

# FENSTER & LEWIS, LLC

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## “FISCAL CLIFF” LEGISLATION AFFECTS ESTATE TAXATION

It’s not quite accurate to say that Congress *prevented* the U.S. from going over the so-called “fiscal cliff.” We went over it, but got a parachute on the way down. It was all a bit too much drama for my taste. But an agreement was reached, and we now have certainty with respect to income and estate taxes. The following is a summary of the estate and gift tax provisions.

### ***Federal Estate Tax***

The fiscal cliff legislation established a permanent estate tax exemption amount of \$5,000,000, with a maximum tax rate of 40%. The exemption is indexed for inflation, resulting in the 2013 amount rising to \$5,250,000. The federal exemption continues to be “portable,” allowing a decedent to pass any unused exemption to his/her spouse (that’s a total exemption of over TEN MILLION DOLLARS for a married couple).

### ***New York State Estate Tax***

New York State’s estate tax rules have been remarkably stable for the past decade, with estate taxation beginning at \$1,000,000. (No tax is due on amounts passing to a spouse or charity.) Once over \$1,000,000, the tax rate is 41%; but at \$1,093,800, the rate *drops* to 6.4%. Given this bizarre tax curve, **it is important for anyone with an estate over \$1,000,000 to have an estate plan that minimizes the New York estate tax.** New York does not allow the transfer (portability) of any unused exemption to a spouse.

### ***Federal Gift Tax***

Since the federal estate and gift taxes are “unified” (that is, the same exemptions and rates apply to both taxable gifts and estates), the \$5,250,000 exemption amount and 40% tax rate applies to *taxable* gifts made in 2013 and beyond.

Finally, we note that, effective January 1, 2013, the “Annual Exclusion” for tax-free gifts rises to \$14,000 per person per year (up from \$13,000 in 2012).

### ***ESTATE TAX PLANNING***

Clients with a taxable estate over \$1,000,000 may want to consider steps to avoid *New York State* Estate Tax. In addition, estate tax plans which use a “formula-based” clause to avoid *federal* estate tax should be reviewed to assure that the new higher exemptions will not have unintended results.

## PROTECTING WEALTH FROM NURSING COSTS

The average cost of a nursing home in the WNY area is between \$9,000 to \$11,000 per month — well over \$100,000 per year. Many people seek to protect their assets from these costs by transferring them to family members —either outright or in an Asset Protection Trust—with the intention of becoming eligible for Medicaid assistance. Any asset transfers, however, must be made at least *five years* before an application for Medicaid assistance.

Cash-strapped governments continue to seek ways to tighten the Medicaid eligibility rules. For example, in 2011, New York State attempted to expand the definition of the “estate” that was subject to recovery by Medicaid. These rules were later repealed.

There continue to be estate planning techniques that are effective at protecting wealth from nursing home costs. Please contact our office for more information.

*New York’s Power of Attorney form was updated in 2010. Though prior forms are still valid, we recommend that our clients update to the new form. Call us if you would like to update your POA.*

## FAMILY WILL PACKAGE

We recognize that for parents of minor children, there’s often barely time to sleep, much less implement an estate plan. Recognizing this problem, we have designed a competitively-priced “Family Will” package. Clients provide information by whatever method is most convenient for them—e.g., phone, e-mail, fax, texting, etc. Then, only *one* in-person meeting is required to review, revise and sign a comprehensive estate plan (which includes Last Wills, Powers of Attorney, Health Care Proxies and assistance with change of beneficiary forms). Evening and weekend appointments are available.

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RETURN SERVICE REQUESTED

WINTER/SPRING, 2013

- ☛ “Fiscal Cliff” Legislation Passed
- ☛ Protect Wealth from Nursing Costs
- ☛ Family Will Package
- ☛ Keeping Your Trust Effective
- ☛ Christina Logan Joins Firm

**WE’RE MOVING (AGAIN)**

Responding to the firm’s need for more space and our client’s desire for better parking and handicap access, on April 1, 2013, we will be moving our office to 2805 Wehrle Drive, Suite 1 in Williamsville. The office — which is just FOUR MILES from our current office — is at the corner of Wehrle Drive and Harris Hill Road.

Visit our new website at:  
**[www.FensterLewis.com](http://www.FensterLewis.com)**

MAINTAINING A TRUST’S EFFECTIVENESS

Many of our clients use trusts to implement their estate planning goals. A trust—whether revocable or irrevocable—can provide the flexibility needed to efficiently and effectively accomplish these goals. A trust is created when a *Grantor* transfers assets to a *Trustee*, who then holds the assets for the benefit of a *Beneficiary* according to rules contained in a *Trust Agreement*. It is the Grantor’s ability to dictate these rules that makes the trust a flexible estate planning tool.

In order to assure the effectiveness of the trust, however, it is important that all of the parties (Grantor, Trustee and Beneficiary) follow the rules contained in the trust agreement. For example, if the trust agreement states that “no distributions shall be made to the Grantor”, then *no distributions should be made to the Grantor!* Ignoring (or bending) the rules can undermine the effectiveness of the trust. If we assisted you in creating a trust, please feel free to call us with any questions in order to assure that the trust will continue to accomplish your goals.

OUR STAFF

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CHRISTINA L. LOGAN

We are pleased to announce that Christina Logan has joined the firm as an Associate Attorney. Christina is a 2012 graduate of the SUNY Buffalo School of Law, where she concentrated her studies on estate planning and estate taxation. Prior to joining our firm, Christina worked as a law clerk at the Erie County Surrogate’s Court and at a private firm where she assisted with real estate closings. \* Christina will be admitted to the New York State Bar in February, 2013.