page 2
Helping a grandchild pay for college just got easier

page 3
Plan now for 2025 estate tax exemption changes

page 4
Net worth under the microscope: state trends in wealth taxes

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Estate Planning
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Cher seeks conservatorship amid concerns over son's well-being: estate planning and addiction

In a recent development that has sparked discussions about family, addiction and legal complexities, singer Cher filed for temporary conservatorship of her son Elijah Blue Allman. Citing concerns about his mental health and substance abuse struggles, Cher seeks to gain control over his finances and ensure his well-being.

Allman is reportedly due to receive a disbursement from a trust set up by his late father, music legend Gregg Allman. In court filings, Cher expressed concern that such funds would be "immediately spent on drugs, leaving Elijah with no assets to provide for himself and putting Elijah's life at risk."

The unfortunate situation is far from an isolated one. Many families face the difficult reality of addiction in their midst. Estate planning is already a complex and sensitive matter, but it becomes even more delicate when an heir struggles with substance abuse.

How do you secure your loved ones' future while protecting them from potential harm? How can you ensure responsible use of an inheritance?

Estate planning strategies for navigating addiction

Fortunately, a trust offers some legal options to address these challenges. Establishing a trust allows you to dictate how and when assets are distributed. Some strategies to consider:

• *Discretionary trusts:* A trust can be set up to give the trustee discretionary power over when to release funds and how to use them. Trustees can be given the flexibility to withhold funds if deemed necessary.

• *Phased distributions*: Instead of a lump sum inheritance, consider distributing assets gradually over time. That provides regular support but prevents the beneficiary from spending the entire amount right away on substance abuse or other unhealthy behaviors.

• *Spending restrictions*: You can include directives in your trust that limit how funds can be spent. You could, for example, require purchases to be approved by the trustee or restrict payments to specific categories such

continued on page 3

Correira Law
800-699-5040 | CorreiraLaw.com

20 Park Plaza, Boston, MA, 617.723.5040
20 Cabot Boulevard, Mansfield, MA, 508.991.5040
1010 GAR Highway, Swansea, MA, 508.679.5040
1415 Panther Lane, Naples, FL, 239.649.5040
10 Dorrance Street, Providence, RI, 401.454.5040

Helping a grandchild pay for college just got easier

As college costs continue their upward trajectory, some grandparents are generously contributing funds to help their grandkids pay for higher education. But for years, those same grandparents faced a thorny problem: whether their gift would impact the student's eligibility for need-based financial aid.

Thankfully, a recent revision to the Free Application for Federal Student Aid (FAFSA) system is offering welcome relief. Beginning with the 2024-2025 academic year, students will no longer have to report financial support they receive from friends and extended family members, including grandparent-owned 529 college savings plans.

Why the FAFSA was updated

The original FAFSA was criticized for being overly complex and time-consuming to complete. Critics said the 100-plus-point questionnaire deterred some families from applying for aid.

Eliminating questions about untaxed gifts was part of simplifying the form. As an added benefit, proponents suggest the shift could incentivize family and friends to provide more assistance without significantly impacting the overall cost of federal financial aid programs.

Be aware that federal aid is not the same thing as scholarships and grants provided by the college or university itself. Some industry watchers say colleges will start asking about gift information on their own, meaning institution-based aid could still be affected. (Approximately 300 schools nationwide require students to complete a "CSS profile," a separate financial reporting form.)

Given the FAFSA changes, here's what grandparents need to know about college gifting:

• Cash gifts: One option is to give your grandchild a cash gift. In 2024, the annual gift tax exclusion is $18,000, meaning a married couple could give their grandchild up to $36,000 a year — removing money from your estate without triggering gift and generation-skipping transfer tax consequences.

• Pay tuition directly to the school: Another option is to make tuition payments directly. Because these payments aren't considered taxable gifts, the $18,000 exclusion does not apply. A large tuition payment can remove money from your estate and still allow you to make a separate tax-free gift to your grandchild, up to the $18,000 limit. Be aware this special gift tax exclusion only applies to tuition, not room, board, books or other fees.

• 529 plans: A 529 plan allows you to grow money tax-free for qualified education expenses, such as college, vocational or K-12 education. Grandparents can open a 529 plan and name a grandchild as the beneficiary or contribute to an existing account in the child's or parent's name. Gifts to a 529 plan count toward your annual gift tax exclusion limit.

• Super funding a 529 plan: A special rule for 529 plans allows individuals to "super fund" the account with a single lump-sum gift of up to $90,000 (married couples can gift up to $180,000 in 2024) while avoiding federal gift taxes. However, a special election must be made, treating the gift as if it were made in five separate years. If the grandparent died during this five-year period, a prorated portion of the gift would be recaptured into the estate. This strategy may benefit families trying to reduce future estate taxes through gifting.

Grandparents considering a 529 plan should be aware of another new rule change. For the most part, 529 funds are limited to educational expenses, and withdrawals for other reasons can trigger a penalty. However, the SECURE 2.0 Act of 2022 introduced a new provision for 529 plans that allows the beneficiary to roll over up to $35,000 in unused funds into a Roth IRA. The 529 account must have been open for at least 15 years, and contributions must be in the account for at least five years before they are eligible.

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Plan now for 2025 estate tax exemption changes

The current federal estate tax exclusion amount is $13.61 million per individual in 2024. However, the exemption is set to sunset at the end of 2025, lowering the amount to an estimated $7 million per person.

This shift creates a planning imperative for high-net-worth individuals. Prompt action can help reduce future estate and generation skipping transfer taxes.

Lifetime giving

"Lifetime giving" refers to the intentional transfer of assets from an individual to another recipient during their lifetime, rather than as part of their estate after death. That can take various forms, including:

• *Direct gifts*: Providing cash, property or other assets directly to beneficiaries, typically in smaller amounts, often utilizing the annual gift tax exclusion ($17,000 per recipient in 2024) to avoid incurring gift tax liabilities.

• *Larger gifts*: Making larger transfers above the annual exclusion that count toward the total lifetime gift tax exemption. These can be strategic choices to reduce the taxable value of your estate later.

• *Charitable giving*: Donating assets to qualified charitable organizations during your lifetime. This can result in tax deductions and reduce the overall taxable value of your estate.

• *Irrevocable trusts*: Establishing trusts that hold assets and transfer ownership rights to beneficiaries outside of your estate. These can be designed to provide income for beneficiaries, avoid probate, and reduce estate tax liability.

By strategically transferring assets through lifetime giving, before the exemption drops, individuals can effectively shield a portion of their wealth from potential future estate taxes.

Irrevocable trusts

Dynasty trusts and spousal lifetime access trusts, or SLATs, can be valuable tools for minimizing tax liabilities and preserving wealth for future generations. However, each serves different purposes and has specific considerations:

• *Dynasty trusts*: These trusts are designed to hold assets and pass them down through multiple generations, providing long-term wealth protection and avoiding estate taxes at each generational transfer. As an added benefit, these trusts can protect assets from creditors and lawsuits.

• *SLATs*: These tools allow one spouse to transfer assets to a trust for the benefit of the other spouse, while still retaining some indirect access to the assets. SLATs can be particularly helpful for couples with a significant disparity in their individual estates, allowing them to equalize their estates and maximize the use of both exemptions.

Anti-clawback rule protects your exemption

As indicated, the federal estate tax exemption is historically high right now. But it is scheduled to revert to approximately $7 million at the end of 2025. That led to concerns about whether there would be a "clawback" for those who planned early but died after the higher exemption sunset.

To alleviate this, the IRS issued guidance with an "anti-clawback rule." It allows taxpayers to lock in use of today's high exemption when making lifetime gifts.

Specifically, it says that any gifts made when the higher exemption applied would not be brought back into an estate after 2025 for tax purposes.

This guidance provides confidence for those looking to make large gifts now. They can take advantage of the higher $13-million-plus exemption, even if they may pass away later under a lower exemption level.

The countdown is on

Remember, you have less than two years to take advantage of the current exemption limits. Consult with a qualified estate planning attorney. Each individual's situation and goals are unique, and determining the best lifetime giving strategies requires professional guidance.

Cher seeks conservatorship amid concerns over son: estate planning and addiction

continued from page 1

as education, health care or housing.

• *Incentives and contingencies*: Distributions can be contingent on a beneficiary meeting set conditions, such as finishing treatment programs, remaining sober, or staying gainfully employed. Likewise, you could include a trigger clause that would release the full inheritance to the beneficiary, provided they met some sort of milestone such as testing clean for two years.

Be aware that wills alone cannot be used to create these kinds of requirements. You typically need a trust to make stipulations on distributions or to restrict access to an inheritance.

Open communication and professional guidance

The best estate planning for addiction goes beyond legal documents. Open and honest communication with your loved ones can help reduce surprises and family conflict down the road.

Seek guidance from an estate planning attorney to tailor a plan that meets your needs.

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call our firm today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.

Correira Law
20 Park Plaza, 4th floor
Boston, MA 02116

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Net worth under the microscope: state trends in wealth taxes

Wealth taxes are inching closer to the center stage of American economic policy. Proponents argue it's a crucial tool to combat inequality and raise vital revenue. Opponents warn of job losses and capital flight. High-net-worth individuals should keep tabs on wealth tax proposals in their state and talk to their estate planning attorney about how such taxes could impact their giving and estate plans.

Here is some activity nationwide:

- Massachusetts: The first state to implement a wealth tax, Massachusetts passed the Fair Share Amendment in 2022. It imposes a 4 percent surtax on income exceeding $1 million.
- Los Angeles: The city's so-called "mansion tax," implemented in 2023, applies a graduated tax on property sales exceeding $5 million, with rates varying from 4 to 5.5 percent.
- Texas: Voters approved a constitutional amendment in November 2023, known as Proposition 3, that prohibits the state Legislature from ever enacting a wealth tax.
- California, Connecticut, Hawaii, Illinois, Maryland, Minnesota, New York and Washington have introduced bills or proposals for a wealth tax in recent years. These proposals vary in design but generally target individuals with net worth exceeding $50 million to $1 billion, with annual tax rates ranging from 0.5 to 1.5 percent on total net worth (not income).

Constitutionality at question

In the meantime, analysts say Moore v. United States, a case currently before the U.S. Supreme Court, could be considered a constitutional test for wealth taxes. The suit revolves around the constitutionality of the Mandatory Repatriation Tax, or MRT, introduced in the Tax Cuts and Jobs Act of 2017.

This provision retroactively taxed certain "global intangible low-tax income" of U.S. corporations operating abroad, even if that income wasn't yet brought back to the United States. The law was meant to close a loophole that allowed U.S. corporations to indefinitely defer taxes on profits earned abroad by keeping them in foreign subsidiaries.

While the MRT specifically targets multinational corporations, the legal arguments have broader implications for how Congress can tax wealth, including unrealized gains from assets like stocks, bonds and real estate.

The court heard oral arguments in December 2023, and a ruling might come this spring. Early indications suggest the court is likely to rule in the government's favor, meaning wealth taxes will still be on the table — for those states with the appetite to enact them.