorce of a child.

Funding Workshops

Learn how to avoid funding failures at our 2018 Funding Workshops. These will take place on March 14 for trust-based plans, and June 13 for will-based plans.

Caldwell Law Annual Riddle!

When is the best time to make Annual Exclusion Gifts and/or Charitable Gifts?

On February 23 the winner will be randomly selected from among all the correct answers and will receive a nice bottle of wine.

Please submit your answer at the link below by February 22 in order to enter:

http://estateandelderlawgroup.com/Page/contact_us

We’re Published!

Tim and Renee worked hard in 2016 to publish their first book *Building Your Lifeplan*. This year they will release the 2nd edition with updated information and strategies for taking care of tomorrow. Look for the new edition on Amazon later this year or stop by the office for a complimentary copy.

We’re on Facebook!

In order to share up to the minute articles and news items with our community, we’ve taken to posting frequent updates on our Facebook page. Follow along for news on Elder Law, Estate Planning, Medicaid, Long-term Care Planning and more.

<https://www.facebook.com/CaldwellLawEstatePlanning>

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This year's **Annual Client Meeting** will be on Thursday, May 10 at the Courtyard by Marriot at Centerra Park in Lebanon. Our featured speaker is Dr. Timothy Leahy, an infectious disease specialist at Dartmouth Hitchcock and a professor at the Geisel School of Medicine. A skilled storyteller, Tim is a frequent contributor to leading news publications, including *The New York Times*, *The Atlantic*, and *Stat News*, among others. Read his "Bedside stories about HIV, medical ethics, and beyond" at <http://www.medmurmurs.com>.

Is Your Plan Up To Date?

We are constantly reminded in our work that plans need to be reviewed and frequently updated. This is why we want our clients to continually monitor their plans. One of our aspirational goals is for all our clients to answer YES to these 4 questions:

1. *Do I understand my estate plan?*
2. *Does it say what I want it to say?*
3. *Are my assets titled in a manner that is consistent with my plan?*
4. *Have I thoroughly informed my helpers of my wishes and kept them up-to-date on changes in my thinking and to my plan?*

If you are unable to comfortably answer YES to *all* these questions, we recommend scheduling a review or attending one of our free monthly workshops. The following is a non-exhaustive list of events or circumstances that could impact your planning:

1. Death of a spouse or partner.
2. Birth of a child or other beneficiary.
3. Divorce or other change of a beneficiary's circumstances.
4. Marriage.
5. Retirement.
6. Purchase of real estate, titling issues.
7. Anticipation of inheritance, titling issues.
8. Open new investment account, titling issues.
9. Purchase of life insurance, beneficiary designations.
10. Turning 70 years of age – time to start planning for your retirement plan distributions.
11. Moving to a new state.
12. Permanent disability or incapacity of a beneficiary.
13. Ownership of real property in a state other than your state of residence.
14. Beneficiaries with substance abuse problems or other special needs.
15. Your declining capacity.
16. Capital gain in an irrevocable trust.
17. Irrevocable trust that has outlived its usefulness and need.

If you have new ideas, or if you or your beneficiaries' circumstances have changed, please review your plan to make sure ***you can still answer YES to our 4 questions.***



Is Medicaid In Your Future?

The average cost of a nursing home in the Upper Valley is now well over \$100,000 per year. Given the ever expanding cost of long-term care, it is no wonder Medicaid is our nation's largest safety net and accounts for one-sixth of all health care spending in the United States. Of that spending, almost two-thirds goes to long-term care services such as nursing homes for elderly or disabled adults.

According to a recent article in the *New York Times*, roughly one in three people now turning 65 will require nursing home care at some point during their lifetime. Only the most expensive private long-term care insurance policies are likely to cover the full amount of nursing home costs, and without it, Medicaid may become a necessity. In fact, about 65% of nursing home residents now depend on Medicaid as their primary support for their health care costs.

For more information on how Medicaid and how long-term care planning fits into your estate plan, please come to one of Caldwell Law's free Long-Term Care and Medicaid Planning Workshops, offered six times in 2018.

Agents Beware!

Assisted living and nursing facilities may sue any person to whom property was gifted within 5 years of donor's application for Medicaid. For example: Mom gives you \$15,000 and 4.5 years later Mom applies for Medicaid. Transfer penalty imposed. In New Hampshire the nursing home may sue you for payment up to the value of the gift. In Vermont the gift is likely to delay Mom's eligibility.

In addition, in New Hampshire, nursing homes and assisted living facilities may sue a fiduciary ("helper") who fails to timely submit an application for Medicaid.

Read the application for residency at the nursing home or assisted living facility. Will you become a "responsible party" because you completed the application? Consider signing application as the **agent**, NOT as *responsible party*.

From all of us at Caldwell Law, Happy New Year!



Caldwell Law would like to extend a warm welcome to our newest team member
Eileen Porneles!

Eileen joined us this year as our new Lifeplan™ Coordinator. Be sure to say hello and introduce yourself the next time you are in the office.

Top Row (Left to Right): Jaclyn Hatt, Attorney Timothy Caldwell, Sheila Smith, Eileen Porneles, Attorney Renee Harvey, Pamela Lain, Joanne Oscadal, Tom Weir, and James Thaxton
Bottom Row (Left to Right): Julie Cryans and Candice Gates

Have you moved? Has your phone number or email address changed? Call us at (603) 643-7577 or email your updated information to julie@estateandelderlawgroup.com. Please also send us the updated contact information for your “helpers.”



Hanover Road Professional Center
367 Route 120 - Suite B - 6
Lebanon, NH 03766-1430

Think of us as your family lawyer. If you or someone you know needs legal advice, call us. If we can't take care of what you need, we will find someone we know and respect to help handle it. We have a network of excellent professionals.