

Taxation of Gifts



Presented by:
Karl Lutterloh
Associate Attorney
2026

Lisa Hostetler Brown, Certified Elder Law Attorney, certified by the National Elder Law Foundation | 803-563-5163 | 7511 St. Andrews Rd, Ste 3, Irmo, SC 29063 | Aiken | Simpsonville | Mt. Pleasant | Bluffton | Myrtle Beach Webinars, training presentations, newsletters, and related materials provide general information regarding particular subjects, and are not intended to constitute legal advice nor do they establish an attorney-client relationship.

Function of the Gift Tax

The Gift Tax serves a primary function to prevent Estate Tax avoidance by transfer of assets during the one's lifetime.

Certain Exclusions and Exemptions apply that will be discussed later in this series.



LAWYERLISA

IRC 2501 imposes a tax on all gifts made by individuals during their lifetime unless otherwise excluded or exempted by statute.



Unified Exemption Credit

The Unified Exemption is the total amount of Transfers either during the lifetime of the individual or at death that pass to someone other than a spouse.

A spouse enjoys an unlimited Marital transfers during life or at death.

In 2025 this exemption amount is equal to \$15 Million Dollars indexed to inflation.

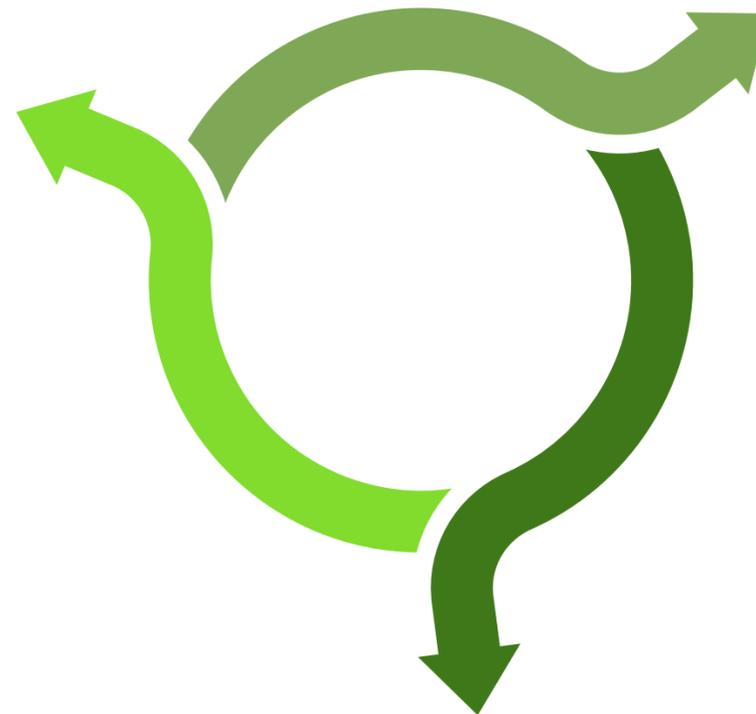
- In other words, you can actually gift a large amount of money before taxes are owed.

Strategies to Avoid Payment of the Gift Tax or to Avoid Using the Unified Exemption Credit

Annual Exclusion

IRC 2503 (b) provides for an annual exclusion for gifts to an unlimited number of individuals

In 2025 this amount was \$19,000



Married couples may elect split gifting to double this amount.

Common Misunderstanding Regarding the Annual Exclusion

1. Many people think that if they make a gift in excess of the annual exclusion amount that taxes will be owed by the person making the gift or the recipient.
2. THIS IS NOT TRUE!
 1. If you make gifts to one individual in excess of the annual exclusion amount you need only file a Gift Tax Return form 709 and subtract the excess from your lifetime Unified Credit.
 2. What this means is taxes are owed only in the event that your Unified Credit has been exhausted, \$15 Million.

Example

- Helen has a Daughter, Mary.
- Helen currently has a net worth of \$8 Million and believes she only needs \$4 Million to retire comfortably.
- Mary is recently divorced with three children and has found herself in need of a larger house.
- Mary is currently renting and she can not afford to buy a new home.
- Helen would like to help her daughter but is afraid of the tax consequences of a gift.

What are the possible outcomes of this scenario?



Helen does not seek professional advice and instead has contacted a few friends who have informed her that if she were to gift her daughter more than \$19,000 she will pay a lot of taxes.

- This is the most common misperception and reason people avoid gifting.

Helen seeks out professional advice and is informed that she can gift her daughter enough funds to purchase a new home and will only need to file a form 709 and the excess over her annual exclusion amount will be deducted from her lifetime unified credit. No taxes are owed by either Helen or Mary.

Strategies to Avoid Payment of the Gift Tax or to Avoid Using the Unified Exemption Credit

Qualified Transfers

IRC 2503 (e) provides for qualified transfers that will not be treated as Gifts

- **Education Payments**

Payments for Tuition made directly to an educational institution no matter the amount is not treated as a Gift to the student

- **Medical Payments**

Payments made directly to medical service providers (Doctor's Offices, Hospitals, Clinics etc.) are not treated as gifts to the patient.

Example

- Mary's son Richard is now 18 and has been accepted to a very selective Art and Design Conservatory.
- The tuition is \$98,000 per year and due next Friday.
- Helen, his grandmother, is so proud of Richard she has decided to pay the entire tuition amount of \$98,000.

Two ways to pay the tuition and two different tax results.

1. Helen transfers \$98,000 to Richard's checking account via direct deposit with strict instructions these funds are to be paid to the school. Richard does just that and Tuition is paid for the year.
 - **Gift Tax result:** Because Helen transferred funds to Richard who could have disregarded her instructions this is treated as a Gift.
2. Helen knows time is of the essence and overnights a check to the school for the full \$98,000. Tuition is paid for the year.
 - **Gift Tax result:** Because Helen paid funds directly to the school this transfer is not considered a Gift to Richard.
 - Refund?

Strategies to Avoid Payment of the Gift Tax or to Avoid Using the Unified Exemption Credit

Charitable Giving

1. IRC 2522 provides for an unlimited deduction for “Gift Tax” purposes to:
 - a) Governmental organizations
 - b) Charitable organizations
2. An income tax deduction may also be allowed under IRC 170 (Restrictions Apply)
3. Deduction is allowed for the year in which it was made.



Strategies to Avoid Payment of the Gift Tax or to Avoid Using the Unified Exemption Credit

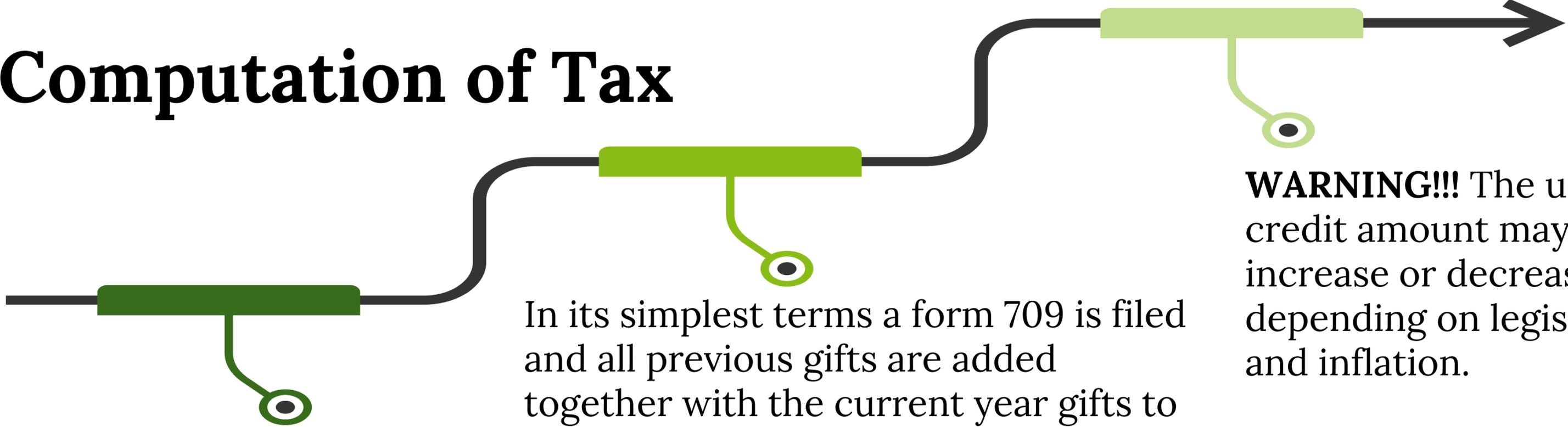
Transfer Between Spouses

1. IRC 2523 provides for unlimited transfers between spouses, except for Terminal Interest Property, and is very similar to the estate deduction under IRC 2056.
2. IRC 2523 (b) disallows the deduction for property in which the Donor spouse retains some interest or rights to control the property (Terminal Interest Property).
 - a) If you retain control of the property it is not really a completed gift.
 - b) Example: gift of a Home while retaining the right through Deed or Trust to determine who receives the property after death.



Strategies to Avoid Payment of the Gift Tax or to Avoid Using the Unified Exemption Credit

Computation of Tax



IRC 2502 provides the framework for computation of Gift Tax owed.

In its simplest terms a form 709 is filed and all previous gifts are added together with the current year gifts to produce a “tentative tax.” Next the Unified credit is applied against the tentative tax. If the unified credit is exhausted then taxes are due for the year. If the unified credit is not exhausted the remaining amount unified credit carries forward to the next year.

WARNING!!! The unified credit amount may increase or decrease depending on legislation and inflation.

Example

1. Don made a gift to his brother Fred in the amount of \$1 Million dollars in 2002.
 - His unified Credit was Exhausted after this gift for 2002.
 - By 2025 the unified credit has risen to \$15 Million.
 - Therefore, Don's current unified credit amount is \$14 Million.
2. Same example as above, but in 2026 Congress changed the unified Credit to \$1 Million.
 - Don in 2026 has no unified credit to apply to 2026 gifts as it was all used in 2002.

Who Must File and Who Must Pay???

 Anyone who makes a “taxable gift” must file a Gift Tax Return



Taxable Gifts Do Not Include:

- Amounts under the Annual Exclusion
- Exempt transfers for Medical or Educational fees
- Transfers Between Spouses
- Transfers to qualified government or charitable organizations

 Therefore, if you make a gift to one individual for \$19,001, then you should file a Gift Tax Return.



This can become problematic and administratively burdensome because you should list all transfers made on the Gift Tax Return even if they are under the Annual Exclusion amount.

Example

- Helen gifts \$19,001 to Richard her grandson and also gifts \$15,000 to her other two grandchildren.
- On the form 709 she must list all the transfers, but her unified credit is only reduced by \$1 due to the gift to Richard.

Incapacity

Incapacity does not negate the responsibility to file a gift tax return and pay any applicable taxes.



LAWYERLISA

Example

- Richard is in an accident, and his brother Fred is his Power of Attorney.
- Richard is currently in a medically induced coma and is expected to stay in such a state for the next 72 hours.
- Fred is contacted by Richard's fiancé who is very concerned about Richard's state but also concerned that Richard was supposed to buy her a new car tomorrow.
- Fred is aware of this purchase and uses his power of attorney to write a check to the dealership for the car.



This is a gift for which a gift tax return should be filed even though Richard was incapacitated.

Who Pays?

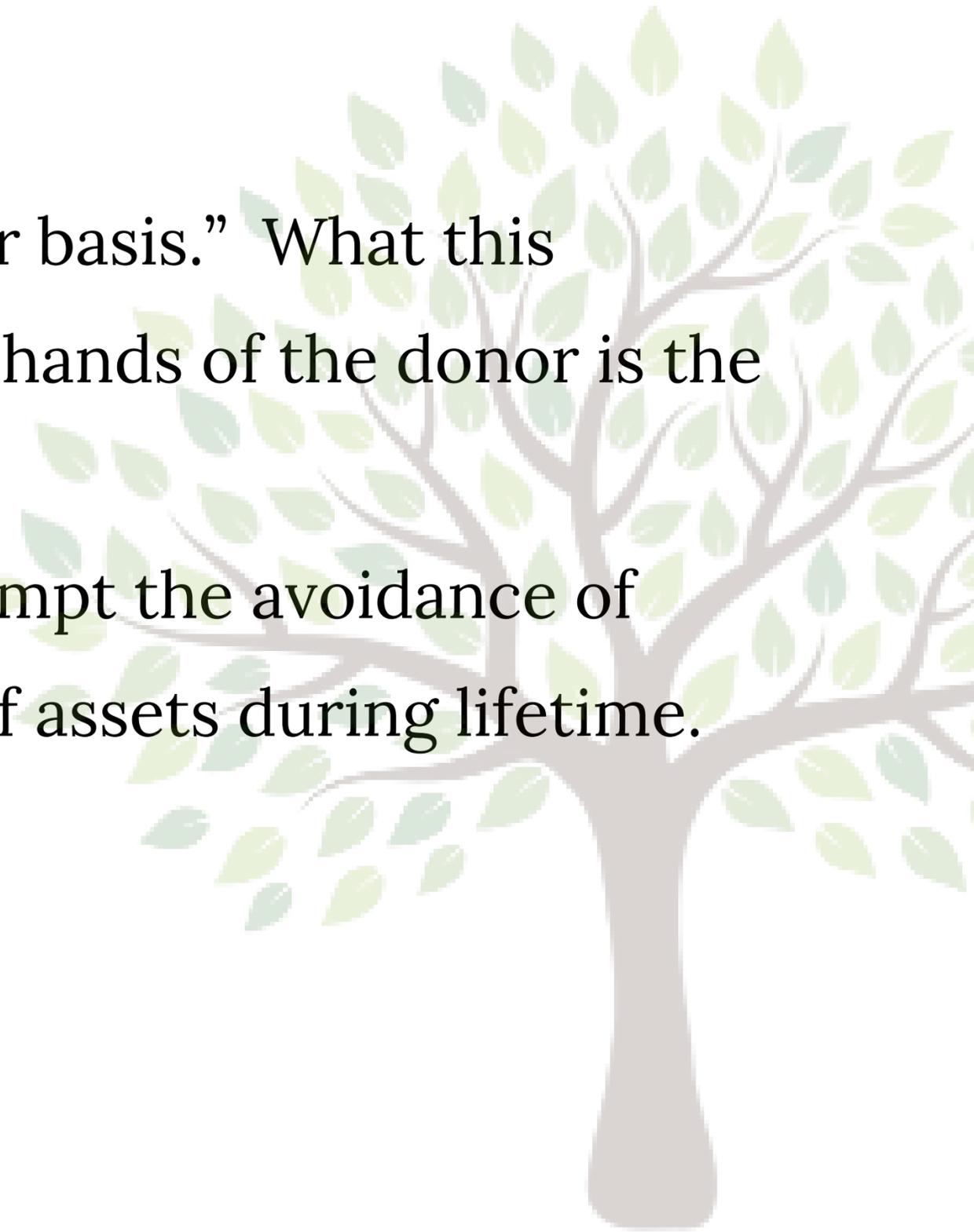
Generally the person making the gift must pay any taxes due from the transfer per IRC 2502 (c).

If taxes are not paid by the person making the Gift then the person who receives the Gift is responsible for the taxes due per IRC 6324 (b).



Cost Basis

1. Property acquired by gift takes a “carried over basis.” What this means is that the cost basis of an asset in the hands of the donor is the same as that in the hands of the recipient.
2. Why is this structured this way? It is to preempt the avoidance of capital gains taxes and to deter the transfer of assets during lifetime.
3. Cash has a basis dollar for dollar.
4. Types of assets given have consequences!!



Examples

- Helen owns ABC stock that she paid \$1,650 for in 1995.
- She gifts the stock to Mary to buy a house. The stock is worth \$250,000.
- If Mary sells the stock she will pay taxes on the gains, \$248,350, and Helen should file a Gift Tax Return.
- Likely minimum capital gains taxes owed by Mary is \$37.252.

- Same as before, but Helen gifts Mary \$250,000 in cash.
- Mary owes no taxes and Helen should file a Gift Tax Return.

- Helen gifts Mary a house with a fair market value of \$250,000.
- Mary lives in the house and does not sell it.
- Mary owes no taxes and Helen should file a Gift Tax Return.

Advanced Strategies to Lower Gift Tax Exposure

Crummey Powers used in conjunction with Life Insurance

1. This strategy leverages the annual exclusion amount to pay for Life Insurance held in an Irrevocable Trust.
2. Annual exclusion is used on a per person basis.

Example

- 10 grandchildren can equal 10 annual exclusions
- Must notify the right to take out the funds.



Advanced Strategies to Lower Gift Tax Exposure

Rolling GRAT or GRUT – Grantor Retained Annuity or Uni Trust

1. Almost always a “Zeroed Out GRAT” is used.
2. Basic formation is to set payouts to the grantor for less than the expected return over a period of years. At the end of the period what is left goes to the remainder beneficiaries free of Gift or Estate tax. Properly created this will use zero unified credit exemption.
3. Remainder Beneficiary is a non-charitable organization or person.



Advanced Strategies to Lower Gift Tax Exposure

Conservation Easements

1. Leverage of the unlimited gift to charitable organizations and provides for income tax deductions.
2. Many people create unusual layouts that provide privacy or hunting grounds for the remaining property owners.



Advanced Strategies to Lower Gift Tax Exposure

Transfer of Assets thought to appreciate quickly

Examples:

- Patents
- Land soon to be developed
- Intellectual Property
- Highly Speculative Stock
- Artwork



LAWYERLISA

Advanced Strategies to Lower Gift Tax Exposure

CRATs or CRUTs aka Charitable Remainder Trusts

1. Transfer to an Irrevocable trust while keeping an income stream for the transferor, spouse or other named individual
2. Transfers for self or Spouse is not a gift
3. Favorable tax treatment of sale of assets inside the trust
4. Creates a current charitable deduction



Advanced Strategies to Lower Gift Tax Exposure

Charitable Lead Trusts

1. Transfer to an Irrevocable Trust with income going to charity and remainder to named beneficiaries.
2. Creates a current charitable deduction and a current gift of the remainder interest.
3. If growth is greater than the Section 7520 rate the excess growth is transferred without estate or gift tax implications.
4. This is part of a very long term planning strategy.



Questions?

More Information visit:

[LawyerLisa.com](https://lawyerlisa.com)

or call 803-563-5163

Take Action!



QUIZ

- Review your current plan or create your first one.
- Don't wait until a crisis.
- We created a quiz to help you determine which type of estate plan best suits your current needs.

<https://lawyerlisa.com/quiz>

Lisa Hostetler Brown, Certified Elder Law Attorney, certified by the National Elder Law Foundation | 803-563-5163 | 7511 St. Andrews Rd, Ste 3, Irmo, SC 29063 | Aiken | Simpsonville | Mt. Pleasant | Bluffton | Myrtle Beach
Webinars, training presentations, newsletters, and related materials provide general information regarding particular subjects, and are not intended to constitute legal advice nor do they establish an attorney-client relationship.



LAWYERLISA
ESTATE PLANNING | ELDER LAW | ELDER CARE | PROBATE

Serving the entire state of SC

