



**SPRING  
2021**

Proposed Estate &  
Gift Tax Reform

The Impact of  
a Divorce on  
Estate Planning

# planning matters

PRACTICAL INSIGHTS INTO  
ESTATE PLANNING & WEALTH PRESERVATION

Compliments of Lindabury's Wills, Trusts & Estates Group



**LINDABURY**

McCORMICK, ESTABROOK & COOPER, P.C.  
Attorneys at Law

## You're thinking about succession planning, and so are we.

Lindabury, McCormick, Estabrook & Cooper has you and your family covered. The attorneys in our Wills, Trusts & Estates group have experience levels ranging from 10 to 40+ years in the field of estate planning and estate administration.

## MEET THE PLANNERS



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## proposed estate & gift tax reform

by Maggie Spaziani, Esq.

On March 25, 2021, Senators Sanders and Whitehouse introduced a bill titled "For the 99.5% Act." If enacted, the following are among some of the significant provisions:

- Federal estate tax exemption reduced from \$11.7 million to \$3.5 million
- Gift tax exemption reduced from \$11.7 million to \$1 million
- Increase in estate and gift tax rates from 40% to up to 65%
  - 45% of the value of an estate between \$3.5 million and \$10 million
  - 50% of the value of an estate between \$10 million and \$50 million
  - 55% of the value of an estate between \$50 million and \$1 billion
  - 65% of the value of an estate in excess of \$1 billion
- Changing the annual exclusion (currently \$15,000 per donee per year) to \$10,000 per donee and adding an annual cumulative limitation per donor
- Restrictions on funding of new Grantor Retained Annuity Trusts (GRATs), imposing a minimum term of 10 years and minimum gifts upon funding
- Elimination of valuation discounts for nonbusiness assets, such as family-owned limited liability companies funded with investment assets

In addition, on March 29, 2021, the "Sensible Taxation and Equity Promotion (STEP) Act" bill was introduced in the Senate. If passed, this Act would in general eliminate the step-up in basis rule for assets owned at death and treat property as sold for its fair market value when transferred by gift or bequest. This law would tax unrealized capital gains on death, effective for deaths after December 31, 2020. However, there are a few softeners:

- A \$1 million exemption to protect smaller estates
- Up to 15 years to pay the tax for illiquid assets, such as business entities and farms
- A deduction against the estate tax (for the gains tax due) for larger estates

The Biden administration has proposed similar reforms. It is impossible to determine what will eventually become law. If you have concerns about how potential changes to the estate and gift tax laws could affect your estate plan and the strategies you might consider in order to mitigate the effects of the changes, please contact your estate planning attorney.



## Lindabury's divorce & family law services

The attorneys of Lindabury's Divorce and Family Law group have decades of experience representing clients in divorce and other serious family law matters. The group comprises six practitioners including the former Presiding Judge of Union County's Family Law Division. The diversity of experience possessed by the group's members ensures that clients have access to the personalized service they need specific to the circumstances of their case.

Complementing the group's courtroom and trial experience, members are certified as family law mediators and have been trained in the use of collaborative divorce process. The Divorce and Family Law group also serves members of the observant Jewish population who wish to address their matrimonial and family law issues before the Rabbinical Courts.

Our experience ranges from counseling clients involved in extremely complex and contentious

divorces which sometimes involve determining the value of a family business, professional practice, second home, investment properties or family trusts, to cordial prenuptial agreements, civil unions or adoption actions.

Inevitably secondary legal issues may arise during the course of a New Jersey divorce. The sale of property, valuation of a business and re-drafting of estate plans are just a few of the issues which many divorce clients face. Of major importance to many of our divorce clients is the ability to access the additional legal services they need all within the same firm.

The members of Lindabury's Divorce and Family Law group pride themselves on thorough preparation and effective advocacy with a view toward the resolution of disputes through the settlement process or litigation in a manner which is fair, just and compatible with the best interests and needs of their clients and their families.

# the impact of a divorce on estate planning

by Elizabeth Candido Petite, Esq. and Nicole Kobis, Esq.

Births, deaths, marriages, and divorces continuously reshape the definition of family. It's no wonder, then, that family law and estate planning often go hand in hand. Estate planners and divorce attorneys alike are often presented with "what if" questions that span both areas of law. Here, a few common questions are explored which can help guide individuals faced with a divorce as they make decisions to protect their family and assets.

## Can I change my Will while I'm getting divorced? Should I?

Although the last thing that many people want to do once the divorce action has begun is engage another attorney, it is actually a good idea to revisit your estate plan at this time. Public policy prohibits disinheriting your spouse, so a spouse who is not named in the other's Will could file a claim for the "spousal elective share" to receive a portion of the deceased spouse's estate. The filing of a divorce complaint does not prevent a soon-to-be former spouse from inheriting an equitable share of marital assets. The New Jersey Supreme Court has analyzed what should happen in this situation and applied a remedy which does not allow the surviving spouse a windfall, but at the same time recognizes that at the time of the death, the parties were in fact still married.<sup>1</sup>

If you die without a Will before the divorce is final, then technically you are still married at the time of death, so your soon-to-be ex is still your spouse. Without a will, the intestacy statute provides that your spouse would receive some or all of your estate, depending on whether you have children and whether those children are also your spouse's children.<sup>2</sup>

Even if you revise your Will during the pendency of a divorce to disinherit your soon-to-be former spouse, this alone will not necessarily prevent him or her from receiving assets from your estate that would have been subject to equitable distribution if the divorce had proceeded until conclusion.

Nevertheless, one important thing that a new Will could change is the appointment of your executor. Because there is no requirement that a married person name the spouse as executor, you are able to appoint someone else to serve in this capacity. Since the executor controls the administration of your estate, having someone other than your soon-to-be ex serve in this role may be desirable.

## Can I change my beneficiary designations while I'm getting divorced?

The short answer is no. When you file a complaint for divorce you also need to file a Certification of Insurance Coverage which details all insurance policies that are in place at the time of the filing of the complaint for divorce.<sup>3</sup> You are also required to disclose any modifications that have been made to these policies during the 90 days

prior to filing the complaint. Therefore, if you have a life insurance policy naming your spouse as the beneficiary, unless there is a consent order signed by both you and your spouse that permits you to make such a change, you should not make any modifications during the divorce.

Other beneficiary designations, like those on retirement and investment accounts, typically require your spouse to sign a form if they are removed as beneficiary while you remain married. Further, retirement and investment accounts that were accumulated during the marriage would still remain subject to equitable distribution in the divorce proceeding regardless of the titling of such accounts.

## What happens if I don't change my estate planning documents that name my ex-spouse after the divorce is final?

New Jersey law provides that a divorce decree automatically revokes many rights of your ex-spouse in your estate, such as: (1) disposition under a Will; (2) nomination as fiduciary, such as executor and attorney-in-fact; and (3) right of survivorship of jointly owned assets.<sup>4</sup> This means if you had a Will that leaves all of your assets to your spouse and names him or her as executor, then even if you do not change your Will, your ex-spouse will not be entitled to inherit any of your property under your Will, nor will he or she be able to serve as executor of your estate.

However, a divorce decree does not automatically void beneficiary designations on life insurance policies or retirement accounts. It is especially important to review the beneficiary designations after a divorce and update them as necessary. The custodians of these accounts are required to distribute the proceeds to whomever is the designated beneficiary on file. If your children or other heirs contest this, the custodian may place a hold on the funds while the parties attempt to negotiate a settlement. Even if your children or heirs prevail in an action to receive some or all of the funds, doing so will likely force them to incur legal fees and delay the distribution of the funds.



1. Carr v. Carr, 120 N.J. 336 (1990)
2. N.J.S.A. 3B:5-3
3. R. 5:4-2(f)
4. N.J.S.A. 3B:3-14.

## welcoming our newest partner: Maggie Spaziani, Esq.

We are pleased to welcome our newest Wills, Trusts & Estates Partner, Maggie Spaziani. She has an unwavering dedication to helping individuals and families navigate the complexities of estate planning. She offers both empathy and a laser-sharp legal mind to ensure the best outcomes for clients.

Maggie works with clients on the preparation of estate planning documents including Wills and Trust Agreements in order to plan

and achieve their wealth transfer, gift planning and business succession goals. Maggie also provides counsel to clients in the areas of guardianships, estate administration, fiduciary obligations and the preparation and filing of estate and inheritance tax returns.

Admitted to the bar in New Jersey and Florida, Maggie is based in Lindabury's Red Bank office. You can reach Maggie at 732.741.7777 or via email at [MSpaziani@Lindabury.com](mailto:MSpaziani@Lindabury.com).

For more detailed assistance with estate planning needs, please visit [lindabury.com](http://lindabury.com)



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