FSI Transition Center
Estate Planning

Foreign Affairs Community

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Please note: The content of this webinar is provided for general information purposes only. It should not be considered legal advice or used as a substitute for consulting an attorney for legal advice regarding the participant's own matters.
Estate Planning Tools

• Powers of Attorney
• Living Will/Advance Medical Directive
• Wills
• Trusts
• Titling of Property
• Gifting
• Life Insurance
General Durable Power of Attorney

- Power to undertake any action relating to your assets that you could do personally
- Effective immediately or effective in the event of disability (“Springing”)
- Avoids guardianship proceedings
- Null/void upon your death
- Requirements differ from state to state
Advanced Health Care Directive
or
“Living Will”

Establishes individual preferences
- Use of oxygen
- Nutrition/hydration
- Pain management
- Organ donation: driver’s license is best

Identifies individuals to make health care decisions for you if you are unable to do so
Titling of Property

-Overrides the will
-Examples
  - Joint ownership (with survivorship)
  - Transfer on death and pay on death accounts
  - Revocable or irrevocable trust
  - Insurance
  - Retirement accounts
  - VA and DC permit Transfer on Death Deeds (not yet permitted in MD. Bills proposed and Bills defeated)
Wills

- Effective at death
- Funeral and other arrangements
- Specific bequests
- Appoints an Executor and outlines Executor’s duties
- May appoint Guardian for minor children
- May establish trusts
- Without a will – state law applies as to distribution of assets and care of children
Trusts

Testamentary

• Established by your will
• Assets do not avoid probate
• Yearly accounting requirement
Trusts cont’d

Inter Vivos

- Established during your life
- Revocable vs. irrevocable trusts
- Irrevocable life insurance trusts
- Bypass trusts – aka credit shelter trust
- Qualified terminal interest property trust
- Personal residence trust
- Charitable trust
- Kiddie trusts and grandchildren’s trust
Estate Taxes

**Tax Cuts and Jobs Act**

- **Transfer between spouses** who are U.S. citizens are tax-free

- **Qualified Domestic Trust** must be established for non-U.S. citizen spouse. Can be established after the death of the deceased U.S. citizen spouse if provided for in the U.S. citizen’s Will or Trust

- **Federal Estate Tax “Exemption” amount:**
  - Approx. $12.92M/individual and $25.84M/married couple with election of portability (reverts to approx. $6M/$12M in 2026)
  - Current tax rate = 40% of amount over the “exemption”
January 2013, Congress passed American Tax Relief Act of 2012 (ATRA) – made portability permanent

A surviving spouse can use deceased spouses (unused) exemption for his/her gift or estate tax purposes

Must file a tax return upon death of first spouse to reserve right to elect portability
Estate and Inheritance Tax

Source: Kiplinger.com
Separate State Estate Taxes

• In 2023, 12 states and the District of Columbia have their own state estate tax

• Virginia – no estate tax

• Maryland - $5M in 2023, adopted portability in 2020 (tax rate up to 16%)

• District of Columbia - $4.52M in 2023, no portability in DC (tax rate up to 16%), annual adjustments are expected
Inheritance Taxes

- Approx. 6 states have their own inheritance tax which is normally paid by the recipient
- Virginia – no inheritance tax
- Maryland – up to 16%, generally payable by collateral (non-lineal heirs)
- District of Columbia – no inheritance tax
Federal Gift Taxes

- **Lifetime Exemption of $12.92M (tied to overall exemption)**
- **Annual Gift Exemption of $17K per individual ($34K if spouse joins in gift)**
- **Unlimited number of gifts to different individuals**
- **Annual transfers to a non-U.S. citizen spouse are tax-free up to $175,000 in 2023 (adjusts annually)**
Gifting Strategies

- **Cash, appreciating/appreciated property**
- **Uniform Gifts to Minors Act/Uniform Transfers to Minors Act**
- **Medical expenses/tuition** Unlimited yearly if gifted directly to educational or health care institution
- **Intra-Family Installment sales or loans**
- **Charitable giving**
Secure Act changes to retirement benefits

- Eliminated ability of children and grandchildren to maintain inherited IRA, 401(k) and 403(b) accounts over their individual lifetimes

- Spouses, individuals with disabilities and individuals who are less than 10 years younger than the deceased may maintain the inherited retirement account over their respective lifetimes

- All others, including children, grandchildren and individuals more than 10 years younger than the deceased, must take all funds from the inherited retirement account within 10 years
Spousal Rights

Foreign Service Spouses

Foreign Service Benefit Default Plan

- Unless otherwise provided by court order or spousal agreement, a Former Spouse (FS) of a FSPS or former FSPS is entitled to both pension and survivor benefits, unless waived, if the following conditions are met:

1. The FS divorced participant after February 15, 1981;
2. Before commencement of payments of any benefits, the FS did not remarry before age 55; and
3. FS was married to FSPS or former FSPS for at least 10 years and during at least 5 of such years, the participant was a member of the Foreign Service.
Spousal Rights Generally

• **Spousal Elective Share for Decedent dying on or after 12/1/2017:**
  • Cannot disinherit a spouse without their consent in Virginia
  • Surviving spouse may make a claim against estate regardless of whether any provision for the spouse is made in a decedent’s will or if the decedent dies intestate (without a will);
  • Six months to file
  • Moves from “support” based theory to an “economic partnership” theory.
    - Old Model: looked only at Deceased spouses assets
    - New Model: looks at both spouses assets
  • Takes into account length of marriage – 15 year “earn in” period
  • Maximum elective share is 50% of all marital assets (sliding scale based on length of marriage).
  • No longer matters if children or no children are living.
    • Can be waived by writing
    • Statutory rights are barred by desertion or abandonment
• **Virginia’s Omitted Spouse Statute** – Applies to wills executed prior to marriage, which omit a spouse. Unless evidence of intentional omission, surviving spouse shall receive intestate share of estate.
Intra-Family Loans

• Historically low applicable federal rate, published monthly by the IRS
• Short-term rate: loans with terms <3 years
• Mid-term rate: loans with terms >3 years but <9 years
• Long-term rate: loans with terms >9 years

Annual AFRs for May 2023

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When to Review an Estate Plan

Major life events

- Inheritances
- Career changes
- Move out of state
- Birth of a child
- Marriage, divorce, death

Tax law changes

Significant changes in values of assets

Every 5 years
Questions & Thank you!

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