



NAEPC  
**Journal**  
of **Estate & Tax Planning**

---

[Click here to view Issue 35](#)

## The Biden Estate Tax Cliff: Gifting Like it's 2012 All Over Again!

By Steven J. Oshins, Esq., AEP (Distinguished)

Those estate planning attorneys who were in practice in 2012 surely remember the last few months of the year when prospective clients were calling and emailing all day long every day literally begging us to take “just one more client”!

There was a mad rush to make \$5 million gifts before the estate tax exemption was going to drop back down when the clock struck midnight at the end of 12/31/2012. Most of the experienced attorneys were so busy that they stopped taking new clients in October or November.

### FAST FORWARD TO 2020

Fast forward to 2020. It's looking more and more likely that Joe Biden will be the next President. His fellow Democrats almost certainly will win the House and the Senate will be very close and could be controlled by the Democrats.

If there is a Democratic sweep, then the likelihood is that the current \$11.58 million estate tax exemption will be reduced to \$3.5 million. For a married couple, this means that the current \$23.16 million combined exemption will be reduced to \$7 million.

### HISTORY REPEATS ITSELF

History often repeats itself. Back in 2012, although we had a sense that there would be a lot of trust business towards the end of the year, I doubt that anyone pro-



jected the magnitude of the number of prospective clients asking for help. This time, with the prospects of seeing a Democratic sweep we should all be preparing for more and more new clients as we get closer to the November election, and then a 2012-like phenomenon if the Democrats do, in fact, sweep the Presidency and Congress.

If that occurs, then the likelihood is that Biden and Congress enact sweeping tax reform that will include a reduction of the federal estate and gift tax exemption, very likely retroactive to be effective January 1, 2021.

### DYNASTY TRUSTS

It's time to get the “printing presses” ready because, just like in 2012, there are will be a ridiculous number of Dynasty Trusts being drafted by estate planning attorneys to receive these large gifts. Those attorneys

who have never drafted a Dynasty Trust need to open their wallets and attend as many webinars and teleseminars as possible and find some Dynasty Trust “forms” and/or join an organization with drafting software that enables them to draft Dynasty Trusts. It is generally unwise to simply push buttons using drafting software without having a complete understanding of the tax and creditor and divorce protection ramifications of those drafting choices. Therefore, attending multiple webinars and teleseminars is a must.

## WHAT IS A DYNASTY TRUST?

A “Dynasty Trust” is an irrevocable trust that continues for as long as applicable state law allows. For as long as it continues its assets escape estate taxes and, depending upon the chosen state law and other decision points, it can be drafted so that its assets are protected from the creditors and divorcing spouses of the beneficiaries.

Once the client understands the substantial advantages of passing assets in trust, especially a Beneficiary Controlled Trust, the client will understand that this concept also applies to more remote generations in exactly the same manner. Thus, the concept should not only be applied to the children’s generation, but also to the grandchildren’s generation, the great-grandchildren’s generation and more remote generations depending upon the applicable state perpetuity restrictions.

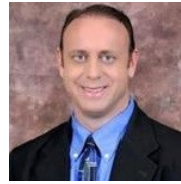
## CONCLUSION

Estate planning attorneys should prepare for another 2012-like end to the year 2020. Start thinking about the amount of new clients you will be able to take on and which clients you will have to turn away.

As we get closer to the November election, more and more wealthy people will continue to hedge by making the gifts that they should have been making all along irrespective of the potential Biden cliff. And if the Democrats sweep the Presidency and Congress, November and December will be similar to the good ‘ol days of 2012!

Link to: <https://ultimateestateplanner.com/2020/09/01/the-biden-estate-tax-cliff-gifting-like-its-2012-all-over-again/>

## ABOUT THE AUTHOR



*Steven J. Oshins, Esq., AEP (Distinguished) is a member of the Law Offices of Oshins & Associates, LLC in Las Vegas, Nevada. He was inducted into the NAEPC Estate Planning Hall of Fame® in 2011. He was named one of the 24 “Elite Estate Planning Attorneys” and the “Top Estate Planning*

*Attorney of 2018” by The Wealth Advisor. Steve was also named one of the Top 100 Attorneys in Worth and is listed in The Best Lawyers in America® which also named him Las Vegas Trusts and Estates Lawyer of the Year in 2012, 2015 and 2018 and Tax Law Lawyer of the Year in 2016 and 2020. He can be reached at 702-341-6000, ext. 2, at [soshins@oshins.com](mailto:soshins@oshins.com) or at his firm’s website, [www.oshins.com](http://www.oshins.com).*