

# Estate Planning and Compliance Under a New Paradigm..... A Look Back & A Look Forward

Presented by

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1. Portability of Estate Tax Exemptions
  - A. Use of the immediately predeceased spouses unused exclusion amount (DSUE)
  - B. Calculation of the DSUE amount
  - C. Use of the DSUE for gifting purposes by the surviving spouse, whose exemptions is used first
  
2. Portability Questions and Problems Remain
  - A. The deceased spousal unused exclusion amount is not indexed for inflation.
  - B. The generation skipping transfer tax exemption is not portable.
  - C. Future legislation is uncertain.
  - D. The Massachusetts exemption is not portable.
  - E. Form 706 must be timely filed to make a portability election.
  - F. Estate of first spouse to die remains open for examination.
  - G. An analysis of the importance of not forgetting the step up in basis rules
  - H. The importance of keeping the surviving spouses taxable estate as small as possible
  
3. An estate planning look forward after the American Taxpayer Relief Act of 2012 and the revival of the Joint Revocable Trust (PLR 200101021 and 200210051)
  - A. Review of the current federal and state estate tax exemptions
  - B. Review of the gift tax exemptions and note no state gift tax exists

- C. Using trusts to have your portability cake and eat it too
- D. Philosophy and analysis of the Joint Revocable trust
  - 1. IRC section 2038 and the inclusion of one half of the trust assets into the estate of first donor to die
  - 2. IRC section 2041 and the inclusion of the surviving spouses half of the trust assets into the estate of the first donor to die
  - 3. IRC Section 2523 and the use of the gift tax marital deduction by the surviving donor
  - 4. IRC section 2056(b)(7) and a discussion of the Marital Deduction, the Marital Share , The Special or State Marital Share and the By Pass or Remainder Share (see Flow Chart)
  - 5. IRC Section 1014(a) and 1014(e) and the possibility of a full step up in basis on the death of the first Donor to die (caution this is uncertain territory but worth the discussion)
- E. Tradition estate planning and the use of two revocable trusts for larger estates remains the appropriate planning choice

4. Elder Law Planning takes center stage for more people than ever before

- A. Caution beware of house bill 6300 and its possible effect on elder law planning
  - 1. This bill is considering making the look back period 10 years instead of the 5 year rule currently in place.
  - 2. Review of current look back period under MassHealth regulation 130 CMR 520.019(B) and how it operates
  - 3. This bill is considering lowering the current home equity limit from approximately \$802,000 here in Massachusetts indexed for inflation to as little as \$50,000
  - 4. Review of the countability of your primary residence for Medicaid purposes and a review of this home equity exemption amount as it currently functions under MassHealth regulation 130 CMR 520.007(G)(3) and 520.008
  - 5. If you act now and do your planning will you be grandfathered in under the current law?
- B. Estate tax planning and Medicaid planning come together
  - 1. A discussion of the use of two Medicaid Irrevocable trusts to reduce taxes and protect assets from the nursing home
  - 2. Explain the use of the estate tax marital deduction and the Marital share and the by pass or remainder share inside incorporated in irrevocable medicaid trusts (see flow chart)