

# PLANNING PERSPECTIVE

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## Tax Reform 2017

Banner headlines tell us that Congress is working on a major tax reform that will change the rules for income tax, estate tax, and gift tax. At this point, things are too unsettled for anyone to make decisions or put a plan in place. However, some things are clear.

**The emphasis for planning will shift to reducing and managing income taxes.**

First, the current estate and gift tax only applies to families with more

than \$5 million from estate and gift taxes. These \$5 million-plus families will likely get some kind of additional relief under the new law. However, these families will still benefit from planning ahead and having excellent Wills and Trusts in place to address tax and other issues.

Second, the emphasis for planning will shift to reducing and managing income taxes. Capital gains taxes will still be part of the picture. Sales of real estate and businesses will continue to present challenges. If advanced planning is no longer necessary to avoid taxes imposed at death, there will still be a need for strategies that can reduce or eliminate other taxes during life.



*J. Douglas Fitzgerald*

Fitzgerald Law Office

Finally, you should include language in Wills, Trusts, and Financial Powers of Attorney that will authorize your trusted agents to work through the various legal and practical issues that can frustrate your intentions regarding the fate of your digital media.

## Information You Can Use

There are a number of new articles and information on [fitzgeraldlawoff.com](http://fitzgeraldlawoff.com). Visit the website regularly to review the latest on a variety of topics.

## Digital Estate Planning

Estate planning for your digital assets continues to become more and more significant as people produce and save family photos, documents, correspondence, financial information, books, music, and other material in digital form. People simply do not accept the idea that all of their accumulated digital media will disappear when they die.

Unfortunately, there is no simple way to make a comprehensive plan for digital media because people use so many different devices, social media outlets, and types of

media. The law regarding access to digital media and the use agreements created by internet-based companies also makes it difficult to save and preserve your digital property.

Given these challenges, what should you do? Any plan will involve some effort to create an inventory of devices, websites, and social media outlets where your important digital media are found. There should also be a plan to permit your executor to access that information after your death.

In order to simplify things and help clients to get directly to what they want, we developed our law practice into Planning Modules that group together legal and planning issues. Each Planning Module shows subjects that deal with similar issues, apply the same law, are usually handled at the same time, and fall within the same planning process.

We hope that the Planning Modules give clients a broad overview that will help clients understand where their particular question or issue falls within the big picture. If a client is thinking about two or three different questions or issues at the same time, the Planning Modules can also help them organize the different ideas and break them down into more manageable chunks that are easier to work with.

## Fitzgerald Law Office Planning Modules

Fitzgerald Law Office has an extensive collection of tools and strategies available to address our clients' planning needs. It can be overwhelming for a particular client to sort through all of those capabilities and find what they need to answer a certain question or get a specific project done.

## Gifts, Estate Taxes and Nursing Homes

Many clients express a strong instinct to make annual gifts to their children. For years, annual gifts were a common tool to plan for estate taxes. However, now that the federal estate tax law exemption is over \$5 million per person, most families do not need regular lifetime gifts to get their estate to fit under the exempt amount. Is there any other reason to make annual gifts a priority?

Medicaid law used to include incentives for making regular gifts. The specific rules

were different, but the general idea was that lifetime gifts were good for planning. However, in 2014, changes to the Medicaid law eliminated almost all of the advantages to regular lifetime gifts. Under current law, a person who makes one large gift is treated exactly the same (and sometimes much better) than someone who made a number of smaller gifts over time.

Generally speaking, the law no longer encourages or gives incentives for regular lifetime gifts. If such gifts continue to be popular, it is probably the fact the arrangement seems to fit most people's definition of common sense. As a result,

regular gifts made annually or at some other interval will likely continue to be part of a family's financial plan for some time. Those making gifts will just not be getting any special tax or other benefits as part of the plan.



## Fitzgerald Law Office

2005 Stonebridge Circle  
West Bend, WI 53095  
262-334-8015 • 262-334-1593 fax  
email: fitzgeraldlaw@fitzgeraldlawoff.com

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## DIY Estate Planning

Entire cable channels are devoted to do-it-yourself ("DIY") home improvement shows. These shows can deliver fascinating information mixed with a little bit of drama. Estate planning, Wills, and Powers of Attorney do not lend themselves to the same level of entertainment, so you do not see any national cable shows devoted to this area. Still, the interest in DIY estate planning is very high.

There is a wide range of steps in estate planning that someone can handle on their own. The tools are available and many people have truly simple goals that can be accomplished without much risk. However,

there are some clear areas where we have seen the DIY mentality cause serious problems.

We regularly see people who misjudge the line between "simple" and "I need some help." We also frequently see situations where people overestimate the value of some commonly available estate planning tools. For example, a payable on death designation is a nifty tool, but is having 14 different P.O.D. designations on 14 different accounts more or less complicated than some other options? Those areas could be open to debate, but we do see situations where it seems clear that doing it yourself creates a problem.

In the past year, we have seen a number of cases where people modified or changed their

Will or Revocable Trust by marking up the document and writing on it. In every case, the changes created confusion and other problems that threatened the heart of the person's intentions. To the extent that there was any convenience or savings from not having an attorney prepare an amendment or restatement, the cost and inconvenience for the estate and the family made it a very bad bargain.

It is always a good idea to have an attorney assist with amendments or modifications. The possibility for unintended consequences is too great when someone begins to change or rearrange the words in a legal document like a Will or Revocable Trust.