

CALDWELL LAW

ESTATE PLANNING & SETTLEMENT

Taking good care of tomorrow...

Newsletter: January 2021

Planning under the Biden-Harris Administration

The 2020 election, culminating with the Georgia Senate runoff elections early this year, promise changes in how Americans will be taxed. It is unlikely every proposal discussed during President Biden's campaign will become law. Limited, if any, GOP support means Biden will have to satisfy a small group of Democratic moderates to pass bills.

Here is what we know so far about some of President Biden's key proposals most relevant to estate planning.

Estate, Gift, and Generation-Skipping Transfer (GST) Taxes

For 2021, the estate and gift tax exemption is \$11.7 million. Wealth over that amount is taxed at 40 percent if it passes to individual beneficiaries. Without a change in the law, the exemption is scheduled to return to \$5 million (indexed for inflation) on December 31, 2025.

During his campaign, Biden said he would support legislation to reduce the estate tax exemption to \$3.5 million per person and would lower the lifetime gift tax exemption to \$1 million. In addition to reduced transfer tax exemption amounts, it is possible we will see an upward adjustment in the estate and gift tax rates. *For those wishing to take advantage of historically high exemptions and low interest rates, now is the time to act.*

Capital Gains Taxes

Current law taxes capital gains as regular income if those gains are realized on property held for less than one year. For long-term capital gains (gains on property held for a year or longer), there is a graduated tax rate depending

upon the tax filer's income level (0 percent, 15 percent, or 20 percent). For individuals and couples who earn more than \$200,000 and \$250,000 per year respectively in net investment income, there is an additional 3.8 percent surtax added to their capital gains tax rate.

Current law also allows for a step-up in basis of appreciated

property if the property is held at the owner's death. This allows for inherited property to be sold or liquidated shortly after the owner's death with little to no capital gains tax assessed on the sale. Proposed changes under Biden's presidency

could either (1) eliminate the step-up basis rule for inherited property and impose a carryover basis rule for inherited property or (2) impose recognition of gain on property at the owner's death.

What to Do in the Meantime

It is too early to know what the tax law will look like in 2021. Tax issues, while important for many, should not overshadow the need to get your affairs in order in case of incapacity or death. Please review your plan. Can you answer "yes" to our four essential questions: (1) Do you understand your plan? (2) Does it say what you want it to say? (3) Are all your assets titled (owned) in a manner that is consistent with your plan? And (4) have you trained your helpers so they know what you expect them to do?

We Are Here to Help

If you have any questions or concerns, please do not hesitate to contact us. Happy New Year!



HELPING YOUR HELPERS

Being able to answer yes to our **4 essential questions** is critical to an estate plan's success:

- **Do I understand my estate plan?**
- **Will it take care of me and those I love?**
- **Are my assets titled in a manner that is consistent with my plan? AND**
- **Have I thoroughly informed my helpers of my wishes and kept them up-to-date on changes in my thinking and to my plan?**

Let's focus on the 4th question: Do your Helpers know they have been named to serve for you during incapacity and after death? Do they want the role? Do they understand the responsibility which comes with the role? You need to engage your Helpers.

"Helper" is the term we use for agents, executors and trustees. Helpers are fiduciaries. A fiduciary is a person or entity invested with rights, powers and obligations to be exercised for your and your beneficiaries' benefit. It cannot be overemphasized, Helpers must be taught (and re-taught) how things are supposed to work – they must be ready for inevitable transitions...your incapacity and your death. Do not presume your Helpers know and understand your wishes and values. What is important to you may evolve over your lifetime.

Consider these additional questions:

- Will your Helpers be able to assist you during a period of incapacity or disability?
- Do your Helpers really know what you want?
- Will your Helpers help you do what you want to do, or will they focus on what they think is best for you or what is easiest for them?
- Will your Helpers be able to assist your beneficiaries during your incapacity?
- How will disagreements amount your beneficiaries (or Helpers) be handled?

Your Helpers must be clear about your thinking. Your Helpers must be informed. Recently, we have had situations which are excellent examples of the necessity of Helpers being informed. First, an Executor was named in a Will, they did not know they had been appointed for this role, and declined to serve when the maker of the will died; the alternate Executor also declined to serve – this resulted in a vacancy in the Executor role for the deceased which meant someone they did not intend to administer their estate is now doing just that.

Second, a Trustee was named in a Trust, they did not understand their fiduciary duties concerning the distribution of assets, and overstepped their boundaries – this resulted in a loss of confidence in the Trustee by the beneficiaries, additional expense, and delay.

It is your responsibility to be sure your Helpers understand your wishes and their responsibilities. It all starts with a conversation. We encourage you – and your Helpers – to attend one of our Helper Training (a/k/a How to Settle Your Estate without Dying) workshops offered twice a year. Visit our website for more information on these live presentations and prior recordings. Also, we encourage you to consider a Helper Meeting annually to discuss and review your planning with your Helpers. We would be pleased to assist you with these types of meetings if you would like to engage our services. At Caldwell Law, we have many resources available to Help You Help Your Helpers!



We hold Helper's Workshops twice a year – sign up [here!](#)

When Do I Plan for Medicaid?

Qualifying for Medicaid is not easy. Applicants must meet the program's strict income and asset limits before qualifying for medical or long-term care services such as nursing home care or home and community-based services. As a federal program administered by individual states, the expectation is you will use your own assets to pay for your care until those assets dip below the Medicaid limits – currently \$2,000 in Vermont and \$2,500 in New Hampshire. With full time nursing facility costs in our area easily costing over \$100,000 per year, and considering that of those who will need long term care, women on average will require 2.5 years of care, and men 1.5 years, (AARP Public Policy Institute, 2017) retirement savings can quickly become depleted and Medicaid benefits needed to pay for both medical and long term care costs.

Waiting to plan for Medicaid until care is actually needed is probably too late, but for those who plan ahead, there

may be options available to protect a nest egg and an inheritance for family members, even if long-term care services are needed later. One of those options is to establish a specific type of irrevocable trust and transfer assets into that trust. This will enable someone who would otherwise be ineligible for Medicaid to become eligible after a five year "look back" period has passed. Assets in the trust are no longer considered owned by the Medicaid applicant and are protected for their children or other beneficiaries, while allowing them to receive the care they require at home or in a nursing home.

In fact, there are several asset protection strategies you may wish to consider based on your specific assets and circumstances. Let us know if you want to meet with us for a consultation to discuss these strategies, and to help you decide if you would like our assistance preparing and implementing your long term care plan along with you.



Keep It Simple! Consolidating Your Assets

Your estate plan is designed to protect your assets and take good care of your tomorrows. By consolidating your assets now, while you have capacity, you will simplify your estate plan and leave a less complicated estate for your loved ones to settle if you lose incapacity and upon your death.



An often overlooked, yet critical step in estate planning, is ensuring all your assets are titled in a manner consistent with your plan. We call this Asset Titling. We recommend consolidating your assets as a first step in the titling process. Doing so will simplify asset tracking, save time in preparing tax returns and benefit your loved ones when the time comes to settle your estate.

Challenge + Change = 2020

What a Year! A year like no other. Let's celebrate what we learned from it.

Here are a few lessons we learned last year at Caldwell Law:

The value of human interaction

We have always valued the personal across-the-conference-room-table interactions we have had with our clients and the office interactions with each other in our office. Zoom has allowed to see each other and come together in a new way – from our office Team Meetings to our daily Client Meetings to our Annual Client Meeting with over 100 in attendance – until we can gather securely in the conference room again. (We do miss the handshakes and the hugs!)

The value of essential employees

They have taught us just how much we depend on one another to conduct our daily lives. These are the people putting themselves at risk to keep us alive and society functioning. We Care & Thank you!

The importance of hygiene

Taking extra effort to wash hands with soap and water, using hand sanitizer often, six-foot social distancing, stay-at-home suggestions and orders, and wearing a face covering has become our normal daily behavior. In addition

to these, at our office, we also sanitize all common surfaces regularly throughout the workday and have installed an air purification system which actually helps sanitize surfaces as well as the air.

New ways of doing things

We are more resourceful than we think – from curbside estate planning signing meetings to statutes allowing us to conduct Zoom will signings to all of our workshops now being recorded and available via e-mail. Social distancing allowed us to get creative and re-think what is important to our office. (We actually picked up the phone and called many of our clients to just say hello and see how they were!)

The challenge of Covid-19 brought significant change to all of our lives....practically overnight. We have all had to adapt quickly. Through thoughtful work, flexibility, resilience, and dedication, we hope we have continued to provide you, our clients, with excellent service. Let's take a moment to celebrate what we have...and life's gifts – Happy New Year!

The SECURE Act became law January 1, 2020. The Act encourages retirement savings (referred to as “IRAs” here) on the one hand (it pushes back the required beginning date for withdrawals from IRAs from April 1 following the year the account owner turns 70.5 to 72 and permits contributions to IRAs throughout life) and on the other hand it accelerates taxation of inherited IRAs by eliminating the life expectancy rule for most all non-spouse beneficiaries and replacing it with a 10 year rule. We hosted several webinars on the SECURE Act. Click [here](#) to listen to Tim present for a colleague in Massachusetts.

Caldwell Law

Hanover Road Professional Center

367 Route 120, Suite B-6,

Lebanon, NH 03766

www.estateandelderlawgroup.com

(603) 643-7577 Phone

(603) 643-8686 FAX

(877) 643-7577 Toll Free

office@estateandelderlawgroup.com

Need a Gift Idea for your grown Children?

The older we get and the older our children get, it is increasingly more difficult to come up with gift ideas. We have a suggestion for you. Share your estate plans with your children. Some of you may have a difficult time talking about what happens after you die, but take it from someone who sees how difficult it can be for Executors and Trustees who have no idea what their parents have set up. This is a conversation that is a true gift.

Losing a parent is hard enough without being caught completely off guard by finding out you are suddenly an Executor or Trustee and you don't have a clue as to what that means or what plans your parent has made. Many times it is your child's first experience in serving in such a capacity. They are grieving from the loss of their beloved parent and they are easily overwhelmed when they have not been prepared for what their new role may be.

I am sure every one of your children would consider it a gift if you were to share your estate planning goals with them before your death. It is not an easy subject for the parent or the child. Avoiding having this discussion will only make it more painful in the end. It is always easier to approach any

task when you are properly prepared and you know what is expected of you.

Another matter often surprising executors is when you have a will based plan there is a period of time between death and the appointment of an Executor that all funds are frozen and an Executor may be expected to advance funds for administration of an estate. These expenses might include a retainer to hire an attorney, filing fees, funeral expenses and more. This could amount to thousands of dollars. If your child is not an owner on your account, but has signing privileges, those privileges end upon your death. If your child has been helping you manage your finances using a Power of Attorney, those powers end upon your death as well.

These are all things that come as a complete surprise to many of the executors we assist in settling estates. Please consider having these discussions with your helpers in 2021 and preparing them for the day they may have to serve. We hope that it is not for many years and we will always be here to assist them in these matters. We just wanted to pass along what we think is a great gift suggestion to all of you. Here's to a happy and healthy 2021!

Meet the Team!



Top Row: Pam Brackett, Tim Caldwell, Melody Baird
Middle Row: Jackie Hatt, Terrie Kelly, Sonja Bailey
Bottom Row: Pamela Lain, James Thaxton, Renee Harvey
(Missing from photo is Sheila Smith.)

While we may not all be in the office at the same time during the pandemic, we are still just a phone call away! The office has a couple of new faces and they are introduced on the next page. Thank you for your continued support through 2020. We wish you all a safe, happy and healthy 2021!



Sonja Bailey - I joined Caldwell Law in September 2020. I am the marketing and events coordinator, and am also your first contact with the office when you call. In England, I spent many years managing global trade mark portfolios for big brand names. Happily ensconced in the Upper Valley with my family, I am an avid photographer, and am happy to be part of the Caldwell team, creating educational and community based events for all our clients.

Melody Baird - I joined Caldwell Law in November 2020. My primary role is Tim's Administrative Assistant/Paralegal. I originally hail from northern New Hampshire and I've had a varied history, working for 2 different law firms in New Hampshire, as well as in the publishing industry for many years. I taught At-Risk High School students for 14 years and prior to that (true to my name) was a professional musical theatre actress/singer.

Special Events & Workshops

We will be hosting our special events this year via Zoom and hope you can join us. Details for joining can be found on our website [here](#).

- Classicopia – April 22, 2021
- Annual Client Meeting – May 27, 2021
- AVA Art Gallery – October 2021
- King Arthur Culinary Adventure – November 2021

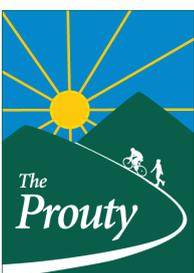
Luncheons

January 13 – Green Burials with Lee Webster
February 17 – Origami with Sophie Usherwood
March 17 – Senior Fraud with Tori Lloyd
April 21 – Titling with Terrie Kelly
May 12 – Dartmouth Dementia Directive with Bob Santulli
June 16 – Settlement with Pam Brackett
July 14 – Investment workshop with Bob Johnson
August 18 – Senior Wellness with Amy Fortier
You can sign up for these [here](#).

Workshops

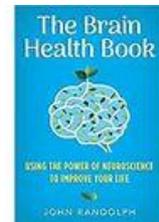
Our monthly workshops can be signed up for [here](#) or call the office at 603-643-7577 for more information.

- The Truth About Estate Planning
- Long Term Care Planning
- How to Settle Your Estate without Dying/Helper Training Workshop



We are proud to sponsor The Prouty. Each year we sponsor a team in memory of Tim's sister who died from cancer in 2011. You can make a difference in the fight against cancer. To donate and/or participate, visit their [website](#) or call the office. We appreciate your support.

Guest Speaker at our Annual Client Meeting



Dr. John Randolph is a board-certified clinical neuropsychologist with extensive experience evaluating and treating individuals with learning, attention, psychiatric, and general cognitive disorders. He holds a Ph.D. in Clinical Psychology (Neuropsychology specialization) and completed clinical and research postdoctoral fellowships in neuropsychology and neuroimaging at Dartmouth Medical School. His recent book 'The Brain Health Book' has received rave reviews and we look forward to hearing how we can all benefit with brain health and how it can improve our lives.