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# TRUSTS & ESTATES UPDATE

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As one year has closed and another begun, it can be very useful to evaluate your current state of affairs in light of your goals and aspirations for the future. Estate planning is an integral part of financial planning that can prepare you and your family for an uncertain future in the context of your wishes for your legacy. This is important regardless of whether you are new to estate planning or have previously established an estate planning structure.

In order to better prepare you for making important decisions about your estate, this *Trusts & Estates Update* will give you a brief overview of some recent changes to consider. As the estate planning landscape changes, Holm & O’Hara LLP will help you navigate these and future updates.

## FEDERAL UPDATE

### INCREASE IN EXEMPTION AMOUNT

The federal estate and gift tax exemption amount for 2016 has been adjusted for inflation to \$5,450,000, up \$20,000 from 2015. While this may not appear to be a substantial increase, it could represent a significant amount after growth or appreciation, especially for investment or development assets.

For families who have created estate planning structures in the past, the 2016 exemption amount is almost certainly higher than when the initial plan was put into place. For instance, prior to 2012, many families created estate planning structures – such as irrevocable trusts – out of concern for potentially adverse estate and gift tax changes. Those trusts typically were created based upon the 2012 exemption amount of \$5,120,000. Since the 2016 exemption amount is \$330,000 more, it may be beneficial to review your overall estate plan and consider whether making further gifts to a trust can be leveraged to provide you with added estate tax savings.

***Consult your estate planning attorney for an update if your estate plan dates to 2012 or earlier.***

### SURFACE TRANSPORTATION AND VETERANS HEALTH CARE CHOICE IMPROVEMENT ACT OF 2015

While the title of this legislation does not suggest any consequences for trusts and estates, it does have at least one relevant provision. The Act requires the reported income tax basis of any property acquired

from a decedent to be consistent with the value of the property on the decedent's estate tax return. This reporting consistency requirement only applies to that property included in the decedent's estate which increases the estate tax liability. Basically, this means that the value that is reported on the estate tax return for a decedent must be the same as the value in the hands of the beneficiary of such property.

The new reporting law requires that executors and personal representatives file an informational statement to the IRS and to each person acquiring any property from the decedent's estate. The informational statement must state the value of such property as reported on the estate tax return. Failure to comply with this provision can result in penalties. For executors and personal representatives, the new reporting law will involve diligence to ensure that these requirements are properly met. For families this means carefully considering your team of advisors (attorneys, CPAs, valuation experts, etc.) to ensure compliance with such rules. Holm & O'Hara LLP's experienced estate administration team can guide you and your family through the process.

***Ensure that everyone involved knows about these new compliance requirements if you are overseeing an estate.***

## DISCOUNT VALUATION REGULATIONS

A common estate planning technique is to gift, sell or transfer interests in a limited liability company or family limited partnership to family members. The interests transferred often receive a valuation discount for tax purposes based upon lack of marketability or lack of control. This has been a valuable planning technique to help reduce the size of your estate by passing discounted assets to your family.

In response to perceived abuses in overly aggressive valuation discounts, regulations have been proposed that would restrict the use of valuation discounts on interests transferred to family members. The proposed regulations could minimize the effectiveness of such planning techniques. For families looking to leverage valuation discounts to reduce the size of their estates, it may be beneficial to start the planning process now.

***Explore the possibility of transferring interests in your LLC or family limited partnership now in order to preserve certain tax advantages.***

## NEW YORK UPDATE

### INCREASE IN EXEMPTION AMOUNT

The New York estate tax exemption amount is scheduled to increase to \$4,187,500 after April 1, 2016. This could result in significant estate tax savings for New York residents. For instance, if an estate is valued at \$4,187,500, the NYS estate tax liability would be \$300,600 if death occurs prior to April 1, 2016, but would be nothing if the death occurs after April 1, 2016. As illustrated with the increase in the federal estate and gift tax exemption amount, the increase in the New York estate tax exemption could translate to significant estate tax savings for you.

***Review your estate plan to ensure that assets are organized optimally to take advantage of the exemption increase.***

## DECANTING REVOCATION

New York is one of a handful of states that allows “trust decanting,” essentially pouring or distributing the assets from an existing trust into a newly-drafted trust. Typically, decanting is utilized to modify irrevocable trusts, to change trustees or fiduciaries or to move the trust to a different state. Decanting can add a significant amount of flexibility to trust structures. Families that have gone through a significant life event – such as divorce, birth of a child or a change in residence - may benefit from decanting into a new trust that better addresses their new situation.

In order to decant a trust, the trustee must provide notice to the beneficiaries and others. The decanting becomes effective 30 days after notice is provided, unless all of the beneficiaries agree to an earlier date. There have been instances in which a decanting needs to be undone – sometimes because a beneficiary objects. Previously, the only way to do this was to decant the trust assets back to the original trust. The process was both time- and work-intensive.

On November 20, 2015, Governor Cuomo signed a new law that makes it easier to undo a trust decanting. Under the new law, trustees have the authority to simply revoke a decanting before its effective date. This will save time and money and reduce legal conflicts between beneficiaries and trustees.

***Review your trusts with your estate planning attorney to ensure that they meet your current needs. If not, it may make sense to explore decanting the proceeds to a new trust.***

## CONNECTICUT UPDATE

### INCREASE IN PROBATE COURT FEE

A recent change to Connecticut’s probate court fees could have a significant impact, especially for estates over \$2 million. Connecticut estates are assessed a probate fee based upon the value of the decedent’s estate.

Prior to January 1, 2015, probate fees were capped at \$12,500. For estates greater than \$4,754,000, the cap provided substantial savings. The new law in Connecticut both removes the cap and increases the rate for estates over \$2,000,000 from .25% to .5%. For example, for an estate of \$5,000,000, previously the probate fee would have been capped at \$12,500. Under the new law, the probate fee would be \$20,615. For larger estates, the probate fee is even greater. For an estate of \$30 million, the fee would have been capped at \$12,500, but in 2016 the probate fee would be \$145,615.

Note that the calculation of the probate fee is assessed on your Connecticut taxable estate, regardless of whether the property is a probate or non-probate asset. This means that non-probate assets, such as a revocable trust, will be included in calculating the probate fees, even though those assets pass outside of the probate court.

***Consult your estate planning attorney to discuss ways to minimize the impact of the probate court fees if you are a resident of Connecticut.***

## HOLM & O'HARA LLP TRUSTS & ESTATES TEAM

These are just a few recent updates for your consideration. The Trusts & Estates Team at Holm & O'Hara LLP are prepared to discuss these and other concerns with you. Estate planning can be complex and overwhelming, but we will provide you with guidance as to how your estate plan can meet your goals both during and after your life.

We wish you and your family the very best and look forward to connecting with you in the coming months.

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### **Michael L. Landsman, Esq.** **Co-Managing Partner**

Mr. Landsman represents fiduciaries and beneficiaries, assisting with the administration of trusts and estates, including federal and state tax compliance. In addition, Mr. Landsman advises clients regarding estate planning strategies and legal approaches, particularly when commercial real estate is involved.



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### **William P. Holm, Esq.** **Senior Partner**

Clients trust Mr. Holm to take on tough legal problems and to get the right answers to even the most complicated questions. Mr. Holm's trusts and estates practice focuses on estate planning, trust and estate administration.



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Ms. Sitko's trusts and estates practice focuses on counseling regarding complex trusts & estates administration and management, domestic and international estate planning, federal gift and estate tax litigation against the IRS, and state fiduciary and probate controversy work.



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### **George E. Martin, Esq.** **Associate**

Mr. Martin focuses his practice in the area of domestic and international estate planning. Prior to joining Holm & O'Hara LLP, Mr. Martin was legal counsel for a trust company in New York City.



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