



# Estate Planning When a Privately Held Business is a Primary Asset

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**CLLA Southern Region Conference**

February 15, 2025

**Chaffe**»

**JONES  
WALKER**



Chaffe & Associates, Inc. ("Chaffe") provides highly specialized investment banking services, particularly mergers and acquisitions, commercial and private debt, balance sheet restructuring, and other strategic advisory services. Chaffe also has over 40 years of experience in valuing companies, entities, investments and other financial instruments, and leverages both core competencies to create a power finance firm with its clients coming first.



## Key Highlights

- Founded in New Orleans in 1982
- Proprietary List of Family Offices and Businesses
- \$25M-\$300M Transaction Sizes
- Diverse Industry Expertise
- Proven Track Record of Success
- Extensive Network of Institutional Lenders and Investors

Our clients range from sponsors, founder-led and family-owned businesses to publicly traded corporations spanning a broad spectrum of industries. They rely on our four decades-long market presence and ability to be value-add during the valuation and sale process.

We listen to boards, executive officers and business owners to understand goals and the specific issues facing their companies. Every client or business has unique needs, requiring a customized approach. Chaffe prides itself on being the trusted advisor to its clients.

Chaffe is the longest serving and most well respected valuation firm in our region. Chaffe has over 40 years of experience in valuing companies, entities, investments and other financial instruments. Chaffe's professionals have the credentials and experience to provide independent valuations that comply with various tax and regulatory requirements.

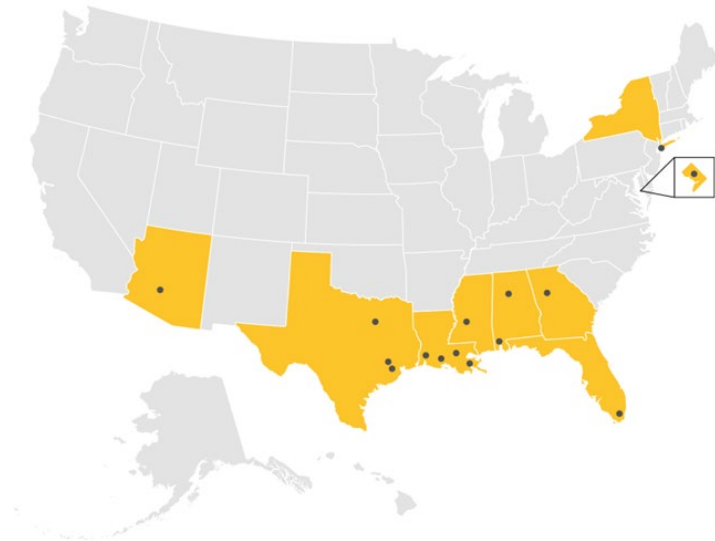
## M&A Services Are Our Core Strength...

- **M&A Advisory**
  - Company Sales
  - Corporate Carve Outs
  - Management Buyouts
  - Buy-Side Advisory
  - Fairness Opinions
- **Capital Advisory**
  - Recapitalizations
  - Debt Advisory and Placement
  - Acquisition Financing
  - Capital Formation/ Fund Raising
  - Exit Planning

## Valuation Services Set Us Apart

- Estate, Gift & Income Tax Planning and Reporting
- Corporate Planning
- Litigation Support
- Employee Stock Ownership Plans (ESOPs)
- Intangible Assets
- Purchase Price Allocations
- Impairment Testing
- Level 3 Portfolio Valuations
- 409A Valuations
- Buy / Sell Agreements

- With more than 350 attorneys, Jones Walker is among the **largest 135 law firms** in the United States and is the **largest law firm in Louisiana**.
- Our principal offices are located in Louisiana, Texas, Mississippi, Alabama, Georgia, Florida, and the District of Columbia. We also have offices in Arizona and New York.
- Our regional and national footprint, the depth and breadth of our team, and the scale of the projects on which we have worked enable us to provide effective counsel on virtually every issue our clients may face, at every step of a project's process.
- In 2023, the BTI Consulting Group once again named Jones Walker to its **Client Service A-Team**, which identifies the top client service firms in the nation. Jones Walker has previously been named to both the A-Team and BTI's Client Service 30.
- We build service-oriented relationships that go beyond our clients' expectations – **when you succeed, we succeed**.



## LOCATIONS

Atlanta, GA  
Baton Rouge, LA  
Birmingham, AL  
Dallas, TX  
Houston, TX  
Jackson, MS  
Lafayette, LA  
Lake Charles, LA  
Miami, FL  
Mobile, AL  
New Orleans, LA  
New York, NY  
Phoenix, AZ  
The Woodlands, TX  
Washington, DC

## Honors & Rankings



*This presentation is for educational purposes only, as of the date of the presentation.*

*This presentation should be used for this limited, intended purpose only.*

*It should not be used in conjunction with any other matter.*

*This presentation does not necessarily represent the professional opinions of the presenter or Chaffe & Associates, Inc.*

*The proper methodologies and techniques to be employed in any engagement are fact specific and based on the totality of circumstances at hand.*



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- A. Transfer Options
- B. Family Matters
- C. Money Matters
- D. Tactics for Transfer to Family Members



Types of Buyers / Successors	Pros	Cons
<b>Family Members</b>	<ul style="list-style-type: none"> <li>• Familiarity with Business</li> <li>• Time to Prepare to Run Business</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of Funding</li> <li>• Lack of Preparation to Run Business</li> </ul>
<b>Management Buyout</b>	<ul style="list-style-type: none"> <li>• Experience</li> <li>• 3<sup>rd</sup> party funding</li> </ul>	<ul style="list-style-type: none"> <li>• Little Individual Funding Capacity</li> <li>• Seller notes</li> </ul>
<b>Business Competitor</b>	<ul style="list-style-type: none"> <li>• Ease of Identifying</li> <li>• Funding</li> </ul>	<ul style="list-style-type: none"> <li>• Competition</li> <li>• Confidentiality in Negotiating</li> </ul>
<b>Synergistic Buyer</b>	<ul style="list-style-type: none"> <li>• Potential for Higher Price</li> </ul>	<ul style="list-style-type: none"> <li>• Redundancies</li> <li>• Potential Loss of Brand Identity</li> </ul>
<b>Financial Buyer</b>	<ul style="list-style-type: none"> <li>• Funding</li> <li>• Corporate Acumen</li> <li>• Retain Owners</li> </ul>	<ul style="list-style-type: none"> <li>• Demands, Conditions, and Criteria</li> <li>• Retain Owners</li> </ul>
<b>Employee Stock Ownership Plan</b>	<ul style="list-style-type: none"> <li>• Tax Benefits</li> <li>• Employees Retained</li> </ul>	<ul style="list-style-type: none"> <li>• Administrative Compliance</li> <li>• Lower Price</li> </ul>

- Other children- Shareholders or not
- Needs of the business vs goals of the shareholders (capital vs dividends)
- Capital calls/dilution
- Divorce-Community assets
- Management/operational control
- Income needs of current owners-compensation, consulting fees, note payments



Three common strategies for dividing an inheritance include:

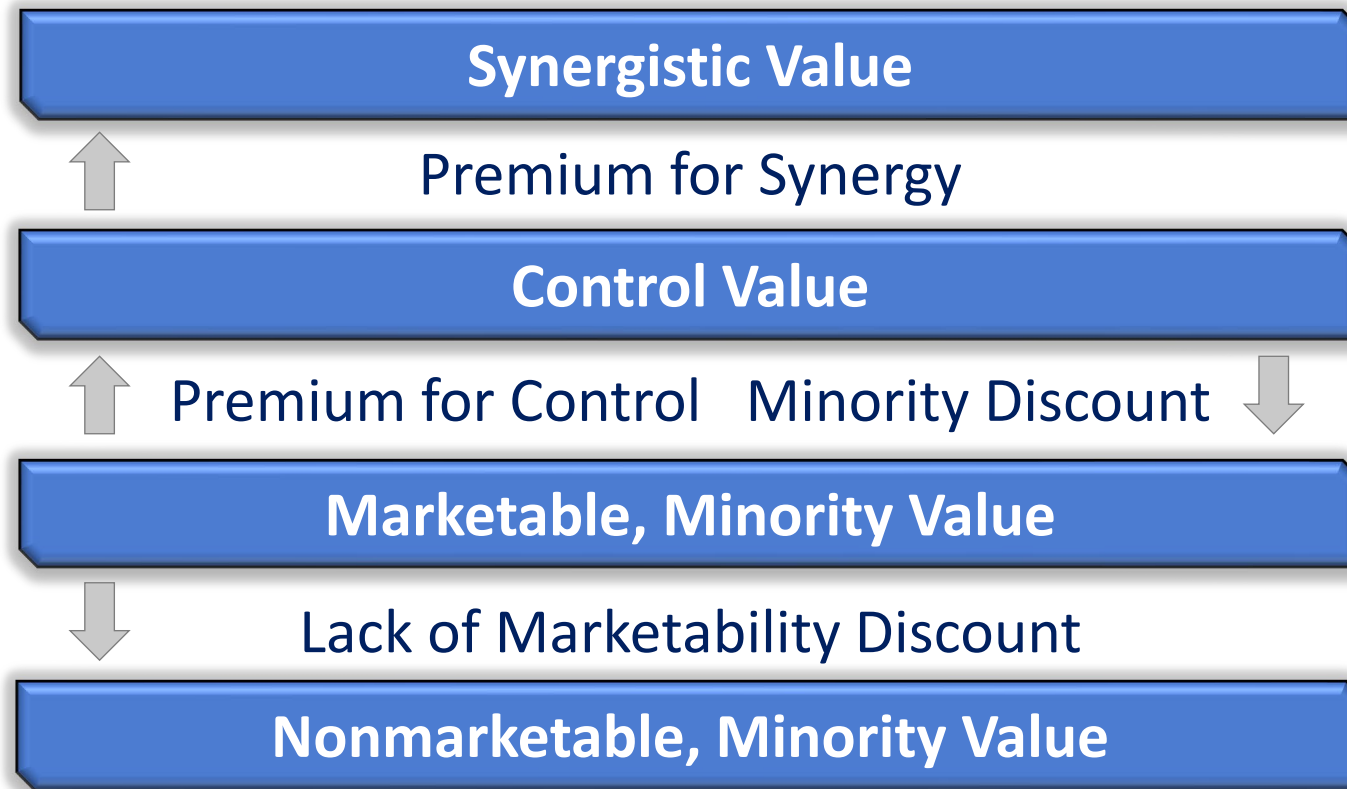
- Per stirpes. One of the simplest strategies for asset distribution among heirs, this method requires that the estate be divided equally among each branch of the family. So, if an heir (a child) should pass away before the parents, their share would be passed along in equal shares to their heirs (the grandchildren).
- Per capita. In contrast to *per stirpes* is the *per capita* — “divided by heads” — approach. In this method, each heir is given an equal share. That means if an heir should pass away before their parents, their heirs or children (the grandchildren) would receive *the same amount* as their aunts and uncles. This method could become problematic, as the children may not perceive it fair that their nieces and nephews receive the same share as them.
- Per capita by generation. Another approach is actually a combination of *per stirpes* and *per capita* called *per capita by generation*. In this approach, the second generation (the children) would be bequeathed what was promised to them. Their heirs or children (the grandchildren) would then receive an equal share of the portion that would have gone to the entire third generation, no matter their connection to the second generation.
- Any special needs family members?

1. Child in business buys out parents and/or siblings and/or other owners over time
2. Child in business takes on equity capital if eventual sale is contemplated
3. Business real estate/equipment transferred to other children and they receive rental income
4. Business non-operating assets sold to raise cash
5. Combination of sales /gifts
6. Self cancelling installment notes-obligation terminates if seller dies before note's maturity date

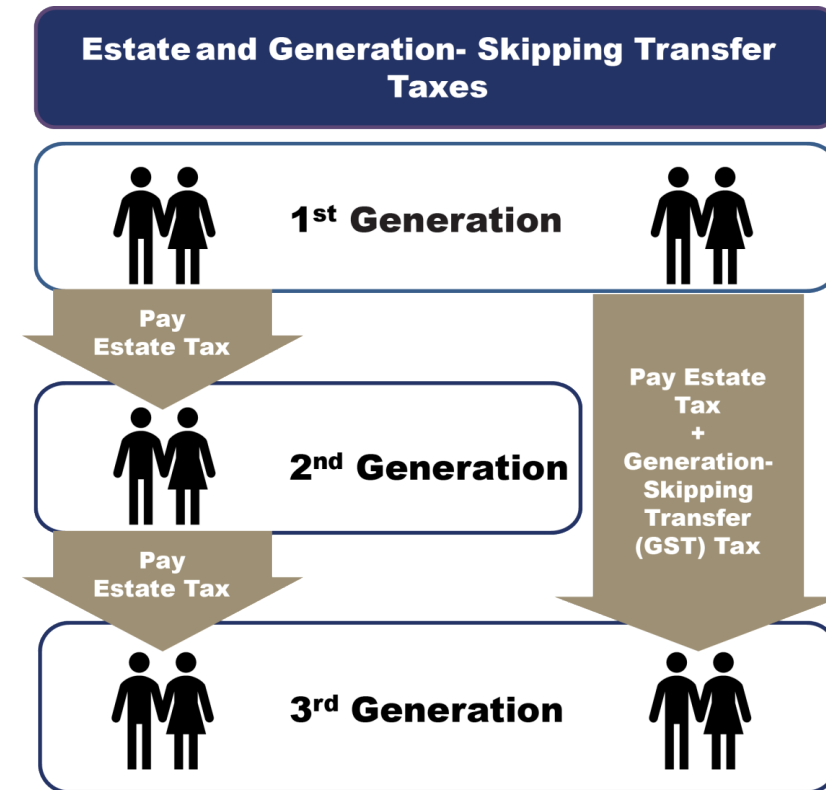
1. Having a plan and sticking to it
2. Avoid making anyone involved feel rushed
3. Consider the unique personality traits of your family and adapt the process accordingly
4. Always include third-party advisors during negotiations

- The valuation of the interest may be significantly less than such interest's pro rata share of the total equity of such company.
- Nevertheless, such a contributed interest is entitled to a pro rata share of the earnings and growth of the company.
- This may result in the percentage “growth” experienced by the donees being significantly greater than that experienced by the entire company.

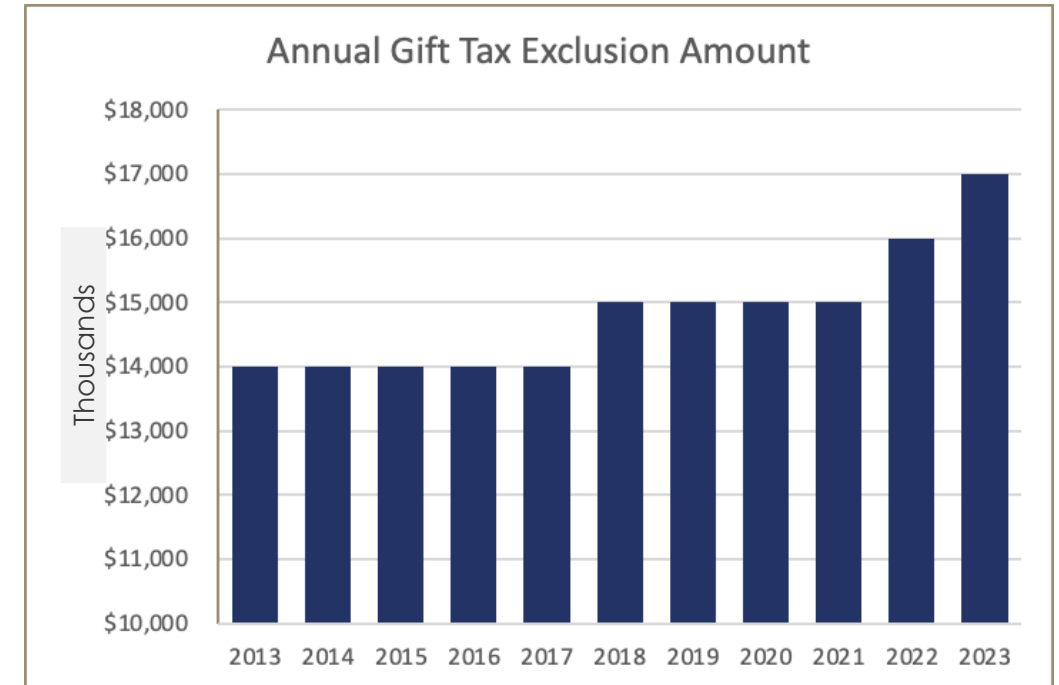
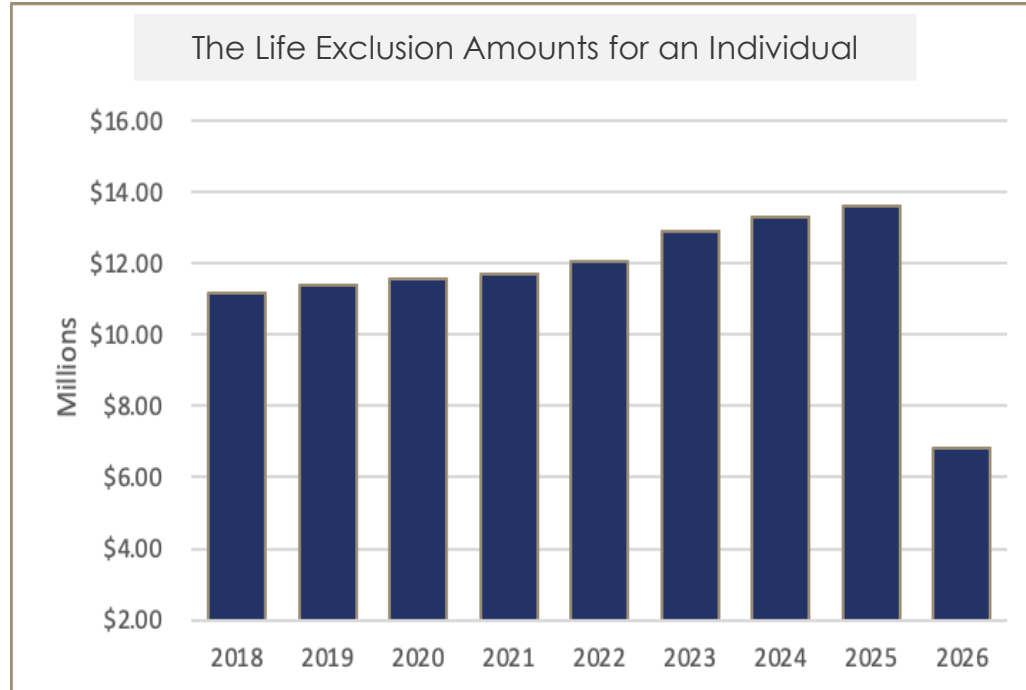




- The 2017 Tax Act did not repeal the estate and generation-skipping transfer (GST) tax
- The only change was to DOUBLE the exclusion amount for estate and gift tax purposes and the GST exemption for GST tax purposes
- The exemption and annual exclusion are adjusted annually based on the Consumer Price Index (CPI)
- The Act retained the "anti-clawback" language added by the 2010 Tax Act to prevent gifts exempt from gift tax under the higher exemption from being subject to estate tax if the increased exemption were to actually "sunset"
- The doubling of the exemptions is set to sunset on January 1, 2026.



# Sunset of the Higher Gift and Estate Tax Exemption



2025 (exemptions are set )

2026 (estimate of \$5M pre-2018 level adjusted for inflation)

- The estate tax exemption is \$13.99 million for 2025 (\$27.98 per couple)
- The rate is 40%
- The estate tax exemption amount is reduced by taxable gifts made during life



- An additional tax on top of gift or estate tax on transfers that “skip” a generation.
- Each donor has a GST tax exemption equal to the estate tax exemption amount - but these are separate exemptions.
- The GST tax rate is 40% in 2025
- The rates apply in addition to gift/estate taxes.
- Generally, if a lifetime gift is exempt from gift tax, it is exempt from GST tax.

- A tax on lifetime gifts.
- You can use all of your exemption during life.
- You can make annual exclusion gifts of \$19,000 per year per donee in 2025 -- without using exemption.
- Tuition payments are excluded and do not “use up” exemption - but donor must pay the school directly.
- Medical expenses are the same and, again, donor must pay the health care provider directly.
- Louisiana has no gift tax.

## Due Diligence

- Review of corporate documents for transfer restrictions, right of first refusal, approvals from third parties, board approvals, and requirements based on company structure
- Determine ownership interests
- Marital property issues

## Family Considerations

- How many in next generation working in family business?
- Who benefits from family business – dividends & salaries?
- If business is largest asset, how to equalize/provide for children not involved in business?

## Practical Considerations

- Is it affordable for child to buy business?
- Can it be done by gifting instead?
- Long term viability of business with new ownership?
- Is the senior generation stepping back from salary?
- Can note payments replace salary for senior generation?

A. Grantor Trusts

B. Sale to a Grantor Trust

C. GRATs

D. Charitable Options



- Grantor pays all of the income tax on the dividends, interest, and capital gains of the trust during Grantor's lifetime
- Assets of trust treated as if owned by grantor
- Provides additional tax-free gift to beneficiaries during Grantor's lifetime
- Trust can be for the benefit of descendants, but consider generation-skipping tax issues

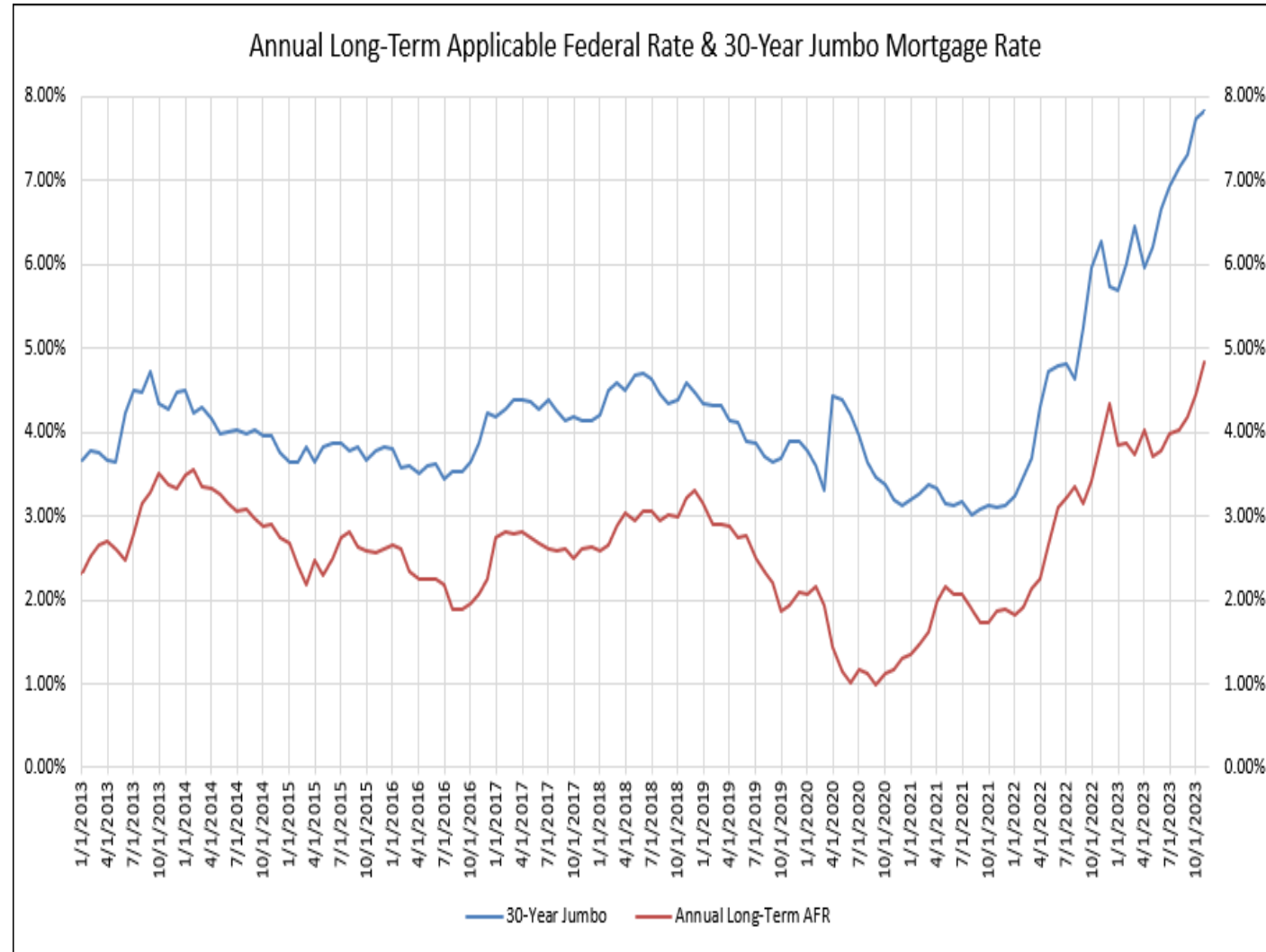
- STEP 1: Establish Grantor Trust with Initial Gift
  - Before the sale, settlor should “fund” the trust with assets equaling approximately 10% of the value of the assets to be sold.
  - Could require a substantial gift and the payment of gift tax by settlor
- STEP 2: Grantor sells assets to the trust for a note
  - Assets sold to trust
  - Trust gives a note to grantor for sale
- STEP 3: Repayment of Note
  - Trust assets are used to make note payments & grantor received an income stream back
- GOAL: Freeze the value of the assets transferred as of the date of transfer to avoid inclusion of appreciation in the settlor's estate. Reduce grantor's taxable estate by paying the trust's income tax.

- Set Trust provisions
- Trustee decisions; Advisory Board for major decisions
- Set note terms & structure & timing
- Consider assets to be transferred and impact on cash flow
  - Grantor's compensation from company
  - Note repayment
- Consider logistics of transfer of assets – new leases, management agreements, compensation, etc.

- The IRS permits relatives to lend money to one another at the Applicable Federal Rate, which the government sets monthly.
- With these, relatives can charge far less than a bank or other 3<sup>rd</sup> party lenders.
- Note is “frozen” asset in the lender’s estate
- For example—
  - Short-Term Interest for February 2025 is 4.34%
  - Mid-Term Interest for February 2025 is 4.52%
  - Long-Term Interest for February 2025 is 4.86%



# Sale to Grantor Trust - Loans



Source: Mortgage News Daily

- Donor transfers property to a trust and the trust pays a determined annuity amount to the donor every year for a set term.
- At the end of the term whatever principal is left goes to the principal beneficiaries free of tax.
- You can structure the GRAT so no or little gift tax exemption is used.
- The annuity amount is calculated based on a set interest rate determined by the government each month.
- If grantor does not survive the term, trust assets are included in the estate and subject to estate tax
- No commercial annuity is involved, despite the name.

- Can the growth of trust assets exceed the annuity payments?
- How long should the annuity term be? Grantor needs to survive annuity term.
- Will annuity payments be made with dividends, stock, both?
- Business valuations are required if annuity payments are made with business interests.
- Set trust provisions /trustee appointments. Trust Protector could be selected for major decisions, such as turning off grantor status and appointing a successor trustee.
- What type of asset should be transferred to the GRAT?

- “Freezes” the value of gifted assets so that their future appreciation will not be subject to transfer tax
- Retains the use of the assets for a period of time.
- Discounts the value of the gift for gift tax purposes.
- In a low interest rate environment, a GRAT provides a great opportunity to shift future appreciation to beneficiaries.

- Donor Advised Funds
- Charitable Private Foundations
- Charitable Lead Trusts
- Charitable Remainder Trusts

- A dedicated account for charitable giving
- Establish a DAF and then donate assets to it
- Take immediate income tax deduction
- Donation grows tax-free
- Support charities with grant recommendations
- Name child as fund advisor



- Established by family to support charitable activities
- Board of directors or trustees oversees a private foundation
- Allow family members to be employed or serve on board
- Board has full control over grantmaking
- Administrative and tax considerations

- Charitable Remainder Trusts
  - Income beneficiary(ies) receives an income stream paid annually for life or a term
  - At termination of the income interest, charity(ies) receive the remaining principal
  - May be established during life or at death
- Charitable Lead Trusts
  - Charity(ies) receives an income stream (based on fixed percentage of the value of assets) paid annually for life or a term.
  - At the termination of the income interest, family beneficiary receives the remaining principal.
  - CLTs may be established during life or at death.

## IRS Circular 230 Disclaimer:

- Pursuant to Treasury guidelines, any tax advice contained in this communication (or any attachment) does not constitute a formal opinion. Accordingly, any tax advice contained in this communication (or any attachment) is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding penalties that may be asserted by the Internal Revenue Service.



Questions?

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