



## **Maryland Wills & Trusts**

### **January 2018**

(v.18.01)

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### **Legal Developments**

#### **Increased Federal Tax Exemptions (effective January 1, 2018)**

The Tax Cuts and Jobs Act of 2017 increased the Applicable Exclusion Amount and the GST Exemption Amount by doubling the basic amount from \$5,000,000 to \$10,000,000. After taking into account indexing for inflation under §1(f), the amount for 2018 is uncertain. In addition to changing the exclusions, Congress also changed the inflation calculations from using the traditional CPI to a Chained CPI, which all analysts agree lowers the impact of inflation adjustments. We expect the amount will be less than the easily computed \$11.2 million (doubling the basic amount with the traditional CPI) but more than \$10.46 million (calculated using fully retroactive Chained CPI). As a consequence, the Law & Strategy and Synopsis have been generalized by using “about \$11 million” as the reference number for the AEA and GST Exclusions.

Likewise, the Gift Tax Annual Exclusion Amount was scheduled to rise to \$15,000 (up from \$14,000) and would do so if the Chained CPI does not get applied retroactively. Assuming the Chained CPI will not be applied retroactively, the exclusion has been changed to \$15,000.

#### **Increased Maryland Estate Tax Exemption (effective January 1, 2018)**

The program has been updated to reflect the increase in the Maryland estate tax applicable exclusion amount from \$3,000,000 to \$4,000,000 effective for decedents dying between January 1, 2018, and December 31, 2018. Maryland's estate tax law provides for the exemption from the Maryland estate tax to be recouped with the federal estate tax applicable exclusion amount (AEA) beginning in 2019, including portability. *Question 353*

### **Updated Product Features**

#### **New Joint Revocable Trust Added (Complex-Separate Shares and Simple)**

The complex-separate shares joint trust is designed to be used for larger estates with mostly jointly owned assets. This type of trust separates the spouses' assets (jointly owned or individually owned) into two distinctly controllable shares, leaving each spouse with the power to amend, revoke, or distribute his or her share without impacting the other spouse's interest. All trust assets contributed by the spouses are listed on a single Schedule A and each spouse's share is deemed to be one-half of the total assets. The trust is still considered “complex,” as it includes provisions for creating both a credit shelter trust and a marital trust after death, as well as a full complement of choices for after-death disposition of assets. In situations where the spouses do not wish to have an equal division of all of the trust assets, but wish to designate some or all of the assets to be held in separate shares, such as in the case of inherited family

property, we have included an option to create additional Schedules B through E for those assets.

The simple joint trust is likely to fit more estate planning situations now that the exemptions from the federal and Maryland estate taxes have increased. If minimizing estate taxes is not an issue, but simplicity is desired, the simple joint trust creates a trust with a unified corpus that each grantor may enjoy, and over which the survivor has full control. At the death of the first spouse, the assets remain in trust for the surviving spouse, but the survivor retains the right to amend and revoke the trust, allowing for a second step-up (or step-down) in basis at the survivor's death. For flexibility in drafting, a disclaimer trust is provided as an option, and many planners may wish to use this approach for control, post-mortem estate tax planning, or disability planning.

The complex or simple joint trust as generated by Lawgic is not intended to be used for a Tenancy by the Entirety Immunity Trust. The drafter should use caution in adapting the joint trust as a Tenancy by the Entirety Immunity Trust under Maryland law for asset protection purposes. Properly creating a Tenancy by the Entirety Immunity Trust requires strict adherence to the rules of Maryland Estates and Trusts § 14.5-511. For a comprehensive treatment of this subject, see Frederick R. Franke, Jr. and David E. Sessions, *Self-Settled Asset Protection Trusts for Married Couples in Maryland*, ABA Section of Real Property, Trust & Estate Law Domestic Asset Protection Trust Planning: Jurisdiction Selection Series, eCLE (April 2015). Lawgic is considering expanding the joint trust by adding an option for a Tenancy by the Entirety Immunity Trust, but we are proceeding carefully because of the intricacies of that law. *Question 5, New Questions 6, 8, 162, 1184, 1186, 1187*

### **New Unitrust Provisions**

A new option has been added to express the "Payment of Income" for the Marital Trust as a unitrust interest. The interest rate is defaulted to 4%, which corresponds to Maryland law. Various definitive and administrative terms are included, as is an option to allow some distributions of principal. If this approach is selected, the new language replaces the "Distribution of Income" and "Distribution of Principal" paragraphs in the Marital Trust. *Question 472, New Question 477*

### **New Provision for Designating Representative**

Maryland law now permits the grantor of a trust to designate one or more persons (other than a trustee of the trust) to represent a beneficiary of the trust or a class of beneficiaries. A new provision is included to allow the grantor to designate a person to represent a trust beneficiary. The grantor may also name one or more successor representatives and may name someone to designate a representative. The representative may receive notices on behalf of the beneficiary and may bind the beneficiary. *New Questions 952-971*

### **Revised Special Needs Trust Provision**

Text has been added to the special needs trust allowing the trustee to make a distribution to the beneficiary, even if the distribution might have negative consequences to the beneficiary's eligibility, if the trustee determines that the benefit of making the distribution outweighs its costs. This language was added to provide additional flexibility in administering special needs trusts.

### **Adoption Provision Clarified in Definitions**

From a customer suggestion, we excluded the testator/rix and Grantor from the operation of the adoption age limitation. It was always the intention for that restriction (a child must be adopted by a certain age to count) to ensure a meaningful relationship with the adopting parent, typically a second or third generation descendant. It was pointed out that it might apply equally to an older child adopted by the testator/rix or Grantor; although such children would likely be named as takers, we removed the restriction for such an adopted child.

### **Anatomical Gifts by Living Donor Revised**

The Advance Directive for Health Care has been revised to comply with the most recent State of Maryland version. Organ donation and funeral representative questions have been added. The text is available either as a standalone document or as part of the Advance Directive for Health Care. [Click here](#) for more information on Maryland Advance Directives. *Question 8 and New Questions 1265-1269*

### **New Subsection Option for Wills and Trusts Custom Provisions**

In response to customer requests, a new subsection option was added to the 'Add Custom Provision' question at the end of each major section in the Navigator for wills and trust documents. This allows the user to add a 3<sup>rd</sup> level (a), (b), (c), and so on, under the level 2 headings which will provide greater flexibility when drafting documents and creating templates.

As before, you have the option of adding custom text either with or without a section heading. If you wish to create a template from your client answer file, the custom text will automatically become part of that template.

For more information on creating templates see **Creating Templates for Estate-Planning Products** in the **Using Templates** topic by selecting **HELP** from the Lawgic menu. In addition, you may attend one of our monthly template Webinars. [Click here](#) for more information and registration.

*New Questions 153, 180, 201 219, 230, 242, 262, 268, 389, 463, 499, 565, 625, 674, 729, 901, 930, 969, 1047, 1071, 1090, 1121, 1148, 1157, 1163*

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To view those questions that are new in this update, or where **Law & Strategy**, choices, or default answers have changed, use the "**Up\_Jan18**" flag file. From inside Lawgic, open any existing answer file; on the **Flags** menu, click **Open Flags**, select the appropriate Title (click **OK**), and next select the "**Up\_Jan18**" flag file (and click **OK**). To view all flagged questions, click **Expand All** on the **Answers** menu and scroll the Navigator. Flagged questions will be indicated with **blue bold** text.

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