

## Hot Topics for 2022

February 2022

To our clients and friends:

Happy 2022! There were many lessons learned in the last year, and we appreciate you riding the roller coaster of 2021 with us. For the estate and tax planning community, 2021 can best be described as turbulent. Throughout the year, we watched as Congress put a spotlight on many of the techniques that we use to help our clients save estate tax, looking to close loopholes. As the trend moves toward using the resources of the top 1% to help subsidize social programs and pay down the national debt, the “Golden Age of Estate Planning” lives, but it’s impossible to guess for how much longer. Don’t put off your planning, and know that our team is here to help you achieve your estate planning goals.

The Blum Firm team grew more than ever in 2021, and many of our attorneys were recognized by their peers and the community for their excellence.

- **Marvin Blum** was included in the fourth annual list of *Fort Worth, Inc.*’s Most Influential People.
- Five of our attorneys were selected to the 2021 Texas Super Lawyers list. **Marvin Blum**, **John Hunter**, and **Dyann McCully** were recognized in Estate Planning & Probate, while **David Bakutis** was recognized in Estate & Trust Litigation. **Len Woodard** was recognized in Business/Corporate.
- **Beth Hampton** and **Jennifer Sibley** were included in the 2021 Texas Rising Stars list.
- *360 West Magazine* recognized **Marvin Blum** and **Dyann McCully** as Top Attorneys in 2021 in the Wills, Trusts, Estates, and Probate category. **John Hunter** and **Len Woodard** were recognized as Top Attorneys in 2021 in Tax Law.
- Six of our attorneys were named 2021 Top Attorneys by *Fort Worth Magazine*. **Marvin Blum**, **Amanda Holliday**, **Rachel Saltsman**, **David Bakutis**, **Dyann McCully**, and **Beth Hampton** were recognized in the Probate/Estates/Trusts category.
- **Jeff Hamilton** was named by *D Magazine* as a 2021 Best Lawyer.
- **The Blum Firm** was included in the 2022 Edition of *U.S. News – Best Lawyers*’ “Best Law Firms” ranking for the D/FW area in Trusts & Estates Law and in Litigation-Trusts & Estates. **Marvin Blum** and **David Bakutis** were recognized for their expertise in Trusts & Estates, while **Keith Morris** was recognized in the field of Litigation-Trusts & Estates. **Ryan Moore** was included in *Best Lawyers: Ones to Watch in America* for Tax Law and for Trusts & Estates (2021).

We had the pleasure of adding multiple attorneys to our team in 2021. **Frank Leffingwell** and **Austin Light** joined the Austin office, focusing on estate planning and tax planning. **Ryan Moore**, **Son Nguyen**, and **Tara Pedian** joined us in Dallas, where they also focus on estate planning. **Caroline Watson** joined the litigation team, and **Annie Counts** joined the estate planning team, both in the Fort Worth office. We are excited to have this excellent group of individuals at the firm. Please visit our website at [www.theblumfirm.com](http://www.theblumfirm.com) for more information about these talented attorneys.

As we look forward to 2022, we will continue to monitor the developments in Washington closely and look forward to working with you to take advantage of the planning opportunities that continue to be available. In the following pages, we discuss these opportunities and other hot topics in more detail. As always, we are available to discuss any questions you may have as you review this information.

We wish you a happy and healthy 2022!

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## IS A GRANTOR TRUST RIGHT FOR YOU?

Tax provisions in the failed Build Back Better Act threatened to end the “Golden Age of Estate Planning.” Conditions for estate planning have never been better: a doubled estate tax exemption, valuation discounts, low interest rates, and a wide array of “squeeze & freeze” planning tools. But for how long? We urge you to take advantage of every tool available while you still can.

With the arrival of 2022 comes an increase in the lifetime estate/gift tax exemption—now \$12,060,000 per person. **A married couple who had used their full exemptions prior to 2022 can now transfer an additional \$720,000 out of their estates.** Unless Congress intervenes sooner, the exemption amount will sunset on December 31, 2025, back to approximately \$6,000,000 per person. Many are taking advantage of the higher exemption amount by gifting appreciating assets to a grantor trust. A grantor trust is an irrevocable trust that does not pay any income tax. Instead, the trust’s income is taxable to a wealthy individual who is subject to the estate tax. The income tax paid by the individual is essentially a tax-free gift to the grantor trust that is not subject to gift tax and not subject to estate tax. **The growth of the assets owned by grantor trusts is “supercharged” because the trust growth is not reduced by any income tax.**

Many popular trusts are written as grantor trusts including an **Intentionally Defective Grantor Trust (“IDGT”)** created to benefit children or grandchildren, **Spousal Lifetime Access Trusts (“SLATs”)** spouses create for the benefit of the other spouse, and an **Irrevocable Life Insurance Trust (“ILIT”)** created to own a life insurance policy so that the death benefit proceeds will be outside of the estate and not subject to estate tax.

Other planning techniques can lock in the increased exemption while incorporating an “estate freeze.” These techniques involve transferring assets with high appreciation potential to a trust for the benefit of your family, such as a sale to a **678 trust** in exchange for a note payable to you. Consequently, the value of your estate for estate tax purposes is frozen at today’s values, and future growth of the assets sold is shifted outside your estate. If the assets are first placed in a **Family Limited Partnership** and the transferred partnership units qualify for valuation discounts, the value of the assets can be “squeezed” down, enabling more to be transferred within the exemption amount.

For these reasons and for other non-tax reasons (including creditor protection, divorce protection, spendthrift protection, and posthumous control), now is the ideal time to explore including grantor trusts in your estate plan.

## WIN-WIN-LOSE: TRUSTS THAT BENEFIT CHARITY WHILE STICKING IT TO THE IRS

Do you like supporting charities? Do you dislike paying taxes? If you answered yes to both questions, then you may be interested in a charitable trust, such as a Charitable Remainder Trust or a Charitable Lead Trust. The **Charitable Lead Trust (“CLT”) works especially well when interest rates are low.** With a CLT, a donor gives an asset to the trust, and the trust makes annual distributions to charity. At the end of the term, anything left in the trust goes back to the donor’s family (or trusts for their benefit) with no estate tax or gift tax.

If the donor is expecting a high tax year, the CLT can be structured to give the donor an upfront income tax charitable deduction on the gift. The charitable distributions are tied to the IRS interest rates in effect when the trust is created. Lower rates equate to a higher upfront income tax deduction or more passing to family members free of estate tax, depending on the goal. **Rates are beginning to rise, so now is a great time for this win-win-lose solution: you and your favorite charities win, and the IRS is the loser!**

## WOULDN’T YOU LIKE A \$100 MILLION IRA LIKE MITT ROMNEY?

Reports that Mitt Romney has over \$100 million in his IRA began circulating at least as early as 2012. Romney understood that investing with IRA assets enables you to grow your assets on a tax deferred basis. Better yet, **investing through a Roth IRA enables you to grow your assets on a TAX FREE (as opposed to tax deferred) basis.** As hard as it is to believe, you can even overfund your Roth IRA to get it started. While overfunding an IRA is discouraged through excise taxes, it is not actually prohibited, and the tax free gains can more than make up for those excise taxes if they are large enough. We would enjoy counseling you and guiding you through this process.

## DO YOU OWN ANYTHING IN YOUR NAME OTHER THAN RETIREMENT ACCOUNTS?

Besides retirement accounts, are any assets directly owned by you? **If assets are titled in your name, it generally reveals two things: the assets likely are exposed to claims of creditors, and if your estate is above the exemption, the assets likely will be exposed to a 40% estate tax.** Once these assets have been identified, the **first step** should be to examine each asset to determine if it is “safe” or “risky.” Risky assets (such as real estate or oil and gas working interests) can give rise to claims. Address this exposure by putting an entity wrapper—a limited partnership or limited liability company—around each risky asset, so creditors can only reach the one risky asset and can’t reach other assets outside the entity. The **second step** is to protect all assets from being exposed to the owner’s personal creditors (such as a tort creditor) by transferring both safe assets and risky asset entities to a family limited partnership (“FLP”). Finally, the **third step** is to transfer the FLP units to an irrevocable trust to add another layer of asset protection and to remove assets from the taxable estate.

## I WANT MY FAIR SHARE — LITIGATION IN TIME OF FINANCIAL UNCERTAINTY

As the current economy is somewhat tumultuous, estate, trust and guardianship litigation seems to be on the rise. Generally, when an individual passes away, the family is able to expeditiously and efficiently transfer the decedent's assets to the intended beneficiaries. However, when family members are counting every penny and tapping every source for financial security during times of financial uncertainty, settling an estate can be neither smooth nor quick. Family members receiving less than they feel they should have received are increasingly turning to litigation—often over amounts smaller than would typically be litigated over. During these times, it's important to [review your estate plan for potential disgruntled parties and perhaps take extra steps to try to mitigate the risk of later litigation](#).

For example, if you've intentionally excluded a family member from receiving benefit from your estate, this needs to be specifically enumerated in your estate plan. Additionally, you need to review the individuals that you have named as executors, trustees, and powers of attorney to ensure that they are people that you absolutely trust to act in accordance with your wishes. Our firm would be happy to review your estate plan to discuss possible litigation traps to make any transition smoother for you and your family.

## CHECK YOUR PROBATE KNOWLEDGE

In many states, avoiding probate is foundational to any estate plan. Texas practitioners often boast of the efficiency and simplicity of our state's probate process, and as a result, probate avoidance has historically been a lower priority in Texas estate plans. While it's true that our probate system is less cumbersome than most states, there are still reasons to consider whether an estate plan centered around probate is appropriate. In our discussions with clients, we have discovered that [perhaps the most important reason to avoid probate is privacy](#). When a Will is probated, it becomes public record. The alternative is to place the dispositive provisions in a separate living trust where they remain private. We are happy to discuss the pros and cons of various estate planning structures with you so that you can determine the right fit for your family.

## FAMILY LEGACY PLANNING

In January 2021, The Blum Firm launched a [weekly email series on Family Legacy Planning](#). Traditional estate planning addresses the family's [valuables](#) – where, when, and how they pass to future generations. Family Legacy Planning addresses the family's [values](#). Its mission is to pass down more than wealth, but also a family's ethos, improving the odds the family will remain meaningfully connected for generations to come. Its aim is to pass down the skills and tools to help heirs face life's inevitable challenges and not only survive as a family, but thrive. You can find a link to the series on our home page at [www.theblumfirm.com](http://www.theblumfirm.com) under Recent White Papers & Publications.

## COULD FORGOTTEN CHECKLIST ITEMS DERAIL YOUR ESTATE PLAN?

Some assets pass by beneficiary designation rather than pursuant to the terms of a will or trust. This can be a powerful tool for creating an efficient estate plan if structured properly. However, it can derail an estate plan if left unchecked.

Consider the following scenario: Husband and wife set up an estate plan with assets passing in trust for the surviving spouse and the children. Among their assets is a brokerage account. Years earlier, when they created the account, they named the surviving spouse as the primary beneficiary and the children as contingent beneficiaries on the account. Then, husband and wife die simultaneously, and the assets are distributed to their children outright rather than to the trusts set up under their estate plan. The moral of the story is that [beneficiary designations should be coordinated with the overall estate plan](#) and monitored each time updates to the plan are implemented.

### ESTATE AND GIFT TAX NUMBERS TO KNOW:

**2021**
**2022**

	2021		2022	
Annual Gift Tax Exclusion Amount	Individual \$15,000*	Married Couple \$30,000*	Individual \$16,000*	Married Couple \$32,000*
Combined Lifetime Federal Estate Tax and Generation-Skipping Transfer Tax Exemption Amount	Individual \$11,700,000	Married Couple \$23,400,000	Individual \$12,060,000	Married Couple \$24,120,000

Unless there is a sooner tax law change, the estate and gift tax exemption will sunset on December 31, 2025. Starting January 1, 2026, the exemption will return to \$5 million adjusted for inflation.

\*Plus unlimited amounts for education or medical expenses, paid directly to the service provider.

This newsletter contains generalizations and simplifications. Prior to implementing any estate plan, you should consult with competent tax and legal counsel to assess your specific circumstances and determine whether any particular technique discussed in this communication would be appropriate for you and could be implemented in a manner designed to achieve the desired favorable outcome. This newsletter including any attachments is not intended to be, and should not be construed as, U.S. federal tax advice for purposes of Circular 230 and may not be used for the purpose of avoiding penalties under the Internal Revenue Code. Additionally, this newsletter including any attachments is for education purposes and is not intended to be used for, and should not be used for, the purpose of promoting, marketing or recommending to another party any transaction or matter addressed herein.

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# HOT TOPICS FOR 2022

## GUARDIANSHIP PREVENTION PLANNING

Baby Boomers are reaching the age of potential cognitive decline. With this comes the possibility of needing someone to act on behalf of the individual who has lost the ability to manage some or all of their rights.

One option is a guardianship—a court will determine to what extent the individual is incapacitated and will appoint a guardian. The court proceeding can be distressing and expensive. And, once the guardianship is established, it will remain court supervised, meaning the guardian will have to file annual reports and accountings with the court (which must be prepared by or reviewed by an attorney).

However, **with proper planning, guardianship for adults is often avoidable.** Every estate plan should include a Power of Attorney and a Medical Power of Attorney. A Power of Attorney authorizes the individual you name to handle your financial matters (can be immediately or upon disability). A Medical Power of Attorney allows the individual you name to make healthcare decisions for you if you are unable to make your own decisions.

Through the use of these documents, guardianship can often be avoided, although in rare instances, guardianship may still be necessary. Therefore, it's a good idea to include a Declaration of Guardian in the Event of Later Incapacity or Need of Guardian ("Declaration of Guardian") in your estate plan. A Declaration of Guardian gives you the opportunity to name whom you want to serve as your guardian should you ever need one. While proper estate planning could also be called "Guardianship Prevention Planning," should a guardianship be necessary, our guardianship attorneys are available to assist.

The comments compiled for this newsletter are general in nature and are not tailored to any particular situation. As in the case with any estate, tax or financial planning recommendation, the planning tips suggested in this summary should not be implemented without carefully considering the total economic impact and obtaining the advice of counsel. The advice of an attorney, accountant, or other financial planning professional will provide valuable aid in analyzing the suitability of the particular estate, tax, or financial planning tip for you. By providing this information, The Blum Firm, P.C. does not assume any obligation to provide notification of future changes in laws. Please contact us if the information we have provided affects you and you would like to discuss. The content of this letter was prepared by Marvin E. Blum.