

Red, White, And Blue, And Your Green: Estate Planning In A Post-Election World

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We survived the election, and while we celebrate the lack of political texts, mailings, commercials, advertisements, and candidate-related traffic, we must also think about what the results mean for estate planning.

What We Know

The only certainty we have in the estate planning world is what we know right this minute: spouses may give assets of unlimited value to each other, but the limit for making gifts or bequests to non-spouse beneficiaries is \$13.61 million, set to increase in January to \$13.99 million. We know that these are the same limits for making gifts to “dynastic trusts,” established to benefit several generations of families, without gift, estate, or generation-skipping transfer tax. We know that the annual exclusion – the amount anyone may give to an unlimited number of recipients each year without consuming this exemption – is \$18,000/donor/recipient/year, set to increase to \$19,000 in January. For now, we know that the exemption is set to decrease to approximately \$7 million on December 31, 2025.

What We Think

It is no secret that our President-Elect, his inner circle, and many members of Congress are wealthy and in favor of tax cuts, so we may surmise that they would all like to see the estate and gift exemptions implemented by President Trump in 2017 extended beyond 2025. Will they do the work to extend the exemptions before the ball drops on December 31, 2025? Perhaps, or perhaps they will act out of necessity in 2026 and climb back up the tax cliff that we fall off in 2025, retroactively “fixing” the exemptions. Overall, it is reasonably likely that we will continue to enjoy the highest-ever exemptions that we enjoy today for at least the next four years until the text messages and campaign ads fire up again.

What To Do

For those of you who have been waiting to see what will happen politically before addressing your planning...the time has come. Given what we know and what we think, there is no reason for further delay. Here are some items to keep in mind:

- **For those with taxable estates**, strong consideration should be given to proceeding with pre-election estate planning. A dollar removed from your estate today may mean many dollars of growth removed from your estate (and future taxes saved) tomorrow. Remember that we do not know what the estate tax regime will look like beyond 2025, and solid yet flexible plans may very well still be worth pursuing.
- **If you are even thinking about funding an irrevocable gift trust** during this brief remaining window of certainty in the tax laws, you are not alone, and the estate attorneys are busy. Remember that the trust itself is a receptacle...and an empty bucket; you do not have to fund it later if you decide not to, but if you think you might consider getting in your estate attorney's drafting queue today.
- **Gifts** – whether you are thinking about making large gifts that consume your exemption, smaller gifts that take advantage of the annual exclusion, or limitless gifts to pay for education or medical expenses, crafting a gifting plan with your advisors may help to understand the gifting laws and ensure you attain your gifting goals while preserving family harmony, avoiding friction, and ensuring you have the budget you need to comfortably live your life the way you want to.
- **Examine existing trusts** – even though your attorney likely (and appropriately) told you that you could not change an irrevocable trust back when you signed it, there are now some efficient ways to modify old trusts that do not require court approval or, in some cases, beneficiary approval. Perhaps a bank is named as a trustee or successor trustee in an old trust and should not be, or your trust is designed to be distributed to your children when they turn thirty-five, but they would now be better served if the trust remained in place for their lifetime. Maybe you have other concerns about the provisions of the trust? Additionally, there may be some available income tax planning you may accomplish by substituting assets of the trust with other assets. Paying attention to your established trusts and whether they still suit your family's needs is important for your overall estate plan.
- **Irrevocable Life Insurance Trusts** – whether you have life insurance because your estate will need the liquidity provided by the death benefit to ultimately pay estate taxes, because you are a believer

in life insurance products in general, or another reason, how the insurance is owned matters. If your life insurance is not already owned by an irrevocable life insurance trust (“ILIT”), it is worth examining whether you may and should establish an ILIT and transfer the ownership, as such titling may result in the exclusion of life insurance proceeds from your taxable estate while ensuring your family inherits the life insurance in the manner you would like.

- **Everyone should examine their documents** if five or more years have passed since they were signed, if there has been a significant change in the value of the estate (for better or worse), or if your family has experienced a major life event (e.g., a birth, a death, a divorce, or a marriage). Not only might your documents require some adjustments to their embedded tax planning, but your personal wishes for your estate may have changed, including items like:
 - **Fiduciaries** – are the executors, trustees, guardians, health care agents, and powers of attorney still what you want? Do you still talk to the people you named? If you named contemporaries or older individuals, have you named younger successors? Is there a need to include a professional trustee? Have your children reached a point where it makes sense to include them as fiduciaries if you have not already?
 - **Structure of Inheritances** – are your spouse and children set to receive their inheritances from you outright (free of trust)? Would it be beneficial for them to receive their inheritances in a trust to potentially provide them with certain future tax planning and asset protection? If you already have trusts for them, are the provisions reasonably flexible to accomplish your goals? Are family dynamics considered and appropriately planned for?
 - **Structure of Estate Documents** – some attorneys are proponents of using revocable trusts and others are not. Incorporating a revocable trust into your estate plan offers many benefits, including helping your estate avoid probate and preserving the privacy of your wishes for your estate after you pass
- **Young Adult Children and Grandchildren** - everyone has been so focused on the election and the tax laws that they have not necessarily thought about other aspects of planning like the younger generation’s planning. Have your children or grandchildren turned eighteen? Do they have advance

directives for health care? Powers of attorney? Wills? Although it may not feel like an eighteen-year-old is an adult, they are in the eyes of the law and need to be planned for accordingly.

- **Charity** – do you have charitable intentions for your estate plan? Have you discussed the use of retirement accounts and/or examined the best ways to fulfill such intentions?
- Are your **titles and beneficiary** designations coordinated with your will and revocable trust? Any assets that are titled “joint with rights of survivorship,” that have a “transfer-on-death” designation, or that have beneficiary designations associated with them will not pass under the terms of your will or revocable trust; instead, the title or designation will supersede and circumvent your estate documents. There is no time like the present to review all your asset titling and to ensure that your life insurance and retirement accounts have beneficiary designations that are consistent with your wishes.

Life is busy. Work. Family. Community obligations. Vacations. Funerals. Celebrations. There will always be another reason to delay focusing on your estate plan, which would be fine if you knew precisely when you would be leaving this earth. What was seemingly a common reason for the delay – the 2024 election – is now over, and your legacy deserves your focus. Schedule some time to talk with your advisors about your plan and whether it requires important adjustments for your family.

If you have any questions or would like to discuss this further, please reach out to your client service team, call us at 404.264.1400, or visit us on the web at [HomrichBerg.com](https://www.HomrichBerg.com).

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