



2023 CENTRAL OHIO ESTATE PLANNING & ASSET PROTECTION

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ELDER AND ESTATE PLANNING



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TAX CONSIDERATIONS

ESTATE TAX

OHIO

| Year | Amount free from Ohio Estate Tax | Highest Tax Rate |
|-----------|----------------------------------|------------------|
| 1987-2000 | \$25,000 | 7.00% |
| 2001 | \$200,000 | 7.00% |
| 2002-2012 | \$338,000 | 7.00% |
| 2013+ | Repealed | N/A |

FEDERAL

| Year | Amount free from Federal Estate Tax | Highest Tax Rate |
|------|-------------------------------------|------------------|
| 2019 | \$11,400,000 | 40% |
| 2020 | \$11,580,000 | 40% |
| 2021 | \$11,700,000* | 40% |
| 2022 | \$12,060,000* | 40% |
| 2023 | \$12,920,000* | 40% |

**Caution: on 1/1/2026, the Federal Estate Exemption will be reduced to approximately \$6,000,000/person.*

GIFT TAX

Three important things to know about Gifting:

1. The Gift Tax Annual Exclusion amount for 2023 is \$17,000 per person per year; The Gift Tax Exclusion for Lifetime Transfers is \$12,920,000 (Scheduled to decrease in 2026).
2. Gifting to a third party during lifetime may be subject to capital gains taxes, above.*
3. While there is an exemption from tax within the annual and lifetime exemptions, there is NOT an exemption from potential Medicaid restricted periods if an applicant transfers any asset for less than fair market value during the five (5) year look back period.

CAPITAL GAINS TAX

Capital Gains is a 15-20% tax* on the appreciation of an asset when sold with some of the following exceptions:

- Up to \$250,000/person for real estate used as a primary residence for at least 2 of the preceding 5 years;
- A step-up of cost basis upon the death of an owner, resetting to the date of death value for heirs;
- Transfer of ownership through most trusts, preserving the step-up of cost basis upon death, above.

This is an important reason to avoid lifetime gifts, outside of a trust

SECURE ACT

Effective 2020

For retirement accounts (traditional IRAs, ROTH IRAs and 401k's), the Secure Act requires that most beneficiaries pay income tax on inherited funds within 10 years of the date of death of the original owner. Some exceptions apply for EDBs (Eligible Designated Beneficiaries), which include the following:

- surviving spouse,
- disabled beneficiary,
- minor child of IRA owner, or
- a beneficiary less than 10 years younger than the decedent.

ESTATE PLANNING



TYPES of ESTATE PLANNING

| Legal Authority | Type | Cost |
|----------------------------|-------------|-------------------------------------|
| 1. Will | Probate | \$200 (Probate average \$4,500) |
| 2. Beneficiary Designation | Non-Probate | Variable |
| 3. Trust | Non-Probate | \$2,000 – \$3,500 depending on type |

1. WILLS:

Subject to administration by the Probate Court and your appointed executor(s)

Advantages:

- Nominate guardians for minor children
- Waive a bond that would otherwise be statutorily required for an executor
- Make specific bequests and plans for property distribution
- The Court enforces the process

Disadvantages:

- Exposed to Creditors, including tax and Medicaid recovery
- Requires 6-9 months of probate administration
- Typically requires assistance from attorneys, resulting in legal fees
- Distributions may not be managed after death

2. BENEFICIARY & JOINT DESIGNATIONS:

Directly on titled assets

Titled assets that can name beneficiaries include:

- Bank and other financial accounts ♦ FREE
- Real estate (Transfer on Death or TOD designation) ♦ \$250 plus recording costs
- Vehicles (Exempt to surviving spouses up to \$65,000) ♦ \$17 at BMV
- Life Insurance ♦ FREE
- Retirement Plans ♦ FREE
- Investments ♦ FREE

Advantages:

- Private
- Often cheaper, faster, easier
- No one in charge of distributions besides institutions

Disadvantages:

- Risk of beneficiary predeceasing
- Cannot manage beyond death
- Must update with changes in titled assets

3. TRUSTS:

Allows for management of assets and distribution beyond death

Trusts may be used to:

- Avoid Probate
- Protect Privacy
- Care for a surviving spouse while protecting interest for other heirs
 - Young enough that a surviving spouse may remarry
 - Spouse is not biological parent of children
- Care for minor or disabled children
- Manage assets for persons who are financially irresponsible
- Minimize estate taxes for married couples subject to federal estate tax
- Hold out of state real estate and business interests

Types of Trusts:

Revocable (also called Living and Inter Vivos) Trust

- May be amended
- Does NOT protect assets from the costs of long-term care
- Settlor(s) may also be Trustee(s)
- Settlor(s) may withdraw assets

Irrevocable (also called Medicaid-Qualified) Trust

- Cannot be amended except by Court order
- Can protect assets against the costs of long-term care
 - **Long-term plan:** Fund and wait five (5) years; or
 - **Crisis plan:** use in collaboration with an annuity for immediate protection
- Settlor(s) may NOT be Trustee(s) if Medicaid involved
- Settlor(s) may not withdraw assets without exposing them to long-term care costs





FIDUCIARY AGENTS



POWER OF ATTORNEYS AND ADVANCE DIRECTIVES

Names a trusted fiduciary to make decisions for you during your lifetime if you are ever incapacitated. This avoids the potential need for a court-appointed guardian.

| Type | Cost |
|---------------------------------------|---------------------|
| Durable (Financial) Power of Attorney | \$100 |
| Health Care Power of Attorney | \$75 |
| Living Will Declaration | Included with HCPOA |
| Package of all Three (Big 3) | \$150 |

GUARDIANSHIPS

Court-appointed for a Minor or Incompetent Person unable to manage affairs. Average cost > \$1,500

Guardianships may involve the following:

- Background check of the Guardian
- Educational requirements of Guardian
- Notice to the Ward
- Bond or Waiver of Bond
- Annual Reports
- Annual Accounting
- Authority to Expend Funds
- Quarterly visits in person
- Limits on Guardian discretion
- Limits on asset protection
- Filing and legal fees

Types of Guardianships

- Guardian of the Person
- Guardian of the Estate
- Emergency Guardian
- Limited Guardianship
- Conservatorship (not technically a guardianship, but similar under specific circumstances)



VETERAN'S BENEFITS

In October 2018, the Department of Veteran's Affairs significantly changed the eligibility requirements for Aid and Attendance benefits, resulting in requirements similar to Medicaid eligibility guidelines, as follows:

Service: The veteran must have served at least 90 days active duty with a least one day during a wartime period:

| | |
|-------------------------|--|
| World War II | December 7, 1941 – December 31, 1946 |
| Korean War | June 27, 1950 – January 31, 1955 |
| Vietnam Conflict | August 5, 1964 – May 7, 1975 <i>if serving anywhere</i> |
| | February 28, 1961 – May 7, 1975 <i>if in Vietnam</i> |
| Persian Gulf | August 2, 1990 – Present |

Discharge: Other than dishonorable

Disability: Presumption of disability over age 65; or total disability caused without willful misconduct of claimant

Income: To qualify, "Income for Veterans Affairs Purposes," or IVAP, must be \$0 or less each month, based on total income minus unreimbursed medical expenses ("UME").

Low-income veterans or surviving spouses may qualify for the following:

| | |
|-----------------------------|---------------|
| Veterans with no dependents | \$1,336/month |
| Veteran with one dependent | \$1,750/month |
| Surviving spouse | \$896/month |
| Healthy veteran, ill spouse | \$1,626/month |

Housebound Veteran or surviving spouse considered to be disabled and confined to the home:

| | |
|----------------------------------|---------------|
| Housebound veteran no dependent | \$1,633/month |
| Housebound veteran one dependent | \$2,046/month |
| Housebound surviving spouse | 1,095/month |

Aid and Attendance – needs assistance with ADLs, blind, and/or in a nursing facility:

| | |
|----------------------------|---------------|
| Veteran with no dependents | \$2,229/month |
| Veteran with one dependent | \$2,642/month |
| Surviving spouse | \$1,432/month |

Asset Limitations: Net worth must be equal or less than \$150,538 for 2023, excluding residential real estate up to two acres, less the amount of mortgaged or encumbered property.

Look Back Period: Thirty-Six (36) month period immediately preceding a VA claim after October 18, 2018. Resulting penalty period may be a maximum of five (5) years, calculated using the maximum pension rate. Penalty period begins the month following the date of the last transfer.



ASSET PROTECTION AND LONG-TERM CARE PLANNING



FIVE (5) YEAR PLANNING

There is currently a five year “look-back” period for Medicaid eligibility that allows the state to review and consider whether an applicant has “gifted” an asset for less than fair market value during the five years preceding an application for long-term care assistance. Therefore, many people decide to complete asset transfers in advance of needed care, in anticipation of protecting said assets after the requisite time period has passed. While it is possible to gift directly to third parties, such as children, the assets would then be exposed to the risks associated with the third party(s) such as divorce, disability, death, capital gains taxes, or creditor issues. To avoid those risks, many people choose the protection of an **irrevocable trust** instead, which not only eliminates those risks, but also offers many tax advantages, such as a step-up in cost basis upon death and the real estate tax homestead deduction if a residence is placed in the trust.

Pros:

- Protect 100% after five years
- Avoid Capital Gains tax
- Preserve deduction in real estate taxes for residential properties
- Limit exposure to risk of divorce, creditors, disability/death of beneficiaries
- Avoid probate
- One of the better ways to protect illiquid assets, such as real estate

Cons:

- Must give up control
- Must wait five years to completely protect transferred asset
- Cost of Trust exceeds cost of outright gift
- May trigger income taxes for non-qualified assets, such as IRAs, if transferred

While using an irrevocable trust may be considered an aggressive planning method, many consider it a type of insurance policy that caps the amount of time they may be exposed to the risk of long-term care expenses. It is also helpful in situations where crisis planning would affect a family business such as farming, where the sale of real estate would be undesirable.



CRISIS PLANNING:

< Five Years to Long-Term Care

In the event of a crisis, where long-term care is needed and an individual does not have a five-year period to protect assets exceeding the \$2,000 individual limit, the following methods may apply:

Consider Investments in Exempt Assets:

- Residential real estate up to \$688,000
- Prepaid funerals and assigned life insurance
- One vehicle – unlimited value
- Fifty Percent (50%) spousal exemption, minimum of \$29,724 maximum of \$148,620
- Non-qualified retirements accounts when taking RMDs (required minimum distributions)
- Unlimited asset transfers for a disabled beneficiary
- Residence to in-home caretaker child > 2 years
- Registered businesses

Married:

Annuity for Healthy Spouse ♦ Protect up to 100%

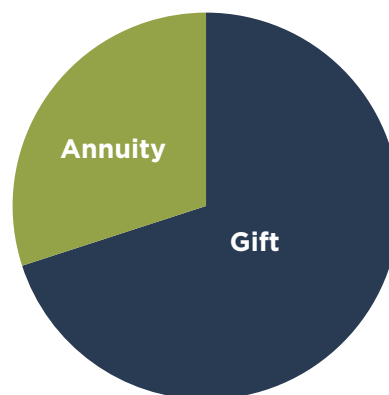
- Asset transfers to a spouse are **exempt from gifting** restrictions
- A spouse may have an **unlimited income** for Medicaid eligibility
- Since Medicaid considers the entirety of a married couples' assets for eligibility, no matter which name they are titled in, half of the assets up to \$148,620 are protected for the spouses' benefit; any and all assets above that may be liquidated in order to purchase a **Medicaid-compliant annuity** for the healthy spouse, based on the life expectancy of the healthy spouse. In Ohio, the "name on the check" rule can save a couple 100% of their assets while qualifying the institutionalized spouse for long-term care Medicaid coverage.

Single or Both Spouses Need LTC:

Gift combined with an Annuity ♦ Protect Majority of Assets

- Used for unmarried individuals or married couples where both spouses need care
- Based on specific calculations, including monthly income and medical expenses, an individual can "gift" more than half their assets to a third party or an irrevocable trust, and purchase a Medicaid-compliant annuity at the same time in order to cover their negative cash flow from private pay expenses during the resulting "restricted period."
- Gifting to an irrevocable trust eliminates the risks involved with said third party experiencing a divorce, disability, death, bankruptcy, or other financial vulnerability.

ASSETS



Average Private Pay Rate = \$7,453/month



MEDICARE



The most important things to know about Medicare long term care coverage are the limitations, based on the plans you have selected. Typically, Medicare Plan A covers the **first 20 days** of hospitalization and long-term care/rehabilitation, so long as it is first triggered by a **THREE NIGHT STAY IN A HOSPITAL**.

Please note that the hospital stay must also be as an admitted patient, NOT just “under observation.” After the first 20 days, depending on the plan you have, Medicare will cover an **additional 80 days**, subject to a co-pay, so long as the medical professionals involved believe the patient can continue to benefit from the care provided.

There is no longer a requirement for the patient’s “continued improvement” in order to continue Medicare’s coverage during that time period. If, however, medical providers determine an individual is no longer eligible to receive Medicare coverage sooner than 100 days, they must provide written notice three days prior to terminating said coverage. At that point in time, the individual may appeal the finding, may private pay, and/or may apply for Medicaid coverage.

WHAT TO EXPECT

- **Appealing a Medicare termination of coverage:**
Since the notice is provided only 3 days before termination, you must act quickly if you intend to appeal.
- **Private pay:** Depending on the facility and type of care needed, there is a wide range of daily rates between facilities and in-home care. In Fairfield County, you can expect \$20/hour to be a competitive rate among home health care providers. For assisted living facilities, the monthly rates can vary between \$2,500/month and \$9,500/month, depending on the level of care provided. In skilled nursing facilities, the average private pay rate in Ohio is currently \$7,453/month.
- **Medicaid Eligibility:** Often, a facility will offer to complete a Medicaid application for you, however, we do not recommend accepting this assistance if there is a possibility that you are not medically and financially eligible, since it will delay your coverage and potentially trigger a penalty period for a prior gift, or the establishment of a Medicaid planning trust, in the past 5 years. If there is a possibility that you have assets to protect or you have gifted any titled assets in the 60 months prior, please consult with a certified elder law attorney before submitting an application.



ABOUT THE ATTORNEY



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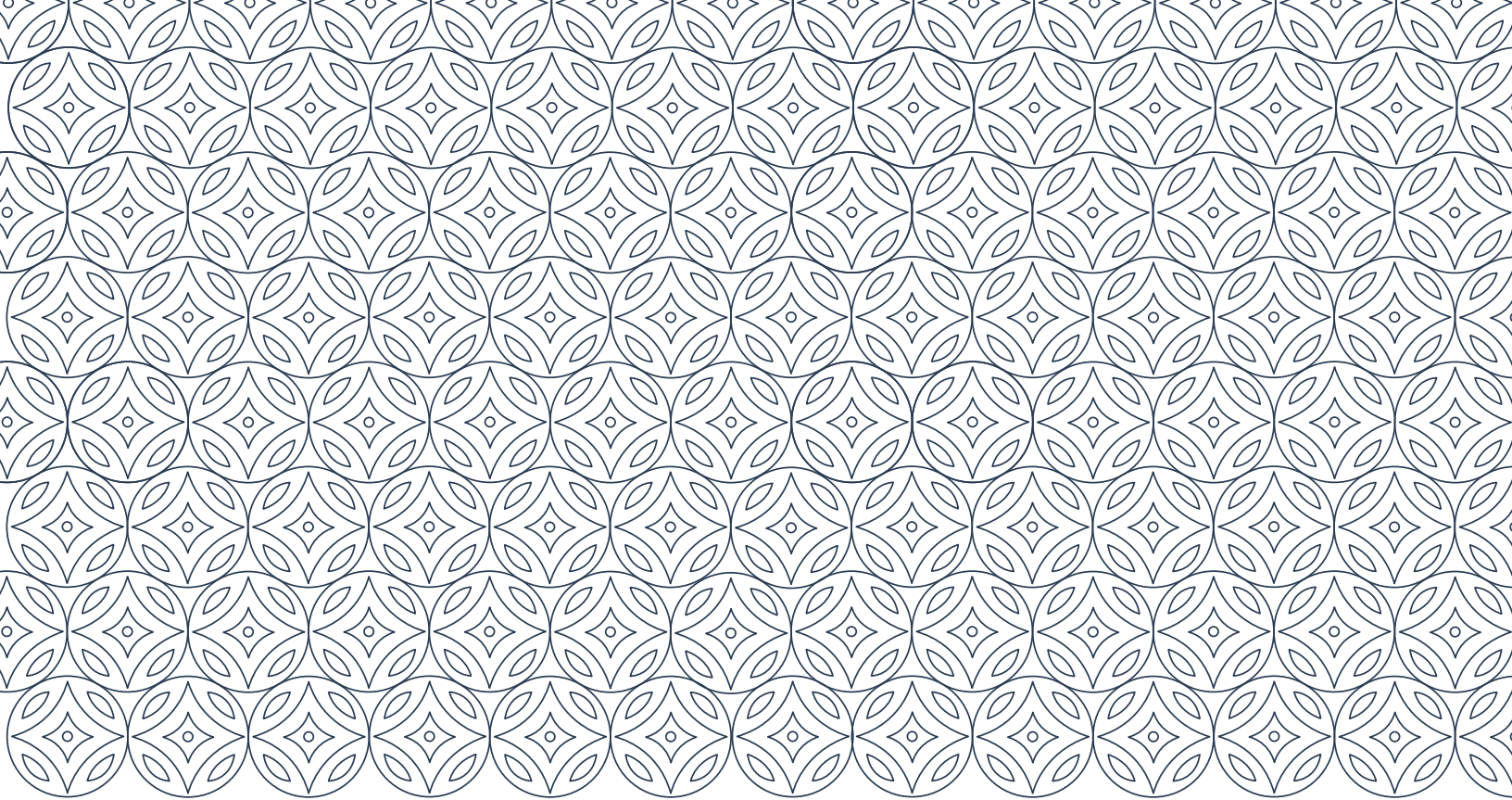
Education:

Following her graduation as Valedictorian from Fairfield Union High School in 1998, Jennifer earned a Bachelor of Science in Business Administration – Finance from The Ohio State University Fisher College of Business in 2002. Jennifer then received her Master of Business Administration, With Honors, in 2006, and completed her Juris Doctorate at the University of Akron C. Blake McDowell School of Law in 2009, where she was awarded the 2009 Perintides and Nolan Award. In 2018, Jennifer became one of only 38 Certified Elder Law Attorneys (CELAs) in Ohio, recognized by the National Elder Law Foundation and one of only 26 Specialists in Elder Law by the Ohio State Bar Association.

Experience and Memberships

Jennifer was the 2019-2020 President of the Ohio Chapter of National Academy of Elder Law Attorneys, and serves on the Executive Committee of the Annual NAELA UnProgram. Locally, she is the past President of the Fairfield County Bar Association, and was named as a 2019 & 2020 Rising Star by Super Lawyers, and 2022 & 2023 Best Lawyer in America in Trusts & Estates.

In addition to serving the legal community, Jennifer also enjoys serving as an At-Large Lancaster City Council member, Past President of the Fairfield County United Way, and Secretary of the Fairfield County Republican Executive Committee. She also serves as a Trustee for the Fairfield County Board of Meals on Wheels, is a member of the Small Business Committee and Health Benefit Program of the Ohio Chamber, and is also a member of the Lancaster Rotary. She is past President of the AHA Children's Museum in Lancaster. Jennifer is married to the love of her life, Brad Hutchinson, and they reside in downtown Lancaster with two daughters, Amelie (11) and Isla (9).



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