

# Trusts & Estates

The one constant responsibility clients face throughout personal and professional milestones, is to secure their family's and business's future. As life changes, so too should estate plans. At Polsinelli, we understand clients want to know they have done everything they can to leave a meaningful legacy and to protect the ones they love. Our experienced Trust and Estate attorneys take time to understand family and business dynamics, design an estate plan and develop and update related documents to optimize every opportunity to preserve assets and administer the plan.

Our Trusts & Estates practice works on myriad matters, with the most common client needs falling within one of the following categories:

- Wills and trusts
- Business succession planning
- Multi-generational transfer planning
- Trust and estate administration
- Charitable planning
- Fiduciary disputes and litigation
- Asset protection

Our Trust & Estate attorneys bring a wealth of knowledge to personal estate planning, business succession planning and tax planning for our clients. Polsinelli's experienced attorneys recognize issues and solve problems for the firm's business owner clients and other successful individuals.

Our attorneys know that estate planning, gift and estate tax planning, income tax planning, and business succession planning are all closely interrelated and should be holistically considered and coordinated in order to achieve our client's long-term financial goals. Each estate plan is designed to fit our client's needs, current law requirements, and a client's objectives for his or her family.

Polsinelli's Trust & Estate attorneys are widely known and respected, with active membership in the American College of Trust and Estate Counsel, a prestigious national organization of counselors. In addition to their work in estate, tax, and business planning, they bring critical experience in trust and estate administration, and are well-equipped to deal with a client's unfortunate death or incapacity. Polsinelli attorneys in this practice engage in trust and estate planning and administration on a full-time basis and collaborate daily with their colleagues in connection with shareholder agreements, retirement planning, marital agreements, gift planning, and charitable planning through current and deferred charitable gifts.

Polsinelli's experienced attorneys listen to and learn from their clients and incorporate each client's wishes in a plan that is both comprehensive and flexible. The attorneys of the Trusts & Estates practice create a personal plan for each client that addresses:

- Accumulation of wealth and gifting opportunities

- Planning for retirement, illness, or disability
- Planning for education expenses and needs of children and grandchildren
- Current business management and succession planning
- Disposition of assets at death, including trust planning for family members or other individuals or charitable beneficiaries
- Coordination of asset ownership for efficient operation of the estate plan

Recent rankings include:

- Regionally recognized for HNW for Missouri Private Wealth Law by *Chambers USA* (2024)
- Nationally ranked Tier 3 for Trusts and Estates Law by the 2024 edition of "Best Law Firms"

## Matters

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### Estate Planning

- Transferred residence in appreciating real estate market by use of a qualified personal residence trust ("QPRT") resulting in retention of multi-million dollar vacation home in family for multiple generations to enjoy free of federal estate tax.
- Represented large family owned company with the termination of two substantial, but tax inefficient irrevocable trusts, and implementation of comprehensive business succession plan involving new irrevocable trusts, voting trusts and shareholder agreements to preserve long-term family ownership of company.
- Represented family owned company in design of long-term irrevocable trusts and shareholder agreement tailored to reward and encourage active participation in family business.
- Represented clients in design and implementation of split-dollar life insurance plans in accordance with new treasury regulations; represented clients in analysis and "unwinding" of grandfathered split-dollar plans pre-dating final treasury regulations.
- Counseled high net worth clients on the establishment of a "freeze" partnership in which senior generation received preferred equity for seed capital and younger generation operating the business received common equity.
- Represented clients with closely-held, yet publicly traded bank stock and real estate; incorporated family limited partnership and various trusts for lifetime transfers and future testamentary transfers; represented estate/trust and utilized applicable valuation discounts and Graegin loans to reduce federal estate tax.
- Represented estate/trust in extensive IRS audit in which valuation discounts and interest expense deducted on federal estate tax return were two of the primary challenges by the IRS; interest expense deduction generated by the Graegin loans was preserved in total and final valuation discounts on the family limited partnership interests were agreed upon resulting in significant tax savings for the family.
- Helped client design and implement plan to benefit long-term employees of the company founded by the client, the company (which had a 25% ESOP ownership interest as of the death of the founder) became a 100% ESOP owned company (after some smaller redemptions); today, no earnings of this company are subject to federal income tax, but rather all net earnings are either used for corporate purposes (pay-down debt, finance additional growth, finance large asset purchases, etc.) or for contributions to the ESOP to benefit the employees of the company.
- Represented clients in creating non-reciprocal spousal lifetime access trusts ("SLATs") for each spouse and transferred ownership interests of the company to each SLAT in amounts to maximize use of the federal estate tax exemption; within two years of such transfers, the company was sold and significant future estate tax savings was accomplished, while allowing the clients to retain access to assets, if needed, in one of the SLATs.

- Represented Trustees of GST grandfathered Trust owning multi-billion-dollar closely held company through conversion from S corporation to C corporation to save millions of dollars in income taxes, while navigating the complexities of the GST and uniquely drafted income distribution provisions of the Trust.
- Represented Trustees of multiple family trusts established by decedent owning 88% percent of closely held bank stock worth approximately \$75 million in preparation of decedent's federal and estate tax returns, payment of federal estate tax, and successful Section 6166 tax deferral election for tax generated by bank holding company stock.
- Provided counsel and advice to \$20-million-dollar family with assets held in multiple trusts and family limited partnership and helped matriarch of family make additional gifts of partnership interests in an effort to keep assets out of her taxable estate, while establishing new intentionally defective grantor trust ("IDGT") to receive gifts of partnership interests.
- Set up irrevocable gift trusts for daughters working in multi-million dollar closely held family business for parents to make gifts of recapitalized non-voting stock in the company and oversaw preparation of buy-sell agreement between daughters' trusts.
- Worked with family owned business in reorganization which resulted in \$50 million of tax free wealth transfer into generation skipping trusts.
- Successfully represented family members in a contested multi-million dollar estate/trust audit with the Internal Revenue Service involving the Tax Court, Court of Appeals and Writ to U.S. Supreme Court concerning valuation and split decisions among Circuit Courts.
- Advised trustee and beneficiaries on a trust severance and modification for \$100 million trust to preserve GST exempt trust status for a trust created in the 1940s.
- Represented large regional bank as Trustee in non-judicial settlement and virtual representation agreement with trust and beneficiaries involving bank stock, farm land, and severance of GST Exempt Trusts.
- Created grantor retained annuity trust ("GRAT") for sophisticated call spread trading strategy resulting in multi-million dollar tax free transfer to younger generation.
- Created series of GRATs for clients with (i) concentrated positions in publicly-traded companies and (ii) privately held companies to transfer wealth to younger generations with minimal transfer tax cost.
- Provide advice to an NBA player on private wealth management following a \$20 million, three-year deal with an NBA team.
- Represent numerous NFL players in estate and charitable planning.
- Represented four generations of family members in estate planning, estate administration, trust administration, investment management, construction projects, real estate issues, alternative energy issues, family business succession, charitable giving, and other matters.

## Charitable Planning

- Worked with retiring CEO of public company to create a grantor charitable lead trust that generated over \$8 million in income tax deductions to offset significant income earned in year of retirement.
- Establishment of family foundations and navigation of family office arrangements.
- Counseled family of substantial wealth with philanthropic giving options such as private foundations, donor-advised funds, charitable and split-interest trusts, and similar giving vehicles.
- Formed tax-exempt charities for professional athletes and provided ongoing advice on programming, fundraising and administration.

## Fiduciary Litigation

- After securing client win at the trial court regarding whether a grantor's handwritten letter was operative to amend his trust, the court of appeals reversed, holding that evidence and testimony of the grantor's intent should not have been admitted; the Polsinelli team convinced the Missouri Supreme Court to take the case and, writing for a unanimous court, Judge Paul Wilson adopted both the primary and alternative arguments put forth by the Polsinelli team.
- Represented beneficiaries facing reduced trust distributions to the point that the beneficiaries were experiencing financial pressure; Trustee then sought to personally buy trust assets for a price well below the market value; assets were properly valued and buyout went forward at a price many times higher than the original offer; all legal fees were recovered.

- Represented wealthy family patriarch who had recently remarried; despite a prenuptial agreement and after suffering a stroke with a very significant mental decline, the new spouse took control of his assets and began wasting them at a significant rate; guardianship imposed after a lengthy jury trial and legal fees recovered.
- Defendant persuaded a relative with dementia to sign over assets that were to pass by will to other relatives; suit was brought successfully to set aside the transfers as having been achieved through undue influence/improper means.
- Caregiver with power of attorney used her authority to obtain her ward's assets for herself and to disinherit other family members; ward had severely diminished capacity at the time of the transfers; jury verdict achieved for clients with legal fees and punitive damages.
- Child of grantor was removed as Trustee of his mother's trust; he later presented the successor Trustee with a purported trust amendment disinheriting his siblings and leaving the entire estate to him; the validity of the document was successfully challenged and the method of amendment was also challenged; affirmed on appeal.
- Extended family members sought to disqualify client from inheriting his late father's portion of a large trust on the grounds that a DNA test showed that he was not the biological child of the father; recovery for the client on the grounds that, regardless of biological paternity, a divorce court had adjudicated paternity as part of his parents' divorce decree decades earlier.
- Represented beneficiaries who complained that Trustee was engaged in self-dealing and was otherwise a poor administrator; removal of Trustee for cause achieved with judgment that Trustee would need to bear its own legal fees of approximately \$750,000.

## Letter Rulings

- Obtained an IRS Private Letter Ruling allowing a conversion of a marital trust to a "unitrust" measuring the annual payout by a graduated scale of percentages of value, elaborating the standard in the regulations.
- Obtained an IRS Private Letter Ruling favorably addressing the overlap between the charitable and marital estate tax deductions in a sophisticated flexible estate plan.
- Obtained Private Letter Rulings from the IRS to facilitate the division, reformation or early termination of long-term trusts with assets valued in excess of \$100 million.
- Obtained a favorable IRS Private Letter Ruling on behalf of clients in need of reorganizing business and partnership entities and the tax free transfer of life insurance policies on the lives of business owners.
- Obtained a favorable IRS Private Letter Ruling for a client granting an extension of time to allocate GST exemption long after a trust had terminated, sheltering substantial family assets from future estate taxes.
- Obtained a favorable IRS Private Letter Ruling allowing exception from the special valuation rules applicable to stock repurchase agreements when less than half of the stock is owned by family members.

## Publications

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December 6, 2024

**Will the Red Wave Crash Down on the Estate Tax Sunset?**

November 11, 2024

**Federal Estate and Gift Tax Changes in 2026: What is on the Horizon, or Sunset Rather?**

September 3, 2024

**Supreme Court Holds Life Insurance Proceeds Paid to Closely-Held Corporation to Fund Buy-Sell Agreement Increases Estate Tax on Deceased Shareholder's Estate**

August 23, 2024

**New Government Reporting Requirements That May Apply To You**

June 29, 2022

**Estate Planning During Periods of Inflation and Market Volatility**