The New Tax Law & Estate Planning Ideas 2026

Estate Planning Counsel of North Texas
February 18, 2026

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The One Big Beautiful Bill Act

Because no estate planner has ever met a statute we didn't immediately turn into an acronym.

- OBBBA
- The Big Beautiful Bill
- OB3

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Agenda

Implications of the OB3 and Strategic Planning Ahead

- **Policy Landscape:** Key provisions of the OB3 and the broader political and fiscal context.
- **Post-OB3 Landscape:** How the OB3 reshapes estate, gift, and income tax planning going forward.
- **Planning in the OB3 Era:** Estate, gift, and income tax strategies in a world of permanent $15M exclusion and new rules.
- **Advanced Considerations:** Case law updates, IRS guidance, and pitfalls with advanced techniques like SLATs and GRATs.
- **Practical Implementation:** Steps for advisors and clients; solvency tests, liquidity, documentation, and planning issues.

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The Policy Landscape in 2025-2026:

OB3 and Beyond

- **OB3 Signed July 4, 2025:** Comprehensive tax and spending package: 878 pages: reshaping estate, gift, and income tax rules.
- **Estate & Gift Exclusion Fixed at $15M:** No 2026 sunset. Indexed for inflation. Fundamental shift in long-term planning.
- **Charitable & SALT Deductions:** Haircut for high earners, SALT deduction cap increased to $40,000 (phasing out at higher incomes).
- **Broader Fiscal Context:** IRS funding cuts, record $37T national debt, and ongoing deficit concerns frame the legislative environment.

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Administration Proposals & Greenbooks

Comparing Vision vs. Reality

- **Biden & Trump Greenbooks:** Proposals included wealth tax, mark-to-market rules, higher capital gains rates, and new trust taxation regimes.
- **OB3 Supersedes:** Despite years of speculation, OB3 became the controlling law; most Greenbook proposals were left on the cutting room floor.
- **What Didn't Pass:** No wealth tax, no elimination of step-up in basis, no mark-to-market; estate tax repeal also off the table.
- **Planning Implication:** Advisors now work with permanent rules but need to watch future fiscal pressure that could revive these ideas.

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Federal 2026 Current Estate & Gift Tax Status

- **"Permanent" $15M Estate & Gift Tax Exemption:**
  - As of January 1, 2026.
    - *Effective for estates of decedents dying and gifts made after December 31, 2025.*
  - Estate and gift tax exemption fixed at $15M (indexed for inflation), shifting focus away from sunset-driven strategies.
  - Increased from 13.99M in 2025.
  - Tax rate remained flat at 40% over exemption amount.
- **2026 annual gift exclusion:**
  - Separate from lifetime exemption amount.
  - Indexed annually for inflation.
  - $19,000/per done.
  - $38,000 / married couple to any individual.
- **New indexed amounts starting in 2027:**
  - Released by IRS via Rev. Proc. around October of every year.

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Federal 2026 GST Tax Status

Generation Skipping Transfer (GST) Tax Exemption:

- Increased to $15M.
- GST exemption unified with estate/gift rules, with indexing; no major restrictions added.
- GST exemption remains not portable between spouses.
- A separate and additional flat 40%.

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Estate Planning Paradigm Shift:

Planning Priorities After OB3

- **From Sunset to Stability:** No more "use it or lose it": planning focus shifts from urgency to efficiency.
- **Planning Priorities:** Emphasis on basis adjustment, non-grantor trusts,, and long-term efficiency.
  - **Basis Adjustment Planning:** With fewer estates paying federal estate tax, the basis adjustment under §1014 becomes the dominant planning opportunity.
  - **Non-Grantor Trusts:** Increasing use for income shifting, SALT optimization, and QSBS stacking.
  - **Strategic Gifting:** Lifetime gifts remain relevant, but now centered on wealth transfer efficiency, GST planning, and family goals.

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Trust & State Tax Considerations

New Rules Under OB3

No new trust-level taxes: OB3 does not create any new taxes on trusts.

- Established estate planning strategies, including Grantor Retained Annuity Trusts (GRATs) and Spousal Lifetime Access Trusts (SLATs), remain fully available and unaffected.

State estate taxes unchanged: OB3 does not impact state-level estate or inheritance tax systems.

- Clients living in states with separate estate taxes or lower exemption amounts may still face state-level transfer tax exposure despite the federal changes.

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Effect on Charitable Giving:

New Rules Under OB3

Overall impact: Creates a mixed framework; adding incentives for non-itemizers while imposing new limits on high-income itemizing taxpayers, which may affect donation timing, structure, and overall giving strategies.

Charitable Deductions Haircut: High-income itemizers taxpayers face a 2/37ths limitation reducing the benefit of itemized deductions, including trust/estate deductions.

- **0.5% AGI deduction floor:** Charitable deductions apply only to contributions exceeding **0.5% of AGI** (e.g., $1M AGI → first $5,000 provides no deduction).
  - *Carryforward Ambiguity:* Unclear whether the 0.5% reduction applies again to future-year carryovers.
- **Reduced deduction value:** Charitable deductions for top-bracket taxpayers are capped at a **35% tax benefit**, increasing the after-tax cost of giving.
- **60% AGI cash contribution limit:** Extension of the current limitation on deductible cash gifts.

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Effect on Charitable Giving:

New Rules Under OB3

Universal Charitable Deduction: Creates a permanent above-the-line deduction for cash contributions for non-itemizers.

- Up to **$1,000** for single filers / up to **$2,000** for married filing jointly.
- **Key limitation:** Contributions to **donor-advised funds (DAFs)** do not qualify for this deduction.

Trust & Estate Charitable Issues: Application of the haircut to §642(c) deductions creates new complexities and possible circular tax effects for estates passing to charity.

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SALT Provisions:

New Rules Under OB3

- **SALT Deduction Expansion:** Cap raised to $40,000 for 2025–2029 (phasing out for higher incomes).
- **Client Impact:** Trustees, estates, and high earners need careful recalculations of effective charitable and SALT benefits under the new rules.
  - **Benefits of donating appreciated securities:** Gifts of appreciated assets (such as publicly traded stock) remain a highly tax-efficient charitable strategy, allowing donors to avoid capital gains tax while generally claiming a deduction for the asset's full fair market value (subject to AGI limitations).
  - **Planning opportunity:** Contributing appreciated securities to a donor-advised fund can also help donors bunch multiple years of giving into one year, maximizing deductibility and helping clear applicable deduction floors.

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Income Tax Changes Under OB3

- **Income tax rates and brackets:** Permanently extends the current reduced individual income tax rates and brackets, including the **37% top marginal rate.**
- **Standard deduction and personal exemptions:** Makes the higher standard deduction permanent and permanently repeals personal and dependent exemptions:
  - ***2026 standard deduction:*** $32,200 (married filing jointly), $24,150 (head of household), and $16,100 (single filers).
- **Expansion of 529 plans:**
  - Increases the annual distribution limit for elementary and secondary education expenses to $20,000.
  - Broadens the categories of qualified expenses that may be paid from 529 plan assets.

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Income Tax Deduction Changes Under OB3

Deduction for tips:
- Up to $25,000 deduction for qualified tips.
- Phaseout begins at AGI $150,000 (single) / $300,000 (married filing jointly).
- Automatically added gratuities do not qualify; applies only to occupations that customarily receive tips (per IRS guidance).

Deduction for overtime pay:
- Up to $12,500 deduction for qualified overtime compensation.
- Phaseout begins at AGI $150,000 (single) / $300,000 (married filing jointly).

Deduction for auto loan interest:
- Up to $10,000 deduction for interest on qualifying new U.S.-assembled vehicle loans.
- Phaseout begins at AGI $100,000 (single) / $200,000 (married filing jointly).

Additional senior deduction (age 65+):
- Additional $6,000 deduction per eligible taxpayer ($12,000 for qualifying couples).
- Phaseout begins at AGI $75,000 (single) / $150,000 (married filing jointly).

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Expansion of QSBS Gain Exclusion

Expanded QSBS holding period rules: providing earlier and more flexible access to capital gains exclusions.

1. **Tiered holding period exclusion schedule for QSBS issued after July 4, 2025** *(able to enjoy some, but less than all, of the QSBS benefits)***:**
   - **50% exclusion** after 3 years
   - **75% exclusion** after 4 years
   - **100% exclusion** after 5 years
2. Maximum capital gains exclusion is increased from $10 million to $15 million (or $7.5 million for married couples filing separately), adjusted annually for inflation beginning in 2027.
3. Ceiling for a corporation's gross assets has increased from $50 million to $75 million immediately following issuance of the stock, adjusted for inflation.

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Tax Incentives for QSBS Ownership

- **Exclusion limits (post-July 4, 2025 issuances):**
  - Per-taxpayer exclusion cap is the greater of:
    - **$15 million** (indexed for inflation beginning in 2027), or **10× the taxpayer's basis** in the stock.
    - **Lifetime exclusion cap:** The $10M/$15M exclusion is a lifetime cap per issuer; multiple sales may still qualify until the cap is exhausted.
- **Per-issuer application:** Exclusions apply separately to each qualifying company, allowing multiple exclusion opportunities across investments.
- **Who can claim the benefit:** Available to any taxpayer other than a **C corporation** (not limited to individual shareholders).
- **Married filing jointly rule:** Gain is treated as owned **50/50**, regardless of which spouse originally held the stock.

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Qualified Business Income (QBI) Deduction

- **Qualified Business Income (QBI) deduction made permanent:** The 20% deduction for qualified business income from pass-through entities is now permanent.
- **Potential limitations for SSTBs:** The deduction may be limited for businesses classified as a *Specified Service Trade or Business (SSTB):*
  - law, accounting, consulting, and other businesses where the primary asset is the reputation or skill of one or more owners or employees.

Greater flexibility for liquidity planning: Reduced holding periods and the increased aggregate gross asset limit under post-OB3 QSBS rules allow stockholders to plan for liquidity events earlier.

Increased investment appeal: The changes may enhance the attractiveness of small business investments, including for private equity investors.

Important caution: QSBS gain exclusion rules remain highly technical and complex, with significant traps for the unwary if requirements are not carefully satisfied.

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Planning Impact with Sub S Stock

QSBS Planning Concepts

- Exclusion limits apply **per issuer**.
  - Gifting and rollover strategies may multiply exclusions or defer gain.
- **Holding period carryover:** In a permitted transfer, the transferee receives the transferor's holding period and original owner's acquisition history.

Examples of permitted transfers:

- Distributions from a partnership
- Rollover of proceeds into another qualifying QSBS issuer
- Certain qualifying corporate reorganizations
- Conversions or stock dividends involving existing QSBS

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Potential *Untested* QSBS Tax Planning Opportunities

- **Leveraging multiple exclusion amounts:** Although complex, QSBS rules create significant planning opportunities for maximizing gain exclusions.
- **Gifting strategy:** A taxpayer with gain exceeding the exclusion cap can gift QSBS to another eligible taxpayer (e.g., an individual or non-grantor trust), allowing both the donor and donee to potentially utilize separate §1202 exclusion limits.
- **Rollover planning:** Gain recognition may be deferred by rolling QSBS sale proceeds into a new qualifying QSBS investment, postponing taxation until the replacement stock is sold.
- **Per-issuer advantage:** Because exclusion limits apply per issuer, serial entrepreneurs and diversified investors may access the §1202 exclusion multiple times across different qualifying businesses.

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Qualified Subchapter S Trust (QSST) Basics

What is a QSST?

- Qualified Subchapter S Trust (QSST) allows a trust to hold **S corporation stock** while preserving S election status.
- Used when ownership is held in trust for estate planning, control, or asset protection purposes.

Core Requirements:

- Only **one current income beneficiary** (must be a U.S. individual).
- All trust income must be distributed annually to that beneficiary.
- Beneficiary must make the QSST election with the IRS.

Noncompliance can terminate S corporation status!

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Trump Accounts for Minors

- Establishes a new tax-deferred savings account for minor children, effective for accounts created after **July 4, 2026**.
- **Government contribution:** Eligible children born between **2025–2028** may receive a one-time government contribution.
- **Annual contributions:**
  - Up to **$2,500 per year** from employers.
  - Up to **$5,000 per year** from other contributors (currently not treated as qualifying for the annual gift tax exclusion).
- **Age limits and access:** Contributions stop once the child reaches **age 18**, and distributions are not permitted before age 18.
- **Annual exclusion treatment (planning note):** Whether contributions qualify for the annual gift tax exclusion remains unclear.
  - ACTEC has highlighted that, unlike §529 plans, the statute does not expressly characterize contributions as a "present interest," and practitioners are awaiting technical clarification from Treasury/IRS.

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Caution!

OB3: Current Technical Update (Early 2026)

OB3 Provisions Most Likely to Generate Future Guidance

Gift & GST Treatment:

- Statute does **not** clearly state whether contributions are treated as present interests for annual exclusion purposes.
- Unclear interaction with gift tax annual exclusion and GST allocation.

Itemized Deduction Limitation (Section 68 Rewrite):

- New limitation structure (effective 2026) may produce unintended results for high-income taxpayers and fiduciary entities.
- Technical questions remain regarding:
  - Charitable deduction ordering rules.
  - Carryforward treatment.
  - Interaction with trusts and estates deductions.

QSBS Expansion & Transition Rules:

- Tiered holding-period regime and expanded exclusion cap create new planning opportunities and complexity.
- Open questions include:
  - Acquisition date and holding-period tacking rules.
  - Pre- vs. post-OB3 stock treatment.
  - Inflation adjustment mechanics and asset testing.

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Basis Basics

- Donee's basis for computing gain is the same as the donor's basis.
- Donee's basis for computing loss is the lesser of:
  - *Donor's basis, or*
  - *FMV of property on date of gift* .
- Basis is generally FMV on date of decedent's death or, if elected, the alternate valuation date.
- Appreciated assets receive a "step-up" in basis at death of owner:
  - Saves income tax when the property is sold by beneficiary.
- Depreciated assets receive a "step-down" in basis at death:
  - Deprives beneficiaries of the income tax benefit of claiming a loss when the property is sold.

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Conversion Agreements in Texas:

Mechanics and Requirements

- **Texas' Community Property Rule:** community property generally provides a full step-up in basis at the death of the first spouse. Both halves of community property receive full step-up at the first spouse's death, maximizing income tax savings.
- **Basis Adjustment:** Step-up at death remains intact; now the single most powerful planning lever for most families.
- **Conversion Agreements:** In Texas and other community property states (or states that have enacted a CP statute), couples may elect to convert separate property into community property to capture double step-up.
  - **Statutory Authority:** Texas Family Code permits spouses to convert separate property into community property by written agreement.
  - **Formalities:** Agreement must be in writing, signed by both spouses, and disclose property affected to avoid later disputes.
- **Creditor & Divorce Risks:** Conversion exposes property to division in divorce and to joint creditor claims.
- **Cautions:** Watch for depreciation recapture, IRD assets (retirement accounts), and state law nuances that may limit benefits.
- **Best Candidates:** Most effective for long-term marriages with strong creditor protection, where income tax savings outweigh risks.

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Tools in the OB3 Era: Alphabet Soup

- **Irrevocable Dynasty/Heritage Gifting Trusts:** Helps clients leave assets to future generations and avoid being taxed more than once as assets pass from generation to generation.
- **Spousal Lifetime Access Trusts (SLATs):** Helps clients leave assets to future generations but gives a *spouse* access to assets should the spouse have an unanticipated financial need in the future Still effective for shifting appreciation, but IRS scrutiny on reciprocal trusts and 2036 issues requires careful drafting. Likely see less of SLATs.
- **Grantor Retained Annuity Trusts (GRATs):** Can help clients who want to transfer more than the gift/estate tax exemption amount to children by transferring asset appreciation (above §7520 hurdle rate); remain viable with careful structuring.
- **Intentionally Defective Grantor Trusts (IDGTs):** Continue to freeze appreciating asset values while shifting appreciation to heirs; integration with sales and swaps remains critical.
- **Irrevocable Life Insurance Trusts (ILITs):** Maintain role in providing liquidity, equalizing inheritances, and shielding insurance from estate inclusion.
- **Charitable Remainder Trust (CRT) and Charitable Lead Trust (CLT):** Combine income tax planning with philanthropy.

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What's New Gift Tax Return World

Modernized e-File (MeF): now offers a secure and accurate way to file Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return.

- Now part of IRS e-file. New Modernized e-File (MeF) schema and business rules for Form 709 are now available for tax year 2024/processing year 2025. Additional information is available on the Modernized e-File (MeF) for gift taxes page.

709 Defense: documentation & compliance

- **Form 709 Precision: e**nsure complete, accurate reporting of gifts; review signatures, dates, and party names carefully.
- **Adequate Disclosure: i**nclude detailed schedules and appraisals to start statute of limitations on IRS review.

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706s Recent IRS Updates

- Final version of the redesigned form was released on September 5, 2025.
  - There is a *draft version* of Form 706 (Rev. August 2025) and instructions posted as of May 30, 2025. But the form is marked "DRAFT — NOT FOR FILING.
- The IRS's overhaul of Form 706 introduces structural, procedural, and administrative changes that estate planners can't afford to overlook.
- *Paul Hood on Form 706: Ten Critical Updates for Estate Tax Filers Steve Leimberg's Estate Planning Newsletter:* LISI Estate Planning Newsletter #3274 (February 13, 2026) at http://www.leimbergservices.com.
  - Explains the new form, decoupled schedules, and revised instructions, emphasizing ten key changes that impact how Form 706 is prepared, filed, amended, and finalized, and offering a clear roadmap through the updated compliance framework.

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Basis Reporting

Form 8971

Updated in Form 8971 (Aug 2025 version)

- The form itself has been revised ("Rev. August 2025") reflecting updated instructions.
- The 2025 Instructions emphasize that Schedule A must be furnished to each beneficiary who acquires property from the decedent, and the executor must certify the date on which that Schedule A was provided.
- Updated guidance on "supplementing" Forms 8971 and Schedule A:
  - If new property is acquired by a beneficiary after the due date, or there is any correction to information previously submitted, the executor must file supplements.
- The instructions also clarify the timing: Schedule A must be furnished within **30 days** of the date when Form 706 or Form 706-NA is required to be filed (including extensions) or within 30 days of when the estate tax return is actually filed, whichever is earlier.

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Key Takeaways: Advisors and Clients in the OB3 Era

Certainty Restored: Permanent $15M exclusion eliminates sunset-driven urgency; focus shifts to long-term strategies.

- Higher exemption changes the planning lens:
  - **$15M per person / $30M per couple (2026)**, meaning fewer clients face estate tax exposure.

Basis is King: Basis optimization and planning now drives more tax savings than estate tax avoidance for most families.

- With fewer taxable estates, income tax planning and capital gains outcomes often outweigh transfer-tax concerns.

Older plans may no longer function as intended: Plans drafted around lower exemptions (especially formula-driven clauses creating unintended results:

- Overfunded bypass trusts, misallocate assets, tax apportionment issues, and GST surprises

Credit shelter / bypass trusts require review: may now reduce basis step-up opportunities or create unnecessary complexity.

- Can unintentionally disinherit spouses or distort intended asset allocations.
- Legacy tax-driven structures may forfeit basis step-up at death.

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Practical Implications: Readiness, Solvency, and Liquidity Financial Analysis & Plan Design

Early Engagement: Begin conversations now: advanced strategies require time for valuations, drafting, and funding.

Liquidity Planning: Ensure cash flow for lifestyle needs and estate expenses; ILITs, and partnerships remain valuable tools.

- Run the numbers
- How much does the client need to live on?
- Gross it up for income tax
- Weigh step up in basis vs. gifting

Solvency Testing: Document solvency and sufficiency before large transfers; protect against fraudulent conveyance claims.

Know life expectancy and any illness/risks:

- Counsel clients on risk
- Doctor Letter on life expectancy

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Overhauling Older Estate Plans After OB3

- **Control planning still matters:** Irrevocable trusts remain valuable for governance, creditor protection, and multi-generational control; even when tax minimization is less critical.
  - **Trust Flexibility:** SLATs, IDGTs, GRATs, ILITs, and non-grantor trusts remain core tools, just used differently than before.
- **Trust Decanting:** Allows movement of assets into a new trust with updated terms; flexibility for modernizing or correcting documents.
- **Planning Priority:** In a stable exclusion environment, managing basis, SALT, and long-term trust design outweighs exemption urgency.
- **Execution Matters:** Solvency testing, liquidity planning, and documentation are critical for defensibility and client peace of mind.
- **Recommended practitioner action:**
  - Review formula clauses and funding mechanisms.
  - Reevaluate legacy irrevocable structures.
  - Consider decanting or adding flexibility where possible.
  - Reassess gifting vs. holding assets for basis step-up.

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Post-OB3 Blind Spots

- **State estate and inheritance taxes re-emerging as key exposure:** federal planning no longer tells the whole story.
- **Charitable deduction rules reshaping giving strategy:** AGI floors, deduction limits, and timing considerations.
- **Non-Grantor Trusts: opportunity + complexity:** state income tax savings, SALT deduction optimization and limits, QSBS stacking, and administrative burdens require careful analysis.
  - **Trust Structuring:** Advisors can toggle grantor vs. non-grantor status to capture optimal mix of income and estate tax benefits.

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What Planners Cared About in 2024 vs. What They Care About Now

Estate Planning in the OB3 Era

2024 Mindset	2026 Reality
• *"Use the exemption before it disappears."*	• *"Do we actually want this asset out of the estate?"*
• Large lifetime gifts = automatic win.	• Basis step-up often more valuable than transfer-tax savings.
• Remove appreciation at all costs.	• Lifetime gifts require solvency + cash-flow stress testing.
• Freeze values and move assets out early.	• Income tax planning now drives structure decisions.
• Estate tax minimization drove the conversation.	• Flexibility and optionality matter more than urgency.
	• Asset Protection.

Advisors' Strategic Role: Guiding families through complex trust design, valuation, liquidity, and compliance challenges.

Collaboration Matters: Best outcomes require estate attorneys, CPAs, financial advisors, and appraisers working as a team.

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Questions?

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