

ORSON AND BRUSINI LTD.

Estate and Gift Taxes

The federal tax statute enacted in 2017 continued to increase the federal estate, gift and generation skipping transfer tax exemptions begun in earnest with the American Taxpayer Relief Act of 2012. As of January 1, 2018, the federal estate, gift and generation skipping transfer tax exemption doubled these exemptions overnight from \$5,490,000 per person to \$11,180,000 per person. This exemption amount increased as of January 1, 2019 to \$11,400,000. With portability, made permanent by the 2012 tax act, a married couple now share combined exemptions totaling \$22,800,000. Although the 2017 law requires these exemptions to "sunset" or revert back to 2017 levels (indexed for inflation) as of January 1, 2026, recent proposed regulations issued by the Treasury Department clarify concerns about a "clawback" should a taxpayer use his or her \$11,400,000 exemption during lifetime and die after December 31, 2025. The intent of these proposed regulations is explained as an effort to "ensure that a decedent's estate is not inappropriately taxed with respect to gifts made during the increased" exemption period.

The annual gift exclusion amount for 2019 remains at the 2018 level of \$15,000.

Trustees Can Breathe New Life Into Old Trusts

Say the word "decanting" and most people immediately think about wine! But in more recent years, "decanting" has come to mean much more to trustees and beneficiaries of older irrevocable trusts which may have been well-formed when originally established but have long since failed to achieve the grantor's goals, often causing frustration for trustees and beneficiaries. Prior to recent advances in the courts and state legislatures, making any changes to an irrevocable trust required a trip to the court (of appropriate jurisdiction) and considerable expense. Oftentimes, trustees and beneficiaries were in agreement as to the results desired, but the judge was not! Enter more case law (as in Massachusetts, for example) and state statutes (as in Rhode Island) to support the modification of irrevocable trusts outside the purview of the court system. This modification process conducted outside the courtroom unilaterally by trustees is known as "decanting". It allows trustees, with certain restrictions of course as well as with a degree of fiduciary risk, the ability to modify an irrevocable trust *always with the best interests of the trust and its beneficiaries at the forefront* to better suit changes in circumstances occurring since the creation of the trust. For a few examples:

- Perhaps since the irrevocable trust was initially created and funded, the tax laws have significantly changed and certain provisions of the trust should be modified through decanting to provide a better tax result for the beneficiaries.
- Perhaps a beneficiary has had a major change in health or in financial circumstances, has declared personal bankruptcy, or developed an alcohol or drug addiction since the trust was created. Modifying certain provisions of the trust by decanting could offer more asset protection and preservation of trust assets for that beneficiary as well as his or her descendants.

- The original irrevocable trust may not have provided sufficiently for successor trustees (perhaps all but one named trustee have died or become ill and are unable to serve). Decanting the trust to address trustee succession could be a simple solution to a potentially serious problem in the future if no action is taken.

- One unfortunate example of where decanting may be extremely beneficial is the birth of a beneficiary with special needs after the original creation of the irrevocable trust. Protecting that beneficiary's interest in the trust while preserving any governmental benefits to which that beneficiary may be entitled would be a driving force for any prudent trustee.

While decanting will not always suit the situation, it most surely is a viable option in many circumstances.

We invest time, effort and emotion in our estate and financial planning - for ourselves and our loved ones. Changes in the law, as well as changes in our personal circumstances, warrant a periodic review of a plan to make sure it continues to comport with our wishes. Your attorneys at Orson and Brusini Ltd. look forward to helping you review your current estate plan, or establish a new one, so that you may continue to accomplish your planning goals.

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Multi-state bar admissions, including Rhode Island and Massachusetts

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