If you are like most people, updating your estate plan is something that always seems to fall to the bottom of the list. However, the increase in the gift and estate tax exemption amount as a result of the Tax Cuts and Jobs Act of 2017 (the “2017 Tax Act”), which became effective on January 1, 2018, makes it especially important for you to review your existing plan.

Estate planning opportunities and surprises

The new, higher gift tax exemption amount creates an opportunity to transfer additional assets before it is scheduled to expire at the end of 2025. However, if you haven’t updated your estate plan, the large increase in the estate tax exemption amount could cause assets to be distributed in ways you never intended. The following example shows how that can happen.

Please see back for additional important disclosure information.
Estate planning documents often contain “formula clauses” that are designed to take maximum advantage of your federal estate tax exemption amount, without forcing you to update your estate planning documents each year as the exemption amount is adjusted for inflation. The individual in the following example has a will that was drafted prior to the 2017 Tax Act and includes a formula clause.

**Example**

John’s will was drafted in 2009 when his net worth was $7 million and the federal estate tax exemption was $3.5 million. His estate planning documents direct that a bypass trust naming his children as beneficiaries be funded upon his death with his “remaining exemption amount.” The assets that remain are to be placed in a trust to provide for his second wife.

At the time John’s estate planning documents were drafted, the estate tax exemption amount was $3.5 million. Had John passed away that year, $3.5 million would have been used to fund the trust for his children and the remaining $3.5 million would have been placed in the trust for his wife.

John’s estate has increased to an estimated $10 million. Now, if he passes away those same formula clauses would direct the entire $10 million to be placed in the bypass trust for his children, leaving nothing to fund the trust for his wife.
Keeping up with life’s changes

Even without major federal or state tax changes, it’s a good idea to review your estate plan on a regular basis. Over time you can find yourself with an estate plan that no longer fits your needs or goals. Life events such as the marriage of a child or the birth of a grandchild may change your goals or create new estate planning opportunities. Major decisions such as accepting a position with a different company, moving to a different state or retiring can create a need to review your estate plan. And the increased focus on longevity and incapacity may have you wondering if there are actions you should be taking now to protect yourself and those you care about.

Changes that may warrant a review of your existing estate plan are likely to fall into the following categories:

**Life events**
- Marriage (or divorce).
- Death of a spouse or child.
- Birth or adoption of a child or grandchild.
- A move to a different state.
- Marriage (or divorce) of a child.
- Retirement.
- A significant illness.
- A child’s decision to pursue a career outside of the family business.

**Changes affecting appointees**
The death of, changes in your relationship with, or the ability of, an individual you have chosen to serve as:
- Trustee of any trust you have created.
- Guardian for a child or individual who needs care.
- Executor or personal representative* of your estate.
- Attorney-in-fact under a power of attorney.
- Health care proxy/agent.

**Major changes in assets**
- Purchase of property in a different state.
- Rolling 401(k) or other qualified plan assets into an IRA.
- Receipt of an inheritance.
- Plans to sell a business or take it public.
- A significant increase in your wealth.
- Purchase or surrender of life insurance.

**Legal, regulatory or tax changes**
- A change in the federal gift, estate or generation-skip transfer tax rate or exemption amount.
- A change in your state’s gift, inheritance or estate tax rate or exemption amount.
- A change in trust or property laws that may affect you.

* In some states, executors are referred to as personal representatives.
Thinking Ahead: Is it time to update your estate plan?

Addressing your specific needs

Without realizing it, even the most carefully crafted plan can become out of date. That’s why meeting with your advisor periodically to review major changes that have occurred since your plan was last updated can be so helpful. Your advisor has a clear understanding of your current financial picture and can review your goal funding status. Your advisor also has access to resources and tools such as our estate planning checklist, that can help you identify changes that you may want to discuss with your estate planning attorney as you are reviewing the need for any tax driven changes.

If changes are needed — If changes to your estate plan are needed, your advisor, together with trust professionals at Bank of America can work with you, your tax advisor and your estate planning attorney to evaluate various strategies and, where appropriate, help implement them. The services that we can provide may be particularly helpful if:

- You have IRA, 401(k) or other qualified plan assets that are not currently integrated into your overall estate plan.
- You envision your assets benefiting grandchildren and future generations.
- You would like a portion of your wealth to fund charitable causes.
- You have already made gifts, and want to take advantage of the new, higher gift tax exemption amount before it is set to expire at the end of 2025.
- You own shares in a private company that may be considering an IPO, sale or merger.
- Nonfinancial assets such as private business interests, investment real estate, oil and gas interests, timberland or farm and ranch land are a significant source of wealth.
- You own a private company and would like to transfer an ownership interest to help minimize estate taxes but want to maintain control of the company.
Trust and estate services from Bank of America—If your existing or updated estate plan includes a trust, we may be able to help by serving as trustee or by assisting an individual you may have named to serve as trustee. Bank of America is the largest provider of trust services in the country and has deep fiduciary knowledge as well as experience with a broad range of personal and charitable trusts. Bank of America also helps clients by serving as executor, a role in which our nationwide presence and ability to provide day-to-day management of nonfinancial assets may be particularly useful.

We work with your relationship manager to help identify trust solutions that align with your priorities, and integrate with your overall estate and wealth management plans. Reach out to your relationship manager to learn more.

Bank of America Trust Services is dedicated to helping you simplify your life, give lasting meaning to your wealth, and prepare for whatever the future may hold.

Thinking Ahead is a series of articles designed to highlight important considerations that can help you create the type of legacy you envision and shape the future for the people and causes you care about most.

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1 The gift and estate tax exemptions are unified. Lifetime gifts reduce the amount of the estate tax exemption that can be claimed upon death, dollar for dollar. The “remaining exemption amount” refers to the estate tax exemption amount available to an estate after taking into account any lifetime gifts.


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