Fundamental Estate Planning Concepts

What is an Estate?

An estate consists of all the assets owned by an individual at the time of their death. This includes cash, real estate, investments, personal belongings, and any other property. Understanding what constitutes an estate is essential for effective estate planning, as it determines what will be transferred to beneficiaries upon death.

Estate Tax

The estate tax is a federal tax that may be imposed on the transfer of assets upon death. This tax is based on the total value of the deceased person's estate, including cash, real estate, investments, and other assets. Importantly, life insurance proceeds may be included in the estate's value and subject to estate tax, depending on the policy ownership and the estate's total value. There are two important rules that can help reduce estate tax: the unlimited marital deduction and the estate exemption.

Unlimited Marital Deduction

The Unlimited Marital Deduction allows you to transfer any amount of money or property to your spouse without having to pay federal estate or gift taxes. This means that when one spouse passes away, all their assets can go to the surviving spouse without incurring any tax at that time. While the unlimited marital deduction is a valuable tool for transferring wealth, it's important to consider the overall estate plan. When the surviving spouse later passes away, portability rules allow them to use any unused estate exemption from the deceased spouse. This can help reduce the estate tax burden when assets are then passed on to heirs and other non-spousal beneficiaries. It's essential to plan before the first death to take full advantage of both the marital deduction and the unified credit. Please let your planner know if you or your spouse are not U.S. citizens, as the rules for non-citizen spouses are different.

Annual Gift Exclusion

The Annual Gift Exclusion lets you give up to a certain amount to any number of individuals each year without incurring gift tax or reducing your lifetime gift and estate tax exemption. In **2025**, you can gift up to **$19,000 per person** ($38,000 for married couples using "gift-splitting") tax-free. The exclusion is indexed to inflation and is expected to rise again in **2026**, though the final figure will be set by the IRS later in 2025.

Estate Exemption (Unified Credit)

Each person has a Lifetime Estate Exemption, which is the amount they can transfer without incurring estate tax, either during their lifetime or at death. For assets not going to a spouse, this exemption shields up to a certain amount from estate tax. In **2025**, the exemption is **$13.99 million per person**, meaning estates valued below this threshold would not owe federal estate tax.

Each person has their own exemption, and they can choose to use some or all of it on gifts made during their lifetime, with any remaining amount available to shield assets when they pass away.

Change in 2026
Under prior law, the exemption was scheduled to **sunset to about $7 million per person** (the pre-2017 level, indexed for inflation) on **December 31, 2025**. However, under the **One Big Beautiful Bill Act (OBBBA)** signed in 2025, the basic exclusion amount instead **increases to $15 million per person starting January 1, 2026**, with annual inflation adjustments thereafter.

Proposed Reduction of the Estate Exemption in 2025

Had the OBBBA not been enacted, the Lifetime Estate Exemption was scheduled to drop back to approximately **$7 million per person** beginning in 2026 (reflecting the pre-2017 level, indexed for inflation). This underscores an important point: **estate tax laws are subject to change**, and thoughtful planning should build in flexibility so families can pursue their long-term goals even as tax regimes evolve.

Step-Up in Basis

A step-up in basis occurs when an asset is inherited, allowing its value to be reset to its fair market value at the time of the deceased's death. This means that if heirs sell the inherited asset, they will only pay capital gains tax on any increase in value from the time of inheritance. For highly appreciated assets, holding assets until death and receiving the step-up could be a valuable strategy.

Fair Market Value and Business Valuation

For gift tax purposes, a business or other illiquid asset must have a **qualified valuation** to establish its reportable value. For estate tax purposes, assets are valued at their **fair market value**—the price at which a willing buyer and a willing seller would agree in a competitive market. While a recent buy–sell agreement can help guide this valuation, the IRS often requires a formal appraisal to determine the value of a business for estate or gift reporting. Establishing this value is the foundation for applying the annual exclusion, lifetime exemption, and potential valuation discounts.

Valuation Discounts

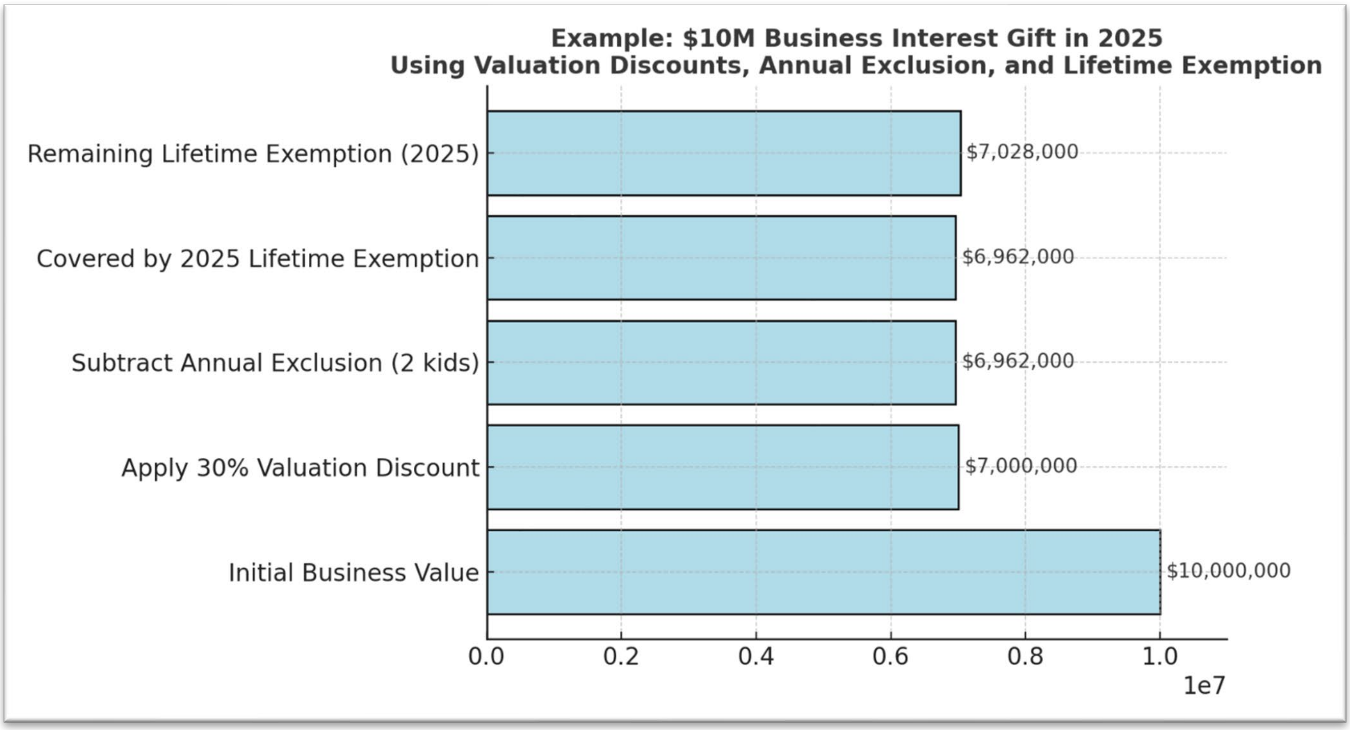
When ownership interests in closely held businesses or family entities are transferred, the IRS recognizes that the value of those interests is often less than a simple pro-rata share of the whole. Qualified appraisals may apply **valuation discounts** to reflect this reality. The two most common are the **discount for lack of control (DLOC)** and the **discount for lack of marketability (DLOM)**. Together, these adjustments reduce the **fair market value** under the willing-buyer/willing-seller standard. For example, **if a 30% discount was applied** to a $10 million non-controlling, non-marketable interest, the reportable value would be $7 million. This lower value allows more of the ownership to be transferred within the annual exclusion or lifetime exemption and can meaningfully reduce potential transfer taxes. Because these discounts are fact-specific, they must be supported by a **qualified appraisal**.

Gifting Assets to Future Generations

One planning technique involves giving assets during your lifetime directly to your children or future generations or placing them in a trust for their benefit. This removes those assets from your taxable estate and shifts future growth out of your name. Each year, you can make gifts up to the **annual gift tax exclusion amount** without using any of your lifetime exemption. Larger gifts are also permitted, but they count against your **lifetime estate and gift tax exemption**. When combined with **valuation discounts**, gifting can become especially effective—allowing families to transfer significant interests at a reduced reportable value, stretch their available exemptions, and pass more wealth tax-efficiently to the next generation.

Example:

- Initial Asset Value: $10,000,000
- 30% Valuation Discount reduces reportable value to $7,000,000
- Annual Gift Exclusion (2 children in 2025) further reduces reportable amount to $6,962,000
- This amount is then applied against the 2025 Lifetime Exemption ($13.99M), leaving over $7M of exemption still available.



Core Estate Planning Documents

• **Healthcare Power of Attorney (HCPOA):** Designates someone to make medical decisions on your behalf if you become unable to do so.
• **Living Wills**: Outline your wishes regarding medical treatment in case you are unable to communicate your

preferences.
• **Power of Attorney (POA):** Grants someone authority to act on your behalf in financial or legal matters.

Wills and Trusts

• **Wills:** A will is a legal document that outlines how your assets will be distributed after your death. It goes through probate, which is the legal process of validating the will and distributing the estate.

• **Trusts:** Trusts can help avoid probate and provide more control over asset distribution. There are many different types of trusts, but each generally falls into one of two categories: revocable and irrevocable. Trusts can be established during a person's lifetime (lifetime trusts) or created through a will and take effect after death (testamentary trusts).

- **Revocable Trusts:** These can be altered or revoked during your lifetime, allowing for flexibility and control. However, assets in a revocable trust are still considered part of your estate for tax purposes.

- **Irrevocable Trusts:** Once established, these generally cannot be changed or revoked without the beneficiaries' consent. Assets placed in an irrevocable trust are generally removed from your estate for tax purposes, potentially reducing your estate tax liability.

Pros and Cons of Trusts

Pros:
- Avoids probate, which can save time and costs.
- Provides greater control over when and how assets are distributed.
- Can help protect assets from creditors, divorce, and allow for multi-generational planning.

Cons:
- Can be more complex and costly to set up than a simple will.
- Requires ongoing management and may incur administrative fees.
- Wills

Wills v/s Revocable Living Trusts

With a combination of a Will, beneficiary designations, and options like Payable on Death (POD) and Transfer on Death (TOD) instructions, you may be able to achieve your estate planning goals with relative simplicity. For those wanting more control over asset distribution, particularly with testamentary trusts, many estate planning attorneys suggest creating a revocable living trust and transferring assets into the trust during your lifetime.

In this approach, you would typically re-title accounts in the name of the Trust and update beneficiary designations on retirement accounts and life insurance policies to name the trust as the beneficiary. It's essential to work with an experienced estate planning attorney to ensure that The trust, account re-titling, and beneficiary designations align with your goals and avoid any unintended tax consequences.

With a Living Trust, you would still maintain a will, known as a "pour-over" will, which would serve to transfer any remaining assets outside the trust into the trust upon your passing, ensuring a comprehensive estate plan.

The benefits of a Living Trust include:

- **Probate Avoidance:** By placing assets in a living trust, you can avoid the probate process, saving both time and expense for your beneficiaries. Currently in Georgia, probate court proceedings can extend over a year, delaying asset distribution. A living trust allows your estate to bypass this process entirely.

- **Privacy Protection:** Probate proceedings are public, meaning anyone can access the records of an estate undergoing probate. In contrast, a living trust is private, ensuring that your financial information remains confidential and inaccessible to the public.

- **Enhanced Control:** A living trust allows you to clearly outline how you want your assets managed and distributed after your passing. Additionally, it enables you to appoint a successor trustee or co-trustee who can manage your assets if you become incapacitated, ensuring continuity without court intervention.

- **Flexibility:** Living trusts can be adjusted or revoked at any point during your lifetime, providing the adaptability to revise your estate plan as your circumstances or wishes change.

Irrevocable Life Insurance Trusts (ILIT)

An ILIT is a special type of trust that holds a life insurance policy outside your taxable estate, which can help reduce estate taxes. By placing your life insurance policy in an ILIT, the death benefit is directed to your beneficiaries without adding to the value of your estate when you pass away.

You will make annual gifts to the ILIT to cover the insurance premiums, and each year, a **Crummey letter** is sent to your beneficiaries. This letter lets them know they have a temporary right to access the annual gift, which allows it to qualify as a completed gift. When the time comes, the ILIT receives the life insurance proceeds and distributes them to your Trust beneficiaries according to your wishes, without the tax impact on your estate.

An ILIT can be a powerful tool if you're looking to pass along life insurance benefits efficiently and protect the proceeds for your loved ones.

Disclaimer

This summary is meant as a general overview of estate planning concepts and is not meant as advice. Please consult your legal, tax, and financial advisors to discuss how these relate to you and rely on their guidance in making your estate planning decisions.