

The Legal Perspective



Willingham & Coté, P.C.
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Important Estate Planning

Tax Changes in the Works for 2022

Currently the estate tax exemption is \$11.7 million per person or \$23.4 million per couple and it was scheduled to remain at that level through the year 2025. However, with a change in political parties in the Presidency and Congress, there has been a bill recently proposed by the Senate to decrease the estate tax exemption from \$11.7 to \$3.5 million per person or from \$23.4 million to \$7 million per married couple in the year 2022.

The Senate has also proposed that the estate tax rate will increase on January 1, 2022, from a flat rate of 40% to a progressive rate that will be based upon 45% for the first \$6.5 million of taxable estate, and then 50% on the next \$40 million of taxable assets, 55% for the next \$50 million of taxable assets and 65% on everything over that. Most of us need only worry about exceeding the 45% tax proposed; however, if your estate exceeds \$3.5 million per person or \$7 million per married couple, you should take action this year in efforts to preserve your assets as much as possible before the possible changes in 2022.

Annual Gifts

One of the easiest ways to reduce your estate is through annual gifts for up to \$15,000 per person per year because there is no requirement to file a tax return reporting the gift to the IRS. Further, a person can gift up to five years of annual exclusion to create a 529 Account (a specific type of college savings

account) without utilizing any Estate Tax exemption. Taking advantage of this rule, a single person could fund a college education account with \$75,000 on behalf of a child or grandchild without having to utilize any exemption, and a married couple could fund an account with \$150,000.

Another technique is to make large taxable gifts. This is a technique for high net worth individuals to make large taxable gifts to utilize the tax exemption amount. The IRS has confirmed that if a person makes large gifts, and the exemption amount is reduced in a later year to an amount below the value of the previous gifts, those gifts would be grandfathered and no tax would be due. However, large gifts are a high-risk, high-reward planning opportunity. It is strongly recommended and encouraged for you to consult with your accountant before making any large gifts by the end of 2021.

Portability

You may have had a spouse recently pass away. If your estate will exceed \$3.5 million upon your passing, you have two years from the date of your spouse's death to file a tax return to preserve the \$11.7 million exemption held by your spouse upon his or her death. This will allow the surviving spouse to keep the \$11.7 million exemption allowance of the deceased spouse plus you have another \$3.5 million estate tax exemption or a total \$15.2 million. However, if the surviving spouse remarries and the new spouse dies before the surviving spouse, the new spouse's portability allowance will be substituted for that of the first spouse. You should consult with an accountant experienced with filing returns for trusts and estates to properly

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preserve the estate tax exemption held by your decedent spouse. Many surviving spouses mistakenly believe that if their deceased spouse's assets are under the \$11.7 million at the time of his/her deceased spouse's death, there is no need to file an estate tax return (Form 706). If you are within that two year window, you need to act fast to preserve that exemption.

The proposed legislation by the Senate will have a profound impact for a good many American families who may have been assuming or hoping that no significant estate tax increase would occur. It is strongly recommended that you act now to preserve your wealth in the face of a significant estate tax increase that involves not only rate increases in exemption amounts, but also elimination of the most prevalent tools and structures now being used by accountants and lawyers.

Torree J. Breen is an attorney and shareholder at Willingham & Coté, P.C. She specializes in the areas of estate planning, family law, and liquor license violations. Ms. Breen may be reached at 517.324.1034 or tbreen@willinghamcote.com.



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Protecting Your Land From Encroachments and Trespassers

Most people have an especially strong emotional (and often sentimental) attachment to protecting their real estate. This is especially the case with respect to family cottages and hunting land. Since much of this land is located adjacent to lakes and other bodies of water, it is generally the most susceptible to boundary encroachments and trespasses by neighboring property owners (or even strangers). Cottage property generally produces abnormal lot line configurations due to the desire to provide owners with adequate access to the water. As a result, it is important to understand the implications of encroachments and trespasses so that you may legally protect your property.

Adverse Possession and Prescriptive Easements

Michigan law provides that if another person's land is occupied by a non-owner for at least 15 consecutive years without interruption, the property will be deemed to be owned by the user pursuant to the law of "adverse possession." The most common types of encroachments are driveways, sheds, garages, or fences. If landowners obtain a survey, it is generally easy to determine whether a neighbor has created an encroachment. Once these property overlaps are uncovered, there are generally two ways to address them. First, the landowner may demand that the encroachment be removed. If the neighbor will not voluntarily remove the structure, the property owner will need to file a lawsuit in circuit court in order to remove the structure. Second, the landowner may give "permission" for the continued encroachment. Since the law of adverse possession requires the showing of "adverse" use, this permission stops adverse possession from occurring. Any expression of permission should be documented, executed by both parties when possible, and recorded with the register of deeds in the county where the property is located.

Likewise, if a trespasser uses a portion of another person's land as a trail or other means of access to another parcel of property for at least 15 consecutive years without interruption, a "prescriptive easement" may be created. More specifically, the trespasser would then be granted a permanent easement to use this property. Most often, prescriptive easements arise when a neighbor uses another person's

property to access a portion of their own property. It also often arises when property is used to access a lake, beach, or dock. Similar to the law of adverse possession, the owner of the land should either take action to prevent the access (e.g. lawsuit or fences) or provide the trespasser with permission. Again, any permissive use of property should be done in writing and signed by all parties involved.

Lawful Preventative Measures

The laws of adverse possession and prescriptive easements are counterintuitive to many people. I have had many clients come to my office and seem confident in their property rights by virtue of the fact that they have consistently put up "no trespassing" signs or sent letters demanding their neighbor to stop the encroachment. However, they are surprised to hear that this actually strengthened the neighbor's case for adverse possession or prescriptive easement. In order to prevent this from happening, stronger action must be taken (often circuit court) to stop the encroachment or permission must be granted.

It is also important to understand that the 15 consecutive years necessary to create adverse possession or prescriptive easement can begin to be calculated prior to your ownership of the land. Therefore, obtaining surveys and conducting other due diligence is highly recommended before purchasing real estate. This will allow you to make informed decisions and understand all potential property rights associated with your property.

Scott A. Breen is an attorney and shareholder at Willingham & Côté, P.C. Mr. Breen also has a Master of Laws degree (LL.M.) in taxation. He specializes in the areas of business and real estate transactions as well as hospitality and alcohol beverage law. Mr. Breen may be reached at 517.324.1021 or sbreen@willinghamcote.com.



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Firm News



Congratulations Michael W. Stephenson

Willingham & Coté, P.C., is pleased to announce **Michael W. Stephenson** was elected to the American Board of Trial Advocates ["ABOTA"]. Since its inception in 1958, ABOTA's primary mission has been the preservation of the right to a jury trial as guaranteed by the Seventh Amendment to the United States Constitution.

Membership is by invitation only and is restricted to experienced trial attorneys only. Members must have at least five years of active experience as trial lawyers, have tried at least 10 civil jury trials to conclusion and possess additional litigation experience. Members must also exhibit the virtues of civility, integrity and professionalism by following ABOTA's Code of Professionalism and Principles of Civility.



Congratulations Scott A. Breen

Scott A. Breen has recently been elected to serve as a member of the Board of Directors for Burcham Hills Retirement Center. As a member of the Board, he will also serve as its General Counsel.

Community Involvement

Our firm strongly believes in the importance of supporting community programs and events. These principles are exhibited through donations, sponsorships and participation in community functions.



Thank you Joseph Van Horn

Willingham & Coté, P.C., through its Traverse City office, partnered with "Roast and Toast" to deliver lunches to the Emergency Department and ICU staff at Northern Michigan Hospital in Petoskey, Michigan. Shareholder, **Joseph Van Horn**, met with the staff to thank them for acting as our first line defenders and to give them appreciation for all they do for our community.

Save the Date

Willingham & Coté, P.C., is excited to announce after taking 2020 off that it plans to continue its annual fall "Wealth Planning Seminar." It is currently scheduled for **October 12, 2021**, at 7:30 a.m., at the University Club at Michigan State University located at 3435 Forest Rd., Lansing, Michigan. A complimentary breakfast will be provided and there will be an array of experts in finance, the law and self-care to address today's concerns. If you plan to attend the seminar, please **RSVP to Torree J. Breen** at tbreen@willinghamcote.com or by calling 517.324.1034.



Willingham & Coté, P.C.

INVITES YOU TO ITS

2021 WEALTH PLANNING SEMINAR

October 12

7:30 AM ■ Complimentary Breakfast
University Club 3425 ■ Forest Rd. Lansing

BRING A FRIEND!

Areas of Practice:

Appellate Work
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Commercial Litigation
Criminal Law
Family Law
Estates & Gifts
Franchise Law
Hospitality & Alcohol Law
Insurance Law
Professional Licensing
Real Estate Law



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Staff Announcements



Ann Graham Nichols is Licensed Attorney

Our firm is pleased to announce **Ann Graham Nichols** is a fully licensed attorney and she will be part of the firm's Medical Malpractice and Professional Licensing groups. Ms. Nichols has practiced since 1992 in the areas of Social Security Disability and the Sixth Circuit Appellate Practice. She will bring a strong knowledge of medical expertise and will handle all aspects of the litigation process.

Other Announcements

A Heartfelt Message to our Clients, Colleagues, Families, and Friends

For six great years, our firm has hosted a MSU tailgate to celebrate in Spartan style with our clients, colleagues, and families. Unfortunately, COVID-19 has had a tremendous impact not only on the world, but has devastated many members of our local community. This year instead of hosting a tailgate, our firm has donated to multiple local charities that support the most vulnerable members of our community during this very challenging time. We have chosen organizations specifically because they helped to meet the housing, nutritional, safety, and educational needs of the people of our community. All of us at Willingham & Coté, P.C. wish to thank you for celebrating with us in the past and hope you and your friends and families have a safe and wonderful fall.

