WealthCounsel®
quarterly
VOLUME 20, NUMBER 1

Business Succession & Exit Planning:

a PRIMER *for* ESTATE PLANNING ATTORNEYS

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From the Editor ...

YVONNE ECKERT, JD
EDITOR IN CHIEF, WEALTHCOUNSEL, LLC

On behalf of WealthCounsel, I would like to extend our best wishes to you for this new year. This Winter 2026 edition of the *Quarterly* focuses on the critical moments when our clients transition ownership, divide assets, or face administrative hurdles, all while striving to preserve the core value of the wealth they've built.

As the calendar turns to a new year, we often reflect on beginnings—but for some of our business-owner clients, the most crucial phase at present isn't the inception of their business, but their successful exit from it. Our feature article on page six provides an indispensable roadmap for that transition. Author Ryan Snow reminds us that estate planning and succession planning are distinct, yet deeply interdependent. The ultimate value of what is often a client's primary asset—their business—depends on a proactive strategy to exit it, whether that involves a sale to a third party, a transfer to the next generation through tools such as grantor retained annuity trusts, or a buyout facilitated by a well-drafted buy-sell agreement. Snow guides us through the foundational questions necessary to define the owner's "end of story," from valuation and funding to the critical choice between an asset sale and an equity sale.

Complementing this focus on business transitions, the rest of the issue dives into crucial fiduciary and state-specific planning challenges:

On page 12, Michael Clear and Erin Nicholls outline the strategic path for trustee tenure and transition, urging practitioners with clients who want to remove a trustee to first pursue a negotiated resignation and explore the trust instrument's removal powers before resorting to costly judicial intervention, which can often diminish the very assets beneficiaries are trying to protect. For clients who call the Sunshine State home, Sagar Jariwala demystifies the powerful—and complex—protections for homeowners' primary residences under Florida's homestead law on page 28. On page 23, Laura Mandel explores the evolving landscape of directed trusts, examining the legal distinctions between directed trusts and traditional trusts, focusing on the provisions of the Uniform Directed Trust Act. The article also explores the potential for directed trusts to enhance flexibility in trust management by shifting fiduciary responsibility to the trust director while holding the directed trustee to a lower, yet still critical, standard of avoiding willful misconduct. Finally, when a family's wealth is divided during a divorce, it is essential to take steps to safeguard public benefits for vulnerable family members. On page 16, Kevin Urbatsch and Evelyn Wynn highlight how traditional divorce settlements can trigger the loss of Supplemental Security Income and Medicaid, emphasizing the crucial strategy of irrevocably assigning spousal and child support payments directly into a properly established special needs trust.

This issue serves as a complete toolkit for managing the transitions—both voluntary and involuntary—that define and impact our clients' lives and legacies. I trust you'll find these articles valuable as you advise your clients through their most complex planning challenges.

Sincerely,

WealthCounsel quarterly

VOLUME 20, NUMBER 1

WealthCounsel Quarterly is published by
WealthCounsel, LLC
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Are you passionate about estate planning, business law, elder law, or special needs planning? We invite you to contribute to an upcoming issue of the *WealthCounsel Quarterly*. Submit your article proposal to magazine@wealthcounsel.com.

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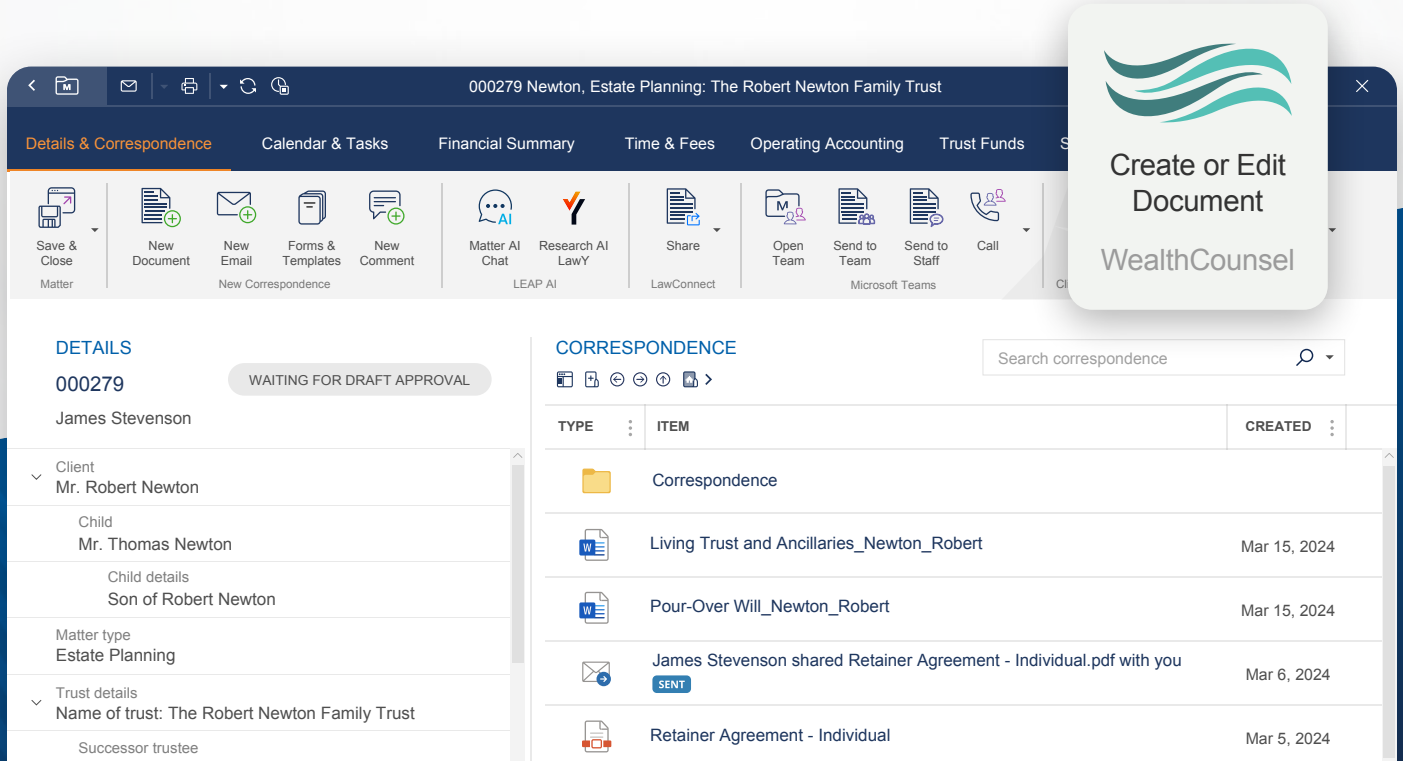

Business Succession & Exit Planning:

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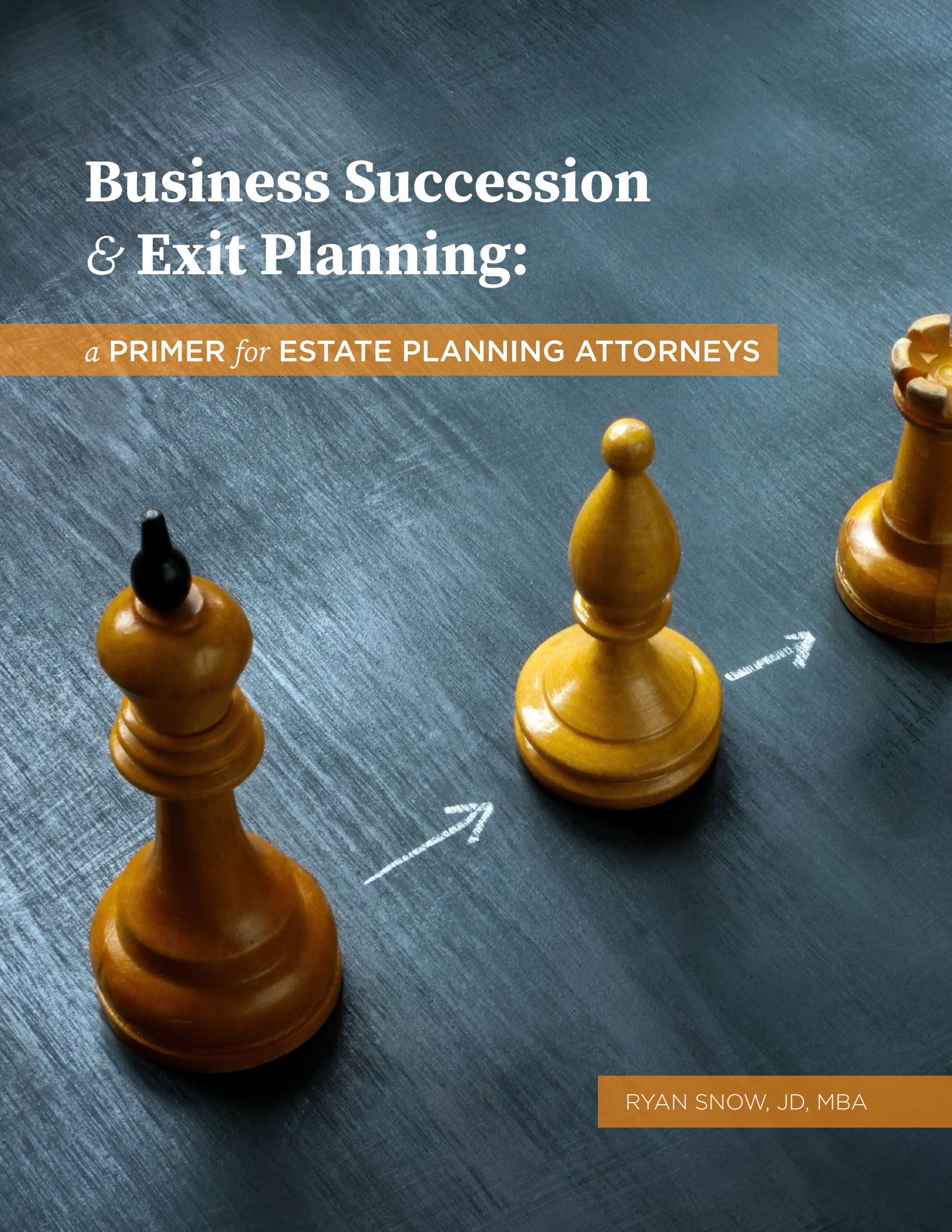


RYAN SNOW, JD, MBA

As an estate planning attorney, you are familiar with the complexities of wealth transfer. When your clients are small business owners, their business is often their most significant asset, but the company's illiquidity and operational demands can present unique challenges. Business succession and exit planning, while distinct from traditional estate planning, are crucial for ensuring the smooth transition and continued value of this critical asset.

This article outlines key considerations and strategies for estate planning attorneys advising business-owner clients. A well-prepared attorney can provide immense value to their clients by helping them navigate these complex issues.

UNDERSTANDING THE DIFFERENCE: SUCCESSION PLANNING VERSUS ESTATE PLANNING

While they are often intertwined and should be carefully coordinated, business succession planning and estate planning are not the same.

Estate planning typically addresses the full range of a business owner's assets, including the business itself, and considers how to handle them upon the owner's death or incapacity. It focuses on the owner's financial security, lifetime asset transfers, and desired distribution among heirs, whether or not they are involved in the business.

Succession planning, in contrast, is more narrowly focused on the business itself. Its primary goal is to ensure a successful transition to new ownership and to convert an illiquid business asset into cash for the owner's retirement, disability, or death. It addresses the future financial needs of the departing owner, the preparedness of new owners, and the overall survival and growth of the business. A business without a viable succession plan may lose all its value, leaving little to be distributed by an estate plan, so business succession planning is critically important.

THE BENEFITS AND GOALS OF SUCCESSION PLANNING

Succession planning is a vital process for any business owner. The goal of succession planning is to understand, preserve, and ultimately pass on the value of the business. This process can involve a variety of strategies, from simply naming a family member to take over to completely overhauling the business structure to meet long-term objectives.

A thoughtful and strategic succession plan can offer several key benefits: ensuring the survival and future growth of the business or its assets, preserving harmony within family-owned businesses by clearly defining roles and expectations, reducing or eliminating estate and income taxes, facilitating a smooth retirement for the current owner, and allowing the owner to retain control of the process rather than leaving decisions to be made by others in the event of the owner's illness or death.

DEFINING THE END: STARTING WITH THE OWNER'S STORY AND GOALS

Effective succession planning is not a one-size-fits-all solution; it is a deeply personal journey that begins with understanding the business owner's unique story, motivations, and aspirations. Defining their "end of the story" is crucial because it sets the foundation for all subsequent planning. This process involves a comprehensive exploration of several important elements:

Motivation. Delve into the genesis of the owner's entrepreneurial journey.

How and why did they start the business? Was it to fill a market gap, pursue a passion, or build a legacy? Understanding their motivation provides insight into their emotional attachment and what they value most.

Why this industry? What drew them to the specific field, and what challenges and triumphs have they experienced? This detail helps identify the unique aspects of their business that need to be preserved or leveraged.

Family involvement. Assess the role of family members in the business.

Which family members are involved and not involved in the business? This step includes understanding their roles, responsibilities, and long-term interest in continuing the business.

Are there potential successors within the family, and if so, are they adequately prepared? Conversely, if family members are not involved, what are the implications for the business's future and family harmony?

Exit desires. Clarify the owner's reasons for wanting to transition or sell.

Why do they want to sell or transition the business? Is it for retirement, to pursue other ventures, due to health reasons, or a desire for a different lifestyle? The *why* significantly impacts the *how* and *when*.

What are their nonfinancial goals for the exit? Such goals could include preserving employee jobs, maintaining the company's reputation, or ensuring its continued impact on the community.

Timeline. Establish a clear time frame for the transition.

When exactly do they want the transition to be complete? A precise timeline (e.g., within five years, by age 65) helps in structuring the plan and setting realistic milestones.

Is this timeline flexible, or is it a hard deadline? Unexpected events can alter timelines, so understanding the owner's level of adaptability is important.

Postexit lifestyle. Quantify the owner's financial requirements postexit.

How much annual income do they need or want postexit? This is critical for determining the target sale price or the income stream required from the business after transition.

What are their annual expenses, and how will expenses be covered? A detailed financial assessment ensures that the succession plan adequately supports their desired lifestyle.

Business value. Understand the business's current financial standing.

What is the business's current value? This determination often requires a professional valuation to establish a realistic baseline and identify areas for value enhancement.

What factors contribute to or detract from the business's value? This information could include market conditions, intellectual property, customer base, and operational efficiency.

Business fate. Determine the owner's desired disposition of the business.

What is their ultimate choice for the fate of their business (e.g., family transfer, sale to a third party, sale to employees, liquidation)? This decision guides the entire planning process and dictates the strategies employed.

Are they open to exploring different options, or do they have a strong preference? Flexibility in this area can open up more opportunities.

Beyond these financial and operational objectives, a holistic succession plan also considers broader goals such as preserving family harmony after the transition, protecting the owner's and business's legacy, minimizing taxes, and maintaining involvement in the community. For instance, an owner who is passionate about their community might prioritize a sale to a local buyer who will retain employees and continue the owner's philanthropic efforts, even if it means a slightly lower sale price. By thoroughly exploring these facets, estate planning attorneys can craft a succession plan that truly reflects the owner's vision and ensures a successful end of the story.

COMMON TYPES OF SUCCESSION TRANSFERS

Succession transfers generally fall into three categories, each with its own set of considerations:

Sale or Transfer to Next-Generation Family Members

Selling or transferring the business to a family member can be accomplished through lifetime gifts, a sale of ownership, or a combination of both. Tax-reduction strategies are often a

priority and can include valuation discounts, private annuities, self-canceling installment notes, grantor retained annuity trusts, intentionally defective grantor trusts, annual exclusion gifts, and life insurance proceeds.

Sale to Co-Owners

Selling the business to other co-owners is a common strategy for businesses with multiple owners and is typically facilitated through a buy-sell agreement. These agreements dictate how an owner's interest will be bought out upon certain triggering events, such as death or retirement. Buy-sell agreements can be structured as cross-purchase agreements, redemption agreements, or a hybrid of both.

Sale to a Third Party

When there are no family members or existing co-owners to take over, selling to an outside party (which could include key employees) may be the only viable option. Professional appraisers and business brokers can be valuable assets in this process.

KEY PLANNING ISSUES BEFORE AN EXIT OR SUCCESSION

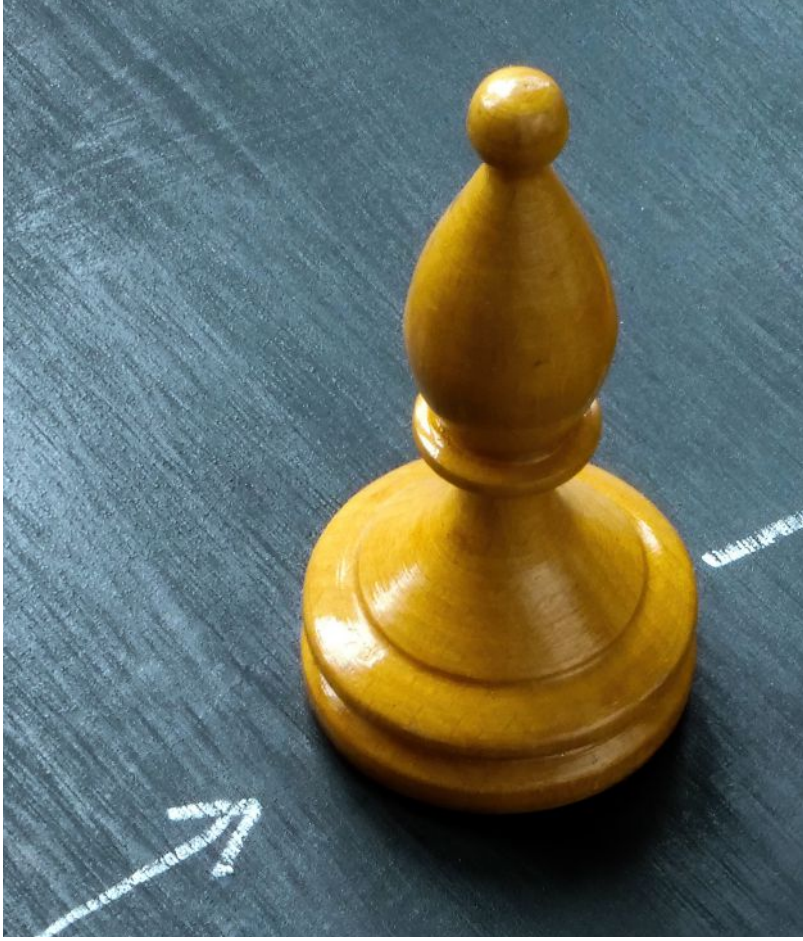
Before selling or transferring a business, several issues must be addressed. Attorneys and other advisors can help clients navigate these complexities to ensure a seamless transition.

Buy-Sell Agreements

A buy-sell agreement is a critical document for any business with multiple owners. It outlines what happens to a member's interest upon a triggering event such as death, disability, or retirement. The document establishes the buyout methods, pricing, funding, and payment terms. While most buy-sell provisions can be included in the operating agreement of a limited liability company (LLC), a separate agreement may be preferable in certain situations, such as when owners negotiate different deals, for single-owner businesses, or when a new client has minimal provisions in their existing operating agreement.

The pricing and valuation methods in a buy-sell agreement are particularly important. Common options include the following:

- **Fixed price.** This price should be regularly updated and may include a backup method if the price becomes outdated.
- **Formula price.** This method uses a predetermined formula, such as book value or a multiple of earnings, and should also be reviewed periodically.



- **Appraised price.** This method involves a business appraisal, which can be costly but provides a professional valuation.
- **Book value.** This value is based on the business's earnings, though it may be below market value.
- **Mutual agreement.** This method requires that the value be agreed upon at a later date; it is considered by some to be a recipe for disaster and, if used, should include a backup plan such as arbitration.

Intellectual Property

A business's intellectual property (IP) may be its most valuable asset. The succession plan should determine if the IP will be sold or transferred with the company, retained and licensed back for ongoing residual income, or sold separately as its own business. It is also important to plan for asset protection and management, which can involve transferring the IP to a single-asset LLC or holding company to limit liability and provide administrative efficiencies.

Multiple Businesses or Affiliates

It is common for clients to have multiple businesses under a single entity. This may create problems if only one business is marketable or a buyer is interested in only a specific segment. If a client has multiple businesses under a single entity, it may be beneficial to separate them. This can isolate financial and legal

risks, increase the marketability of profitable businesses, and make it easier to secure financing or sell a particular segment. However, the downsides may include increased paperwork, costs, and administrative tasks.

Books and Records

Properly maintained books and records are essential for a successful sale or transfer. A business's documentation must be in order to expedite due diligence and ensure a smooth transfer. Buyers will generally conduct due diligence and require access to a wide range of documents, including formation documents, financial reports, tax returns, contracts, permits, licenses, leases, insurance policies, and employment agreements. Proper planning includes ensuring that all records are in order and that relationships with vendors and contractors are formally documented to avoid issues after the original owner leaves.

Tax Planning

The primary goals of the business and its owners, such as providing retirement income or transitioning to the next generation, may be the most important nontax factors to consider when developing a strategic succession or exit plan. While the company's tax strategy may not be the sole driver of succession planning, it must be carefully considered as a key element of an effective plan. It is crucial to consider all related tax issues, including estate, gift, income, and corporate taxes. A tax strategy that solves one problem while creating another may be less successful than intended. Unless the attorney is well versed and experienced in tax issues, it is critical to work closely with a client's certified public accountant or other financial advisors for all tax planning and execution.

Founder Compensation and Management Roles

The plan may also address the founding owner's need for ongoing income and benefits during or after the transition. It should also clarify the owner's role in providing expertise or training and whether the purchase price will be based on an earn-out over time. An earn-out, whereby part of the buyout price is based on the company's future success, may require the founder to stay involved for a period of time.

ASSET SALE VERSUS EQUITY SALE

A critical decision in any sale is whether it will be an asset sale or an equity sale. This is a fundamental decision with different implications for buyers and sellers.

In an asset sale, the company sells its assets to the buyer, who typically forms a new entity and does not assume the seller's liabilities. The buyer generally prefers an asset sale because it allows them to avoid undisclosed liabilities and provides a step-up in the depreciable basis of the assets for tax purposes, often leading them to pay more in the transaction.

In an equity sale, the seller transfers their individual ownership interest in the company to the buyer, who takes on all assets and liabilities of the existing business entity. The seller typically prefers an equity sale in order to receive capital gains tax treatment and avoid asset depreciation recapture. The seller's ability to insist on an equity sale depends on their bargaining power in the transaction.

VALUATION AND FUNDING

Determining a business's value is often a point of conflict, as the seller generally wants a high price and the buyer usually wants a low one. The goal is to arrive at a fair market value, which is the price a willing buyer and seller would agree on with full knowledge of the facts. The best valuation method may depend on the reason for the transfer because different valuation methods can yield different results. For a departing owner focused on retirement funds, a higher fair market value formula may be preferable; for a transfer to the next generation, a lower value, such as book value, may be more appropriate.

Funding for the sale can come from various sources, including seller financing, where the buyer provides a promissory note to the seller for the balance of the purchase price; third-party financing from banks or other lenders, allowing the seller to receive a lump sum at closing; cash flow or a sinking fund, where the business uses its own retained earnings to pay for the buyout over time; or life insurance policies that are used to fund the buyout upon an owner's death or disability.

MECHANICS OF A SALE OR TRANSFER

When a client is ready to sell their business, there are several key steps and documents typically involved, from initial negotiations to closing:

Confidentiality Agreement

A nondisclosure agreement (NDA) protects the seller by prohibiting the prospective buyer from disclosing confidential information if the sale does not close.

Letter of Intent

A letter of intent (LOI) is a preliminary, nonbinding document that outlines the general terms of the sale, such as the purchase price, payment terms, and confidentiality provisions. It helps ensure that the parties are aligned on major issues before incurring significant costs.

Purchase Agreement

The purchase agreement establishes the detailed provisions of the sale, including the purchase price, payment terms, closing details, warranties and representations, and other obligations of the parties.

Due Diligence

The due diligence process is where the buyer investigates and reviews the business's records and documents to verify its value and uncover any potential unacceptable liabilities. The seller must be prepared to provide a wide range of documents, including financial records, contracts, and legal documents.

Financing Documents

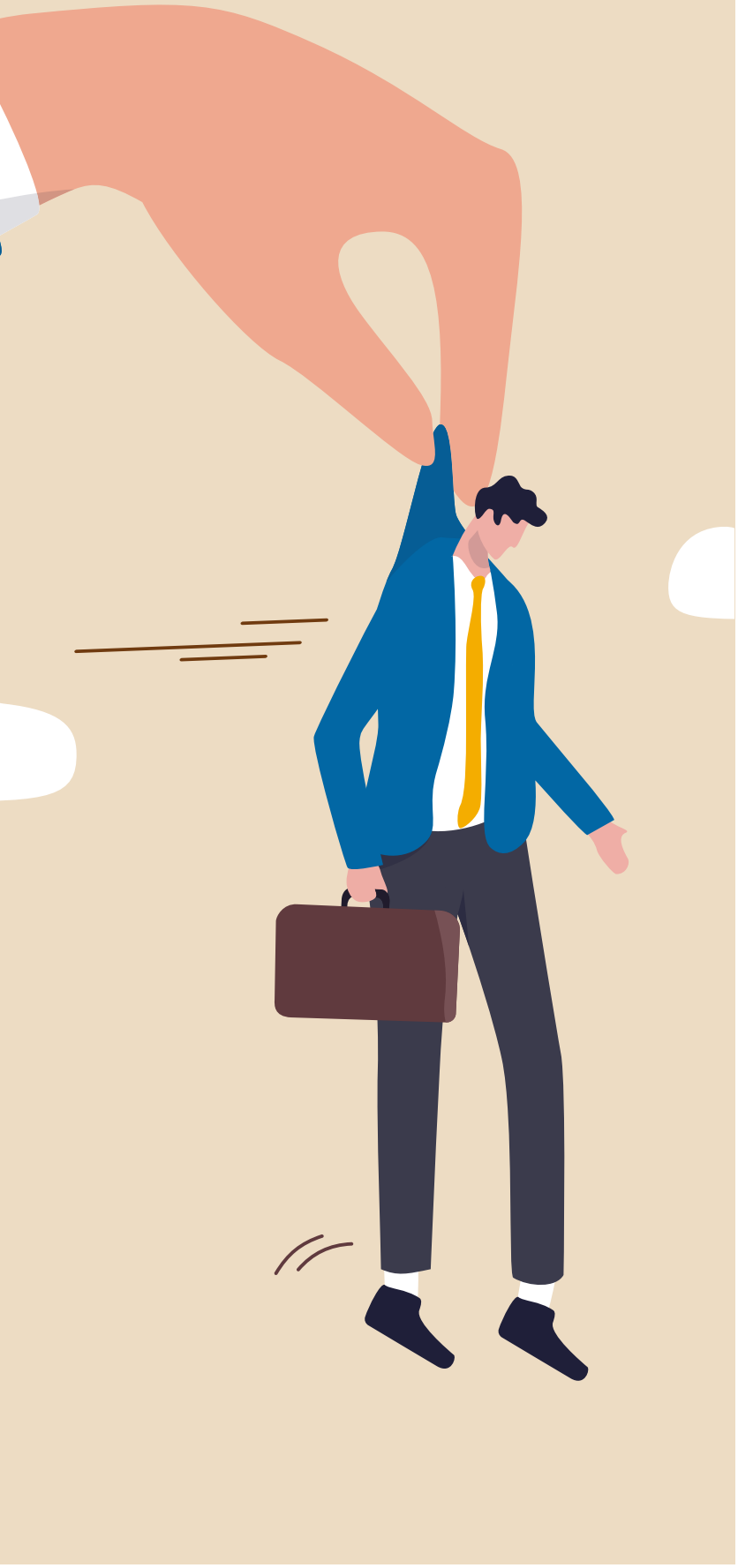
The financing documents used for a sale or transfer may include a promissory note, a personal guarantee, a security agreement, or other documents required by a third-party lender.

Closing

The closing of the transaction is the final stage when ownership is officially transferred. The specific documents used will depend on whether it is an equity or asset sale as well as the complexity of the transaction.

CONCLUSION

By understanding these critical aspects of business succession and exit planning, estate planning attorneys can provide comprehensive and strategic advice to their business-owner clients, ensuring the long-term success and value of their most important asset. Taking a proactive approach to helping clients prepare for a future sale or exit will help facilitate a seamless transition, preserve business value, and provide peace of mind for your clients and their families.



TRUSTEE REMOVAL:

Practical Guidance for Planners and Litigators

MICHAEL T. CLEAR, JD, AND ERIN D. NICHOLLS, JD

INTRODUCTION

Trustees occupy a pivotal role at the intersection of tax planning, wealth management, and family governance. Entrusted with the power to make distributions, oversee investments, and shape decisions that influence generations, trustees wield considerable influence. With such authority, however, comes the potential for problems: When a trustee becomes ineffective, conflicted, or unresponsive, the orderly administration of the trust suffers, and the potential for a dispute rises—sometimes resulting in protracted, costly litigation.

In these instances, replacing the trustee often becomes the ultimate objective. But the replacement process can vary significantly based on the language of the trust agreement, the statutory remedies available in the state of administration, and the relative cooperation of the parties involved. It is essential to understand the available options, as well as best practices for approaching the removal of a trustee.

RESIGNATION

Before pursuing removal under the instrument or through a court process, beneficiaries should be counseled to speak with the trustee directly and request that they resign, which can offer the following benefits:

- **Path of least resistance:** A simple resignation is almost always the easiest and least contentious path forward, and many trustees, especially professionals, may prefer to voluntarily step down once it becomes clear that the beneficiaries no longer support their service. Note, though, that some trustees may prefer to be removed under the terms of the trust document or by court order, particularly if they want

the protection of a judicial accounting and discharge of liability. Alternatively, in such an instance, the beneficiaries (and additional or successor trustees) may wish to directly release the resigning trustee from liability to avoid the expense and delay of a judicial accounting.

- **Negotiation opportunities:** Asking for a resignation first can open a dialogue, help avoid an escalation in disagreements, and allow the parties to structure a transition that minimizes disruption.

Practice pointer: Document the request for resignation. If litigation becomes necessary, showing that the beneficiaries attempted a less-adversarial solution can enhance their credibility in court.

REMOVAL PURSUANT TO TRUST TERMS

If the trustee declines a resignation request, the first step before initiating any removal effort through the court should always be a thorough review of the trust instrument itself. Many modern trust documents confer upon someone a trustee removal power, often in a nonfiduciary capacity, unless the trust or state law provides otherwise. If the instrument includes clear removal provisions, following them is usually the most efficient and effective path to resolution. When reviewing this type of power, consider the following:

- **Identity of power holder:** It is important to identify who holds the power of removal. Some common options include the beneficiaries themselves or a third party who may hold a unique title such as trust protector. If multiple people are eligible to exercise the power of removal, determine whether the power holders may act independently (sometimes expressed as acting severally) and, if not, whether the power holders must act unanimously or by majority.
- **Limitations on power of removal:** Many trust documents limit the power to remove a trustee, so it is important to fully understand the scope of the power. Examples of limitations include the following:
    - **Temporal limitations:** sometimes the removal power limits the frequency with which it can be exercised (e.g., a trustee can be removed only once every five years).
    - **Cause required:** though less common, the removal power may sometimes require some demonstration of cause to exercise the power.
- **Requirements for successor trustees:** Before removing a trustee, the trust document should also be reviewed to determine who is designated to serve next. Many trusts name one or more successor trustees who will be eligible to serve upon removal of the current trustee. In other cases, the person or entity holding the removal power is also granted the authority to appoint a successor. Sometimes trust agreements impose qualifications on the successors, such as requiring that they be independent or, in more restrictive cases, that they be a professional trustee (such as a bank, trust company, accountant, or attorney).

Practice pointer: A trust that lacks a clear removal provision can leave beneficiaries mired in costly litigation; overly broad removal powers may undermine the stability of trust administration. The most effective removal clauses strike a thoughtful balance, providing flexibility for beneficiaries while preserving the critical independence of the trustee's role.

REMOVAL UNDER STATE LAW

If the trust instrument provides no mechanism for removal, the applicable state law will determine whether and how a trustee can be removed by the courts. State statutes vary, but most share several guiding principles regarding trustee removal through judicial intervention. The following are some common grounds for removal:

- Serious breach of trust (e.g., asset mismanagement, self-dealing)
- Lack of cooperation among co-trustees that substantially impairs administration
- Unfitness, unwillingness, or persistent failure to administer the trust effectively
- Removal in the beneficiaries' best interests

In certain jurisdictions, statutes allow "no-fault" removal of trustees. Generally, these states permit removal even in the absence of misconduct, provided beneficiaries consent and the action aligns with the trust's material purposes. This approach can be particularly beneficial when a trustee is not mismanaging assets but may not suitably match the role, for example, because of diverging philosophies on investment strategy or communication challenges. Courts exercise caution in applying these statutes, carefully considering whether removal will genuinely enhance trust administration.

Practice pointer: Always confirm the controlling law. Typically, for-cause removal proceedings involve substantive legal issues, meaning that the trust's governing law will control. But statutes that permit no-cause removal (e.g., with the unanimous agreement of the beneficiaries) may be deemed administrative in nature, meaning that the controlling law would be tied to the trust's situs, which may be different from its governing law.

ADVISING BENEFICIARIES: INITIAL CONSULTATION AND HARM REDUCTION

Advising a client about trustee removal requires more than analyzing the trust agreement and applicable state law. Effective counsel will also evaluate strategy, costs, and consequences. For trusts and estates counsel, considerations and best practices include the following:

- **Starting with communication:** Beneficiaries should ask the trustee for explanations and information related to the source of their concerns before escalating the situation with an immediate request for resignation. Many disputes arise from misunderstanding rather than misconduct.
- **Planning for releases:** As mentioned above, trustees often request a release upon departure. Whenever possible, the parties should work collaboratively to resolve the terms of the release without court involvement. Open communication, transparency in accounting, and clearly documenting how trust assets were handled can go a long way toward easing beneficiary concerns and avoiding disputes. If the parties cannot agree on a release agreement, a trustee may petition the court for approval of an accounting and judicial discharge before resigning, which could lead to a protracted and more expensive process.
- **Factoring in timing and costs:** Removal actions in court are rarely quick. Depending on the jurisdiction, the process can take months to a year or more. These proceedings can also be expensive when court costs and attorney and accountant fees are included. Since these expenses are typically paid from trust assets, the very funds that beneficiaries are trying to protect may be diminished in the process.
- **Considering tangential impacts:** Granting beneficiaries the power to remove trustees can have unintended consequences. In certain circumstances, it may expose the trust to claims by creditors or divorcing spouses who may argue that the beneficiaries exercise so much control that their entitlements under the trust are reachable. While merely having the power to remove is not usually a problem, frequent use (or perceived misuse) of this power may become evidence in future litigation that the beneficiary exerted excessive control over the trust, which can undermine the trust's objective of providing asset protection and preventing other legal challenges.

Practice pointer: It is important to set expectations early. Advise clients that litigation is often costly, time consuming, and uncertain, but that thoughtful negotiation might achieve the same objective with far less collateral damage.

ADVISING BENEFICIARIES: IN CONTEMPLATION OF LITIGATION

If disharmony cannot be resolved through negotiation and the situation progresses to the point of judicial intervention, expect the process to be adversarial. For litigators, consider:

- **Procedure:** In some states, a petition for the removal of a trustee can be filed with the probate court that has jurisdiction over the trust. In other states, the petition may need to be filed in a court of general jurisdiction, such as the trial-level state court or superior court. A proceeding in probate court is often less formal and may lack some of the procedural elements of a trial-level proceeding, such as a formal discovery period. For that reason, probate court actions may be shorter and less expensive than the alternative.
- **Burden of proof:** When trustee removal requires a finding of fault, the burden of proof is typically on the party seeking removal. Beneficiaries should be prepared to collect evidence of the trustee's alleged wrongdoings, as well as any other relevant information, such as the beneficiaries' attempts to resolve the dispute prior to litigation, as previously mentioned.
- **Considerations of alternatives:** In trustee removal actions, courts generally have a range of remedies available to them that fall short of full removal. Courts may consider intermediate remedies such as restricting a trustee's powers, ordering fiduciary accountings, requiring the trustee to serve with a bond, or appointing a co-trustee. Beneficiaries should be advised of such potential outcomes when considering the pros and cons of judicial intervention.

Practice pointer: Remember that trustee removal is not just a litigation issue; it is also a planning issue. Well-drafted trust documents reduce disputes; poorly drafted trust documents all but ensure them.

CONCLUSION

Trustee removal is one of the most consequential remedies in trust administration. It protects beneficiaries when fiduciaries fail in their duties but also reveals the inherent tension between flexibility, stability, tax efficiency, and asset protection.

The practitioner's roadmap in these instances should be simple: first, ask for the trustee's resignation and negotiate a release if one is requested; next, review the trust instrument to determine whether it authorizes trustee removal; and finally, pursue removal through judicial intervention only if the trustee refuses to resign and removal is not possible pursuant to the terms of the trust itself. By advising with foresight and drafting with precision, attorneys can help ensure that removal remains a last resort to be used only when necessary to protect both the trust and the family it was designed to serve.

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Protecting SSI and Medicaid in Divorce Cases

KEVIN URBATSCH, JD, AND EVELYN WYNN, JD

Divorce is always complex, but when it involves a spouse or child with disabilities who receives means-tested public benefits, the stakes become even higher. Property settlements, spousal support, and child support can inadvertently disqualify beneficiaries from critical programs such as Supplemental Security Income (SSI) and Medicaid.

This article examines strategies for preserving benefits during divorce proceedings, focusing on using special needs trusts (SNTs), carefully structuring support obligations, and considering divorce as a potential planning tool. While such issues arise most often in family law, they demand the attention of special needs planners, who are usually best positioned to identify risks and coordinate with family law counsel. Even those not practicing family law are frequently the first professionals to recognize these risks. Understanding the intersection between divorce and benefits planning is critical to protecting clients and avoiding malpractice pitfalls.

UNDERSTANDING THE BENEFITS LANDSCAPE

The federal disability benefit system operates through multiple programs with distinct eligibility rules. Knowing the difference is essential for divorcing families.

- **Social Security Disability Insurance (SSDI):** SSDI is based on an individual's work history and is not means-tested. A spouse's income or assets do not affect eligibility.[1] SSDI recipients also qualify for Medicare after a two-year waiting period.[2]
- **Medicare:** Medicare is a federal health insurance program that covers hospital and physician services but has limited coverage for long-term care or in-home care support. Divorce and property division do not affect Medicare eligibility. However, because Medicare leaves significant gaps in long-term services, many SSDI recipients eventually need Medicaid. Specific Medicaid programs supplement Medicare coverage by helping to pay for Part B premiums

1 42 U.S.C. § 423.
2 42 U.S.C. § 426.

and the 20 percent of medical expenses not covered by Medicare, including prescription costs.

- **Supplemental Security Income (SSI):** A needs-based program, SSI has strict limits: $2,000 in countable assets for individuals and $3,000 for couples, plus income rules that reduce benefits dollar-for-dollar.[3] Effective January 2026, the federal benefit rate is $994 per month for an individual and $1,491 for a couple.[4] Receiving SSI automatically qualifies a recipient for Medicaid in most states.
- **Medicaid:** Medicaid provides vital long-term care, in-home caregiving, and medical services not covered by Medicare. Like SSI, it has stringent income and asset restrictions, usually aligned with SSI's limits. Therefore, divorce settlements, spousal support, or child support that provide direct cash or support payments threaten Medicaid eligibility.

In divorce planning, an SSDI or Medicare recipient can accept substantial property or spousal support without losing their benefits. However, if the same individual later needs Medicaid, the property or support could disqualify them. An SSI or Medicaid recipient is immediately at risk, since income and assets are counted at the time of receipt.

Hypothetical: Maria, age 42, receives SSDI based on her work history and Medicare after an injury. Currently, she does not rely on Medicaid, but she expects to need it in the future to cover in-home caregiving services that Medicare does not provide. In her divorce, the proposed settlement offers Maria $150,000 in cash plus monthly spousal support. If she accepts the settlement outright, those resources will prevent her from qualifying for Medicaid when the time comes, since the individual limit is $2,000. By irrevocably assigning the support and cash settlement into a properly drafted first-party SNT, Maria preserves her future Medicaid eligibility while receiving SSDI and Medicare without interruption.

THE MARRIAGE PENALTY IN SSI

The marriage penalty embedded in SSI compounds these challenges. When two SSI recipients marry, their combined benefit equals only 1.5 times the individual rate.[5] This reduction, combined with spousal deeming rules that count one spouse's income and resources against the other's eligibility,[6] creates powerful disincentives to marriage for individuals with disabilities.

Hypothetical: Anna and Sam each receive $994 per month in SSI. While they remain unmarried, their combined household SSI is $1,988. After marriage, their combined benefit drops to about $1,491 (1.5 times the individual rate, rounded down). This $497 monthly loss is compounded by spousal deeming rules, which count Sam's small pension against Anna's eligibility. For couples like Anna and Sam, marriage can reduce monthly resources enough to jeopardize their ability to cover basic needs. Some couples avoid marriage altogether; others may consider divorce to restore eligibility.

PROPERTY DIVISION AND BENEFIT PRESERVATION

Traditional property divisions can devastate eligibility for SSI and Medicaid. Although certain assets, such as the home and one vehicle, remain exempt,[7] most financial accounts and investments are countable toward the resource limit. The "cliff effect" means that even a single dollar over the limit can cause complete loss of benefits.[8]

One effective strategy involves structuring the property division by allocating exempt assets, such as the family home or a vehicle, to the spouse or child with disabilities. The parties can then direct any remaining funds into a first-party or pooled SNT, as authorized under 42 U.S.C. §1396p(d)(4)(A) and (C), respectively. By sheltering assets in this way, the individual maintains eligibility for benefits while having resources available for supplemental needs.

Hypothetical: David receives $80,000 in marital assets as part of a divorce settlement. If he were to hold these funds outright, he would immediately lose both SSI and Medicaid. Instead, by placing the funds into a pooled SNT, David preserves his full monthly SSI benefit of $994. He maintains Medicaid eligibility while still having access to trust funds for expenses that improve his quality of life.

SPOUSAL SUPPORT CONSIDERATIONS

Spousal support presents unique challenges under benefit rules. For those receiving SSI, support is unearned income; thus,

3 42 U.S.C. §1382(a); 20 C.F.R. § 416.1205.
4 Social Security Admin., *SSI Federal Payment Amounts for 2026*, https://www.ssa.gov/news/en/cola/factsheets/2026.html (last visited Oct. 27, 2025).
5 20 C.F.R. § 416.412.
6 42 U.S.C.A. § 1382c; 20 C.F.R. § 416.1160; 20 C.F.R. § 416.1202.
7 42 U.S.C. § 1382b.
8 20 C.F.R. § 416.1207(a).

every dollar received (after a modest $20 general exclusion) reduces the benefit amount dollar for dollar.[9] When support payments exceed the monthly SSI benefit plus $20, the recipient loses the SSI cash benefit and Medicaid coverage linked to SSI.

When an SSI recipient divorces, special needs planners should review or revise existing SNTs and related estate planning documents to ensure that spousal support payments are structured in a way that will not jeopardize public benefits. The primary solution is to structure the support order so that payments are irrevocably assigned to a properly established first-party SNT.[10] Courts sometimes resist this approach, concerned that it prevents later modifications of support orders. However, it is important to clarify that irrevocability applies only to the trust's designation as the payee, not the amount or duration of support. The court remains free to adjust the amount or length of the obligation, but the trust must always be the recipient.

Another issue concerns the division of future income such as pension or retirement benefits. Often, the spouse with a disability is better off taking cash or real property instead of qualified funds or deferred income benefits. Pension benefits are particularly problematic, as they are difficult to assign to a special needs trust and will result in a dollar-for-dollar reduction of SSI benefits after the $20 disregard.

Hypothetical: Janet relies on SSI. She is awarded $500 monthly in spousal support as part of her divorce settlement. If she receives those payments directly, the $20 exclusion would apply, and $480 would be counted against her SSI. This would reduce her monthly benefit from $994 to just $514, cutting her income nearly in half. By irrevocably assigning the payments to her first-party SNT, Janet preserves her SSI and Medicaid eligibility and continues to benefit from the support funds through the trust.

CHILD SUPPORT COMPLEXITIES

Child support presents additional layers of complexity, with rules that differ depending on whether the child is a minor or an adult. For minors, one-third of support received from an absent parent is excluded when calculating SSI.[11] The remaining two-thirds, however, count as unearned income and can significantly reduce the child's benefit. The exclusion disappears when the child turns eighteen, and all support counts as income.

Special needs planners should not assume that the family law court will automatically recognize the need to assign child support to a trust. Close coordination with family law counsel is essential to prevent unintended loss of benefits. Custody arrangements can further complicate matters. The Social Security Administration applies the one-third exclusion when parents live separately, but shared custody arrangements can blur the lines and jeopardize the exclusion. Courts may also resist directing child support into an SNT, concerned that doing so might limit the child's right to adequate support. To ensure that the child has access to both public benefits and supplemental resources, attorneys must therefore frame the trust as an enhancement instead of a restriction.

Hypothetical: Lily is 10 years old and receives $994 in SSI. The court ordered her father to pay $600 monthly in child support. Federal rules exclude one-third of that payment, or $200, but $400 counts as income. As a result, her SSI drops to $594 per month. If Lily irrevocably assigns support to a court-approved first-party SNT, her SSI will remain at $994, preserving her Medicaid eligibility, and she will still benefit from the trust funds for additional needs.

State Variations in Support for Adult Children with Disabilities

While the federal benefit rules discussed above apply uniformly across all states, the underlying support obligations, particularly for adult children with disabilities, vary significantly by jurisdiction. This creates a complex patchwork that practitioners must navigate carefully.

Very few states have statutes extending support obligations for adult children based on disability:

- California: Cal. Fam. Code § 3910 provides one of the broadest statutes, extending support to "an adult child who is incapacitated from earning a living and without sufficient means" with no age limit.
- New York: New York law provides a limited extension only to age 26 for developmentally disabled adults who reside with and depend on a parent.[12]

9 42 U.S.C. § 1382a; 20 C.F.R. § 416.1124; 20 C.F.R. § 416.1121(b).
10 Soc. Sec. Admin. Program Operations Manual System (POMS) SI 01120.200(G)(1)(d) (2024), https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120200.
11 20 C.F.R. § 416.1124(c)(11).
12 N.Y. Dom. Rel. Law § 240-d; N.Y. Fam. Ct. Act § 413-b.

Most states follow the approach seen in Michigan,[13] which terminates support at age 18 (or 19½ if the recipient is still in high school) regardless of disability. Without specific statutes, courts in these states cannot order postmajority support for adult children with disabilities absent a voluntary agreement between the parents.

This distinction creates essential planning considerations. In states with support statutes, such as California, courts have experience directing payments to SNTs to preserve benefits while fulfilling support obligations. In states without such laws, practitioners must be creative, for example:

- Negotiating support agreements that specify irrevocable assignment to an SNT
- Using property division leverage to fund trusts instead of ongoing support
- Structuring settlements to front-load resources into trusts rather than relying on future payments that cannot be court-ordered

Hypothetical: Consider Michael, a 22-year-old with cerebral palsy who receives SSI and Medi-Cal (California's version of Medicaid). If his parents divorce in California, the court could order ongoing support under Cal. Fam. Code § 3910, irrevocably assigned by court order to an SNT to preserve benefits. If they lived in Michigan, that court lacks the authority to order any support past age 19½, so Michael's parents would need to agree to fund an SNT through property division or a negotiated agreement.

STRATEGIC MEDICAID DIVORCE FOR BENEFIT PRESERVATION

The most controversial planning strategy in this area is the so-called Medicaid divorce. This approach arises when one spouse needs long-term care and the couple fears their marital assets will be quickly used up before they can get Medicaid.

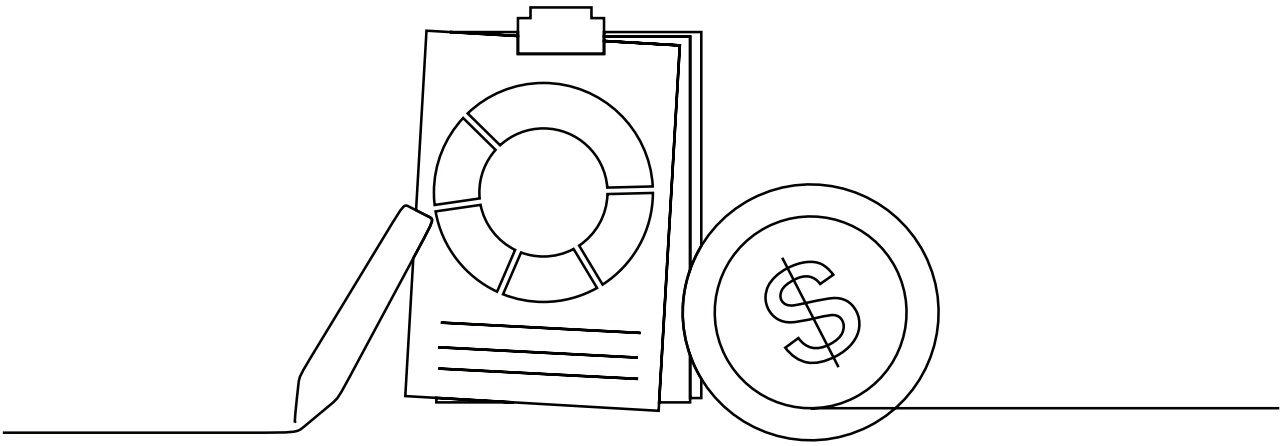
Spousal impoverishment provisions enacted in 1988 under 42 U.S.C. § 1396r-5 significantly reduced the need for this strategy by allowing the community spouse to keep a certain amount of resources while the institutionalized spouse qualifies for Medicaid. In 2026, the community spouse may retain up to $162,660 in countable assets, plus exempt property such as the home and one vehicle, while the institutionalized spouse may generally retain $2,000. For couples of modest means, these protections often suffice.

Because Medicaid spousal impoverishment rules vary widely by state, special needs planners should consult local experts before recommending property division strategies. Failing to confirm state-specific rules can expose clients to unnecessary risks and create professional liability for the planner.

Hypothetical: John and Mary's situation shows why some people consider divorce. John and Mary have been married for 40 years and have $600,000 in savings, plus their home. John enters a nursing facility. If they remain married, Mary may keep $162,660 while John keeps $2,000, forcing them to spend down $435,340 before John qualifies for Medicaid. At current care costs, paying for John's care would consume these resources in three to four years. If they divorce in an equitable distribution state, Mary might be awarded $450,000 of the savings, leaving John with $150,000. In theory, this approach preserves an additional $292,080 for Mary.

But the numbers rarely tell the whole story. If they divorce, Mary may lose her Social Security spousal benefits, face new support obligations, or incur significant legal fees. In addition, Medicaid officials in some states scrutinize divorces that precede applications, treating settlements that appear inequitable as potential fraudulent transfers. The emotional toll of dissolving a long marriage solely for financial reasons is also profound.

13 Mich. Comp. Law § 552.605b.



For these reasons, Medicaid divorce is considered only in unusual cases, generally where marital assets are well above $500,000 and other planning strategies have been exhausted. Most families find more security in alternatives such as Medicaid-compliant annuities, irrevocable trusts funded outside the five-year look-back period, or spousal refusal strategies in states that permit them.[14]

ALTERNATIVE STRATEGIES: BEYOND DIVORCE

Most couples find better alternatives in proper Medicaid planning. These strategies often prove more effective and less emotionally devastating than divorce.

Medicaid-Compliant Annuities

Medicaid-compliant annuities offer a particularly effective alternative for couples with modest assets who face immediate long-term care needs. These annuities convert countable assets into an income stream, potentially accelerating Medicaid eligibility while protecting resources for the community spouse. To be Medicaid compliant, an annuity must be irrevocable and nonassignable, provide equal payments, name the state as beneficiary in the appropriate position, and be actuarially sound.[15] Federal courts have consistently upheld properly structured annuities. In *Geston v. Anderson*,[16] the court ruled that annuities meeting Deficit Reduction Act requirements constitute income rather than resources, stating that, because the annuitant has no "right, authority or power" to liquidate the annuity, it cannot be counted as a resource. The Third Circuit's decision in *Zahner v. Secretary, Pennsylvania Department of Human Services*[17] further clarified that Congress imposed no minimum term requirement, validating even short-term annuities when properly structured.

The strategy proves particularly effective when the annuity is purchased in the community spouse's name, as this can expedite asset protection while potentially avoiding estate recovery under 42 U.S.C. § 1396p(b). Since the community spouse's income is deemed unavailable to the institutionalized spouse under 42 U.S.C. §1396r-5(b)(1), higher monthly payments over shorter periods become possible, mitigating the risk of both spouses dying before annuity completion.

Other Planning Tools

Irrevocable trusts established outside the five-year lookback period remain powerful planning tools.[18] Such trusts can protect unlimited assets if properly structured and funded before the lookback period begins.

Spousal refusal strategies, permitted in Florida, New York, Ohio, and Rhode Island, allow community spouses to decline to contribute toward care costs while preserving assets. While Medicaid agencies may still pursue contributions through separate proceedings, this strategy provides immediate eligibility while preserving negotiation leverage.

For some individuals with disabilities, ABLE accounts permit additional savings of up to $100,000 without affecting SSI

14 *See* Soc. Sec. Admin. POMS SI 01120.201(F) (2022), https://secure.ssa.gov/poms.nsf/lnx/0501120201; 42 U.S.C. §1396p(c)(1)(B)(i).
15 42 U.S.C. § 1396p(c)(1)(F)-(G).
16 729 F.3d 1077, 1083 (8th Cir. 2013).
17 802 F.3d 497 (3d Cir. 2015).
18 42 U.S.C. § 1396p(c)(1)(B)(i).

and up to state-specified limits without affecting Medicaid.[19] Although age-of-onset requirements and annual contribution ceilings limit their utility, they offer valuable supplemental savings options.

Irrevocable funeral trusts and prepaid burial arrangements convert countable resources into exempt assets, providing another avenue for spend-down planning while addressing inevitable expenses.[20]

Pooled Special Needs Trusts for Divorcing Seniors

When older couples divorce and one spouse needs long-term care, pooled SNTs emerge as a critical, but often overlooked, planning tool. Unlike first-party SNTs established under 42 U.S.C. § 1396p(d)(4)(A), which cannot be created for individuals aged 65 or older, pooled trusts under subsection (d)(4)(C) contain no such age restriction. This distinction creates powerful planning opportunities for seniors facing divorce and long-term care costs, though success depends entirely on state law.

Pooled SNTs operate through nonprofit organizations that maintain a master trust with separate accounts for each beneficiary. Upon the beneficiary's death, remaining funds typically stay with the nonprofit to support its charitable mission, with some funds potentially retained for other beneficiaries or paid to the state for Medicaid reimbursement. This structure offers unique advantages in divorce settlements, enabling spouses with disabilities to receive their fair share of marital assets without compromising their benefit eligibility.

The landscape varies dramatically by state. California and several other states honor the federal statute and impose no transfer penalty regardless of the beneficiary's age. In contrast, Michigan and other states treat transfers to pooled trusts by those 65 or older as divestment subject to penalty periods. Michigan's policy explicitly states: "Transfers to an Exception B, Pooled Trust by a person age 65 or older are subject to divestment analysis."[21]

Case law strengthens the argument for penalty-free transfers. In *Lewis v. Alexander,*[22] the Third Circuit struck down Pennsylvania's age restriction on pooled SNTs, noting that Congress intentionally included an age limit in subsection (d)(4)(A) but not in subsection (d)(4)(C). The court ruled that states cannot impose requirements beyond those specified in the federal statute. More recently, in *Pfoser v. Harpstead*,[23] the Minnesota Supreme Court ruled that a 65-year-old Medicaid recipient's transfer to a pooled SNT was not subject to penalty. The court found that the beneficiary would receive "valuable consideration" through goods and services not covered by Medicaid, establishing a practical standard for evaluating such transfers.[24]

Hypothetical: Robert and Patricia, both aged 72, face divorce after Robert enters a nursing facility. Their $400,000 in marital savings presents a dilemma: an equal division would leave Robert with $200,000, disqualifying him from Medicaid until it is spent down. Without pooled SNT options, Patricia might seek more than her fair share to preserve Robert's eligibility, creating conflict and inequity. In a penalty-free state like California or Minnesota, Robert could receive his full $200,000 share through a pooled SNT, maintaining immediate Medicaid eligibility while Patricia receives her fair share. The divorce proceeds equitably without sacrificing benefits. However, the same transfer would trigger months of Medicaid ineligibility in Michigan, forcing the couple to consider alternatives like Medicaid-compliant annuities or unequal asset division.

These state variations make it essential for practitioners to research their specific state's policies before recommending pooled SNTs for divorcing clients over 65. In penalty states, alternative strategies become critical. In contrast, in states that follow federal law, pooled SNTs can eliminate the perceived need for a "Medicaid divorce" by allowing equitable asset division without loss of benefits. The availability of this tool can transform complex negotiations into manageable solutions, preserving both financial security and personal dignity during an already challenging time.

IMPLEMENTATION STRATEGIES AND BEST PRACTICES

Navigating divorce where public benefits are at stake requires collaboration among estate planners, family law attorneys, and benefits advocates. Estate planners should work with family counsel to ensure that decrees authorize the irrevocable assignment of support payments into a first-party SNT. The timing of property transfers is equally crucial because SSI and Medicaid

19 26 U.S.C. § 529A; Soc. Sec. Admin. POMS SI 01130.740(C)(3)(2025), https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740#:~:text=SI%2001130.740%20Achieving%20a%20Better,before%20the%20individual's%2026th%20birthday.
20 42 U.S.C. § 1382b(a)(2)(B).
21 Michigan Bridges Eligiblity Pol'y Manual 401, p. 11 (2022), https://mdhhs-pres-prod.michigan.gov/olmweb/ex/bp/public/bem/401.pdf.
22 685 F.3d 325 (3d Cir. 2012).
23 953 N.W.2d 507 (Minn. 2021).
24 *Id.* at 522.

measure resources on the first day of each month, and a temporary spike in assets, even if quickly corrected, can trigger ineligibility.

Support orders must be carefully structured to comply with state guidelines while preserving eligibility. Sometimes, this involves setting support at a level that maintains SSI and Medicaid, with additional voluntary contributions directed to a third-party SNT. All decisions should be thoroughly documented, both to protect against malpractice claims and to maintain a record in case eligibility is later challenged.

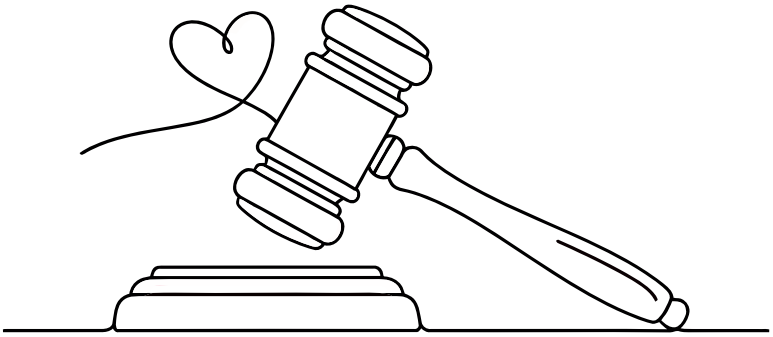
ETHICAL CONSIDERATIONS

Attorneys also face difficult ethical questions. The duty to zealously represent clients must be balanced against obligations to the court and opposing parties. An overly aggressive position on spousal support could deprive a disabled spouse of access to healthcare. Facilitating sham divorces exposes both attorneys and clients to professional discipline and even criminal liability. Transparency and careful documentation of advice and reasoning are crucial to protect all parties involved.

PRACTICE POINTERS: DIVORCE CASES INVOLVING PUBLIC BENEFITS

Top Five Mistakes to Avoid

- Paying support directly to the beneficiary: Support paid directly to someone on SSI is treated as income, reducing benefits dollar-for-dollar and often eliminating Medicaid coverage.
- Failing to use an SNT: Placing divorce settlement assets outright in the name of a spouse or child with disabilities usually causes immediate loss of benefits. A first-party or pooled SNT preserves eligibility while still providing resources.
- Mishandling the timing of transfers: SSI and Medicaid apply a strict "snapshot" at 12:01 a.m. on the first day of the month. Even a brief excess at that moment disqualifies the individual for the entire month, and delays can cause multiple months of lost benefits.
- Ignoring future Medicaid needs for SSDI or Medicare recipients: While SSDI and Medicare are not means-tested, many recipients eventually need Medicaid for long-term care. Planning should anticipate this future risk.
- Working in isolation: Estate planners and family lawyers must coordinate. Without collaboration, well-intentioned settlements often undermine benefit eligibility.



Key Strategies for Practitioners

- Assign support payments irrevocably to an SNT: Ensuring that spousal or child support is paid directly into an SNT prevents it from being treated as income. This is often the single most critical planning step.
- Use exempt assets wisely: One home and one vehicle are not countable under SSI and Medicaid rules. Assigning these assets to the spouse or child with disabilities helps preserve eligibility while providing security.
- Collaborate across specialties: Family lawyers, estate planners, and benefits advocates must work together to ensure that divorce decrees comply with state domestic relations laws and federal benefit requirements.
- Document all advice and options: A complete record of strategies considered and the reasons for decisions protects both the attorney and the client if eligibility is later challenged.

CONCLUSION

Special needs planners who anticipate these issues and collaborate closely with family law counsel can preserve benefits and reduce family stress. Divorce cases involving individuals with disabilities require a unique blend of family law knowledge, special needs planning expertise, and a detailed understanding of public benefits. Special needs planners play a vital role by identifying risks early, coordinating with family law counsel, and ensuring that settlements are structured to protect eligibility for essential programs.

The hypothetical client stories examined herein illustrate the stakes. The wrong settlement can strip families of critical benefits; however, with careful planning, families can preserve their financial stability and dignity. Achieving this balance requires technical skill, empathy, and a willingness to advocate for systemic change.

Directed Trusts:
Evolving Roles, Duties, and Liabilities

LAURA MANDEL[1]

Directed trusts are used with increasing frequency in modern estate planning to divide fiduciary responsibilities among multiple parties. They are especially popular with high-net-worth families who own complex assets. Many of these clients want to retain authority over certain business assets, either directly or through their advisors with specialized knowledge or skill. While directed trusts can afford greater flexibility in trust management through the bifurcation of fiduciary duties among various parties, they can also result in a complicated intersection of roles, duties, and undefined liability.[2]

Directed trusts are trust structures where the trustee is required to follow the instructions of a designated *trust advisor* or *trust director* who usually serves as an investment advisor, distribution advisor, or trust protector.[3]

Directed trusts are distinguishable from traditional trusts in three critical ways:

1. Limited trustee responsibility: Directed trustees are responsible only for trust management decisions about which the directed trustees are not directed by the trust director.
2. Restricted discretion: The directed trustees' discretion is limited, as third-party trust directors control key functions such as investments or distributions.
3. Reduced liability: The directed trustee's liability is reduced but not eliminated entirely.

An essential component of managing directed trusts is determining the roles and authority of both the trust director and the directed trustee. Determining each party's status as a fiduciary or nonfiduciary is a foundational step in determining the scope of each role and who owes what duties to the beneficiaries. Closely related to a party's status as a fiduciary is whether a directed trust act imposes a mandatory minimum standard of conduct on trust directors and directed trustees.[4] Even with the enactment of the Uniform Directed Trust Act in many states, there remains a lack of uniformity in the duties and liabilities of trust directors and directed trustees.

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1 Chief Fiduciary Officer, The Northern Trust Company.

2 Jocelyn Margolin Borowsky, Shaheen I. Imami, & Laura G. Mandel, It's Not My Fault, They Made Me Do It: An Update on Directed Trusts, ACTEC Annual Meeting (Mar. 4, 2023).

3 This article does not address the concept of *excluded trustees* (trustees who are excluded from exercising certain powers under the trust instrument). An excluded trustee is not necessarily equivalent to a directed trustee.

4 *See* Borowsky, *supra* note 2.

UNIFORM TRUST CODE AND UNIFORM DIRECTED TRUST ACT

The Uniform Trust Code (UTC) was the original uniform act to recognize a directed trust concept.[5] It is instructive to compare the original section 808 of the UTC to sections 8 and 9 of the Uniform Directed Trust Act (UDTA).[6] Although both confer fiduciary duties on trust directors with liability to trust beneficiaries for breaches of fiduciary duties, the fiduciary standards under the two acts are quite different.

Section 808, Powers to Direct, is now "reserved"[7] and is replaced for states that adopt the UDTA.[8] The UDTA was promulgated in 2017, has been adopted (in some cases with variations) in twenty states and the District of Columbia, and has been introduced in Kentucky. Several states enacted directed trust laws before the UDTA, most notably Delaware, which has had a version of a directed trust act for almost thirty years. Other trust-friendly jurisdictions, such as Alaska, Nevada, and South Dakota, have their own form of directed trust statutes. A minority of states have retained section 808 of the UTC.[9]

Former section 808(b), (c), and (d) of the UTC provided as follows:[10]

> (b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power **unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.**
>
> (c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.
>
> (d) A person, other than a beneficiary, who holds a power to direct is **presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries.** The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

The UDTA provides that a trust director is a fiduciary with the same duty and liability as a sole trustee in a like position and under similar circumstances.[11] The same standard applies to trust protectors. Under the UDTA, fiduciary responsibility for the power of direction is held by the trust director who holds the power.[12] Directed trustees are required to comply with a trust director's exercise or nonexercise of a power of direction unless doing so would result in the directed trustee engaging in willful misconduct—a standard modeled on Delaware law. The drafting committee viewed the Delaware directed trust statute, which imposes a standard on a directed trustee to avoid "willful misconduct," as a standard that had proven to be workable in practice.[13]

The UDTA allows customization of fiduciary standards through trust language, but neither the trust director nor a directed trustee can be exculpated from liability for bad faith or intentional misconduct.

The UTC's comments emphasize that "a trustee must always comply with a certain minimum standard" even where the terms of a trust attempt to completely exculpate a trustee.[14] The drafting committee for the UDTA declined the suggestion that it should completely eliminate the fiduciary duty of a directed trustee.[15]

The UDTA contains no default powers for trust directors, nor does it limit them.[16] Rather, the UDTA's comments make it clear that the existence and scope of a power of direction must instead be specified by the terms of a trust.[17] Trust directors

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5 Mary C. Downie, Variations in Directed Trust Statutes, ACTEC State Laws Presentation (Nov. 4, 2022).
6 Unif. Directed Tr. Act § 8 and § 9 (Unif. L. Comm'n 2017).
7 Unif. Tr. Code § 808 (Unif. L. Comm'n 2023). The UTC legislative note states on page 135 that a "state that has enacted the Uniform Directed Trust Act (UDTA) should repeal Section 808 and revise certain other provisions of the UTC as indicated in the legislative notes to the UDTA."
8 Former Unif. Tr. Code § 808(b), (c), and (d) (Unif. L. Comm'n 2000).
9 Alabama, Maryland, Massachusetts, Mississippi, and Oregon.
10 Emphasis added.
11 Unif. Directed Tr. Act § 8(a)(1) (Unif. L. Comm'n 2017).
12 John D. Morley & Robert H. Sitkoff, *Making Directed Trusts Work: The Uniform Directed Trust Act*, 44 ACTEC L. J. 3 (2019).
13 Unif. Directed Tr. Act, Prefatory Note, at 2 (Unif. L. Comm'n 2017).
14 Unif. Tr. Code §1008, cmt. (Unif. L. Comm'n 2020).
15 Unif. Directed Tr. Act, Prefatory Note, at 2 (Unif. L. Comm'n 2017).
16 *Id.* at § 6(a).
17 *Id.* at § 6(a), cmt.

are granted those further powers which are appropriate for the exercise of powers granted under the trust instrument.[18]

Trust protectors are included within the definition of "trust director" under the UDTA, but as with trust directors, there are no default trust protector powers. The powers of trust protectors must also be defined in the trust instrument, and, in practice, they generally are. The powers can range from purely administrative powers (e.g., the ability to change the trust's situs, remove and replace trustees, amend the trust to achieve a particular tax status, etc.) to broad powers, including the power to remove or add beneficiaries or terminate and distribute a trust. Some states with directed trust statutes (e.g., Alaska, Delaware, Nevada, South Dakota) may provide a nonexclusive list of trust protector powers under their statutes.

DIFFERENT STATE APPROACHES

The choice of jurisdiction is critical in directed trust planning, as state law determines the clarity of fiduciary duties, the scope of liability, and, therefore, the willingness of trustees to serve. Currently, only a few states—Louisiana, New York, and Rhode Island—lack both a directed trust statute and adoption of UTC section 808 or some version of the UDTA.

States vary widely with regard to whether trust directors are considered fiduciaries. In states that have retained section 808 of the UTC, trust directors are deemed to be fiduciaries.[19] Similarly, in states that have enacted the UDTA, trust directors are fiduciaries with the same duties as trustees. In Delaware and Nevada, the trust "adviser" is a fiduciary under the statute unless the terms of the trust override the default fiduciary status. Texas requires an advisor to serve in a fiduciary capacity, regardless of the terms of the trust, with limited exceptions relating to the removal and appointment of other fiduciaries and powers that are conferred to create a grantor trust for income tax purposes.[20]

In states where a trust director can serve as a nonfiduciary, the question becomes who is responsible to the beneficiaries? If the directed trustee is absolved from liability for following the directing party's instructions and the trust director is not a fiduciary, who will be liable for breaches? Trustees may be shielded from liability when acting under lawful directions, but courts may still scrutinize whether a trustee should have questioned a directive. Currently, there is limited case law on the responsibility and liability of trust directors and directed trustees. Courts may reclassify advisors deemed nonfiduciaries

as fiduciaries if they exercise substantial control, even if the trust document says otherwise. In one reported case, a trust protector was deemed to be a fiduciary, and a claim against the trust protector for failure to remove a negligent trustee was allowed to proceed.[21]

States differ in how they define directing parties or assign default powers based on the role. Delaware broadly defines the role of trust adviser as any person given authority by the

18 *Id.* at § 6(b).
19 Former Unif. Tr. Code § 808 (Unif. L. Comm'n 2003).
20 Texas Prop. Code, § 114.0031(e).
21 McClean v. Davis, 283 S.W.3d 786 (Mo. Ct. App. 2009).

terms of a trust to direct, consent to, or approve a fiduciary's decisions.[22] It also incorporates "trust protectors" within the ambit of its statute.[23] Likewise, Nevada defines a "directing trust adviser" as a "trust adviser, trust protector or other person designated in the trust instrument who has the authority to give directives that must be followed by the fiduciary."[24]

Therefore, it is critical that the trust document clearly delineate the duties and liabilities of each party under a directed trust. Most directed trustees will seek certainty that they will not retain residual liability for executing directives. Generally, trustees prefer jurisdictions with clear statutes and existing case law. As case law develops, courts will continue to clarify the scope of trustee and director duties, particularly in disputes involving investment losses or beneficiary claims.

As noted above, Delaware has adopted the willful misconduct standard for directed trustees but is unique in defining "willful misconduct." Willful misconduct is more than gross negligence or recklessness and requires intentional wrongdoing. Delaware defines "wrongdoing" as "malicious conduct or conduct designed to defraud or seek an unconscionable advantage."[25] Most states that have adopted this standard have not defined what constitutes "willful misconduct."

Nevada adopts a "no liability" approach for directed trustees under its directed trust statute.[26] It provides:

> 1. A directed fiduciary is not liable, individually or as a fiduciary, for any loss which results from:
>
> (a) Complying with a direction of a directing trust adviser, whether the direction is to act or to not act; or
>
> (b) Failing to take any action proposed by a directed fiduciary if the action:
>
> (1) Required the approval, consent or authorization of a person who did not provide the approval, consent or authorization; or
>
> (2) Was contingent upon a condition that was not met or satisfied.[27]

However, Nevada statutes also limit the ability to exculpate a fiduciary for the fiduciary's own willful misconduct or gross negligence.[28] It is unclear how to reconcile these two statutory sections.

DUTY TO MONITOR

The duty to monitor is a central concern in directed trust arrangements. Most trustees do not want to be responsible for overseeing the actions of a trust director or advisor, but requirements differ between jurisdictions.

The UDTA waives the duty to monitor the trust director and the duty to inform or give advice to a settlor, beneficiary, trustee, or trust director about the directed act unless the trust itself provides otherwise.[29] The UDTA requires the directed trustee to monitor the directions it receives from the trust director to confirm that compliance with the direction would not be an act of willful misconduct.[30]

Under section 808 of the UTC, a trustee cannot comply with a direction if it is manifestly contrary to the terms of the trust or would constitute a serious breach of duties owed to beneficiaries. This standard has been challenging in practice, given the lack of definition of a "serious" breach of trust and the uncertain level of oversight required by a directed trustee of a third-party trust director's direction.

The Delaware statute waives the following separate but related duties for directed trustees: the duty to monitor the conduct of the adviser; the duty to provide advice to, or consult with, the adviser; and the duty to warn the beneficiary or others about the directed act.[31] In contrast, in some jurisdictions (e.g., Florida), a trustee must confirm that the action being directed falls within the scope of the trust director's authority.[32]

DUTY TO INFORM

Both trust directors and directed trustees have a duty to keep each other informed under the UDTA.[33] Section 808 of the UTC does not address a trustee's duty to inform. States have taken different approaches to parties' duty to inform each other

22 Del. Code Ann. tit. 12 § 3313(a).
23 Del. Code Ann. tit. 12. § 3313(f).
24 Nev. Rev. Stat. Ann. § 163.5536.
25 Del. Code Ann. tit. 12 § 3301(g).
26 Nev. Rev. Stat. Ann. § 163.5549.
27 *Id.*
28 Nev. Rev. Stat. Ann. § 163.160(3)(a).
29 Unif. Directed Tr. Act § 11 (Unif. L. Comm'n 2017).
30 *Id.* at § 9.
31 Del. Code Ann. tit. 12 § 3313(e).
32 Fl. Stat. § 736.1409(3).
33 Unif. Directed Tr. Act § 10 (Unif. L. Comm'n 2017).

about their actions in managing a trust. Delaware requires each trust fiduciary, including advisers, to keep fiduciaries and nonfiduciaries reasonably informed about the administration of a trust with respect to any duty or function being performed by another party to the extent that providing the information is reasonably necessary for the other fiduciaries and nonfiduciaries to perform their duties.[34] Nevada, by contrast, does not include a duty to inform in its directed trust statute.

CONCLUSION

The UDTA expressly waives the duty of a directed trustee to monitor the advisor or director, as well as the duty to inform or provide advice to the settlor, beneficiaries, trustee, or trust director regarding directed actions. However, the act implicitly requires the directed trustee to ensure that compliance with a direction would not constitute willful misconduct. This "willful misconduct" standard, modeled after Delaware law, provides a workable threshold: the trustee must not blindly follow directions but is not required to second-guess whether directives are authorized by the trust or applicable law.

Under section 808 of the UTC, a directed trustee cannot comply with a direction if it is manifestly contrary to the terms of the trust or would constitute a serious breach of fiduciary duty. In practice, this standard has proven challenging, as "serious breach" is not well defined, and the directed trustee's required level of oversight remains uncertain.

Directed trusts offer significant advantages but require directed trustees to remain vigilant and informed. They have a level of administrative complexity that can be misunderstood. Management of a directed trust requires careful coordination among the directed trustee and trust directors. Directed trustees should be cautious when conducting any form of due diligence on directed actions, as this might create an implied obligation to continue to do so and potentially undermine otherwise applicable protections from liability.

Directed trustees should require written directives and maintain records of all actions taken; such documentation is essential to effectively fulfilling the directed trustee role and minimizing risk. Courts are increasingly recognizing the statutory protections offered by directed trust laws, but directed trustees must be clear on their roles and responsibilities and document their compliance with directives.

34 Del. Code Ann. tit. 12 § 3317.

Florida Homestead:

An Estate Planner's Practical Guide

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Homestead laws are state-specific regulations that protect a homeowner's primary residence from creditors and forced sale. They also typically offer additional benefits such as property tax exemptions and relief from other financial obligations. Homestead property protection has been enshrined in Florida's Constitution for more than 150 years.[1] The homestead exemption promotes the stability and welfare of the state by securing a home for the householder and the householder's heirs, allowing them to live beyond the reach of financial misfortune and the demands of creditors.[2] The object of the homestead exemption laws is

> to protect people of limited means and their families in the enjoyment of so much property as may be necessary to prevent absolute pauperism and want, and against the consequence of ill advised promises which their lack of judgment and discretion may have led them to make, or which they may have been induced to enter into by the persuasion of others.[3]

The Florida Supreme Court has long emphasized that the homestead exemption should be liberally construed to protect the family home.[4] In this article, readers will learn basic concepts, traps, and planning techniques associated with homestead. The article includes a number of footnotes intended for readers who want a firmer understanding of the matters discussed.

Florida's homestead laws offer three distinct benefits: property tax limitation, creditor protection, and inheritance and family protections.

1 Fla. Const. art. IX, § 1, https://library.law.fsu.edu/Digital-Collections/CRC/CRC-1998/conhist/1868con.html.
2 McKean v. Warburton, 919 So. 2d 341 (Fla. 2005), https://supremecourt.flcourts.gov/content/download/319731/opinion/Opinion_SC04-1243.pdf.
3 Carter's Adm'rs v. Carter, 20 Fla. 558, 569 (1884).
4 Havoco of America, Ltd. v. Hill, 790 So. 2d 1018 (Fla. 2001), https://supremecourt.flcourts.gov/content/download/325228/opinion/Opinion_SC99-98.pdf.

PROPERTY TAX LIMITATION

Save Our Homes Assessment Limitation

In 1992, Florida voters approved Constitutional Amendment 10, also known as the Save Our Homes amendment.[5] The amendment is now codified in section 193.155 of the Florida Statutes, which provides that a home must be assessed at its just value the first year the home receives a homestead exemption. Each subsequent year, the assessed value of the home cannot increase by more than (a) 3 percent of the assessed value for the prior year or (b) the percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average (CPI) for the preceding calendar year, whichever is less. Furthermore, the assessed value of the homestead property cannot exceed the just value.[6] *Just value* is synonymous with *fair market value*.[7] The Save Our Homes statute provides tremendous economic benefits. In years such as 2020–2024, during which the state experienced a real estate boom, the homestead property owner is protected from excessive increases in assessed values and, in turn, property taxes. In years when real estate values have decreased, such as in 2008, the homestead property owner benefits from a reduction in the assessed value and, in turn, property taxes.

Reassessment on Change of Ownership

With a few exceptions, homestead property is reassessed at its just value as of January 1 of the year following a change of ownership.[8] A change of ownership means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person.[9] Reassessment of homestead property is avoided if, after the change or transfer, the same person who was previously entitled to the homestead exemption is still entitled to it and

1. the transfer of title is to correct an error;
2. the transfer is between legal and equitable title or equitable and equitable title, and no additional person applies for a homestead exemption on the property;
3. the person is listed on the transfer instrument as both grantor and grantee, even if others are added as grantees, unless one of the additional grantees applies for a homestead exemption;
4. on the transfer instrument, the person entitled to the exemption remains as both grantor and grantee, and other individuals previously holding title as joint tenants with rights of survivorship with the owner are removed from the title; or
5. the person has entered into a lease of the homestead property for a term of 98 years or more.[10]

Reassessment of homestead property can also be avoided when

1. legal or equitable title is changed or transferred between husband and wife, including a change or transfer to a surviving spouse or a transfer due to a dissolution of marriage;[11]
2. the property passes by operation of law to a surviving spouse or children;[12]
3. the owner dies and the property is transferred to a person who is legally or naturally dependent on the owner and permanently resides at the property;[13] or
4. at least one deceased owner of property held as joint tenants with rights of survivorship received a homestead exemption, and the surviving owners continue to be eligible for and receive that exemption.[14]

Portability of the Accumulated Save Our Homes Benefit

Homestead owners who received a homestead exemption in any of the three years preceding the establishment of a new homestead property can transfer all or a portion of the accumulated homestead benefit from the old homestead to the new homestead.[15] The three-year period starts on January 1 of the year that the old homestead property was abandoned.

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5 Florida Ballot, Homestead Valuation Limitation, https://dos.elections.myflorida.com/initiatives/fulltext/pdf/4923-1.pdf; Florida Dep't of State Div. of Elections, Official Results (Nov. 3, 1992), https://results.elections.myflorida.com/SummaryRpt.asp?ElectionDate=11/3/92&COUNTY=ORA&PARTY=&DATAMODE=.

6 Fla. Stat. Ann. § 193.155(2) (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.).

7 Walter v. Schuler, 176 So. 2d 81, 83 (Fla. 1965).

8 Fla. Stat. Ann. § 193.155(3)(a) (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.).

9 *Id.*

10 *Id.* § 193.155(3)(a)(1).

11 *Id.* § 193.155(3)(a)(2).

12 *Id.* § 193.155(3)(a)(3).

13 *Id.* § 193.155(3)(a)(4).

14 *Id.* § 193.155(3)(a)(5).

15 *Id.* § 193.155(8); Fla. Dep't of Revenue, DR-501T, Transfer of Homestead Assessment Difference (2008), https://floridarevenue.com/property/Documents/dr501t.pdf.

Example: Tracy's property qualified for the homestead exemption for the 2025 calendar year. Tracy sold the homestead on October 31, 2025. If Tracy wishes to port the homestead benefit, Tracy must establish a new homestead no later than January 1, 2028.

Upsizing

If the new homestead's just value in the first year it qualifies for the homestead exemption is greater than or equal to the old homestead's just value in the year it was abandoned, the assessed value of the new homestead must be its just value reduced by an amount equal to (a) $500,000 or (b) the difference between the old homestead's just value and assessed value in the year the old homestead was abandoned, whichever is less.[16]

Example: An old homestead had a just value of $750,000 and an assessed value of $500,000. The amount available to port is $250,000, the difference between the two. The new homestead has a just value of $900,000. The assessed value of the new homestead will be $650,000, which is the just value ($900,000) reduced by the portability amount ($250,000). If the old homestead had an assessed value of $100,000, the new homestead would be able to benefit from only a $500,000 reduction instead of the entire $650,000 because the statute caps the portability benefit at $500,000.

Downsizing

If the new homestead's just value in the first year it qualifies for the homestead exemption is less than the old homestead's just value in the year it was abandoned, the new homestead's assessed value will be its just value divided by the old homestead's just value in the year it was abandoned and multiplied by the old homestead's assessed value in the year it was abandoned.[17] However, there is a limit to the portability benefit of $500,000, and if the difference between the new homestead's just value and the assessed value as calculated in the previous sentence is greater than $500,000, the new homestead's assessed value will be increased so that the difference between the new homestead's just value and assessed value is $500,000.[18]

Example: An old homestead had a just value of $1,200,000 and an assessed value of $600,000. The amount available to port is $600,000, the difference between the two. The new homestead has a just value of $600,000. The assessed value of the new homestead will be $300,000, calculated by dividing the just value ($600,000) of the new homestead by the just value ($1,200,000) of the old homestead and multiplying the result by the assessed value ($600,000) of the old homestead. If the old homestead had a just value of $10,000,000 and an assessed value of $5,000,000 and the new homestead has a just value of $2,000,000, the $500,000 cap would apply, and the assessed value of the new homestead would be $1,500,000.

Multiple Previous Exemptions to a Single New Homestead

When multiple individuals wish to port their homestead benefits into a single new homestead and the individuals who qualify for the homestead exemption in the new homestead are not the same individuals that qualified for the homestead exemption in the old homestead, the new homestead's assessed value will be its just value reduced by (a) $500,000 or (b) the

16 Fla. Stat. Ann. § 193.155(8)(a) (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.).
17 *Id.* § 193.155(8)(b).
18 *Id.*

higher of the difference between the just value and the assessed value of each individual's old homestead in the year it was abandoned, whichever is less.[19]

> **Example:** Pat sold homestead property in 2025 when it had a just value of $1,000,000 and an assessed value of $700,000. Phoenix sold homestead property in 2026 when it had a just value of $800,000 and an assessed value of $600,000. They purchase a new homestead together that has an assessed value of $1,200,000. The difference between the just value and the assessed value for Pat's old homestead ($300,000) is higher than the difference between the just value and the assessed value for Phoenix's old homestead ($200,000). The assessed value of the new homestead will be $900,000, the just value reduced by $300,000.

Jointly Owned Homestead to Separate Homesteads

If two or more individuals abandon jointly owned and jointly titled property that had received a homestead exemption and one or more, but not all, such individuals who were entitled to and received a homestead exemption on the abandoned property establish a new homestead, the assessed value of the new homestead is equal to the just value of the new homestead reduced by (a) $500,000 or (b) the just value of the old homestead minus the assessed value of the older homestead divided by the number of owners of the old homestead who received a homestead exemption, whichever is less.[20] If the abandoned property specifies specific ownership shares, instead of dividing by the number of owners of the old homestead property, the reduction in the just price of the new homestead will be proportional to the ownership share. Spouses abandoning a jointly titled homestead may designate the ownership share to be attributed to each spouse.

> **Example:** Atlas, Blair, and Cameron jointly owned a homestead property having a just value of $900,000 and an assessed value of $600,000. Atlas abandons the property and establishes a new homestead that has a just value of $1,000,000. The assessed value of the new homestead would be $900,000, calculated by reducing the just value ($1,000,000) of the new homestead by $100,000, which is the difference between the just value ($900,000) of the old homestead and the assessed value ($600,000) of the old homestead divided by three. If Atlas owned a 50 percent share of the old homestead, the assessed value of the new homestead would be $850,000, which is calculated by reducing the just value ($1,000,000) of the new homestead by $150,000—Atlas's share of the $300,000 difference between the just value and assessed value of the old homestead.

Exemptions Applied to Assessed Values

$50,000 Exemption

If the assessed value of a homestead property is $50,000 or less, up to $25,000 of the assessed value is exempt from all taxation, including school district levies.[21] If the assessed value of the homestead property is greater than $50,000, there is an additional exemption for property taxes (but not school district levies) up to $25,000 for assessed values between $50,000 and $75,000.[22] For homestead property with an assessed value of $70,000, $25,000 would be exempt from all taxation, and an

19 *Id.* § 193.155(8)(c), (e).
20 *Id.* § 193.155(8)(d), (e).
21 *Id.* § 196.031(1)(a).
22 *Id.* § 196.031(1)(b).

additional $20,000 would be exempt from property tax but not school district levies.

Low-Income Senior Citizens

For homestead owners who have attained age 65 and have an annual household income of less than $20,000 (adjusted according to an average cost of living index), the board of county commissioners of any county or the governing authority of any municipality can adopt an additional homestead exemption of either or both of (a) up to $50,000 or (b) the amount of the assessed value of the property for a person who has the legal or equitable title to real estate with a just value less than $250,000.[23]

Veterans and Surviving Spouses of Veterans

Any former service member who is a permanent resident of the state, was discharged under honorable conditions, and has been disabled to a degree of 10 percent or more is entitled to exempt up to $5,000 of property from taxation.[24] The exemption is also available to the unremarried surviving spouse of the disabled former service member.[25]

If the former service member is permanently and totally disabled, was honorably discharged, and is a permanent resident of the state, their real estate is exempt from taxation.[26] The exemption is also available to their surviving spouse until the surviving spouse remarries or sells the property without transferring the exemption to a new residence.[27]

Veterans who have attained age 65 and who are partially or permanently disabled may receive a discount from the amount of property taxes owed on homestead property if the Veteran's disability is combat related and the Veteran was honorably discharged.[28] The discount is a percentage equal to the percentage of the Veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs.[29] The discount from property taxes carries over to the surviving spouse as long as the surviving spouse does not remarry or sell the property without transferring the exemption to a new residence.[30]

Other Exemptions and Reductions to Assessments

The Florida legislature has shown a commitment to providing housing security to those in need by passing legislation that provides additional property tax benefits for disabled persons;[31] first responders and their spouses;[32] widows, widowers, and blind persons;[33] and those taking care of parents and grandparents.[34]

Trusts and Homestead Tax Benefits

Homestead owners wanting to avoid probate often transfer their homestead to a trust, and when they do so, they may retain the tax benefits provided to homestead property. Opinions of the Florida Attorney General have long provided that

> when the trust in question is of such a nature that it would be considered a passive rather than an active trust and the beneficiary has a present possessory interest and makes the real estate comprising the corpus of the trust his permanent home, he may have sufficient equitable title to real estate so as to support a claim for homestead tax exemption.[35]

Entitlement to homestead tax benefits is extended to a beneficiary possessing both beneficial or equitable title to real property and a present possessory interest for life in the real property.[36] Furthermore, the homestead tax benefits can be maintained not only by revocable trusts but also by irrevocable trusts.[37] Before granting a beneficiary homestead status over property held in a trust, the property appraiser's office in most,

23 *Id.* § 196.075(2), (3).
24 *Id.* § 196.24(1).
25 *Id.*
26 *Id.* § 196.081(1)(a).
27 *Id.* § 196.081(3).
28 *Id.* § 196.082(1).
29 *Id.* § 196.082(2).
30 *Id.* § 196.082(3).
31 *Id.* § 196.101.
32 *Id.* § 196.102.
33 *Id.* § 196.202.
34 *Id.* § 193.703.
35 Op. Att'y Gen. Fla. 74-313 (1974), https://www.myfloridalegal.com/ag-opinions/homestead-exemption-and-inter-vivos-trust-2; Fla. Admin. Code Ann. r. 12D-7.011 (West, Westlaw through amendments effective on or before Oct. 29, 2025).
36 Op. Att'y Gen. Fla. 90-70 (1990), https://www.myfloridalegal.com/ag-opinions/homestead-tax-exemption.
37 For qualified personal residence trusts, see *Robbins v. Welbaum*, 664 So. 2d 1 (Fla. Dist. Ct. App. 1995) and *Nolte v. White*, 784 So. 2d 493 (Fla. Dist. Ct. App. 2001); for land trusts, see Op. Att'y Gen. Fla. 2008-44 (2008), https://www.myfloridalegal.com/ag-opinions/homestead-exemption-florida-land-trust.

if not all, counties requires the beneficiary to provide proof that the trust confers onto the beneficiary both equitable title and a present possessory interest in the real property. Providing proof could mean providing excerpts from or a full copy of the trust agreement. Florida practitioners often include a few sentences in a trust agreement expressly stating that the beneficiary may use, possess, and occupy real property owned by the trust and that the beneficiary's interest in the real property is construed as *beneficial title in equity to real property* as set forth in section 196.031(1) of the Florida Statutes.

CREDITOR PROTECTION

Creditor Protection Generally

The Florida Constitution provides that a homestead

> shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty.[38]

The protection against forced sales applies to up to 160 acres of contiguous land and improvements if located outside a municipality or up to one-half acre of contiguous land if located within a municipality.[39] The protection is not dependent on the value of the homestead property, meaning that regardless of whether the homestead has a value of $100 or $1,000,000,000, it is protected from forced sale. If property exceeds the acreage size limits, courts can partition the property so that there is a portion that is protected from forced sale and another portion that is not protected and, in turn, force a sale of the unprotected portion to satisfy creditors.[40] In dividing property between a protected share and an unprotected share,

38 Fla. Const. art. X, § 4(a).
39 Fla. Const. art. X, § 4(a)(1).
40 Fla. Stat. Ann. § 222.02 (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.); *In re* Englander, 95 F.3d 1028, 1029–30 (11th Cir. 1996) ("A landowner can designate a portion of their property as their homestead, subjecting only the remainder

the unprotected share must have a legal and practical use.[41] If the property cannot be divided for various reasons such as zoning restrictions, courts may order the sale of the entire property and apportion the proceeds between two shares: one share that is protected and another share that is available to creditor claims.[42]

Trusts and Homestead Creditor Protection

Very conservative practitioners will not place homestead property into a trust, primarily because of a 2001 bankruptcy case, *In re Bosonetto*, 271 B.R. 403 (Bankr. M.D. Fla. 2001). For property to qualify for homestead status, the property must be held by a natural person.[43] The *Bosonetto* court found that a trust is not a natural person, and therefore, homestead protections would not apply to property held in a trust. Subsequent courts have chosen not to follow *Bosonetto* and found that the homestead protections do apply to property held in a trust.[44] In 2006, the bankruptcy court clarified that property held in a revocable trust is owned by a natural person for purposes of the constitutional homestead exemption.[45] A trustmaker maintains an ownership interest in property held in a revocable trust when the trust holds property title because a trustmaker is free to revoke the trust at any time.[46] Although courts have chosen not to follow *Bosonetto*, this author is unaware of any case law that has directly overruled it. For practitioners concerned about the *Bosonetto* ruling and clients with known or expected creditor issues, a better option may be to execute a Lady Bird deed (also known as an enhanced life estate deed) providing that, upon the death of the grantors, the real property passes to a trust. The Lady Bird deed allows the grantors to maintain control (sell, encumber, and consume the real property), qualify for homestead status, and avoid probate.[47]

INHERITANCE AND FAMILY PROTECTIONS

The Florida Constitution provides that

> homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse.[48]

In Florida, *devise* is defined as follows:

> [W]hen used as a noun, [*devise*] means a testamentary disposition of real or personal property and, when used as a verb, [it] means to dispose of real or personal property by will or trust. The term includes "gift," "give," "bequeath," "bequest," and "legacy." A devise is subject to

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to sale. The Debtors' designated portion of non-exempt property had no access to roads, utilities or lake frontage and was completely surrounded by the claimed exempted .5 acres of land. The bankruptcy court granted the creditors' and trustee's motion for summary judgment, noting that the Debtors' 'attempt at homestead exemption "gerrymandering" was clearly made in bad faith.'" (citation omitted)).

41 Fla. Stat. Ann. § 222.02 (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.); *In re* Englander, 95 F.3d 1028, 1029–30 (11th Cir. 1996).

42 *In re* Kellogg, 197 F.3d 1116, 1122 (11th Cir. 1999) ("The Florida constitution grants Kellogg the right to exempt up to one-half acre of municipal property; it does not grant him the inalienable right to homestead in his particular part of Palm Beach, where he chose to live knowing his property could not be subdivided into an exempt one-half-acre parcel.").

43 Fla. Const. art. X, § 4(a).

44 *In re* Edwards, 356 B.R. 807 (Bankr. M.D. Fla. 2006); *In re* Alexander, 346 B.R. 546 (Bankr. M.D. Fla. 2006); *In re* Romagnoli, 631 B.R. 807 (Bankr. S.D. Fla. 2021).

45 Engelke v. Estate of Engelke, 921 So. 2d 693, 696 (Fla. Dist. Ct. App. 2006) ("We note that in this case while Paul's residence was held in a revocable trust, it was owned by a 'natural person' for purposes of the constitutional homestead exemption.").

46 *Id.* ("Because Paul retained a right of revocation, he was free to revoke the trust at any point in time. Accordingly, he maintained an ownership interest in his residence, even though a revocable trust held title to the property. We therefore conclude that Paul's interest in his residence as beneficiary of his own revocable trust would entitle him to constitutional homestead protections.").

47 Joseph M. Percopo, *Lady Bird Deed: An Inexpensive Probate Avoidance Technique*, ActionLine, Spring 2020, at 20, https://www.deanmead.com/wp-content/uploads/2022/05/Lady-Bird-Deed-spring-2020-Actionline-PDF.pdf; Benjamin T. Jepson, *Enhanced Life Estates Are Now Standard Practice*, ActionLine, Fall 2020, at 56, https://www.flprobatelitigation.com/wp-content/uploads/sites/837/2023/08/FALL-2020-Actionline_WEB.pdf; Juan C. Antúnez, *Of Heirs Property and Lady Bird Deeds*, Fla. Prob. & Tr. Litig. Blog (July 9, 2023), https://www.flprobatelitigation.com/2023/07/articles/trust-and-estates-litigation-in-the-news/whats-heirs-property-and-why-does-it-matter (The portion of the article entitled "Rohan Kelly doesn't use Lady Bird Deeds" is particularly interesting, as it discusses potential risks associated with Lady Bird deeds.).

48 Fla. Const. art. X, § 4(c).

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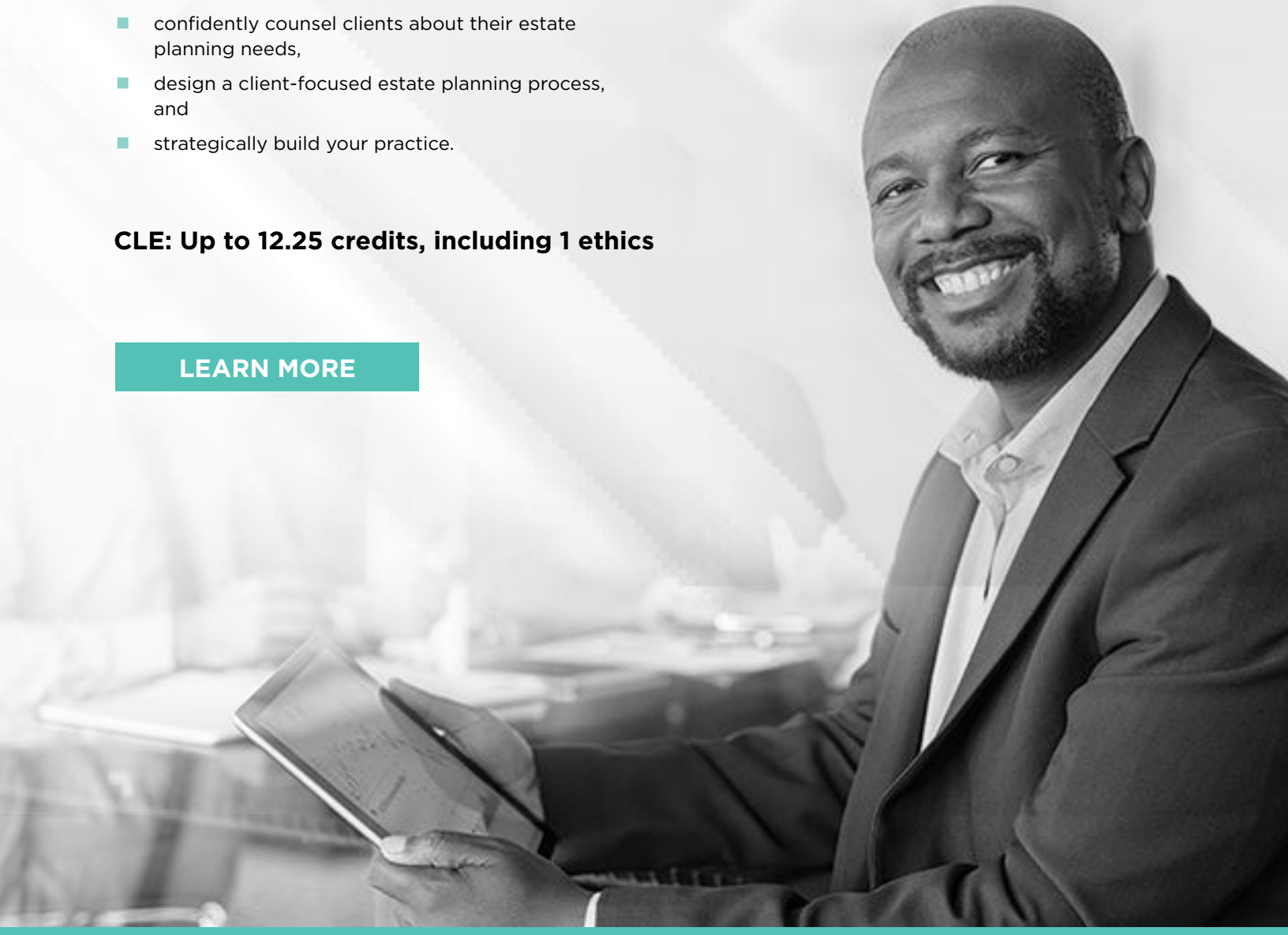

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> charges for debts, expenses, and taxes as provided in this code, the will, or the trust."[49]

The statutes further clarify that a devise "includes a disposition by trust of that portion of the trust estate which, if titled in the name of the grantor of the trust, would be the grantor's homestead."[50] Together, these definitions mean that a homestead owner faces transfer restrictions both during life and at death.

Restrictions During a Homestead Owner's Lifetime

Florida statutes make clear that a lifetime transfer of homestead property, including a transfer to a trust, is not considered a devise as long as the transferor, alone or in conjunction with another person, cannot revoke the transfer or revest the interest in the transferor.[51] The homestead laws place greater restrictions on a devise, so it is generally easier to transfer homestead property during life than at death.

The married owner of homestead property cannot sell, gift, transfer, or mortgage homestead property without their spouse's consent.[52] A spouse may waive, wholly or partly, before or after marriage, their homestead rights through a written contract, agreement, or waiver signed by the waiving party in the presence of two witnesses.[53] It is common for a nuptial agreement to include provisions requiring a spouse to waive homestead rights upon request by the other spouse. An unmarried homestead owner, even if they have minor children, can freely sell, gift, transfer, or mortgage homestead property during life.

Restrictions at Death

The restrictions on the transfer of homestead property at death are complex, primarily because minor children enter into the mix, and violations of the restrictions can have harsh consequences for families. Generally, for purposes of the homestead laws, a *minor* is a person who has not reached the age of eighteen.[54] *Child* includes a person entitled to take as a child by intestate succession from the parent whose relationship is involved and excludes any person who is a stepchild, a foster child, a grandchild, or a more remote descendant.[55] Violations could mean that homestead property passes according to intestacy laws or that a surviving spouse is given a life estate in the homestead with the remainder passing to the descendants.[56]

Devise, Minor Children, and No Surviving Spouse

If an unmarried homestead owner is survived by a minor child, the homestead owner cannot devise the property.[57] Instead, the homestead passes according to the intestacy laws to the homestead owner's descendants, per stirpes.[58]

Devise, Minor Children, and Surviving Spouse

If a married homestead owner is survived by a minor child, the homestead owner cannot devise the property.[59] Instead, the surviving spouse is given a life estate in the property, and upon the surviving spouse's death, the property will pass to the homestead owner's descendants, per stirpes.[60] As an alternative to a life estate, the surviving spouse can elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the homestead owner's descendants-in-being at the time of the decedent's death, per stirpes.[61] Making the election requires the surviving spouse to file a specific notice in the public records.[62]

Devise, No Minor Children, No Descendants, and Surviving Spouse

If a homestead owner is survived by a spouse but no descendants, the homestead owner can devise the property to their surviving spouse.[63] If the homestead owner attempts to devise

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49 Fla. Stat. Ann. § 731.201(10) (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.).
50 *Id.* § 732.4015(2)(b).
51 *Id.* § 732.4017.
52 *Id.*; *Id.* § 689.111(2).
53 *Id.* § 732.702(1).
54 *Id.* § 731.201(25).
55 *Id.* § 731.201(3).
56 *Id.* § 732.401. For help understanding the restrictions, the author highly recommends googling "Kelley's Homestead Paradigm" and referencing the decision tree as you read this section. Rohan Kelley's work and decision tree have provided guidance on homestead to Florida practitioners for many decades.
57 Fla. Const. art. X, § 4(c); Fla. Stat. Ann. §§ 732.401(1), 742.4015(1) (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.).
58 Fla. Stat. Ann. § 732.401(1) (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.).
59 Fla. Const. art. X, § 4(c); *Id.* §§ 732.401(1), 742.4015(1).
60 Fla. Stat. Ann. § 732.401(1) (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.).
61 *Id.* § 732.401(2).
62 *Id.* § 732.401(2)(e).
63 *Id.* § 732.4015(1).

the homestead property to anyone other than their surviving spouse and the surviving spouse has not waived their spousal rights, the devise will be invalid, and the property will pass to the surviving spouse.[64]

Devise, No Minor Children, Descendants, and Surviving Spouse

If a homestead owner does not have minor children but is survived by a spouse and descendants, the homestead owner can devise the property to their surviving spouse.[65] If the homestead owner attempts to devise the homestead property to anyone other than their surviving spouse and the surviving spouse has not waived their spousal rights, the devise will be invalid, the surviving spouse will be given a life estate in the property, and upon the surviving spouse's death, the property will pass to the homestead owner's descendants, per stirpes.[66] As an alternative to a life estate, the surviving spouse can elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the homestead owner's descendants in being at the time of the owner's death, per stirpes.[67]

Devise, No Minor Children, Descendants, and No Surviving Spouse

If a homestead owner does not have minor children and is not survived by a spouse but does have descendants, the homestead owner can devise the homestead property to anyone. However, the homestead exemptions will inure to the heirs if the property is left to them.[68]

HELPFUL INFORMATION ABOUT HOMESTEAD

How to Establish Homestead for Property Tax Benefits

Due to Florida's tax-friendly policies, including no state income tax, estate tax, or inheritance tax, as well as its warm climate, beautiful beaches, and numerous retirement communities, it consistently ranks among the most popular states for retirees.[69] People moving to Florida should establish a homestead as soon as possible so that they can take advantage of the property tax benefits. Delaying the election could be costly because a failure to apply for a homestead in a particular year generally constitutes a waiver of the exemption privilege for that year.[70]

To claim homestead benefits, a person must make the intended homestead property their permanent residence in good faith.[71]

A permanent residence

> means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.[72]

For claiming property tax benefits, whether someone has made a residence their permanent residence is a factual determination made by the property appraiser.[73] In making the determination, the appraiser may consider the following:

1. an applicant's declaration of domicile recorded in the public records
2. evidence of the location where the applicant's dependent children attend school
3. the applicant's place of employment
4. the applicant's previous place of residency and when that residency was terminated
5. the applicant's voter registration
6. whether the applicant has a valid Florida driver's license or identification card and has relinquished driver's licenses from other states
7. issuance of a Florida license tag
8. the address listed on the applicant's federal income tax returns

64 *Id.* §§ 732.401(1), 732.702(1), 732.102(1).
65 *Id.* § 732.4015(1).
66 *Id.* § 732.401(1).
67 *Id.* § 732.401(2).
68 Fla. Const. art. X, § 4(b).
69 Kathryn Pomroy, *Best Places to Retire in the US*, Kiplinger (Sept. 12, 2025), https://www.kiplinger.com/retirement/happy-retirement/best-places-to-retire-in-the-us.
70 Fla. Stat. Ann. § 196.011(1)(a) (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.).
71 *Id.* § 196.031(1)(a).
72 *Id.* § 196.012(17).
73 *Id.* § 196.015.

9. the location where the applicant's bank statements and checking accounts are registered
10. proof of payment for utilities for the claimed permanent residence[74]

Based on the foregoing list of considerations, a person claiming homestead status should take the following steps to qualify for homestead benefits:

Step 1: File a Declaration of Domicile with the clerk of the court in the county where the residence is located.[75]

Step 2: Register to vote in Florida.

Step 3: Update addresses used for financial accounts, tax returns, employment, and voting.

Step 4: Obtain a Florida driver's license and license tag and relinquish out of state licenses and tags.

Step 5: Pay the utility bills for the claimed residence.

Step 6: Apply for the homestead property tax exemption. Generally, this can be done by electronic filing, visiting a physical service center, or mailing in a printed form.[76] The applicant must establish permanent residency by January 1 of the year the applicant wishes to claim the exemption and must, in most cases, submit the application to the property appraiser no later than March 1 of that year.[77]

The statutes require that an annual application for homestead benefits be made. However, counties can waive the requirement for annual applications for properties that have already been granted the homestead exemption.[78] Practitioners often encounter potential clients who wish to claim homestead benefits without truly intending to become a Florida resident. Those potential clients should be warned that knowingly or willfully providing false information to claim homestead benefits can lead to fines and imprisonment.[79]

An applicant is not required to reside in Florida for a minimum number of days out of the year to be eligible for homestead exemption. The applicant's intention to treat a property as a permanent residence is sufficient. However, if the applicant is moving to Florida from a state that has state-level income tax, the applicant may wish to spend fewer than 183 days in the former state to reduce the risk that the former state will claim the applicant as a resident and impose income taxes.

Application Required Only for Property Tax Benefits

To receive the property tax benefits, a formal application with the county property appraiser is necessary. However, the significant nonproperty tax advantages of Florida homestead, including protection from forced sale by most creditors and the legal restrictions on devising or mortgaging the property, apply automatically once a homeowner's property meets the requirements to qualify as homestead property. Therefore, a separate application is not required to benefit from these protections. Consider someone who buys a home on July 4 of any given year. The buyer cannot receive the property tax benefits until January 1 of the following year. However, the creditor protection and inheritance and family protections start as soon as the property meets the requirements to qualify as a homestead.

Multiple Homesteads for Married but Separated Couples

A married couple can have more than one homestead property.[80] When spouses have established two separate permanent residences in good faith and have no financial connection with and provide no benefits, income, or support to each other, each may be granted a homestead exemption.[81] To claim separate homestead exemptions, the spouses cannot be considered a single family unit.[82] Only one homestead exemption is allowed per family unit, regardless of whether the second exemption is in Florida or another state.[83]

Homestead and Probate

If the owner of a protected homestead dies leaving a surviving spouse or minor children, the homestead transfers directly to them by operation of law, thus bypassing the probate process.[84]

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74 *Id.*
75 *Id.* § 222.17.
76 *Id.*; Fla. Dep't of Revenue, DR-501, Original Application for Homestead and Related Tax Exemptions (2025), https://floridarevenue.com/property/documents/dr501.pdf.
77 Fla. Stat. Ann. § 196.011(1)(a) (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.).
78 *Id.*; *Id.* § 196.011(10)(2).
79 *Id.* § 196.131(2).
80 Op. Att'y Gen. Fla. 2005-60 (2005), https://www.myfloridalegal.com/ag-opinions/homestead-exemption-separate-residences.
81 Wells v. Haldeos, 48 So. 3d 85 (Fla. Dist. Ct. App. 2010).
82 Brklacic v. Parrish, 149 So. 3d 85 (Fla. Dist. Ct. App. 2014).
83 Endsley v. Broward County, 189 So. 3d 938 (Fla. Dist. Ct. App. 2016).
84 Fla. Stat. Ann. §§ 731.201(33), 736.1109(1), 733.607(1), 733.608(1) (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.); Florida Prob. R. 5.340(a).

If the owner is not survived by a spouse or minor children but devises the protected property to heirs, the property also passes outside probate.[85] If the homestead property is devised in a will or trust to heirs "where a decedent is not survived by a spouse or minor children, the decedent's homestead property passes to the residuary devisees, not the general devisees, unless there is a specific testamentary disposition ordering the property to be sold and the proceeds made a part of the general estate."[86] In other words, if a will or trust provides for specific distributions and the estate or trust lacks sufficient nonhomestead assets to satisfy those distributions, the homestead property cannot be used unless the terms of the will or trust direct the fiduciary to sell the homestead to satisfy the distributions. Practitioners should think twice about including language directing a fiduciary to sell a homestead and use the proceeds to satisfy distributions because the proceeds may lose their homestead character and become subject to creditors' claims.[87]

Even if protected homestead property passes outside probate, it is often a practical necessity to file a Petition to Determine Homestead Status with the probate court.[88] The court then provides an Order Determining Homestead that (1) formally establishes that the property was the decedent's homestead, thus preventing creditors from attempting to force a sale of the property to recover debts; (2) clarifies title, allowing the new owners to easily transfer, refinance, or sell the property; and (3) releases the personal representative from any duties or responsibilities related to the property. Depending on the county, clerk, or judge, it may be possible to file a standalone Petition to Determine Homestead Status outside a formal proceeding.[89]

85 McKean v. Warburton, 919 So. 2d 341, 347 (Fla. 2005).
86 *Id.*
87 *Id.*
88 Rohan Kelley, *Homestead Made Easy, Part I: Understanding the Basics*, 65 Fla. Bar J. 17, 20 (1991), https://www.floridabar.org/the-florida-bar-journal/homestead-made-easy.
89 Rohan Kelley & Tae Tanya Kelley, *Homestead Made Easy, Part Three: How to Find the Courthouse and What to Do Next*, 69 Fla. Bar J. 105 (1995), https://www.floridabar.org/the-florida-bar-journal/homestead-made-easy-part-three-how-to-find-the-courthouse-and-what-to-do-next.

However, the Petition to Determine Homestead Status is typically filed in either a summary or a formal administration. If the value of the assets subject to probate does not exceed $75,000, the petition can be filed in a summary administration regardless of the value of the homestead property.[90]

Personal representatives are entitled to compensation for their services, and the compensation is paid from estate assets.[91] Unless the personal representative provides extraordinary services in dealing with a protected homestead, the value of the homestead property is not considered in determining the personal representative's compensation.[92] For nominated personal representatives motivated by compensation, it may be prudent to inform them that homestead property may be excluded in determining their compensation before they petition the court for a formal appointment as personal representative.

Commercial Use Can Reduce Benefits

It is not uncommon for homeowners to lease and give exclusive use to a portion or all of their residence. Renting out all or substantially all of a dwelling can be considered abandonment of a homestead for tax purposes and could cause loss of homestead property tax benefits.[93] Renting out only a small portion could mean a reduction in homestead property tax benefits.[94]

Waiver of Spousal Homestead Devise Restriction by Deed

Certain estate planning techniques may involve deeding homestead property away from a spouse. For instance, spouses may want to divide homestead property to fund separate qualified personal residence trusts. At one point, there was uncertainty about whether a spouse's joinder in a deed conveying homestead property could constitute a waiver of their homestead devise rights.[95] To address the uncertainty, the legislature enacted section 732.7025 of the Florida Statutes in 2018. A spouse can waive homestead devise restrictions by including the following language in a deed: "By executing or joining this deed, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property described in this deed to someone other than me."[96]

Note that the waiver language does not constitute a waiver of either (a) the protection against the owner's creditor claims during the owner's lifetime and after death or (b) the restrictions against alienation by mortgage, sale, gift, or deed without the joinder of the owner's spouse.[97] Practitioners should be selective about when to include the waiver language in deeds because including the language in all deeds involving homestead property can have unintended consequences.[98] For example, if a deed with the waiver language is used to fund an individual revocable trust for Spouse 1 and Spouse 1 then restates the trust to disinherit Spouse 2, Spouse 2 may be forced to move out of the home upon Spouse 1's death. Also, the mechanism found in section 732.7025 for waiving the devise restrictions is not exclusive. Spouses can also waive homestead rights under the provisions of section 732.702.

98-Year Lease

Once the initial term of a qualified personal residence trust expires, the property can be held in continuing trust. The donors can then lease back the property from the trustee of the continuing trust. If the continuing trust is structured as a grantor trust for income tax purposes and the donor pays fair market value, the donor can transfer a tremendous amount of wealth without using transfer tax exemptions and incurring income taxes. Florida law allows a lessee to qualify for homestead property tax benefits if the lease is for a period of 98 or more years.[99] Therefore, a donor leasing property from an irrevocable grantor trust can benefit from both tax-free wealth transfers and homestead property tax benefits.

Business Entities and Homestead

To qualify for the Florida homestead exemption, the property must be the permanent residence of a natural person who holds

90 Fla. Stat. Ann. § 735.201 (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.).
91 *Id.* § 733.617.
92 *Id.*
93 *Id.* § 196.061(1).
94 Furst v. Rebholz, 361 So. 3d 293 (Fla. 2023) (The homeowner rented out 15 percent of his house. The supreme court held that the homestead tax exemption should be reduced proportionally to the portion of the property used for commercial rental purposes.).
95 Stone v. Stone, 157 So. 3d 295 (Fla. Dist. Ct. App. 2014).
96 Fla. Stat. Ann. § 732.7025(1) (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.).
97 *Id.* § 732.7025(2).
98 Jeffrey S. Goethe & Jeffrey A. Baskies, *Homestead Planning Under Florida's New "Safe Harbor" Statute*, 93 Fla. Bar J. 36 (2019), https://www.floridabar.org/the-florida-bar-journal/homestead-planning-under-floridas-new-safe-harbor-statute/; Angela K. Santos & Jeffrey A. Baskies, *PROCEED WITH CAUTION: Waiver of Spousal Homestead Devise Restrictions by Deed*, ActionLine, Spring 2019, at 22, https://www.katzbaskies.com/wp-content/uploads/2021/06/PROCEED-WITH-CAUTION-Waiver-of-Spousal-Homestead-Devise-Restriction-by-Deed.pdf.
99 Higgs v. Warrick, 994 So. 2d 492 (Fla. Dist. Ct. App. 2008); Fla. Stat. Ann. § 196.041 (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.).

legal or equitable title. This exemption does not apply to real estate held by business entities such as limited liability companies or corporations, irrespective of the owner's personal use or residency or the owner's status as the sole shareholder.[100]

Mobile Homes

The owner of a mobile home can benefit from homestead's creditor protection benefits, tax benefits, or both depending on the type of interest the owner has in the land on which the mobile home is located. If the mobile home owner owns the land where the mobile home is located and the mobile home is permanently affixed to the land, the owner can be protected from the forced sale of the mobile home by creditors and claim the property tax benefits associated with homestead.[101] If the mobile home owner does not own the land, the mobile home can be protected from forced sale, but the homeowner typically cannot claim homestead's tax benefits.[102] If the mobile home owner does not own the land but (a) is a tenant-shareholder or member of a cooperative corporation or (b) has a long-term leasehold interest of 98 years or more, the owner can claim both creditor protection benefits and tax benefits.[103]

CONCLUSION

Florida homestead laws protect residents from excessive property taxation and creditor claims. They also protect families by preventing a homeowner from disinheriting spouses and minor children. Practitioners may find the laws complex and a bit overwhelming but, because the homestead protections have existed for over 150 years, there is plenty of statutory and case law guidance to help answer questions. If you wish to develop a thorough understanding of the homestead laws and concepts discussed, reading this article alone is not enough: Please spend time reviewing the statutes, case law, and other guidance referenced in the footnotes.

100 Op. Att'y Gen. Fla. 2007-18 (2007), https://www.myfloridalegal.com/ag-opinions/homestead-exemption-limited-liability-company; Prewitt Mgmt. Corp. v. Nikolits, 795 So. 2d 1001 (Fla. Dist. Ct. App. 2001).

101 Fla. Const. art. X, § 4; Fla. Stat. Ann. §§ 196.031, 320.0815 (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.); Fla. Admin. Code Ann. r. 12D-7.0135 (West, Westlaw through amendments effective on or before Oct. 29, 2025).

102 Fla. Stat. Ann. § 222.05 (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.); *In re* Scott, 638 B.R. 658 (Bankr. S.D. Fla. 2022).

103 Fla. Stat. Ann. §§ 196.031, 196.041, 719.103(26) (West, Westlaw through 2025 Spec. Sess. C and July 1, 2025, of 2025 1st Reg. Sess.); Op. Att'y Gen. Fla. 2007-33 (2007), https://www.myfloridalegal.com/ag-opinions/homestead-exemption-leased-property.

WealthCounsel Safeguards Information and Privacy:

SOC 2 Type 2 Audit Complete

Information security is a growing concern for both organizations and individuals. WealthCounsel has taken substantial steps to safeguard members' data, including adopting policies and practices compliant with criteria established by the American Institute of Certified Public Accountants (AICPA) called SOC 2 (System and Organization Controls), which involves being audited by an independent AICPA-approved certified public accountant.

WHAT IS SOC 2?

SOC 2 is the gold standard for security compliance among software-as-a-service (SaaS) companies worldwide. It requires companies to establish and follow strict policies and procedures for information security that encompass the availability and confidentiality of customer data. Attaining a SOC 2 Type 2 attestation involves an in-depth, months-long review by an independent auditor to ensure that internal security controls are well-designed and operating effectively. WealthCounsel has received a SOC 2 Type 2 attestation report following an independent audit by Assurance Labs.

WealthCounsel's systems underwent a stringent examination that tested the following service categories:

- overall security (i.e., protections against unauthorized access and disclosure have been implemented)
- service availability (i.e., controls are in place to maintain the accessibility and operation of systems for users as agreed)
- information processing integrity (i.e., practices have been implemented to provide authorized, timely, complete, and accurate data processing)
- privacy safeguards (i.e., controls are in place to protect identifying personal data such as names or Social Security numbers)

WHY IT MATTERS

The SOC 2 Type 2 audit confirmed that our systems are properly configured to keep our members' sensitive data secure. This rigorous independent assessment of our systems underscores our dedication and adherence to the highest standards for security and confidentiality to protect both our members' data and their clients' data. WealthCounsel will undergo an annual SOC 2 Type 2 audit as part of our ongoing commitment to data security.

Over the past few months, there have been many noteworthy legal developments in trusts and estates, trust administration, tax, business, special needs, and elder law. This quarterly update summarizes significant recent developments that could impact your practice and examines their implications.

IRS Releases 2026 Exemption and Exclusion Amounts, Retirement Account Contribution Limits

Summary. On October 9, 2025, the Internal Revenue Service (IRS) issued Revenue Procedure 2025-32,[1] providing the annual inflation adjustment amounts for tax provisions to be used by individual taxpayers for the 2026 calendar year. The adjustments include the following:

- The estate, gift, and generation-skipping transfer tax exemptions for 2026 are $15 million, reflecting the increased exemption amount under the One Big Beautiful Bill Act,[2] an increase from $13,990,000 for transfers in 2025.
- The annual exclusion for gifts remains $19,000 for calendar year 2026.
- For 2026, the first $194,000 of gifts (other than gifts of future interests in property) to a spouse who is not a citizen of the United States are not included in the total amount of taxable gifts made during that year, an increase from $190,000 for 2025.

On November 13, 2025, the IRS released Notice 2025-67,[3] providing annual inflation adjustments for retirement accounts. For 2026, the annual contribution limit for employees who participate in various retirement savings plans is $24,500, an increase from $23,500 in 2025. The limit on annual contributions to an IRA is $7,500—an increase from $7,000 in 2025. Individuals aged 50 and older can deduct an additional $1,100, an increase from $1,000 in 2025.

Implications. The increase in the basic exclusion amount means that an individual will be able to transfer $1,010,000 more free of transfer tax liability in 2026 than they could in 2025. Estate planning attorneys should work with clients to determine if they should take advantage of the planning opportunities provided by these increases. Attorneys with

high-net-worth clients will need to advise them regarding tax minimization strategies. Some attorneys may want to encourage clients to use strategies designed to take advantage of the higher exemption amount sooner rather than later, in case a future Congress repeals the new tax law. The $19,000 annual exclusion amount for gifts remains unchanged for the first time since 2021, following increases in 2022, 2023, 2024, and 2025.

Creditor May Not Reach Real Property Held by DAPT-Owned LLC

Facts. In 2014, Can IV Packard Square, LLC (Can IV) loaned money to a company owned by Craig Schubiner to finance a development project in Michigan. The project was unsuccessful and, in 2018, Can IV sued Craig for repayment of the loan and additional relief. In 2019, Can IV obtained a $14 million judgment against Craig.

In September 2023, Can IV, in an effort to satisfy its judgment, filed an action seeking to either void a spendthrift provision in, or invalidate, a trust Craig had established in 2007 (seven years before Can IV made the loan) that named his wife (if any), parents, and issue as beneficiaries. The trust named a

1 Rev. Proc. 2025-32 (Oct. 9, 2025).
2 Pub. L. No. 119-21 (2025).
3 I.R.S. Notice 2025-67, 2025-49 I.R.B. 1 (Nov. 13, 2025).

professional trustee that had the sole and absolute discretion to distribute the income and principal for the benefit of the beneficiaries; however, Craig was an "advisor" to the trust and retained full power to manage the investments of the trust in a fiduciary capacity. The trust document barred Craig from acting as trustee.

The trust included a spendthrift provision prohibiting the beneficiaries from transferring their interests and precluding creditors from reaching the trust's assets. Can IV petitioned the court to declare the spendthrift provision void or to invalidate the entire trust. It claimed that Craig was the de facto trustee and that certain transfers of real estate to several limited liability companies (LLCs) that were 90 percent owned by the trust, formed in Delaware and managed by Craig, were fraudulent. Craig and other interested parties filed a motion to dismiss.

Holding. In *In re CES 2007 Trust*,[4] the Delaware Chancery Court determined that the trust met the requirements under Delaware's Qualified Dispositions in Trust Act (the Act)[5] to qualify as a domestic asset protection trust (DAPT).

The court noted that the Act defines a *qualified disposition* as "an irrevocable transfer, conveyance, or assignment of real or personal property (or the interests therein) to one or more trustees, at least one of which is a 'qualified trustee.'"[6] The court rejected Can IV's attempt to conflate the parcels of real property, which were assets of the LLCs, with the LLCs, which were assets of the trust. Thus, real estate transactions at the LLC level could not be fraudulent transfers to or from the trust that could justify voiding the trust's spendthrift provisions.

In addition, the court determined that the original and successor trustees met the statutory definition of a *qualified trustee* under Delaware law and that Craig's role as an advisor, whereby he managed, operated, and controlled LLCs owned by the trust, did not undermine the trustee's authority. The trustee could enforce its rights as an LLC member as set forth in Delaware's LLC Act.

The trust agreement satisfied the statutory requirements to be treated as a DAPT under Delaware law: It expressly incorporated Delaware law, included a spendthrift provision consistent with the requirements of Delaware law, and was irrevocable. Therefore, the court granted Craig's motion to dismiss for failure to state a claim.

Implications. DAPTs are permitted by statute in a minority of states. If properly structured, a DAPT enables a trustmaker to protect assets from future creditors using an irrevocable trust even when the trustmaker has retained a discretionary beneficial interest. A transfer of assets to a DAPT can be structured as a completed gift to the trust if the trustmaker wishes to minimize estate taxes and protect their assets.

As noted, the DAPT at issue in *In re CES 2007 Trust* was formed in Delaware. Craig created a double layer of asset protection by forming LLCs (also created in Delaware) to hold real property and transferring a majority interest in the LLCs to the trust. In the present case, the DAPT had been created and funded long before the creditor's claim arose. Further, the alleged fraudulent transfers were not of the LLC interests held

4 No. 2023-0925-SEM, 2025 WL 1354268 (Del. Ch. May 2, 2025).
5 12 Del. Code §§ 3570–76.
6 *Supra* note 3 at *6 (citing 12 Del. Code §§ 3570–76).

by the DAPT but of real estate transactions at the LLC level: The court found that because the creditor had not alleged any fraudulent transfers to or from the trust, it had failed to state a valid basis for the court to invalidate the DAPT. In addition, Craig's role as a trust advisor with the power to manage the trust investments was sufficiently limited so that he could not undermine the trustee's powers. Craig was also the manager of the LLCs—a potential point of vulnerability that could be mitigated by having another party serve as manager.

State Officials Immune from Federal Claim Alleging Insufficient Medicaid Termination Notice Violated Due Process

Facts. In 2020, Gillian Filyaw obtained Medicaid benefits administered by the Nebraska Department of Health and Human Services (NDHHS). In April 2024, Gillian received a notice from NDHHS that she was no longer eligible for Medicaid coverage because her income exceeded the standards and that she could request a fair hearing within 90 days. Gillian did not appeal, and her Medicaid coverage ended in May 2024.

In June 2024, Gillian filed an action against NDHHS officials in their official capacities under 42 U.S.C. § 1983 on behalf of herself and a class of Nebraskans who had or would in the future receive a written notice from NDHHS proposing to terminate their Medicaid eligibility because their income exceeded the standards. She sought certification as a class action, a declaration that NDHHS's notice violated due process and thus was unconstitutional, and a preliminary and permanent injunction ordering NDHHS to reinstate her, the proposed class's, and the future class's property interests in Medicaid coverage until a notice that met constitutional due process requirements was provided. The district court granted NDHHS's motion to dismiss the complaint. Gillian appealed.

Holding. In *Filyaw v. Corsi*,[7] the Eighth Circuit Court of Appeals noted that an unconsenting state is generally immune under the Eleventh Amendment to the US Constitution from suits in federal court brought by either its own citizens or citizens from other states, but that suits seeking injunctive and declaratory relief against state officers—in their individual capacities—based on ongoing violations of federal law are not barred. However, the court also stated that the exception is narrow and requires a plaintiff to allege an ongoing violation of federal law and seek prospective—not retrospective—relief.

In a case of first impression, the court held that Gillian had not alleged an ongoing violation of federal law but was experiencing the effects of the allegedly unconstitutional pretermination notice. The only alleged violation of federal law was the discrete violation that occurred when Gillian received the notice—a completed act that was not repeated. Further, her assertion that she faced an imminent risk of receiving the same deficient notice in the future was insufficient to show a real likelihood that her due process rights would be violated in the future: She was no longer enrolled in Medicaid and had not alleged that she would be eligible for it if she applied.

The court also determined that the limited exception to the sovereign immunity provided by the Eleventh Amendment did not allow a judgment against a state official declaring that they had engaged in a past violation of federal law. As a result, the court affirmed the district court's order.

Implications. Although the Eighth Circuit had not previously addressed whether the termination of a Medicaid recipient's benefits following a state official's issuance of an allegedly constitutionally deficient pre-termination notice was an ongoing violation, the court noted that its decision was consistent with analogous decisions, both in the Eighth Circuit and in other circuit courts of appeals. The court distinguished the facts of the present case, which involved an allegedly deficient notice, from cases in which plaintiffs had alleged that they were deprived of benefits with no notice at all and were not afforded an opportunity for a hearing. In those cases, ongoing federal law violations were found because the complete absence of any process was an ongoing violation of federal due process rather than a discrete past act.

Signing Arbitration Agreement Not a Healthcare Decision Authorized by Living Will Directive Act

Facts. In 2019, Sandra Norris was appointed as her husband Rayford's conservator by a Tennessee court after his diagnosis with Alzheimer's disease. She sought his admission to a private-pay personal care facility, The Lantern, in Lexington, Kentucky. Sandra did not register the 2019 Tennessee order in Kentucky. The Lantern required Sandra to sign a mandatory arbitration agreement before Rayford's admission to the facility. The agreement requested that the signee indicate the capacity in which they were signing, for example, self, power of attorney, or guardian, etc., but Sandra did not do so. Nevertheless, Rayford was admitted to The Lantern and resided there until March 2020. Sandra alleged that he fell multiple times, lost weight, and suffered from an infected bed sore while he resided at The Lantern. Rayford died in August 2020.

7 150 F.4th 936 (8th Cir. 2025).

Sandra filed a lawsuit against The Lantern, asserting multiple claims, including negligence, medical negligence, and wrongful death. The Lantern filed a motion to stay the claims and compel arbitration, asserting that Kentucky's Living Will Directive Act[8] granted Sandra the authority to enter into the arbitration agreement on Rayford's behalf. The Lantern acknowledged that the Tennessee court order was not registered in Kentucky and had no legal effect there. The circuit court denied The Lantern's motion to compel arbitration, holding that signing an arbitration agreement was not a healthcare decision under the Living Will Directive Act. The Kentucky Court of Appeals affirmed its decision, and the Kentucky Supreme Court granted The Lantern's request for review.

Holding. In *Lexington Alzheimer's Invs., LLC v. Norris,*[9] the Kentucky Supreme Court distinguished its precedent holding or stating as dicta that where an agent under a power of attorney expressing general authority to make healthcare decisions or a guardian is presented with an agreement to arbitrate as a condition to admission to a nursing facility, the agent has the incidental or reasonably necessary authority to enter the arbitration agreement. In contrast to the facts in those cases, Sandra was not Rayford's agent under a power of attorney, his guardian or conservator under an order enforceable in Kentucky, or his surrogate under a living will or advance directive.

Under the Living Will Directive Act, when an individual's physician has made a written determination that the individual lacks decisional capacity, a spouse is authorized to make certain healthcare decisions on their behalf, even if they do not have a living will or advance directive. However, the Act only authorizes the spouse to decide whether to consent to or withdraw consent for any medical procedure, treatment, or intervention. The court determined that signing an arbitration agreement was not a medical procedure, treatment, or intervention and thus was not a healthcare decision under the Act. In addition, the court noted that nothing other than the unregistered Tennessee order indicated that Rayford's physician might have determined he lacked decisional capacity. Therefore, the Act did not authorize Sandra, as Rayford's spouse, to enter into the arbitration agreement on his behalf.

The court also rejected The Lantern's argument that the lower courts had flouted the US Supreme Court's ruling in *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*,[10] which had invalidated the clear-statement rule, i.e., that a power of attorney must explicitly state that an agent has the authority to enter into arbitration agreements. The US Supreme Court held that the rule violated the Federal Arbitration Act by discriminating against arbitration agreements, rather than placing them on equal footing with other contracts. The court determined *Kindred Nursing* was inapplicable: The court's determination that the arbitration agreement was invalid was based on a generally applicable contract defense—an agent's lack of authority to bind the principal—and did not discriminate against arbitration. Thus, the court affirmed and remanded the case for further proceedings.

Implications. Many states have statutes like Kentucky's Living Will Directive Act that specify individuals, such as a spouse, child, court-appointed guardian, or attorney-in-fact, who can make certain healthcare decisions on behalf of individuals who no longer have the capacity to do so for themselves. In the absence of such a statute, a party must be authorized by a properly executed medical or financial power of attorney effective in the relevant state or petition a court to be appointed as the guardian or conservator for an incapacitated individual to act on their behalf. In *Lexington Alzheimer's Invs., LLC*, Sandra was not authorized by a statute, a court order effective in Kentucky, nor an estate planning document to sign the arbitration agreement on Rayford's behalf.

IRS Issues Proposed Rule Regarding the Tax Deduction for Qualified Tips

The One Big Beautiful Bill Act provides an income tax deduction of up to $25,000 for qualified tips received by individuals in occupations that customarily and regularly receive tips. On September 22, 2025, the IRS published a proposed rule[11] that provides a definition of qualified tips and identifies the occupations that customarily and regularly receive such tips.

Qualified tips are tips paid in a cash medium of exchange (e.g., cash, check, credit card, gift card, etc.) or received under a tip-sharing arrangement that are paid voluntarily and are not received in the course of a specified service trade or business as defined in I.R.C. § 199A(d)(2). To be considered voluntary, the payment of a tip must be made without any consequence due to nonpayment, must not be the subject of negotiation, and must be determined by the party paying the tip.

8 Ken. Rev. Stat. § 311.631.
9 718 S.W.3d 795 (Ky. 2025).
10 581 U.S. 246 (2017).
11 Occupations That Customarily and Regularly Received Tips; Definition of Qualified Tips, 90 Fed. Reg. 45340 (proposed Sept. 22, 2025) (to be codified at 26 C.F.R. pt. 1), https://www.federalregister.gov/documents/2025/09/22/2025-18278/occupations-that-customarily-and-regularly-received-tips-definition-of-qualified-tips.

Occupations that customarily and regularly receive tips include not only those in the service industry involving interactions with customers but also those in which workers receive tips through tip-sharing arrangements. The proposed rule includes a chart that categorizes and assigns codes to these occupations.

The deduction phases out for individuals with modified adjusted gross income exceeding $150,000. For married individuals, the deduction is available only if the taxpayer files a joint return with their spouse. The deduction is effective retroactively as of January 1, 2025, and applies to tax years 2025 through 2028.

Takeaways. Attorneys representing businesses with employees who may be eligible for the deduction should advise them to consult with their certified public accountant to ensure compliance with the proposed rule. Note, however, that on November 5, 2025, the IRS issued Notice 2025-62,[12] which provides relief for taxable year 2025 from penalties for failure to file correct information returns and furnish correct payee statements related to deductions for qualified tips and qualified overtime compensation.

Businesses may want to examine the categories of workers who qualify for the deduction and adjust their tipping policies, such as mandatory service charges, to enable these workers to take advantage of the deduction. It is notable that some categories of workers not traditionally considered to receive tips, such as home electricians and plumbers, are eligible to take advantage of the deduction under the proposed rule.

FTC Withdraws Notices of Appeal, Acceding to the Vacatur of the Non-Compete Clause Rule

Summary. On September 5, 2025, Federal Trade Commission (FTC) Chairman Andrew Ferguson and Commissioner Melissa Holyoak announced[13] that the FTC withdrew its notices of appeal in *Ryan, LLC v. FTC*[14] and *Properties of the Villages v. FTC*,[15] acceding to the vacatur of the April 2024 Non-Compete Clause Rule.[16] The rule banned most noncompete covenants in the employment context.

However, Ferguson and Holyoak expressed the FTC's intention to initiate enforcement actions against individual instances of unreasonable noncompete agreements that violate section 5 of the FTC Act, which prohibits unfair competition. On September 4, 2025, the FTC launched a public inquiry[17] to encourage employees and others to share information about the use of noncompete agreements for possible future enforcement actions. Further, on September 10, 2025, the FTC issued a warning letter[18] to several large healthcare employers and staffing firms, advising them to review their noncompete agreements to ensure that any restrictions imposed are reasonable.

Implications. The FTC's abandonment of its appeals formally ended its efforts to implement the Non-Compete Clause Rule. At the state level, the law addressing the enforceability of noncompetition covenants has been dynamic over the past several years, with some states imposing additional restrictions and others creating presumptions of enforceability under certain circumstances. A few states—California, Minnesota, North Dakota, and Oklahoma[19]—have enacted statutes completely banning noncompete clauses in employment under most circumstances. However, Kansas recently enacted Kan. S.B. 241, an employer-friendly statute that identifies circumstances in which nonsolicitation agreements are presumed to be enforceable.[20] Similarly, Florida enacted H.B. 1219, entitled the Florida Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act, which creates presumptions of enforceability for certain garden leave and noncompete agreements.[21]

12 I.R.S. Notice 2025-62, 2025-48 I.R.B. 1 (Nov. 5, 2025).

13 Fed. Trade Comm'n, Statement of Chairman Andrew N. Ferguson Joined by Commissioner Melissa Holyoak (Sept. 5, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-holyoak-statement-re-noncompete-acceding-vacatur.pdf.

14 No. 24-10951 (5th Cir. 2025).

15 No. 24-13102 (11th Cir. 2025).

16 89 Fed. Reg. 38342 (Apr. 23, 2024) (codified at 16 C.F.R. pts. 910, 912), https://www.federalregister.gov/documents/2024/05/07/2024-09171/non-compete-clause-rule.

17 Fed. Trade Comm'n, Federal Trade Commission Issues Request for Information on Employee Noncompete Agreements (Sept. 4, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/09/federal-trade-commission-issues-request-information-employee-noncompete-agreements.

18 Fed. Trade Comm'n, FTC Chairman Ferguson Issues Noncompete Warning Letters to Healthcare Employers and Staffing Companies (Sept. 10, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-chairman-ferguson-issues-noncompete-warning-letters-healthcare-employers-staffing-companies.

19 Cal. Bus. and Prof. Code §§ 16600, 16600.1; Minn. Stat. § 181.987; N.D. Cen. Code § 9-08-06; 15 Okla. Stat. § 219A.

20 For additional discussion of Kan. S.B. 241, *see Current Developments: May 2025 Review*, WealthCounsel (May 16, 2025), https://info.wealthcounsel.com/blog/current-developments-may-2025.

21 For additional discussion of Fla. H.B. 1219, *see Current Developments: June 2025 Review*, WealthCounsel (June 13, 2025), https://info.wealthcounsel.com/blog/current-developments-june-2025-review.

LISSA BEALKE-MOORE

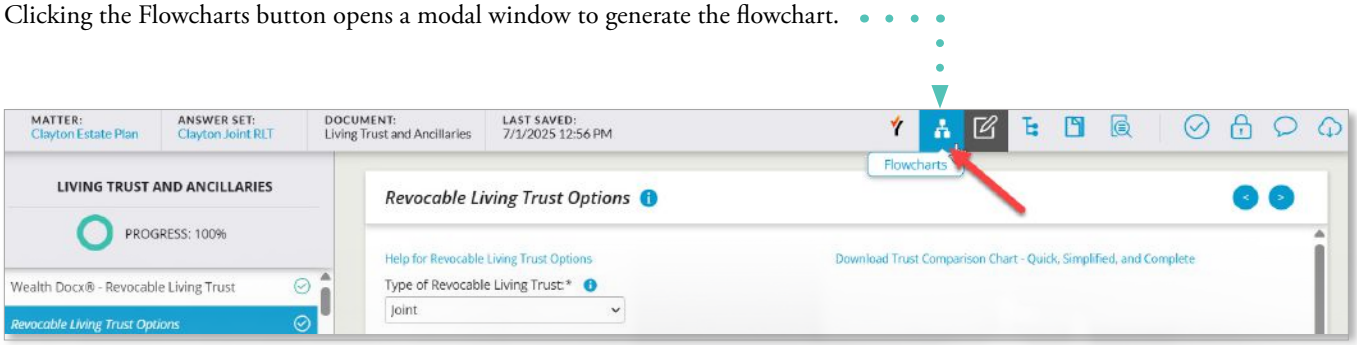
Estate Planning Visualizations Using WealthCounsel Flowcharts

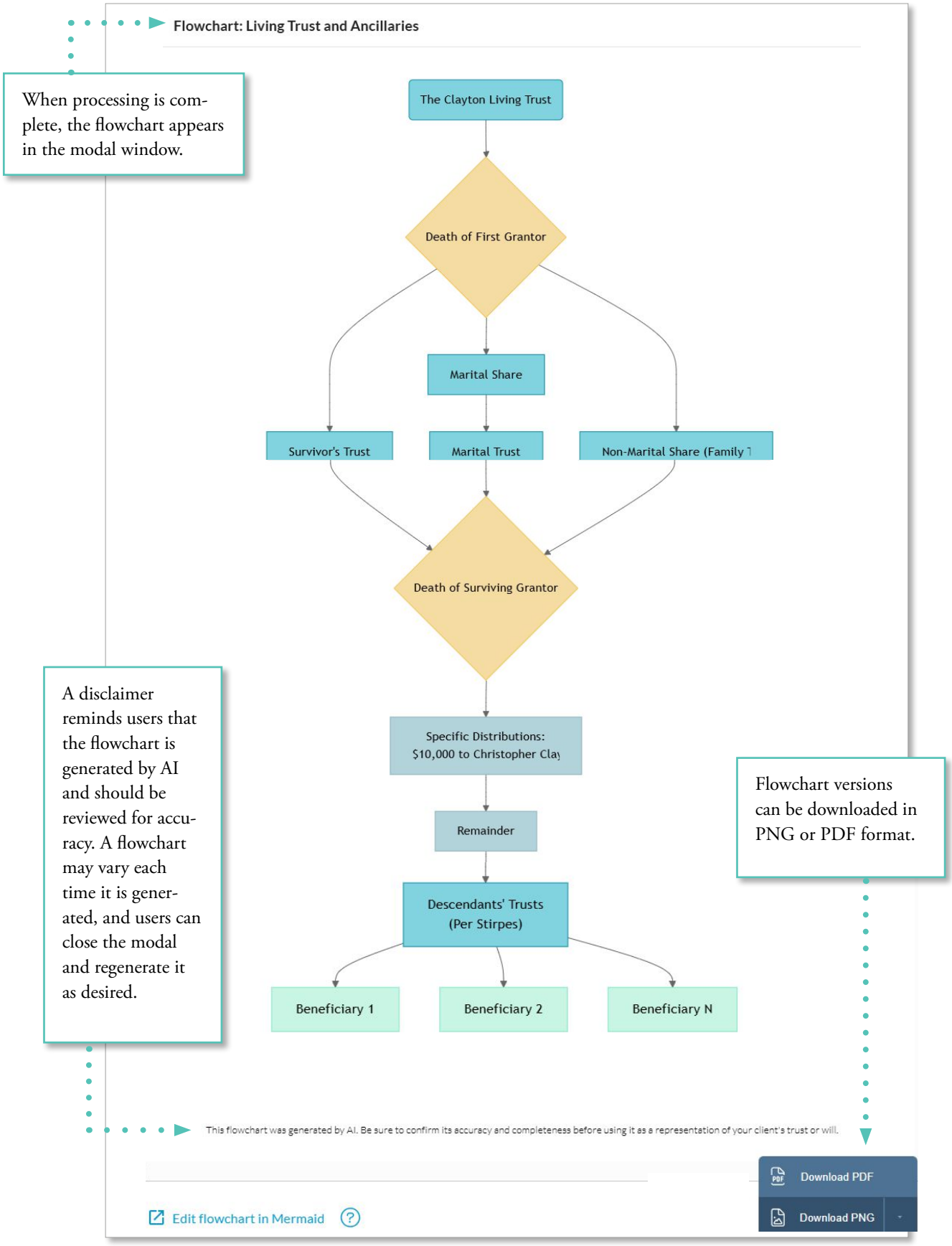
Helping your clients understand their trust or will plan is a vital part of the estate planning process. We are excited to introduce the new Flowcharts feature for WealthCounsel Elite and Professional subscribers. With just the click of a button, you can turn the complexities of a trust or a will into a clear, easy-to-understand visual representation of an estate plan. It is a fantastic way to enhance your clients' understanding and confidence when you present these important documents to them.

The AI-generated Flowcharts feature is built directly into the drafting toolbar and is available only when you are creating a trust or a will.

Before generating a flowchart, ensure that all questions in the answer set interview have been completed so that the flowchart output will be as accurate as possible.

Clicking the Flowcharts button opens a modal window to generate the flowchart.




Flowchart: Living Trust and Ancillaries
When processing is complete, the flowchart appears in the modal window.
The Clayton Living Trust
Death of First Grantor
Marital Share
Survivor's Trust
Marital Trust
Non-Marital Share (Family T
Death of Surviving Grantor
Specific Distributions:
$10,000 to Christopher Cla
Remainder
Descendants' Trusts
(Per Stirpes)
Beneficiary 1
Beneficiary 2
Beneficiary N
A disclaimer reminds users that the flowchart is generated by AI and should be reviewed for accuracy. A flowchart may vary each time it is generated, and users can close the modal and regenerate it as desired.
Flowchart versions can be downloaded in PNG or PDF format.
This flowchart was generated by AI. Be sure to confirm its accuracy and completeness before using it as a representation of your client's trust or will.
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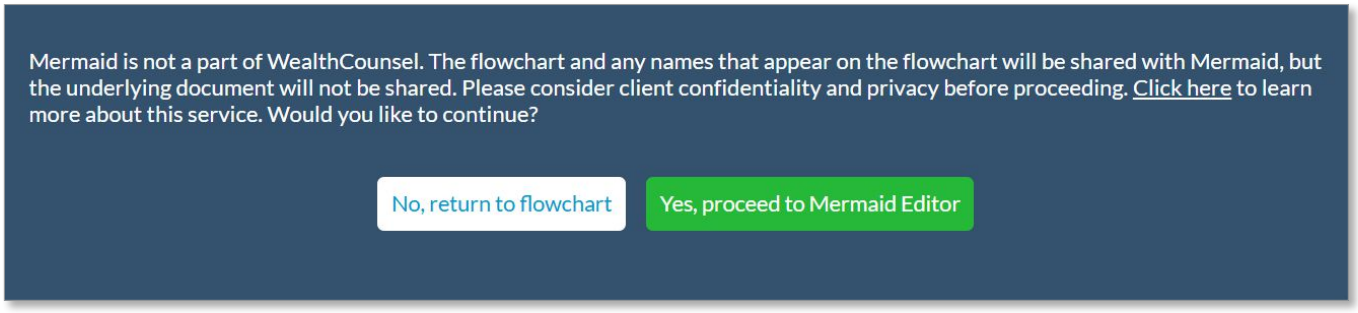
CUSTOMIZING FLOWCHARTS

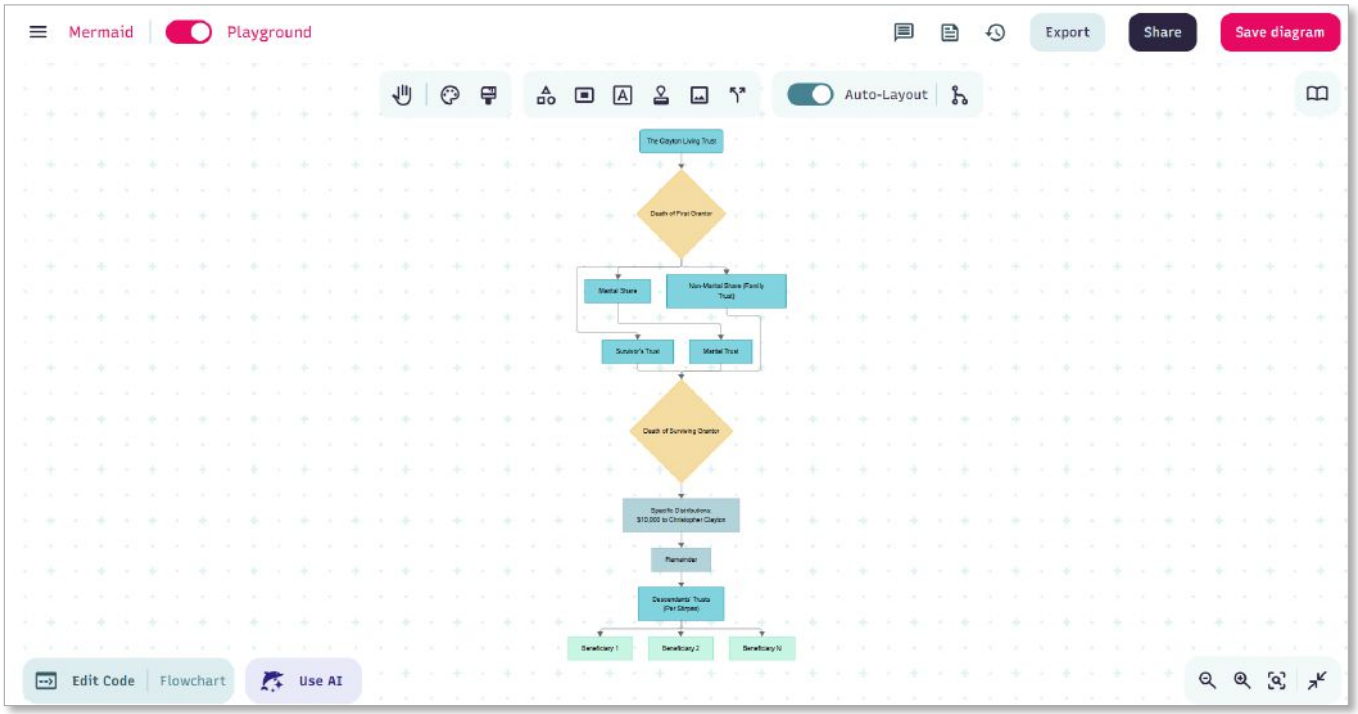
Each client's estate plan is unique. As a result, the flowchart may need to be customized before you present it to the client. You can edit a flowchart in Mermaid, an external diagram editor.

To get started, click the "Edit flowchart in Mermaid" link located at the bottom left of the modal window. After clicking the link, a disclaimer informs you that Mermaid is a third-party application that is not affiliated with WealthCounsel. The flowcharts generated in the WealthCounsel system are stored within our secure technology. By clicking the link to edit in Mermaid, you agree to share all information in that flowchart with Mermaid. No additional data will be shared beyond what is presented in the flowchart.



After you click the "Yes, proceed to Mermaid Editor" button, the flowchart will open the Mermaid Editor in its Playground view.

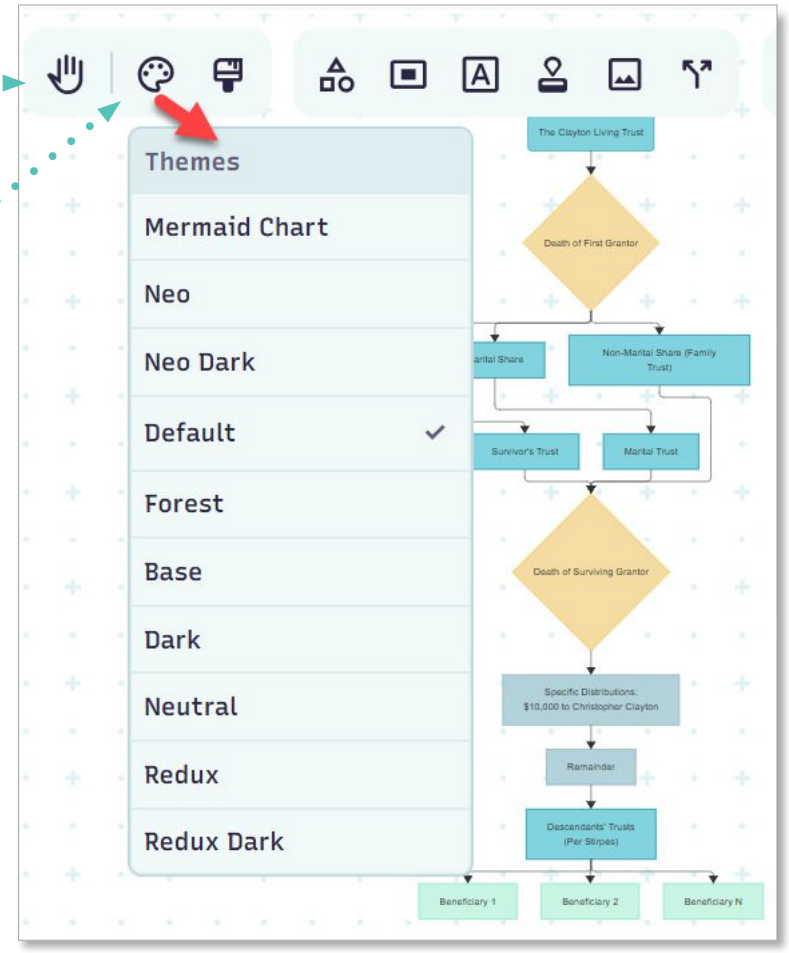
Flowcharts are composed of geometric shapes, called nodes, and edges, which are arrows or lines that connect nodes and define the relationships between them. Users can customize the flowchart by adjusting text, modifying styles, and adding or removing elements.



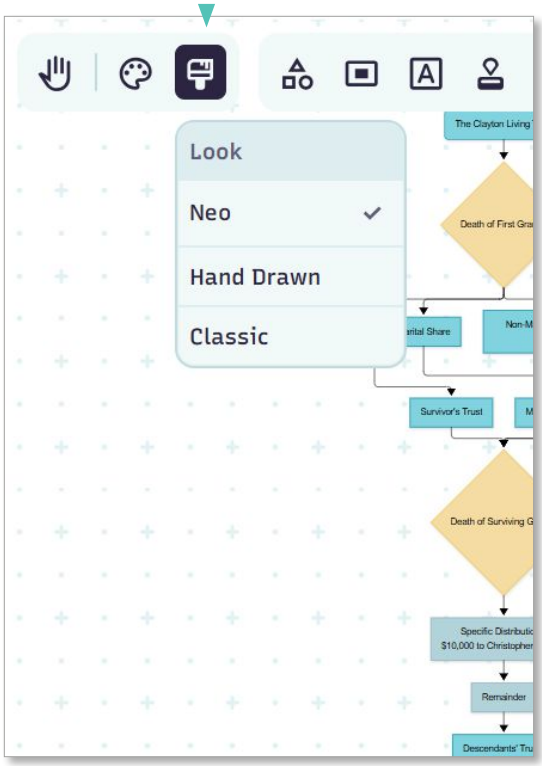
The flowchart opens by default in adaptive layout mode, which allows users to modify existing elements and add new shapes and connections. Use the toolbar to apply edits to the flowchart. As you make changes, Mermaid automatically rearranges elements in the flowchart to maintain a balanced and organized layout.

The first icon in the toolbar is Pan, which allows you to move, or pan, the flowchart around the canvas.

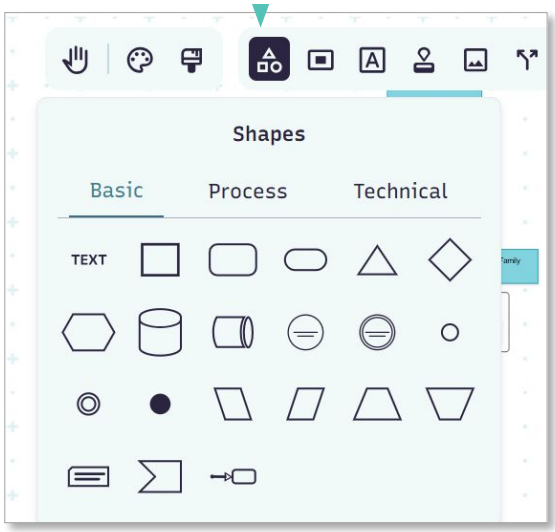
Click the Themes icon to change the flowchart's appearance.



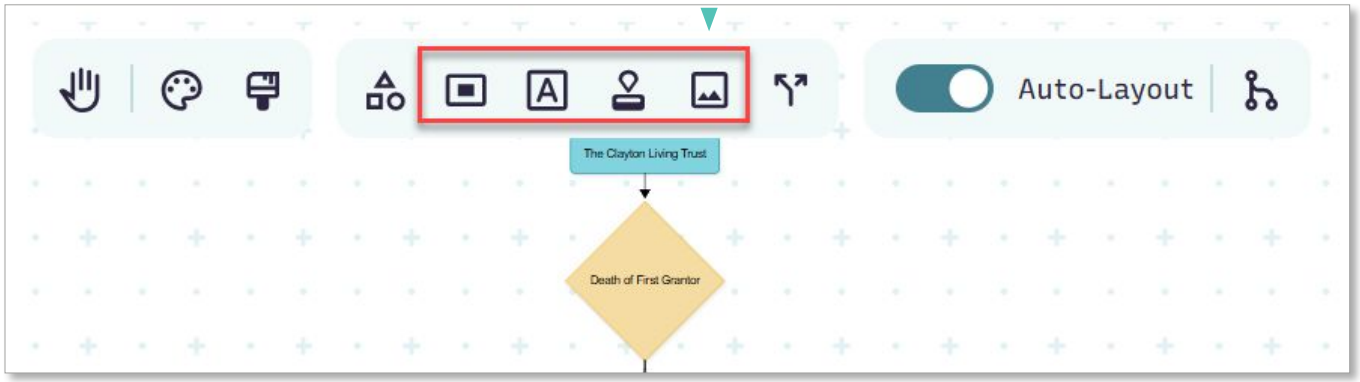
To add a neo, hand-drawn, or classic look to the flowchart, use the Look icon.



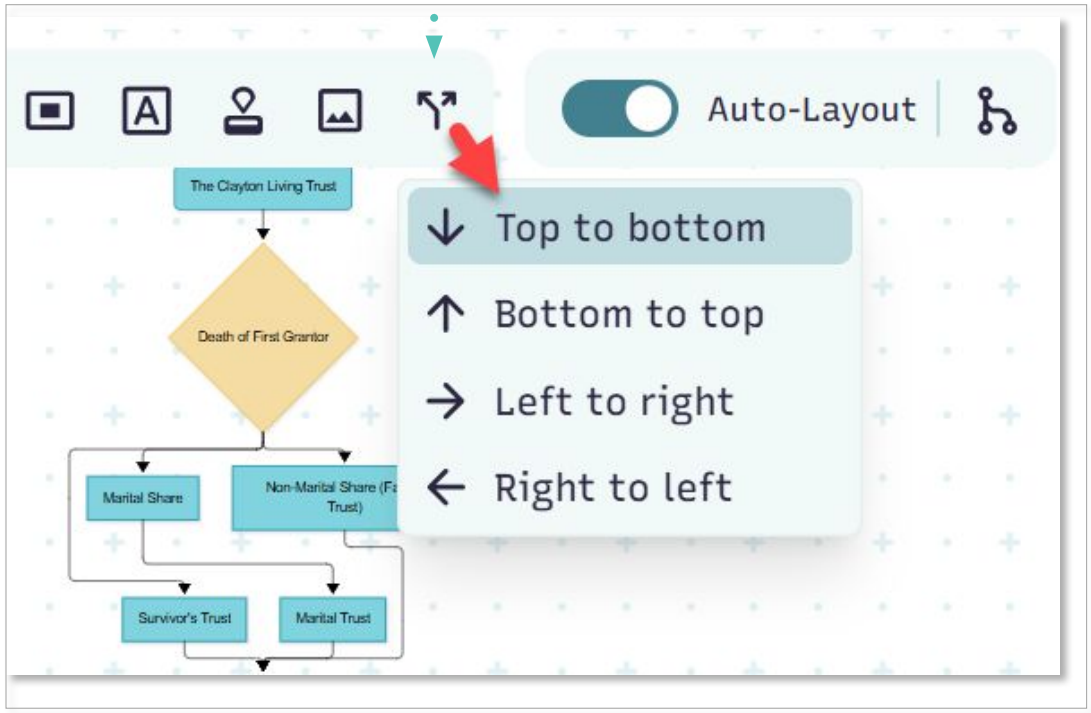
You can use the Shapes icon to change the shape of the nodes to represent different steps or meaning.



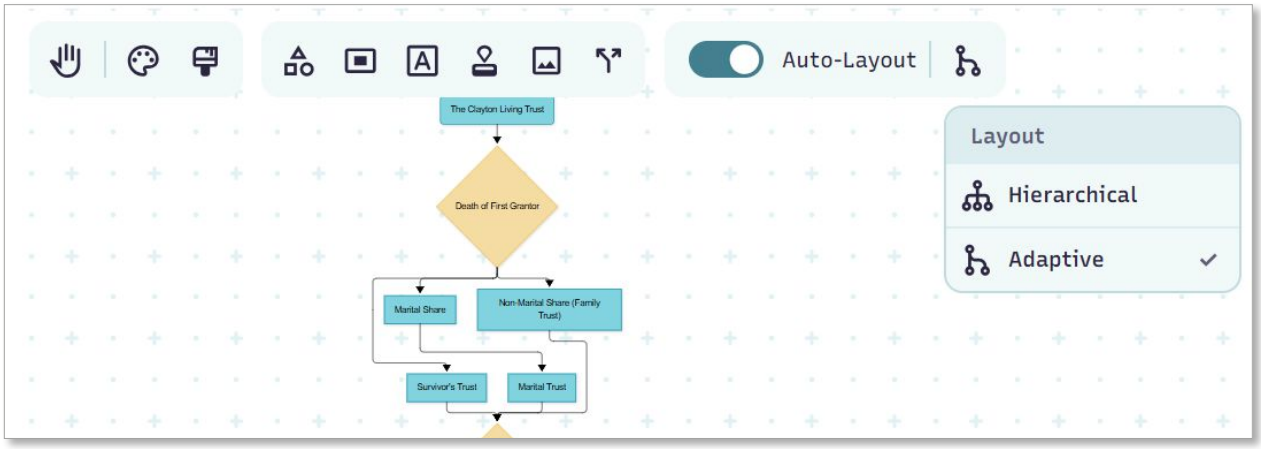
The next four icons on the toolbar, from left to right, are used to add a subgraph, a text box, an icon, or an image to the flowchart.

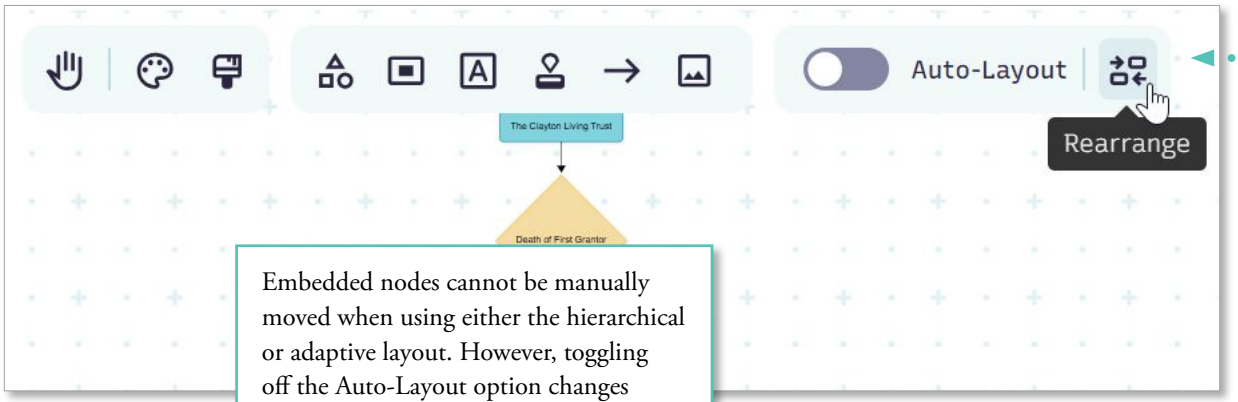


The Change Direction icon, clicked at the beginning of the flowchart, controls its layout and orientation.



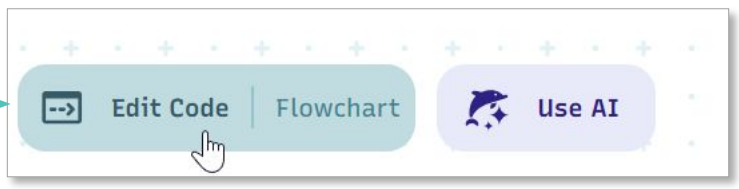
Auto-Layout automatically arranges the flowchart's nodes and connections, eliminating the need for manual positioning of each element. There are two layout options: adaptive and hierarchical. The default adaptive view presents sharper corners and straighter lines, while the hierarchical view resembles an organizational chart arranged in a nested structure.





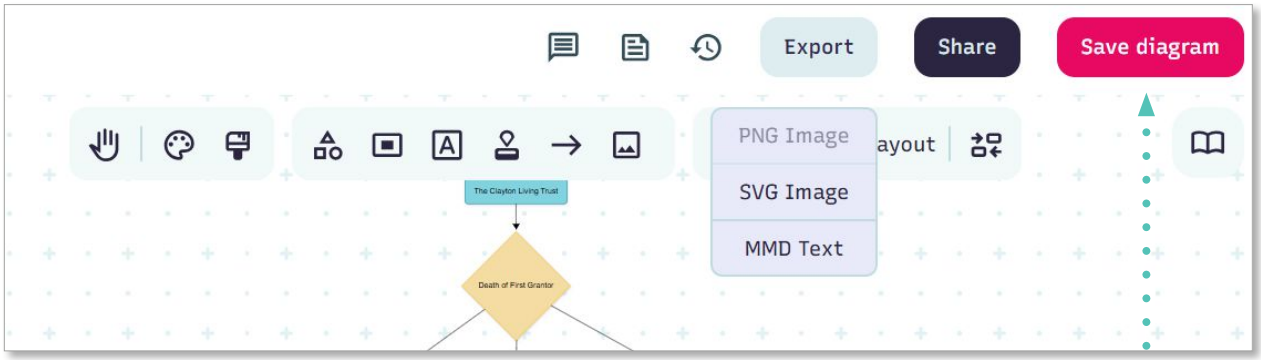
Embedded nodes cannot be manually moved when using either the hierarchical or adaptive layout. However, toggling off the Auto-Layout option changes the flowchart to manual layout mode and adds the Rearrange option. Users can click the Rearrange option to reset the chart back to one of the automatic layouts.

Users can also click the Edit Code button at the bottom left of the page to see the related code used to structure the flowchart.



Click the X to close the Code view. Click here for a short video tutorial about customizing flowcharts in Mermaid.

Once all customizations are complete, click the Export button at the top right of the page. Flowcharts can be downloaded as a PNG, SVG, or MMD Text image.



To download the flowchart as a PNG file, users must create a free Mermaid account. To create an account, click the Save diagram button (located to the right of the Share button) and follow the prompts. Creating a free account enables users to use other helpful Mermaid features, such as adding comments and notes, using the timeline feature, and creating a shareable link (visible to the right of the Export button once an account has been established).

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