

Elder Law & Estate Planning

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Honors and Awards of David R. Okrent Esq., CPA

- Mr. Okrent is a **CPA and an attorney**, with prior experience at both **KPMG** Peat Marwick and the **IRS** as a Revenue Agent and has more than **39 years** experience.
- He is the recipient/honored by
 - **The Long Island Coalition for the Aging, Inc. "Man of Spirit" Award in 2006,**
 - **L.I. Herald's Top Attorney Award in 2023 in the field of Elder Law,**
 - **The Long Island Alzheimer Foundation as "Angel of Spirit,"**
 - **Day Haven Adult Day Services,**
 - **The Long Island Business News, &**
 - **Appointed by Governor Hochul to the New York State Coordinating Council for Services Related to Alzheimer's Disease and Other Dementia**
- Suffolk County Bar Association an immediate Past **Board of Director, Managing Director of its Charity Foundation, & Co-Chair** of the **Elder Law Committee.**
- **Member** of the **Executive Committee of the NYS Bar Association's Elder Law Section and Vice-Chair of its Estate and Tax Planning Committee.**
- **Board Member of the NY Chapter of the National Academy of Elder Law Attorneys**

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The 10 Most Common Mistakes in Elder Law & Estate Planning

- No Estate Plan & Beneficiary Designation Wrong/Missing
- No Documents or they are Outdated
- The Wrong Executor/Trustee/Agent in POA and HCPOA
- Failure to:
 - Fund/Coordinate Living Trust and Assets
 - Execute Power of Attorney w/Gift Giving Provisions
 - Sign Documents and complete Will
 - Properly Insure Assets inside a Living Trust
 - Consider Income Tax Impact of Estate as well Estate Tax
 - Plan for Long Term Care
 - Consult with Qualified Professionals

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Type of Long-Term Care and Cost

- Home Care
- Day Care
 - Social Model
 - Medical Model
- Assisted Living
- Nursing Home

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How Will the Care be Paid for?

- Medicare
 - Skilled Nursing Facility day 81-100 Copayment \$209.50
- Private Pay
- Long Term Care Insurance
- Medicaid

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Medicaid Limits for a Single Person

- Income
 - \$50 a month under Institutional Medicaid
 - \$1,800 a month under Community Medicaid
 - However, more can be kept under Community Medicaid for any type of expenses with a "Pooled Income trust"
- Resources
 - \$32,396 in non-qualified assets
 - Unlimited amounts in certain *tax qualified retirement accounts in a Medicaid pay status (*may be subject to recovery)
 - Prepaid funeral
 - A Home.....see next slide for important details

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Transfer of Assets & the 5 Year Rule

- The **5 Year Lookback** Rule:
 - Primarily only applies to applications for Institutional/Nursing Home Medicaid
 - Does not apply:
 - To Community Medicaid (YET - What about 10/1/2020?)
 - October 1, 2020 – 30 month look back and penalty for transfers on hold
 - If there is a transfer exemption, e.g. transfer to spouse, caretaker child, etc.- If **Applying for Nursing Home Medicaid and within the 5 year look back there are transfers**, then for every **\$14,914** (Long Island Rate) the person transferred they are ineligible for Institutional/Nursing Home Medicaid for one month.

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Medicaid at its Best!



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NYS Coordinating Council for Alzheimer’s Disease and Other Dementia

- The New York State Coordinating Council for Services Related to Alzheimer’s Disease and Other Dementias (Council) was **established by Public Health Law § 2004-a** (enacted by Chapter 58 of the Laws of 2007, Part B, § 24). The Council **was created to facilitate interagency planning and policy-making, review specific agency initiatives for their impact on services related to the care of persons with dementia and their families, and provide a continuing forum for concerns and discussions related to the formulation of a comprehensive state policy for Alzheimer’s disease (AD).**
- The Council is charged with providing periodic reports to the Governor and the Legislature. The reports must set forth the Council’s recommendations for state policy relating to dementia and include a review of services initiated and coordinated by public and private agencies to meet the needs of persons with Alzheimer’s disease and related dementias and their families, this report provides a beginning to this review.

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NYS Coordinating Council for Alzheimer’s Disease and Other Dementia

- “BOLD”**
- The Federal Government’s **Building Our Largest Dementia Infrastructure for Alzheimer’s Act (P.L.115-406) 12/13/18** (referred to as **“BOLD”**) to support a public health approach to prevention, treatment, & care of Alzheimer’s disease and related dementia. Authorizing the CDC to:
 - 1) **Establish Public Health Centers of Excellence** dedicated to promote the best ways to effectively manage Alzheimer’s disease and related dementia & support caregivers (of which **Stony Brook University Hospital** has been selected).
 - 2) **Work with state, local, and tribal public health departments to promote brain health, strategies to reduce cognitive decline** and care for individuals with Alzheimer’s disease and related dementia, and
 - 3) **Improve the analysis and timely reporting of data on** Alzheimer’s disease and related dementia, cognitive decline, caregiving and health disparities at both a state and national level.
- States with more developed programs, such as New York with structure in place, are expanding focus on early detection and diagnosis of **ADRD**.

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Federal 2025 Estate & Gift Tax Numbers

- Exemption 2025** is **\$13,990,000** per person.
 - Sunsets back to \$5,000,000 12/31/25 with inflation.
- Annual Exclusion 2025** is **\$19,000**
 - \$190,000 to a spouse who is not a citizen** of the United States **2025**.
 - Recipients of gifts from certain foreign persons** are required to report gifts under §6039F if aggregate value of gifts received in a taxable year exceeds **\$19,570**.

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Federal Estate & Gift Tax: The Anti-Clawback Regulations

- On 11/26/2019, the IRS issued Final regs under Sec. 2010 protect gifts made before 2026 (TD 9884; Reg §20.2010-1; Reg §20.2010-3; IR 2019-189) providing a “special rule,” that ensured that a decedent’s estate would not be inappropriately taxed with respect to gifts that were sheltered from gift tax by the increased Basic Exclusion Amount (“BEA”) when made.
- On 4/26/2022, the IRS released new proposed regulations limiting the 2019 anti-clawback regulations to address situations in which an estate could be taxed on gifts made by a donor after 2017 and before a reduction in the BEA, wherein the gifts were free of gift tax when made.

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NY Estate and Gift Tax

- For 2025 the Basic Exclusion amount is \$7,160,000, Top Rate 16%.
- There is **No NYS Gift Tax, but Estate must include Gifts made in prior 3 Years.**
 - 3 Year Gift Inclusion Lookback ends for decedent dying **on or after 1.1.2026**. NY CLS Tax §954(a)(3).
 - Governor’s 25-26 Budget includes provision to continue this 3 year lookback.
- No portability in NYS**, so still need credit shelter style planning.
- “Cliff”: Lose exemption if estate >exemption by 5% (>\$7,518,000 in 2025).
- Cliff Planning by use of a “Santa Clause.”

Net Estate	\$7,260,000	\$ 7,260,000
Amount to charity	—-0-	—(\$100,000)
Net	\$ 7,260,000	\$7,160,000
Tax	\$ 262,535	—-0-
Net to Family	\$ 6,997,465	\$7,160,000
Savings \$162,535 in tax & increase to family		

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Disregarded SMLLC with N.Y. Real Property is Included in N.Y. Taxable Estate

- TSB-A-15(1)M Estate Tax May 29, 2015**
 - [Is]...a membership interest in a single-member LLC (SMLLC), that is disregarded for income tax, is also disregarded for New York State estate tax purposes.
 - Pursuant to 26 CFR §§ 301.7701-2, ...“A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.” 26 C.F.R. § 301.7701-2(a). Then, per 26 C.F.R. § 301.7701-3(a) **an entity with a single owner is disregarded as an entity separate from its owner unless it elects to be classified as an association.** 26 C.F.R. § 301.7701-3(c)(1)(i).
 - Based on the above analysis, where a SMLLC is disregarded for Federal income tax, it is treated as owned by the individual owner and the activities of the SMLLC are treated as activities of the owner. Therefore, ... an interest in the SMLLC ... would not be treated for NY estate tax purposes as an intangible asset, **instead, condominium held by SMLLC would be treated as real property held by the decedent for New York State estate tax purposes.**

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Beneficial Ownership Reporting Requirement

www.Fincen.gov



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Federal Income Tax

- **Trusts and Estates** brackets are compressed and **reach 37% at \$15,650** of income.
- **Grantor Trust Rules** (See Rev. Rul. 85-131985-1 C.B. 184) treat grantor as the owner of the trust for income tax purposes, and therefore taxed on individuals return and rates, etc. Instructions to 1041 give reporting options, and how to use Grantor's Tax Identification Number for the trust.
- **Capital gains.**
 - The **15% rate**: above \$96,700 for married joint and **\$48,351 for individuals and \$3,250 for trusts and estates.**
 - The **20% rate**: Above \$600,050 for married joint and **\$533,400 for individuals and \$15,900 for trust and estates.**
- **Alternative minimum tax (AMT)** for individuals, kept the tax, but increased the exemption. The AMT exemption amount is now \$137,000 for married joint and half for married separate, \$88,100 for individuals. The exemption is reduced by \$1 for every \$4 above \$1,252,700 for married joint, \$626,350. For corporations it has been repealed.
- The exemptions and phaseouts were significantly increased under the TCJA. Without Congressional action, they'll drop to their pre-TCJA levels (adjusted for inflation) in 2026.

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Federal Income Tax

Tax brackets, tax rates change and Alternative Minimum Tax.

Tax Rate	For Single Filers	For Married Individuals Filing Joint Returns	For Heads of Households
10%	\$0 to \$11,925	\$0 to \$23,850	\$0 to \$17,000
12%	\$11,925 to \$48,475	\$23,850 to \$96,950	\$17,000 to \$64,850
22%	\$48,475 to \$103,350	\$96,950 to \$206,700	\$64,850 to \$103,350
24%	\$103,350 to \$197,300	\$206,700 to \$394,600	\$103,350 to \$197,300
32%	\$197,300 to \$250,525	\$394,600 to \$501,050	\$197,300 to \$250,500
35%	\$250,525 to \$626,350	\$501,050 to \$751,600	\$250,500 to \$626,350
37%	\$626,350 or more	\$751,600 or more	\$626,350 or more

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Federal Income Tax

- **Personal and dependent exemptions are eliminated in accordance with the Tax Cuts and Jobs Act of 2017 (TCJA).**
- **Standard deduction increases** - \$15,000 for a single taxpayer, \$22,500 for a head of household taxpayer and \$30,000 for taxpayers who file jointly, and the additional standard deduction amount for the aged or the blind is \$2,000 if single or head of household and \$1,600 if married.

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Federal Income Tax

- **Itemized deductions eliminated, limited or modified**
 - Miscellaneous itemized deductions eliminated
 - Eliminated Employee business expenses, including Tax preparation fees, Investment interest expenses.
 - Eliminated Personal casualty and theft losses (except for certain losses in certain federally declared disaster areas).
 - State and local income taxes total \$10,000 (\$5,000 if MFS).
 - Home mortgage interest new home mortgage is limited to interest on a maximum of \$750,000 (\$375,000 if Married filing separately) and not on home equity Loans unless used to improve home.
 - Charitable contributions: When you donate cash to a public charity, the general deduction is up to 60% of adjusted gross income. Appreciated assets held for >1 year are generally deductible at fair market value, up to 30% of adjusted gross income.
 - Gambling Losses any otherwise allowable deduction incurred

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Federal Income Tax

- **Itemized deductions eliminated, limited or modified (continued)**
 - **Medical expenses threshold for 2025 is 7.5% of AGI.**
 - Home Care
 - Assisted Living – (part of cost - consult with Assisted Living Facility)
 - Long Term Care Insurance – Qualified Plan
 - New York permits a credit for 20% of premium paid for qualifying long term care insurance, with a maximum of \$1,500.00 and AGI is below \$250,000
 - Federal Deduction:

Attained age before end of Year	Maximum deduction for year
40 or less	\$480
More than 40 but not more than 50	\$900
More than 50 but not more than 60	\$1,800
More than 60 but not more than 70	\$4,810
More than 70	\$6,020

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Inheriting IRA’s and Retirement Plans & the “SECURE” Act: 10 year pay out with exceptions

- In 2019:**
 - On **December 20, 2019**, the “Further Consolidated Appropriations Act, 2020 (H.R. 1865)” included the Setting Every Community Up for Retirement Enhancement Act of 2019 (***the “SECURE Act”***) was enacted. The Act included changes regarding retirement age, retirement plan access and lifetime income options in retirement plans.
- In 2022:**
 - On **2/24/22** the IRS issued Proposed Regulations.
 - The IRS has issued Notices which waives the 50% penalty for RMD shortfalls by beneficiary who inherited from an owner who died after their RBD.
 - On **12/29/22** “**SECURE Act 2.0**,” contained in Division T of the 2023 Consolidated Appropriations Act (a/k/a CCA, a/k/a Omnibus Bill), H.R.2617, became law further modifying.
- In 2024:**
 - Final regulations for distributions** from retirement plans and IRAs, including implementation of changes made by the **SECURE Act** (and some changes by the **SECURE 2.0 Act**) were **released July 18, 2024**, (Federal Register July 19, 2024)

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Consider a Charitable Remainder Unitrust as a Beneficiary for the IRA

Beneficiary	Amount of Ultimate Inheritance
Child receives \$600,000 IRA result after 20 years	
Withdraws in year 10, pay tax and reinvest for additional 10 years	\$1,099,217
Child receives \$600,000 from 20 year “CRUT”	
Child gets	\$1,415,979
Charity gets	\$ 293,177
Total	\$1,709,156

*For illustration purposes prepared using 2022 numbers with a \$600,000 IRA.

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Qualified Charitable Distribution (“QCD”) IRC 408(d)(8) & Secure 2.0

- Allows taxpayers age 70½ and older to transfer up to \$108,000 annually from their IRA** directly to a qualified charity without having to recognize the income. **For those 73 and older the distribution also counts towards this years RMD.**
- The SECURE Act did **not** change this.
- Not permitted to transfer to donor-advised funds**, supporting organizations or private foundations.
- Under the SECURE Act, QCDs need to be reduced by any post-age 70 ½ IRA contributions.
- Section 307, One-time election for qualified charitable distribution to split-interest entity; increase in qualified charitable distribution limitation.** Section 307 expands the IRA charitable distribution provision to allow for a **one-time, \$50,000** distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts.

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Donating Crypto Of \$5,000 Or More Requires Qualified Appraisal

- Unlike publicly traded securities, a *donation of crypto currency that exceeds \$5,000 will require a qualified appraisal*. Wait, aren't crypto currencies actively traded, with the ups and downs of their prices making headlines? The answer is that neither the IRS nor the SEC has taken any official position to treat cryptocurrencies as securities. In fact, the *IRS has designated cryptocurrency as property and not currency*.
- A "qualified appraisal" must meet IRS requirements, who is an appraiser who has met education & experience requirements and are usually licensed/certified in state where property is located.
- Appraisal must be no more than 60 days prior to the donation & no later than due date of tax return including extensions. The appraisal is reported on Form 8283.
- It can be challenging to find a crypto appraiser, investors may turn to their financial institutions, advisor, charities or donor advised funds and planned giving resources as a resource.
- *Confirmed in Ruling of 1st impression by IRS Office of Chief Counsel*
 - *Internal Revenue Service Memorandum Number: 202302012 Release Date: 1/13/2023* – Failure to obtain a qualified appraisal will result in a denial of a Charitable Deduction

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Estate Planning Considerations 2025

- *Gift more then \$6,995,000, to use the extra "Basic Exclusion Amount."*
- *Outright Gifts.*
- *Spousal Lifetime Access Trust (SLAT).*
- *Split Gifts.*
- *Use Business entities to transfer certain assets.*
- *GST Planning.*
- *Topping Off Gifts.*
- *Review Formula Bequests.*
- *Insure Adequate Disclosure Reporting on Gift Tax Returns.*
- *Consider Ensuring Your Estate Has Sufficient Liquidity.*
- *Use a Defective "Grantor" Trusts.*
- *Consider the Basis Adjustment and "upstream planning."*
- *Charitable Giving.*

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NY Governor’s 2024-2025 Budget Creates “Transfer on Death Deeds” in New York, Exercise Caution!

- The NY Governor’s 2024-2025 budget contained a new section of the Real Property Law in New York, Section 424 authorizing Transfer-On-Death Deed(s) for New York real property (See Governor’s budget, Art. VII, Part O, sec. 12).
- See our blog on our website at:
 - <https://okrentlaw.com/ny-governors-2024-2025-budget-creates-transfer-on-death-deeds-in-new-york-exercise-caution/>

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A The New Method of Taxation



GLASBERGEN

"Today we are introducing a new simplified tax code:
Send us all of your money and we'll send back
whatever we don't use."

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Famous Tax Quotes:

Ronald Reagan - "The taxpayer: that's someone who works for the federal government but doesn't have to take a civil service examination."

Albert Einstein - "The hardest thing in the world to understand is the income tax."

Morgan Stanley advertisement - "You must pay taxes. But there's no law that says you gotta leave a tip."

Will Rogers - "The difference between death and taxes is death doesn't get worse every time Congress meets."

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A & A Veteran's Benefit

- The A&A Pension can provide up to **\$2,385** per month to a veteran, **\$1,515** per month to a surviving spouse, or **\$2,795** per month to a couple (if both are veterans **\$3,740.50**).
- Any War-Time Veteran with **90** days of active duty.
- To qualify medically, Veteran or Surviving Spouse requires assistance of another person to help with activities of daily living
- Deductible Medical Expenses include:
 - Payments for meals, lodging, health care, custodial care and other services provided by a facility (assisted living, independent living, etc.) are deductible medical expenses as long as the Veteran:
 - Resides in a facility that is staffed 24 hours/day
 - Needs assistance with 2 Activities of Daily Living (ADLs)
 - An in-home attendant with health care or custodial care.

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A & A Veteran’s Benefit

- **Net Worth:**
 - Asset limit: **\$155,356 in year 2025**
 - Net worth includes monthly income multiplied by 12 and added to total.
 - Certain medical expenses can be deducted from income (see below).
- **Look-Back and Penalty Periods for transfers after October 18, 2018:**
 - **36 Month** look-back period.
 - Applicant **can return** assets and un-do a penalty period (in whole or in part) within 60 days of a penalty period decision.
 - Penalty period cannot **exceed 5 years**.
 - Transfers to a **trust for a disabled** child will not be penalized.
- **Real Property**
 - Primary residence is excluded from net worth
 - Acreage limit: Primary residence plus 2 acres is excluded. Additional acreage will be counted toward net worth unless it is unmarketable.
 - Proceeds from the sale of real property, after benefit entitlement, are not counted as long used to purchase another property in the same year.

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Advance Directives



Financial

- Powers of Attorney
- Trusts

Medical

- Healthcare Proxy
- Living Will
- Molst
- FHCDA
- “Care Act”

Guardianship

- Article 81
- SCPA 17A

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Methods of Protecting Assets

- **OUTRIGHT GIFTS**
- **LIFE ESTATES**
- **TRUSTS**

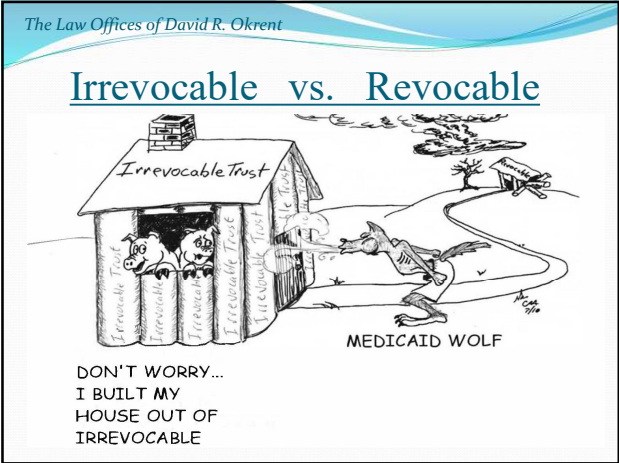
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Okrent's Transfer Matrix

	Outright Gift	Life Estate	Irrevocable Trust
Medicaid Penalty	5 year Maximum	5 year Maximum	5 year Maximum
Tax Issues			
Property			
Star	Lost	Keep	Keep*
Veterans	Lost	Keep	Keep*
Income			
Capital Gain	Lost	Part	Keep
Exclusion			
Step up in Basis	Lost	Keep	Keep
Lifetime Sale Protection	None	Part	All
Control	Lost	Part	Keep
Recovery	None	None	None


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*Thank you for your attendance and I hope this was
Webinar was helpful...
We are available for Individual Consultations*



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