Financial Planning & Wealth Management

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Wealth Management Considerations

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- Investment Planning
- Executive Compensation
- Charitable Giving
- Tax Planning
- Education & Family Support
- Retirement Planning
- Planning for Incapacity
- Titling & Beneficiary Designations
- Distribution of Estate
- Risk Management & Insurance Planning
- Banking & Credit Management
- Business Succession Planning
- Executor & Trustee Selection

Estate Planning Checkup:
10 Questions to Ask

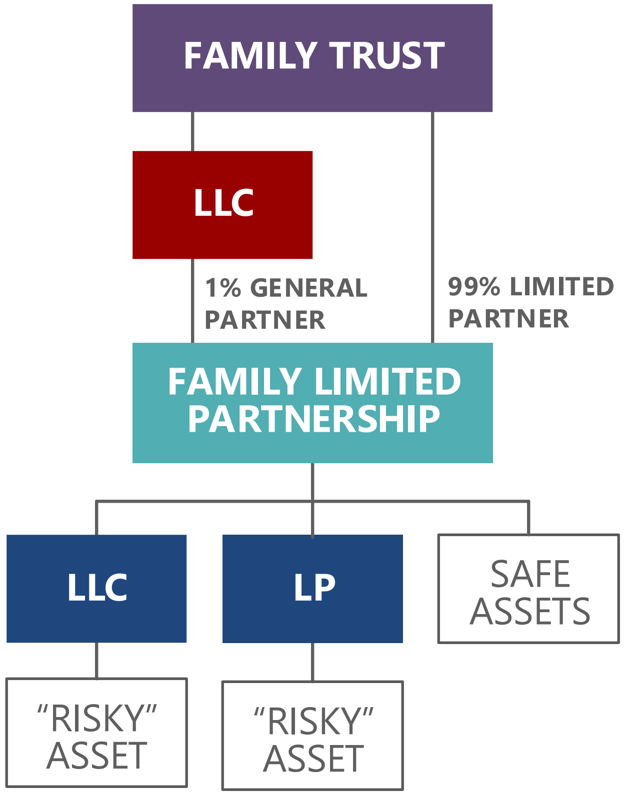
1. Do you own anything in your name (other than retirement accounts)?

If assets are titled in your name, it generally reveals two things, most likely, the assets are exposed to the claims of creditors. And, if the estate is above the exemption, the assets will likely be exposed to a 40% estate tax.

Step 1 – Examine each asset to determine if it is "safe" or "risky." Risky assets (such as real estate or oil and gas) can give rise to claims. Put an entity wrapper such as a limited partnership (LP) or limited liability company (LLC) around each risky asset, so creditors can only reach the one risky asset and can't reach other assets outside the entity wrapper.

Step 2 – Protect all assets from being exposed to personal creditors (such as a tort creditor) by transferring safe assets and the risky asset entities to a Family Limited Partnership (FLP).

Step 3 – Transfer the FLP interests to an irrevocable trust for another layer of asset protection and to remove assets from the taxable estate.



2. After you're gone, will your retirement assets be protected?

Naming children as outright beneficiaries of a retirement account may not be ensuring the best protection of the benefits.

Naming a trust as beneficiary instead places the funds out of reach of creditors of the trust's beneficiaries and makes the trust assets unreachable in the event of divorce. Also, any retirement funds remaining in the trust when the beneficiary dies may not be subject to estate taxes.

Normally when a trust is named as the beneficiary of an IRA, the payout is subject to a 5-year rule which requires the balance of the IRA be distributed (and taxed) to the trust beneficiaries within 5 years of the death of the IRA owner.

A special trust called an Accumulation Trust could be named as beneficiary to gain the asset protection qualities inherent to trusts and also "stretch out" the payout period. With an Accumulation Trust, IRA amounts must be paid out from the IRA to the Accumulation Trust within 10 years. The funds can then be held in the Accumulation Trust and dribbled out to the beneficiary as needed.

3. If you died right now, would your children's inheritance potentially become divisible upon a divorce?

Any asset owned outright by either spouse is "marital property." All marital property is presumed to be community property. The burden of proof is on the party claiming an asset is separate property. Income from separate property is community property.

On the other hand, none of the assets that are owned by a properly structured irrevocable trust is marital property. Being "non-marital property" is even more protected than being "separate property." Non-marital property does not generate community property income and is not divisible upon divorce.

I recommend leaving the inheritance to dynasty trusts for the benefit of children and future generations.

4. Have you taken advantage of the doubled estate tax exemption?

We have a limited window of opportunity to take advantage of the doubled estate tax exemption before it sunsets in half. Proposed legislation moves up the sunset date from December 31, 2025, to December 31, 2021 (2 months from now!). To lock in the benefit of the entire doubled exemption, a couple has to transfer $23.4 million out of their estate.

The most popular way for married couples to use each spouse's gift/estate tax exemption is for each spouse to create a trust for the benefit of the other because doing so preserves the resources for the spouses' benefit.

This type of trust is often referred to as a Spousal Lifetime Access Trust (SLAT).

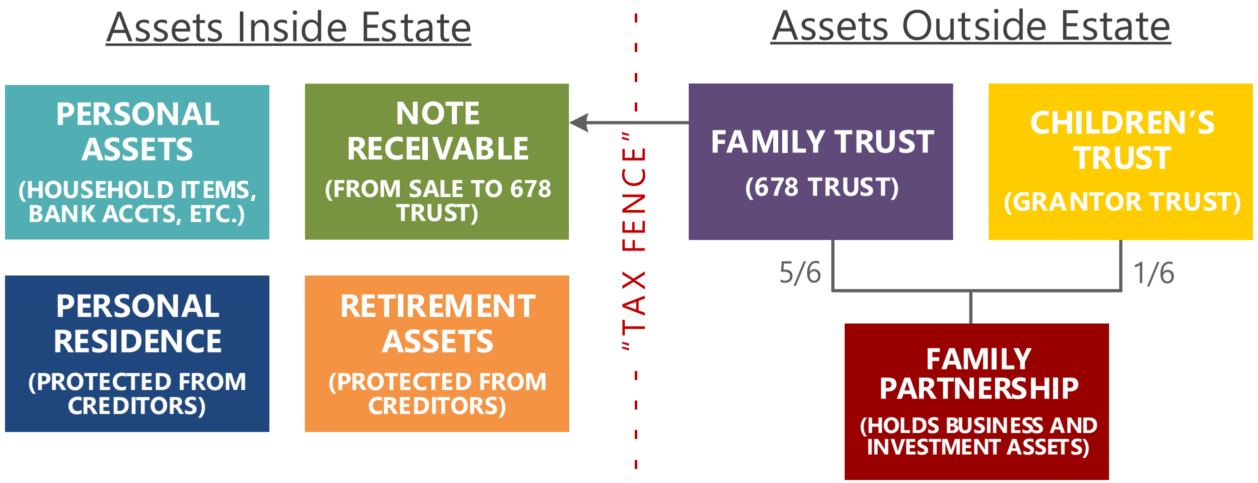
The two SLATs must be substantially different to avoid violating the Reciprocal Trust rule.

5. Can you have your cake and eat it too?

How can you get assets out of your estate but still have access and control?

If your goal is to transfer appreciating assets out of your estate while continuing to retain access to the trust assets and control of trust investments, consider a 678 Trust. Essentially, a 678 Trust allows a beneficiary to be treated as the owner of the trust for income tax purposes, provided it is properly drafted.

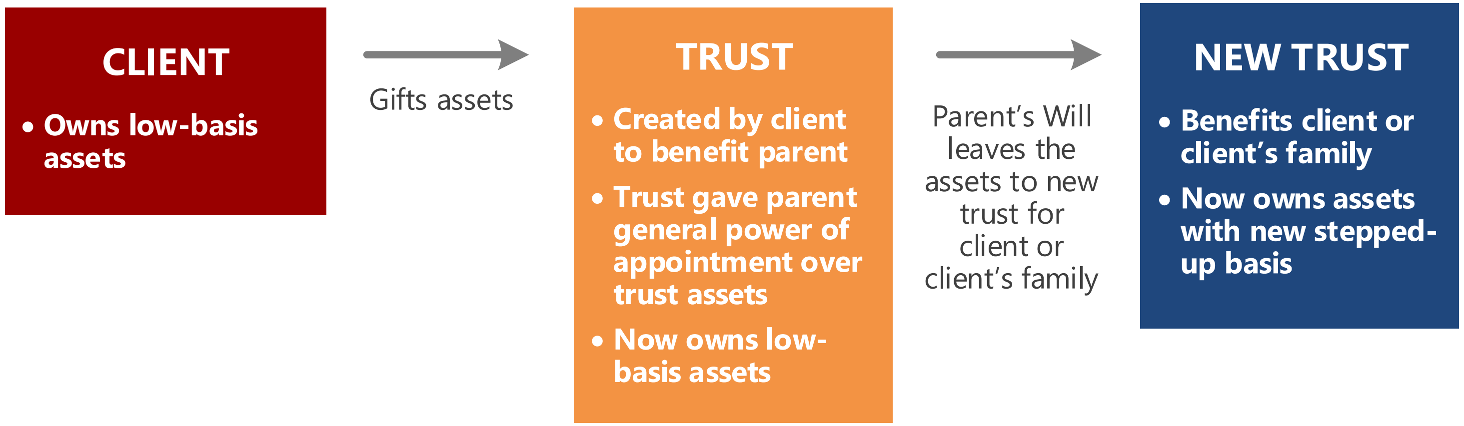
With a 678 Trust, you can access to the trust's funds for health, education, maintenance, and support purposes and can serve as trustee of the trust. Moreover, upon your death, the trust assets will not be subject to estate taxes. Assets owned by the trust are also not subject to the claims of your creditors.



6. Do you have any low basis assets?

If you have appreciated assets, you may need some “upstream” planning.

If you have low-basis assets and a parent has unneeded exemption, you could gift the assets to the parent outright or, even better, to a trust for the parent and give the parent a General Power of Appointment over the assets. (Note that the gift eats into your exemption.)

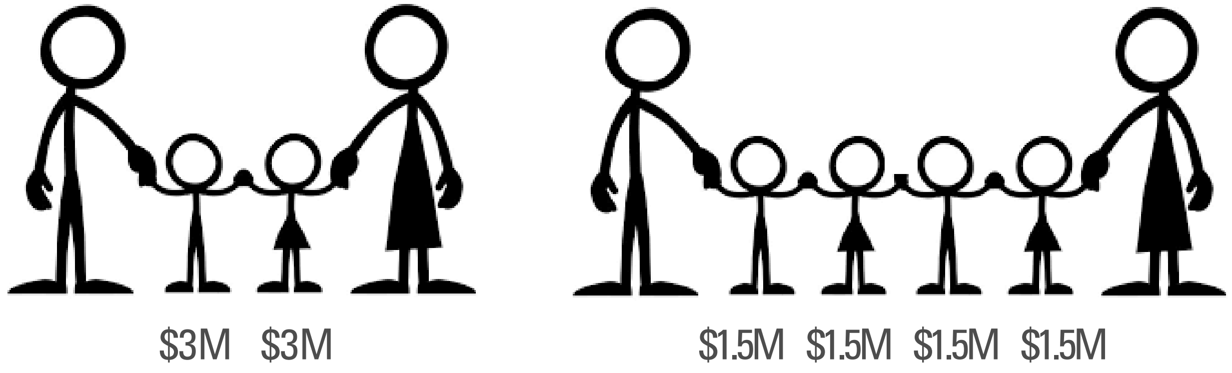


7. Do you love your grandkids equally?

With a traditional per stirpes inheritance, grandchildren with more siblings will receive less than grandchildren with fewer siblings.

Assume Generation 1 has a son with 2 children, a daughter with 4 children, and a $12 million estate. After Generation 1 dies, the son and daughter each receive $6 million. However, after the son and daughter (Generation 2) dies, the son's children each receive $3 million while the daughter's children each receive $1.5 million.

To lessen this blow on the cousins, consider taking out a life insurance policy that goes to all the grandchildren per capita. The rest of the estate plan remains intact. This creates new assets to use for gifting to Generation 3 without disrupting Generation 2's inheritance.



8. Do you have a "Red File"?

People in seemingly excellent health can go quickly and unexpectedly. Imagine you died suddenly or become incapacitated. Do those closest to you have all the information they will need?

Create a "Red File" for what estate planning documents don't cover.

- Section 1: Centralized File of Personal Information: Passwords, contacts, listing of assets you own, location of assets and documents.
- Section 2: Business Continuity Plan: Your will says who will own the business, but not who will manage it. Give your family management succession guidance to facilitate the transition for the day WHEN (not IF) you are gone.
- Section 3: Plan for Incapacity: Who will provide care, will they be compensated, where will you live, favorite TV shows, movies, colors, foods (don't make your caregiver guess).
- Section 4: Legacy Plan: A Red File is the ideal place to document the "heart" side of your estate plan. Provide information on ancestors, obstacles they overcame, meaningful memories, lessons learned, values, and goals for the family.

Download our Red File Checklist here: https://theblumfirm.com/2021/Red-File-Checklist.pdf

9. Do you have a business succession plan in place?

Why is business succession planning such a hot topic? As baby boomers age, many of us seem to think we're going to live forever and have done no business succession planning.

Before you can start developing a plan, the founder needs to decide if the business will be passed down in the family or sold. There are 3 primary choices in the toolbox when thinking about succession planning:

- Transfer the business to a family member/family members.
- Sell the business to people within the business.
- Sell the business to an outside party.

To start the process, form a planning team (CPA, attorney, financial advisors) and bring all the key stakeholders to the table to develop a plan and implement the succession process.

10. Are you worried an inheritance will ruin your children?

We have all witnessed the disaster when an inheritance passes into unprepared hands. Families who succeed engage in best practices like family meetings and family education, all aimed at preparing heirs to be responsible inheritors. A FAST (Family Advancement Sustainability Trust) equips your family to remain healthy and connected through the generations.

In a nutshell, the FAST does two things:

1) It is funded with assets that will be used to pay for family enrichment and family education activities such as family retreats, family travel, and preserving the family's heritage, as well as maintaining legacy real estate assets the family wants to pass down to future generations; and
2) The FAST appoints trustees/committees who are paid to do the legwork in planning these activities and making sure they happen.

The end result is a gift to your family of a meaningful and lasting legacy.

A FAST is an add-on to a traditional estate plan, often funded with life insurance.

Bonus: Pending Tax Laws—What's the Latest?

1) Accelerates the sunset of the lifetime gift and estate tax exemption back to $5 million adjusted for inflation to now be effective December 31, 2021, rather than December 31, 2025. For 2022, estimated to be $6,020,000.

2) Valuation discounts no longer available when transferring entities holding "non-business assets" (passive assets not used in the active conduct of a trade or business), effective for transfers made after the date of enactment.

3) Grantor trust assets now includible in grantor's estate, applicable to trusts created on or after the date of enactment AND to any portion of a trust created before the date of enactment which is attributable to a contribution made on or after the date of enactment.

4) Sales to grantor trusts no longer ignored for income tax purposes and therefore subject to tax on the gain, whether it's a sale to an old grantor trust or a new grantor trust, effective the date of enactment.

5) Increases top income tax rate from 37% to 39.6%, effective for 2022 tax year, and lowers threshold for highest bracket to $450,000 for joint filers, $400,000 for single, $425,000 for head of household, $12,500 for trust or estate. (Current threshold for top bracket is $628,300 for joint filers and $523,600 for single.)

6) Increases highest long term capital gains tax rate from 20% to 25%, for gains realized after Sept 13, 2021. Also aligns income threshold to highest new ordinary income tax bracket ($450,000 for joint filers, $400,000 for single, $425,000 for head of household, $12,500 for trust or estate). For 2021, current income bracket applies.

7) Expands reach of the 3.8% Net Investment Income tax to include income from active trade or business if taxable income is over $500,000 for joint filing, $400,000 for single, and for all trusts and estates, effective for 2022 tax year.

8) New 3% surtax on modified adjusted gross income above $5 million for joint filers AND for single, above $100,000 for trusts and estates (excluding charitable trusts), effective for 2022 tax year.

9) Caps maximum allowable Section 199A 20% pass-through deduction at $500,000 for joint filers, $400,000 for single, $10,000 for trusts and estates, effective for 2022 tax year.

10) **Modifies carried interest rules** to increase holding period from 3 years to 5 years to be taxed as capital gain, effective for 2022 tax year.

EXCEPTION: If adjusted gross income is less than $400,000, still get 3-year period.

EXCEPTION: Real property trades or businesses still get 3-year period.

11) **New graduated corporate tax rate structure**, effective for 2022 tax year, of 18% tax rate on first $400,000 of income, 21% on income $400,001–$5 million, 26.5% on income above $5 million.

EXCEPTION: For corporations with income over $10 million, the amount of tax determined above is increased by the lesser of (i) 3% of such excess, or (ii) $287,000.

EXCEPTION: Personal services corporations taxed at flat 26.5% rate.

12) **Limits exclusion rate for Qualified Small Business Stock gains** for sales on or after September 13, 2021. For taxpayers with AGI over $400,000 and all trusts and estates, the 75% and 100% exclusion rates no longer available—only the 50% exclusion rate is available.

13) Restricts Roth conversions beginning in 2032 if income is over $450,000 for joint filers, $400,000 for single, $425,000 for head of household.

14) Caps IRA size if income is over $450,000 for joint filers, $400,000 for single, $425,000 for head of household. Cannot make additional contributions to Roth or traditional IRA if the combined value of IRAs and defined contribution plans exceeds $10 million, effective for 2022 tax year.

15) Increases minimum distribution from large IRA if income is over $450,000 for joint filers, $400,000 for single, $425,000 for head of household. If combined value of IRAs, Roth IRAs, and defined contribution plans exceeds $10 million, new minimum distribution rules apply, effective for 2022 tax year.
    - Combined value over $10 million: Required minimum distribution of 50% of overage.
    - Combined value over $20 million: Required minimum distribution of lesser of (i) 100% of overage or (ii) total balance held in Roth IRA and Roth defined contribution plans.

16) Prohibits IRAs from owning interests in Private Placement Investments, effective for 2022 tax year. Subject to a 2-year transition period for IRAs already holding such investments.