

Estate Planning Paralysis: Getting Your Clients to Act

Presented by:

JUSTIN MILLER, J.D., LL.M., TEP, AEP®, CFP®

Partner and National Wealth Strategist, Evercore Wealth Management
Managing Director, Evercore Trust Company

October 2022

EVERCORE | Wealth Management
Trust Company
THE NEW STANDARD IN WEALTH MANAGEMENT

Follow at:
[linkedin.com/justinmillerescq](https://www.linkedin.com/company/justinmillerescq)
twitter.com/justinmillerescq

AGENDA

I. Are Clients Prepared?

II. Why Do Clients Not Take Action?

III. Overcoming Fear and Paralysis—A Three Step Process

- Investigate
- Communicate
- Motivate

IV. Summary

Are Clients Prepared?

ARE CLIENTS PREPARED?

Business Owner Surveys

73%-83% have no documented succession plan¹

More than 50% expecting to retire in five years have not yet selected a successor²

64% have no plan to minimize capital gains and estate taxes³

More than 50% have no buy/sell agreement⁴

31%-36% have no estate plan²

¹ Exit Planning Institute, 2013 “State of Owner Readiness” Survey; PricewaterhouseCoopers, U.S. Family Business Survey, 2015.

² Mass Mutual, Kennesaw State University, Family Firm Institute, American Family Business Survey, 2007; Exit Planning Institute, 2013 “State of Owner Readiness” Survey.

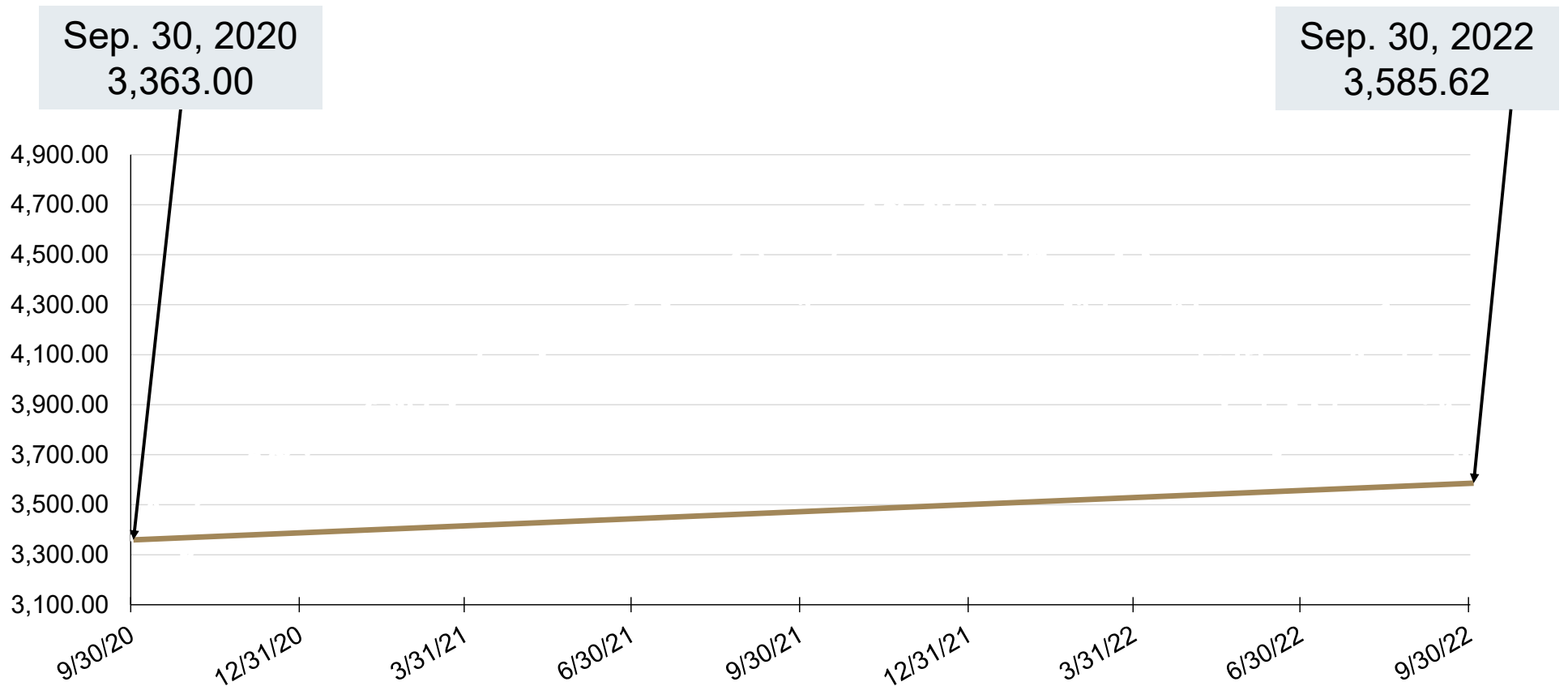
³ PricewaterhouseCoopers, Family Business Survey, 2006; TNS Global, Phoenix Wealth Survey, 2005.

⁴ Marquette University—Center for Family Business, Survey of Family Business Issues, 2003.

Why Do Clients Not Take Action?

FROZEN BY FEAR—VOLATILITY

S&P 500 Index (Straight Line)



As of 9/30/2022. Source: Evercore Wealth Management

EVERCORE | Wealth Management
Trust Company

THE NEW STANDARD IN WEALTH MANAGEMENT

FROZEN BY FEAR—VOLATILITY

S&P 500 Index

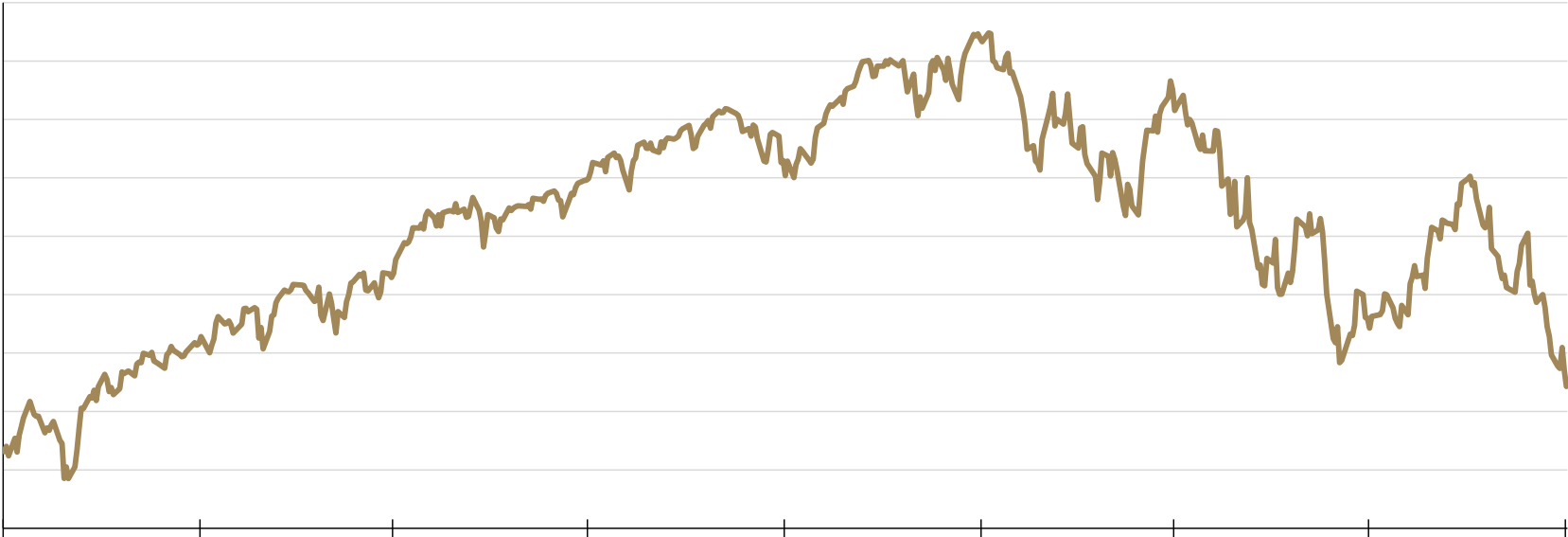


As of 9/30/2022. Source: Evercore Wealth Management

EVERCORE | Wealth Management
Trust Company

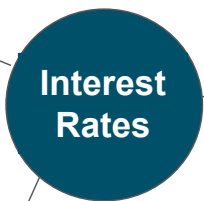
THE NEW STANDARD IN WEALTH MANAGEMENT

FROZEN BY FEAR—VOLATILITY



THE ELEPHANTS IN THE ROOM

Is my portfolio positioned for interest rate increases?



How are rates impacting inflation?

Will rates rise and how quickly?

Should I consider debt from a mortgage or liquidation of assets to finance purchases or investments?

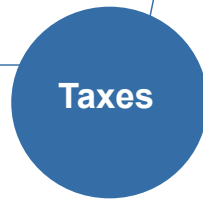


What is the best approach to leave my investment portfolio intact?

Should I wait for a market correction before investing?

Have I reviewed and do I understand both sides of my balance sheet?

How will the tax laws change in 2022 and beyond?



Are my portfolio and estate plans positioned to take full advantage of the current beneficial environment?

How will income, gift and estate taxes impact me?

How will accelerating growth in the U.S. impact the economy?



Is Europe stable?

What about China?

Will an EM contagion spread and how will it impact the U.S. economy?

A JUMBLE OF ACRONYMS

Clients Paralyzed by Complexity, Even in Best of Times

ATRA *GRAT* *DAF* TCJA *QTIP* *DING*

ROTH ILIT NING GRIT IDGT

POA SEP SCIN

CRAT *CLUT* IRA FLLC POD

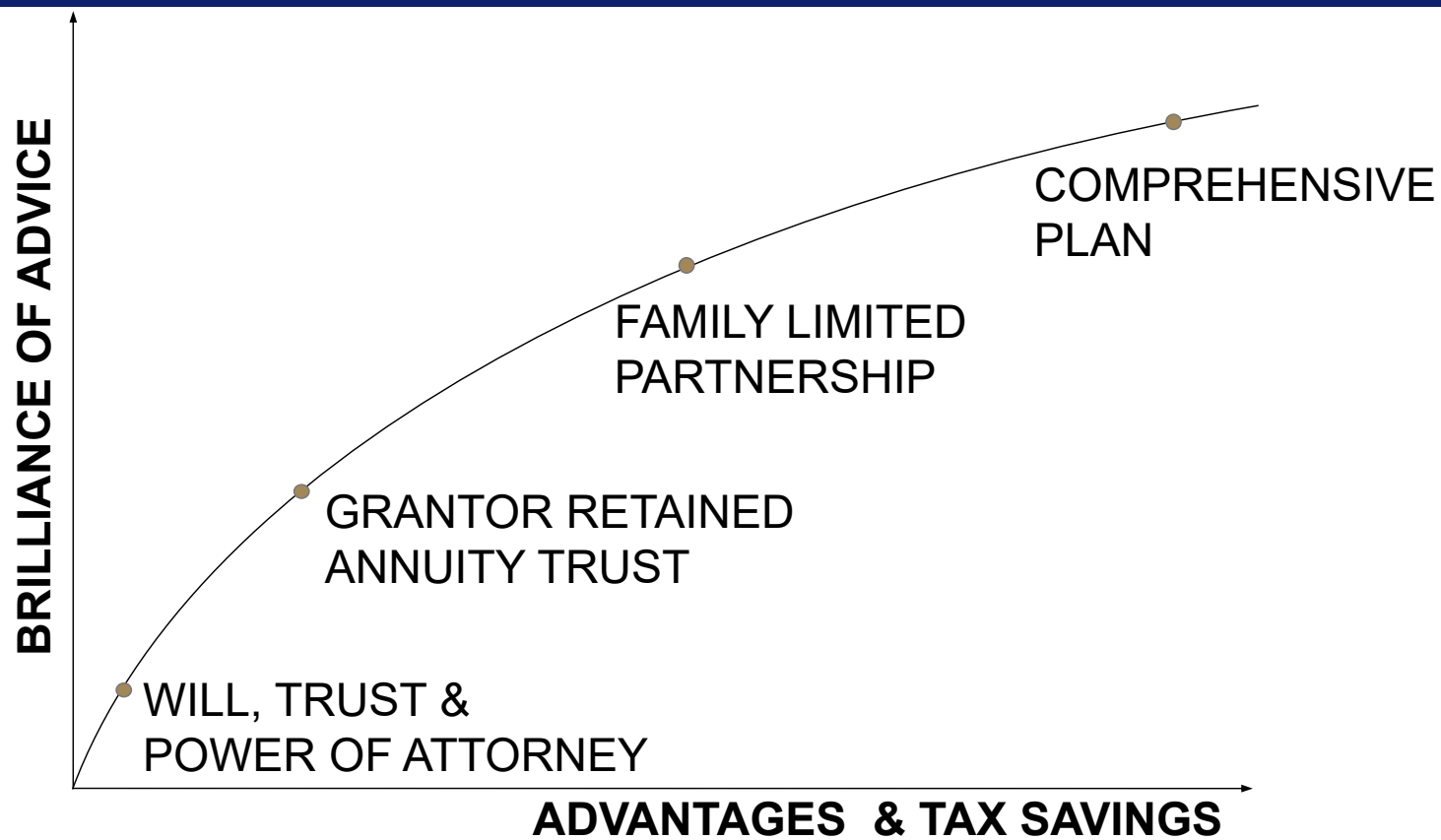
TRUIRJCA QPRT GST FLP *CLAT*

CRUT *EGTRRA* DSUEA IDIT *QDOT*

NIMCRUT ESOP SLAT

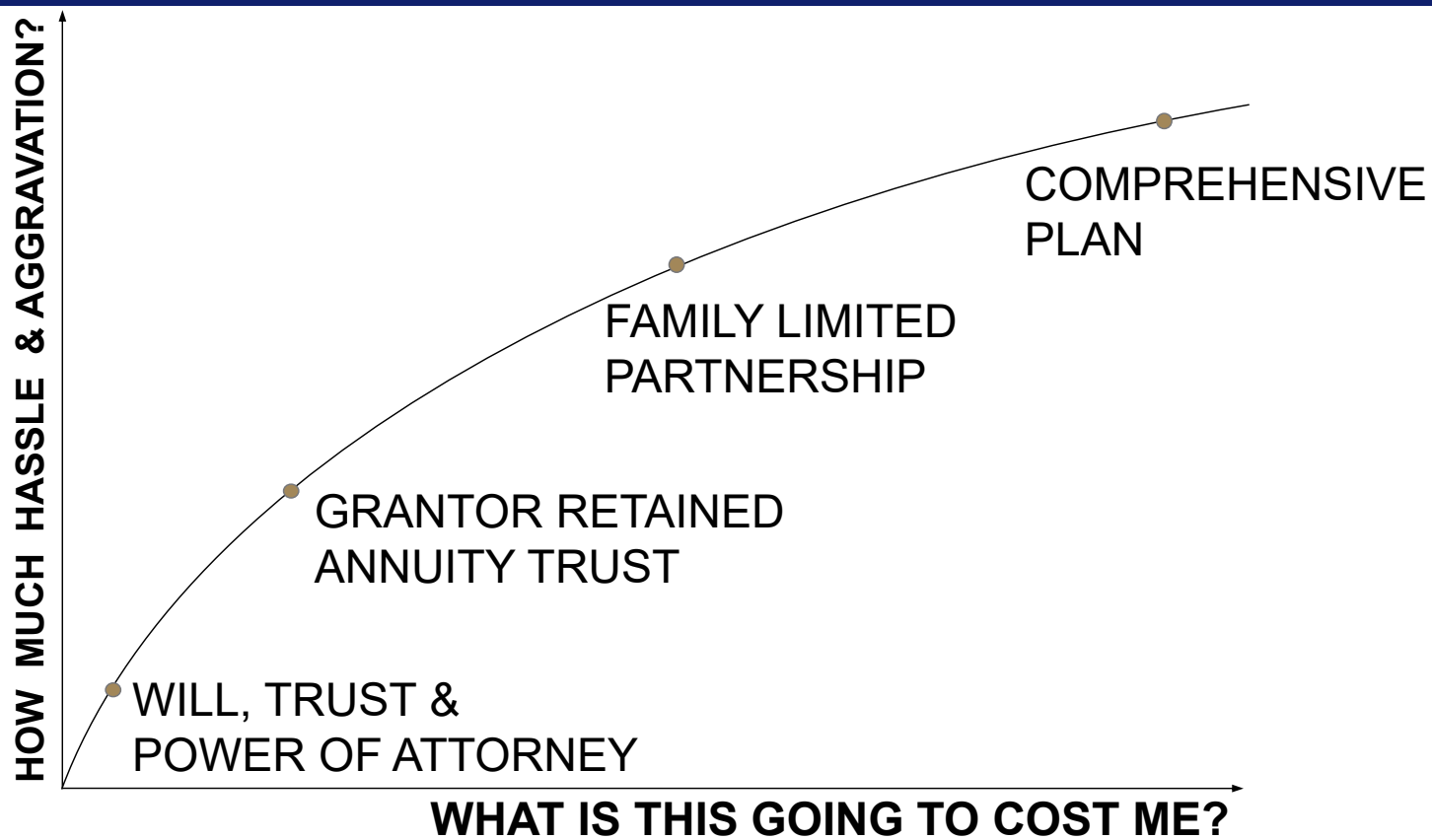
OVERCOMING FEAR AND PARALYSIS

Advisor Perspective



OVERCOMING FEAR AND PARALYSIS

Client Perspective



Step 1: Investigate

INVESTIGATE



INVESTIGATE

Key Questions for Uncovering Explicit Needs

- If you were incapacitated, how would your wishes be met?
- How have you taken advantage of low interest rates?
- What have you done to ensure your assets pass tax-free to future generations?
- In what ways have you documented your values and charitable goals?
- What have you done to prepare your children to receive your wealth?

INVESTIGATE

Don't Jump to Solutions

Scenario 1:

Advisor: How do you feel about your children serving together as successor co-trustees?

Client: I can already imagine them fighting over money.

Advisor: You need a corporate trustee.

INVESTIGATE

Don't Jump to Solutions

Scenario 2:

Advisor: How do you feel about your children serving together as successor co-trustees?

Client: I can already imagine them fighting over money.

Advisor: What are your thoughts on naming an unrelated professional to help minimize the conflict?

Client: Yes, someone unbiased could help. But my advisors will retire before then.

Advisor: A corporate trustee or co-trustee could make objective decisions and prevent disharmony.

Step 2: Communicate

COMMUNICATE

Storytelling and Visuals

Stories

- Persuasive, compelling and memorable
- Elicit emotions, which lead to action

Visuals

- “Left brain” – mathematical, analytical (e.g., attorneys and CPAs)
- “Right brain” – visual, artistic (e.g., clients)

Sources: Stephens, G.J., Silbert, L.J., and Hasson, U., “Speaker-listener neural coupling underlies successful communication,” National Academy of Sciences (2010); Schank, R.C., and Abelson, R.P., “Knowledge and memory: The real story,” Advances in Social Cognition (1995); Sperry, R.W., “Hemisphere disconnection and unity in consciousness,” American Psychologist (1968); Nielsen, Jared A., Zielinski, Brandon A., Ferguson, Michael A., Lainhart, Janet E., and Anderson, Jeffrey S., “An Evaluation of the Left-Brain vs. Right-Brain Hypothesis with Resting State Functional Connectivity Magnetic Resonance Imaging,” PLOS ONE (2013).

COMMUNICATE—BEHAVIORAL SCIENCE AND ECONOMICS

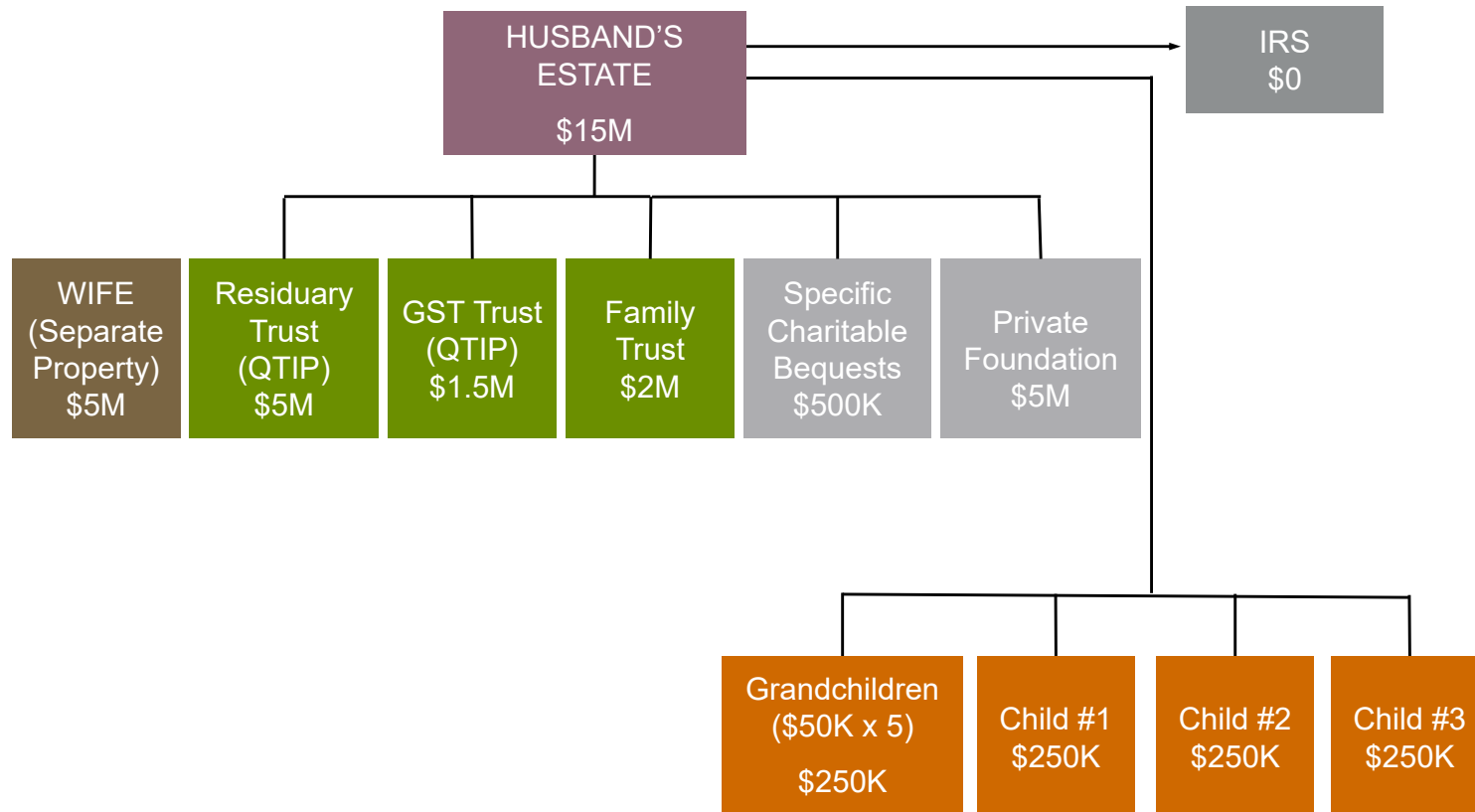
Keep it Simple, Stupid (KISS) Principle

“If you want to encourage someone to do something, make it easy.”
—Richard H. Thaler

“[P]eople will eventually gravitate to the least demanding course.”
—Daniel Kahneman, Thinking, Fast and Slow

COMMUNICATE—LEFT BRAIN VS. RIGHT BRAIN

A Picture Is Worth A Hundred Thousand Words



COMMUNICATE—LEFT BRAIN VS. RIGHT BRAIN

Possible Planning Strategies

1. Intra-Family Loan
2. Family Limited Partnership (FLP) or Family LLC
3. Grantor Retained Annuity Trust (GRAT)
4. Intentionally Defective Grantor Trust (IDGT)
5. Irrevocable Life Insurance Trust (ILIT)
6. Charitable Remainder Unitrust (CRUT)
7. Charitable Lead Annuity Trust (CLAT)
8. Spousal Lifetime Access Trust (SLAT)

COMMUNICATE—LEFT BRAIN VS. RIGHT BRAIN

Don't Just Give Facts and Figures

Grantor Retained Annuity Trust (GRAT)

- An irrevocable trust
- Wealth shifting vehicle allowed by statute that achieves two important objectives:
 - Provides grantor an annuity payment for a predetermined, limited time period
 - Appreciation in excess of § 7520 rate passes to beneficiaries when the trust term ends
- Purpose of a GRAT is to make a gift without incurring gift tax
 - The larger the value of the retained interest (i.e., the annuity) the smaller the taxable gift
- Transfer of the property to the GRAT is a taxable gift
 - Gift value is reduced by the present value of the annuity payments
- When the trust term ends, the remainder passes to beneficiaries with no additional transfer tax
- Key to success of a GRAT
 - Investment performance must exceed the § 7520 rate (4.0% in October 2022)
 - Grantor must survive GRAT term or assets are includible in grantor's taxable estate

COMMUNICATE—LEFT BRAIN VS. RIGHT BRAIN

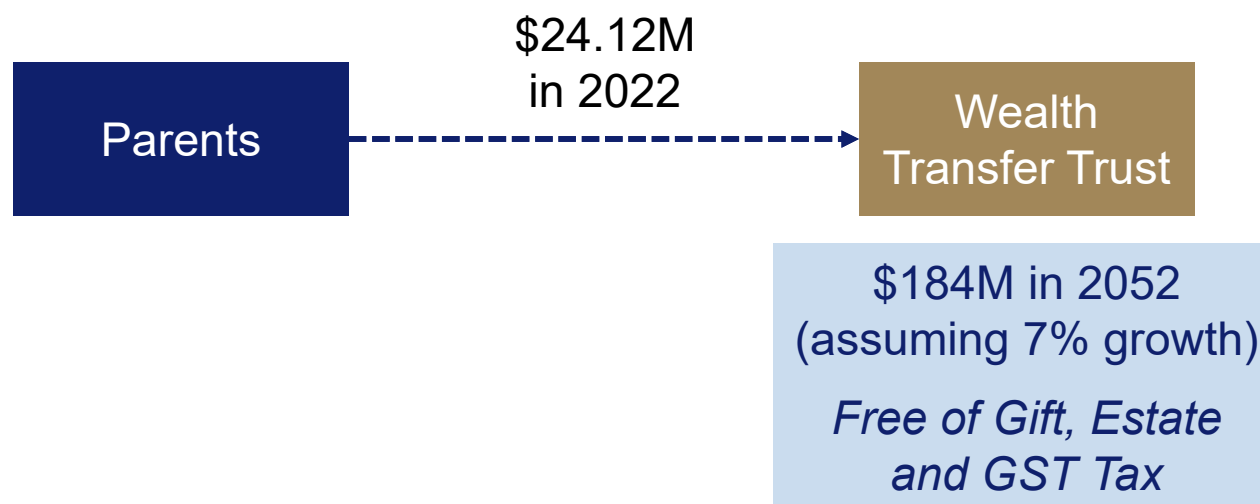
Don't Just Give Facts and Figures

Type of Calculation:	Term
Transfer Date:	10/2022
§7520 Rate:	4.00%
Income Earned by Trust:	1.40%
Term:	10
Total Number of Payments:	10
Annual Growth of Principal:	5.60%
Pre-discounted FMV:	\$5,000,000
Discounted FMV:	\$5,000,000
Optimized:	Yes
Optimized Payout:	12.3290880000%
Exhaustion Method:	IRS
Payment Period:	Annual
Payment Timing:	End
Distribute Principal in Kind:	Yes
Vary Annuity Payments?	No
Is Transfer To or For the Benefit of a Member of the Transferor's Family?	Yes
Is Interest in Trust Retained by Transferor or Applicable Family Member?	Yes
With Reversion?	No

***** §2702 IS Applicable *****

Base Term Certain Annuity Factor:	8.1109
Frequency Adjustment Factor:	1.0000
Annual Annuity Payout:	\$616,454.40
Initial Amount of Payment Per Period:	\$616,454.40
Value of Term Certain Annuity Interest:	\$4,999,999.99
Value of Grantor's Retained Interest:	\$4,999,999.99
(1) Taxable Gift (Based on Term Interest):	\$0.01

WEALTH TRANSFER TRUST—GIFT NOW VS. LATER

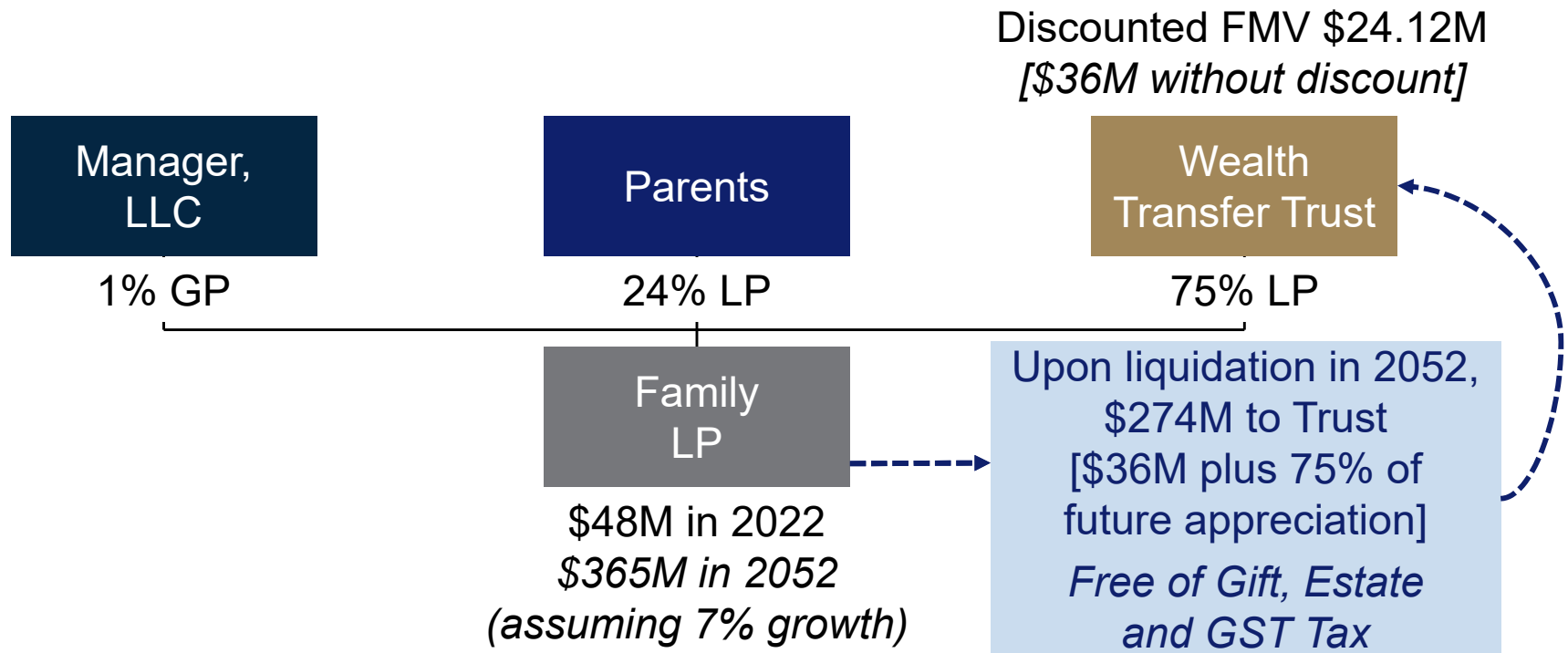


Assumes 7% net growth and parent pays income taxes for grantor trust, which is not treated as a gift for gift tax purposes. See IRS Rev. Rul. 2021-45, 2008-22, 2004-64, and 85-13.

EVERCORE | Wealth Management
Trust Company

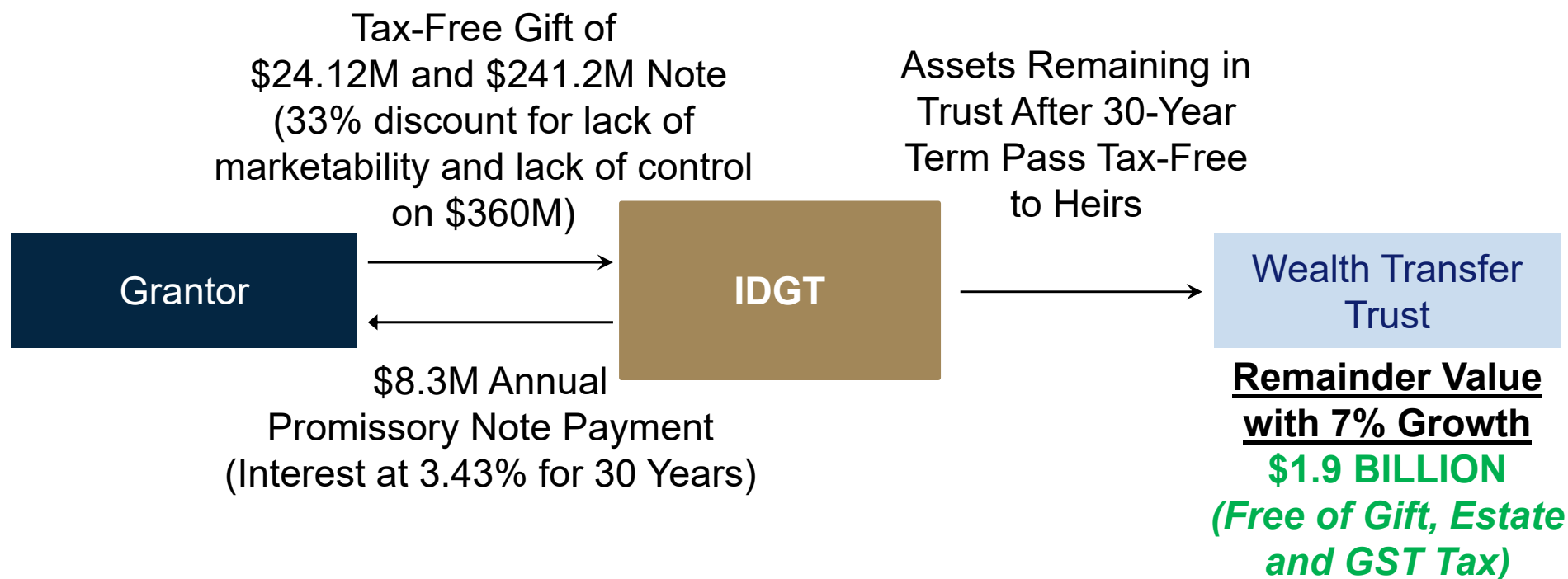
THE NEW STANDARD IN WEALTH MANAGEMENT

DISCOUNTS FOR LACK OF CONTROL AND LACK OF MARKETABILITY



Assumes 33% discount for lack of control and lack of marketability, business purpose (form and substance), \$24.12 million exemption amount per married couple in 2022, 7% net growth, and parent pays income taxes for grantor trust, which is not treated as a gift for gift tax purposes. See IRS Rev. Rul. 2021-45, 2008-22, 2004-64, and 85-13. See International Glossary of Business Valuation Terms, as adopted in 2001 by the American Institute of Certified Public Accountants, American Society of Appraisers, Canadian Institute of Chartered Business Valuators, National Association of Certified Valuation Analysts, and The Institute of Business Appraisers. Note that Treasury Department withdrew Proposed Regulations under IRC section 2704 pursuant to President Trump Executive Order 13789.

SALE OF FLP TO INTENTIONALLY DEFECTIVE GRANTOR TRUST (IDGT)



Assumes Oct. 2022 Applicable Federal Rates. IRS Rev. Rul. 2022-18. Also assumes 7% net growth and parent pays income taxes for grantor trust, which is not treated as a gift for gift tax purposes. See IRS Rev. Rul. 2021-45, 2008-22, 2004-64, and 85-13.

Step 3: Motivate

MOTIVATE—WHY CLIENTS NEED TO ACT NOW

Limited Exception with Fear of Death

The Three D's

- Death (Relative or Friend)
- Divorce
- Deal

About to Undergo Surgery

About to Leave on a Big Trip

MOTIVATE—WHY CLIENTS NEED TO ACT NOW

Risk of Disability and Incapacity for Older Adults

80%	Suffer from hypertension, high cholesterol, arthritis, heart disease, diabetes, kidney disease, Alzheimer's/dementia, and/or other chronic conditions
70%	Will need help with eating, dressing, bathing and walking—activities of daily living (ADLs)
10%	Are victims of elder abuse each year

Sources: National Council on Aging (2021); "Lifetime Risk of Needing and Receiving Long-Term Services and Supports," Office of the Assistant Secretary for Planning and Evaluation (2019); Centers for Medicare & Medicaid Services, Chronic Conditions Prevalence State/County Table: All Fee-for-Service Beneficiaries (2018); Yongjie Yon, Christopher R. Mikton, Zachary D. Gassoumis, Kathleen H. Wilber, "Elder abuse prevalence in community settings: a systematic review and meta-analysis," *The Lancet Global Health*, Vol. 5, Iss. 2, E147-E156 (2017); Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (2013); Johns Hopkins Bloomberg School of Public Health, "Analysis of Medical Expenditure Panel Survey" (2005); Johns Hopkins University Bloomberg School of Public Health, Westat and the National Institute on Aging, "National Health and Aging Trends Study" (2011); National Council on Aging (2014); Lifespan of Greater Rochester, Inc., Weill Cornell Medical Center of Cornell University and New York City Department for the Aging, "Under the Radar: New York State Elder Abuse Prevalence Study," (2011); Acierno R, Hernandez, Amstadter AB, Resnick HS, Steve K, Muzzy W, et al., "Prevalence and correlates of emotional, physical, sexual, and financial abuse and potential neglect in the United States: The national elder mistreatment study," *American Journal of Public Health* (2010); National Research Council, "Elder mistreatment: Abuse, neglect and exploitation in an aging America. Washington, D.C.," The National Academies Press (2003); National Center on Elder Abuse, "The national elder abuse incidence study" Washington D.C. (1998).

MOTIVATE—WHY CLIENTS NEED TO ACT NOW

Risk of Disability and Incapacity for Anyone

National Car Accident Statistics

- Approximately 5.25 million car accidents in the U.S. per year
 - 38,824 were fatal
 - 2.28 million people were injured (both vehicle occupants and pedestrians)—more than
 - ~6,250 injured per day
 - ~4 injured per minute

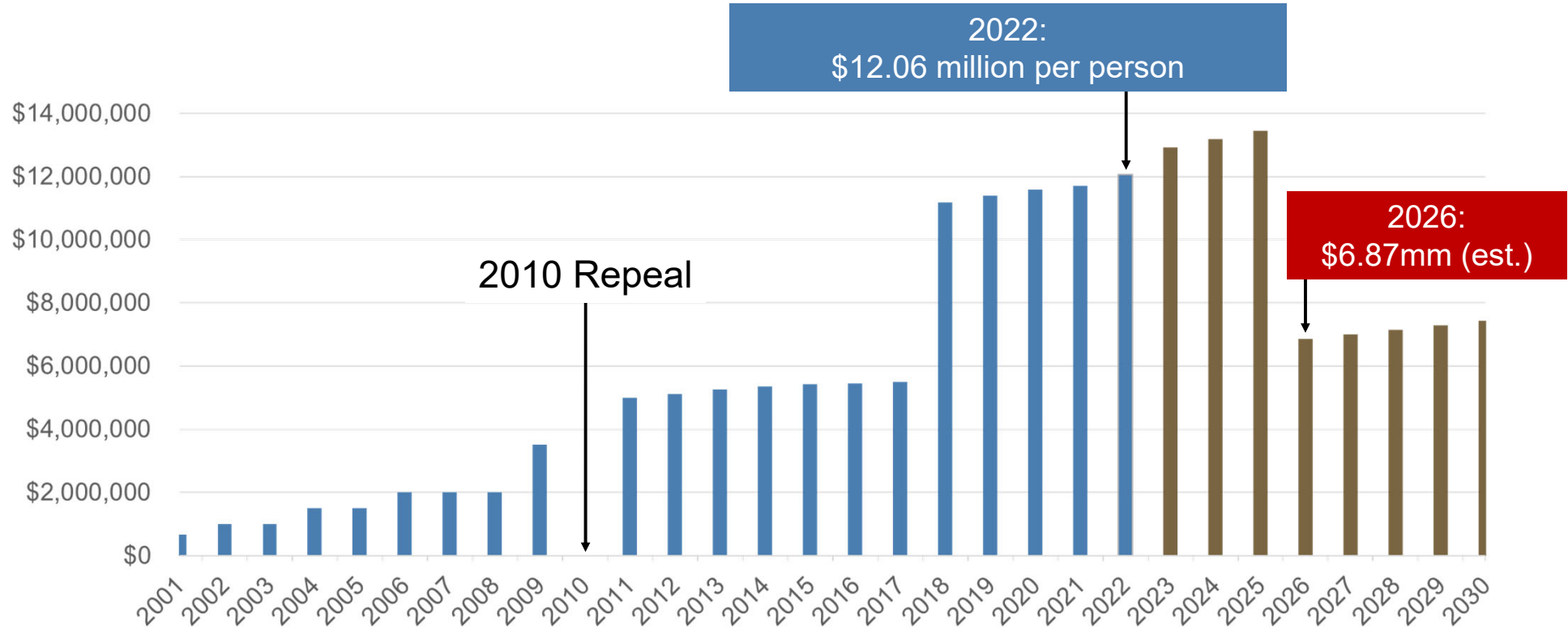
Source: “Overview of Motor Vehicle Crashes in 2020,” Report No. DOT HS 813 266, U.S. Department of Transportation, National Highway Traffic Safety Administration (March 2022).

EVERCORE | Wealth Management
Trust Company

THE NEW STANDARD IN WEALTH MANAGEMENT

MOTIVATE—WHY CLIENTS NEED TO ACT NOW

Historically High Exemption Amounts



The chained CPI tends to increase more slowly than the regular CPI. The exclusion amount is \$12,060,000 per person in 2022. Rev. Proc. 2021-45, 2020-45, 2019-44, 2018-57, 2018-18, and 2017-58. Projected future exemption amounts based on average annual inflation adjustments.

MOTIVATE—WHY CLIENTS NEED TO ACT NOW

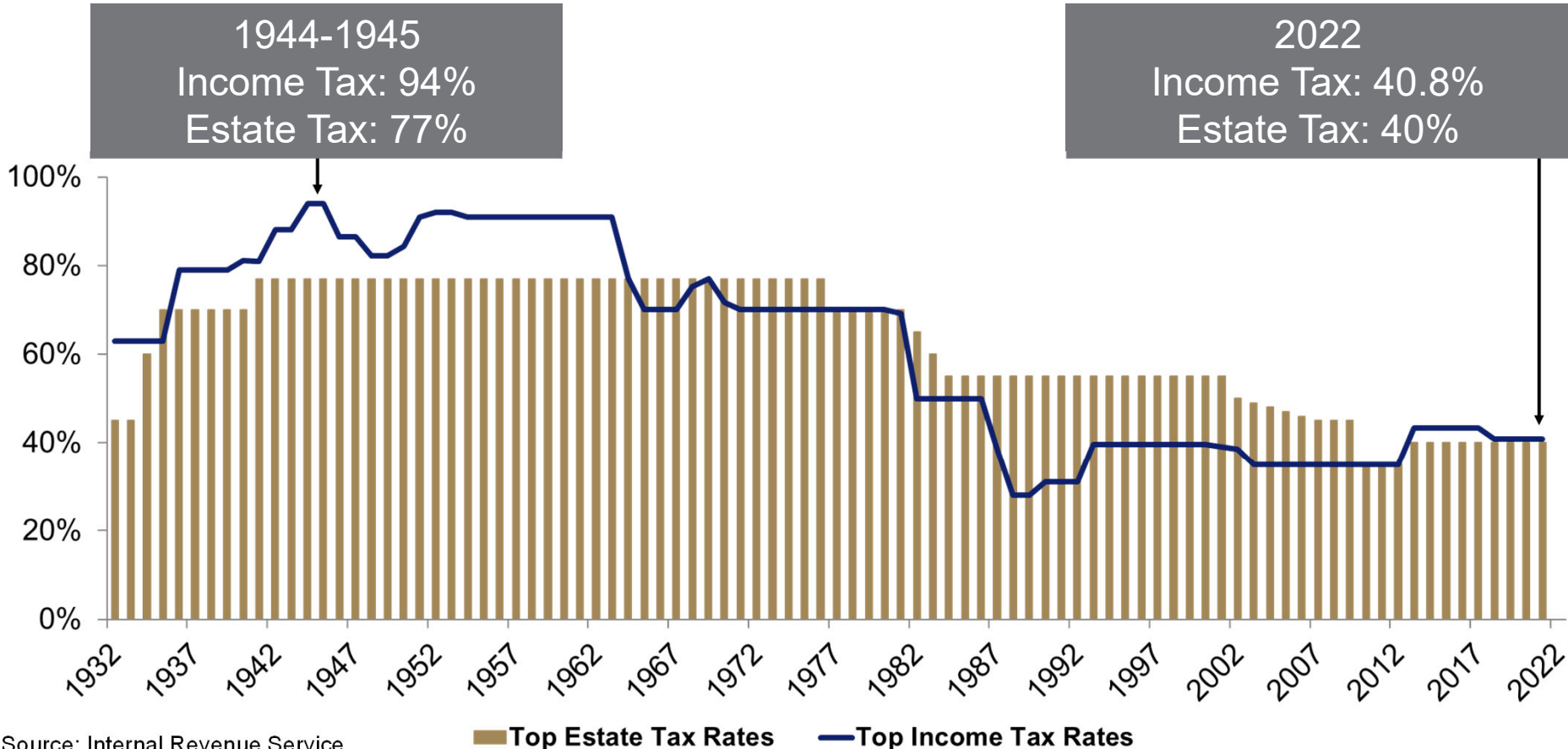
Historically Low Interest Rate Environment



Source: Internal Revenue Service. Section 7520 rates as of October 2022. Rev. Rul. 2022-18.

MOTIVATE—WHY CLIENTS NEED TO ACT NOW

Highest Income and Estate Tax Rates: 1932-2022



Source: Internal Revenue Service.

EVERCORE Wealth Management
Trust Company

THE NEW STANDARD IN WEALTH MANAGEMENT

MOTIVATE—WHY CLIENTS NEED TO ACT NOW

The Cost of Procrastination

Assumptions:			
Net Worth	\$40,000,000	Growth Rate on Assets	7.0%
Unified Credit Per Individual: 2022	\$12,060,000	Strategic Planning Discount	35.0%
Unified Credit Per Individual (estimated): 2032	\$7,608,051	Estate Tax Rate: 2022	40.0%
Married (Y/N)	Y	Estate Tax Rate (estimated): 2032	40.0%

	STATUS QUO	STRATEGIC PLANNING WITH CHARITABLE FUND
Estate Value Today	\$40,000,000	\$40,000,000
Strategic Planning Discount	\$0	(\$14,000,000)
Charitable Fund	\$0	(\$1,880,000)
Net Taxable Estate	\$40,000,000	\$24,120,000
Amount Due IRS	(\$6,352,000)	\$0
Total Net to Family/Charity	\$33,648,000	\$40,000,000

<u>COST OF PROCRASTINATION</u>	<u>TAXES</u>	<u>AVG. COST PER MONTH</u>
Today in 2022	(\$6,352,000)	(\$158,633)
Ten Years in 2032	<u>(\$25,387,981)</u>	
ADDITIONAL TAXES	(\$19,035,981)	

MOTIVATE—AS A COLLABORATIVE TEAM

Secondary Source of Confirmation



WHAT CAN YOU DO TO GET CLIENTS TO ACT?

Summary

1. Investigate: Critique the Questions You Regularly Ask Clients

- Are you uncovering their worries, anxieties and fears?
- Are you addressing their explicit needs?

2. Communicate: Analyze Your Materials and Communication Style

- Are you using charts and graphics to illustrate complex ideas?
- Are you using compelling stories to personalize planning concepts?

3. Motivate: Alert Your Clients to the Dangers of Not Acting Now

- Have you quantified the risks and cost of procrastination?
- Are you collaborating with your clients' other advisors?

Thank You!

BIO

Justin Miller, J.D., LL.M., TEP, AEP®, CFP®

Partner and National Director of Wealth Planning, Evercore Wealth Management

Managing Director, Evercore Trust Company

Justin Miller is a Partner and National Director of Wealth Planning at Evercore Wealth Management and a Managing Director at Evercore Trust Company, where he works collaboratively with accountants, attorneys, and other advisors to provide comprehensive wealth planning advice to clients. Prior to joining Evercore in 2021, Justin was a national wealth strategist for 10 years at BNY Mellon. He previously was a managing director at Wells Fargo and began his career as a tax attorney at Sidley Austin.

Justin also is an adjunct professor at Golden Gate University School of Law, a Fellow of the American Bar Foundation, and a Fellow of the American College of Trust and Estate Counsel. He has served in leadership positions with the American Bar Association, California Bar Foundation, San Francisco Estate Planning Council, and State Bar of California, and is a former editor-in-chief of the *California Tax Lawyer*. Additionally, he is a past recipient of the Outstanding Conference Speaker Award from the California Society of CPAs and the V. Judson Klein Award from the California Tax Bar.

Justin received a B.A., with honors, from the University of California, Berkeley, and a J.D. and LL.M. in Taxation from New York University School of Law. He also holds the Accredited Estate Planner® and CERTIFIED FINANCIAL PLANNER™ designations and is a member of the State Bar of California.

DISCLOSURES

The information provided is for illustrative/educational purposes only. It is based on assumptions that we believe are reasonable within their context; however, actual results will vary. All investment strategies referenced in this material come with investment risks, including loss of value and/or loss of anticipated income. Past performance does not guarantee future results. No investment strategy or risk management technique can guarantee returns in any market environment. This material is not intended to constitute legal, tax, investment or financial advice. Effort has been made to ensure that the material presented herein is accurate at the time of publication, however, we have no obligation to update, modify or amend this information or to otherwise notify a reader in the event that any such information becomes outdated, inaccurate, or incomplete. This material is not intended to be a full and exhaustive explanation of the law in any area or of all of the tax, investment or financial options available. The information discussed herein may not be applicable to or appropriate for every investor and should be used only after consultation with professionals who have reviewed your specific situation.

Evercore Wealth Management, LLC (“EWM”) is registered with the U.S. Securities and Exchange Commission under the Investment Advisers Act of 1940. Evercore Trust Company, N.A., is a national trust bank regulated by the Office of the Comptroller of the Currency. EWM obtained the information in this presentation from multiple sources believed to be reliable as of the date of publication; EWM, however, makes no representations as to the accuracy or completeness of such third party information.

©2022 All rights reserved.