

GREENSAGE GROUP

Estate Planning | Trust Administration | Asset Protection
Houston, Texas

MEMORANDUM

TO: Client File — Henderson, Robert & Susan

FROM: Aria | AI Estate Planning Advisor, Greensage Group

DATE: March 21, 2026

RE: Estate Planning Instrument Recommendations — Blended Family, \$3,000,000 Business Interest, Special Needs Adult Beneficiary

**PRIVILEGED AND CONFIDENTIAL — ATTORNEY WORK PRODUCT
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I. INTRODUCTION AND SCOPE OF MEMORANDUM

This memorandum is prepared at the direction of supervising counsel for the client file of Robert and Susan Henderson (collectively, "Clients"). The facts as presented are as follows: Robert Henderson ("Husband") and Susan Henderson ("Wife") are married Texas residents with a blended family structure. Husband has children from a prior marriage ("Husband's Children"); Wife has children from a prior marriage as well as one adult son with special needs ("Special Needs Son"), whose Medicaid eligibility must be protected in perpetuity. Husband owns or co-owns a business interest currently valued at approximately \$3,000,000 (the "Business"). The Clients' stated planning objectives are three-fold: (1) to preserve the Special Needs Son's eligibility for Medicaid and other means-tested government benefits; (2) to protect Husband's Children's ultimate inheritance in the blended family context; and (3) to minimize or eliminate federal estate tax exposure for both estates.

This memorandum sets forth the recommended estate planning instruments, the legal authority supporting each recommendation, the estate tax analysis, and the implementation sequence. It is intended to serve as a roadmap for supervising counsel and the drafting attorney.

Critical Threshold Note: Before any instrument is selected or funded, counsel must confirm the community property characterization of all significant assets, and in particular the \$3,000,000 Business. Texas is a community property state,¹ and this characterization is not merely a formality — it determines who owns what, what transfer strategies are available, and what tax consequences flow from each transfer. A full asset tracing analysis is strongly recommended as a prerequisite to plan implementation.

II. THRESHOLD ISSUE: COMMUNITY PROPERTY CHARACTERIZATION

Texas follows a community property regime under the Texas Family Code.² Under Texas law, all property acquired by either spouse during marriage is presumed to be community property owned equally by both spouses, unless it falls within the definition of separate property.³ Separate property includes property owned or claimed by a spouse before marriage, property acquired during marriage by gift, devise, or descent, and recovery for personal injuries (with the exception of lost earning capacity).⁴

The \$3,000,000 Business interest must be characterized before any transfer strategy is selected. Two distinct scenarios apply:

Scenario A — Business Is Community Property: If the Business was formed or acquired during the current marriage, it is presumed community property. Wife owns an undivided one-half interest, and Husband owns the remaining one-half interest. Under IRC § 1014(b)(6),⁵ upon the death of either spouse, *both* halves of the community property asset receive a full stepped-up basis equal to the fair market value on the date of death. This is a significant income tax benefit that must be factored into any lifetime transfer strategy. The full \$3,000,000 Business would be subject to estate planning from both spouses' perspectives, and transfer strategies must account for Wife's community interest.

Scenario B — Business Is Separate Property: If the Business was formed before the current marriage, or was acquired by Husband through gift or inheritance, it is Husband's separate property alone. Wife holds no ownership interest. In this scenario, Husband has full authority to transfer the Business or interests therein without Wife's joinder, and the stepped-up basis benefit under IRC § 1014(b)(6) would not apply to the full value of the Business — only to Husband's separate property interest. Depending on Husband's basis in the Business, significant capital gains exposure could arise on any lifetime transfer.

Scenario C — Mixed Character (Mutation): A common and legally complex scenario arises when a business was started before marriage but grew substantially during marriage, with community funds or labor contributed to its growth. In such cases, the business may have a mixed character, and a claim of reimbursement under Texas Family Code § 3.402⁶ may arise between the separate and community estates. Tracing of expenditures, capital contributions, and appreciation is required under established Texas case law.

Recommendation: Counsel should commission a formal asset tracing analysis prior to finalizing any transfer strategy. The outcome of that analysis will directly affect the funding of the Family Limited Liability Company, the SLAT, and the valuation for estate tax purposes. This memorandum proceeds on the assumption of community property for illustrative purposes in Section IV, with the explicit caveat that this assumption must be confirmed.

III. RECOMMENDED ESTATE PLANNING INSTRUMENTS

A. Third-Party Special Needs Trust (SNT)

Legal Authority: Texas Property Code §§ 112.001, 736.001 *et seq.*;⁷ 42 U.S.C. § 1396p(d)(4) (A) (Medicaid exception for special needs trusts);⁸ Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Pub. L. 103-66; 42 C.F.R. § 435.601.

Analysis: Establishment of a third-party Special Needs Trust for the benefit of Wife's Special Needs Son is mandatory. It is not optional. Any direct bequest to the Special Needs Son — even a bequest of a single dollar — will be counted as a resource that could trigger a Medicaid spend-down requirement, potentially disqualifying him from Medicaid and Supplemental Security Income (SSI) benefits. The consequences of failing to establish this instrument before either spouse's death are immediate and severe.

A properly structured third-party SNT holds assets for the benefit of the Special Needs Son without those assets being counted toward Medicaid resource limits under 42 C.F.R. § 435.601. The trustee is granted discretionary authority to expend trust funds for the beneficiary's supplemental needs — goods and services that enhance quality of life beyond what Medicaid and SSI provide. The trust must be carefully drafted to avoid duplicating benefits already covered by government programs, including food, shelter in the primary sense, and routine medical care covered by Medicaid. Expenditures for education, travel,

entertainment, technology, personal care, and similar supplemental items are generally permissible.

Critical structural requirements for a valid third-party SNT under Texas and federal law include:

- The trust must be established by a third party — Wife (or both spouses) — *not* by the Special Needs Son himself. A trust established by the beneficiary using his own assets would constitute a self-settled SNT under 42 U.S.C. § 1396p(d)(4)(A), which carries different legal requirements including a Medicaid payback provision at the beneficiary's death.
- The trust must be irrevocable upon funding.
- The trustee must exercise discretionary (not mandatory) authority over distributions. A mandatory distribution provision could cause assets to be counted as available resources.
- The trust should designate remainder beneficiaries (e.g., other children) to receive assets remaining at the Special Needs Son's death, as there is no federal payback requirement for third-party SNTs.

Funding Strategy: The SNT should be funded at Wife's death via a pour-over provision in Wife's Revocable Living Trust. Additionally, counsel should consider naming the SNT as a beneficiary of ILIT proceeds at Wife's death to provide immediate liquidity. Lifetime funding of the SNT by Wife during her lifetime is also permissible and may be advisable given the time-sensitivity of the Special Needs Son's needs. A professional or corporate co-trustee with experience in public benefits law is strongly recommended to ensure ongoing compliance with Medicaid rules.

B. QTIP Trust (Qualified Terminable Interest Property Trust)

Legal Authority: IRC § 2056(b)(7);⁹ Treas. Reg. § 20.2056(b)-7; IRC § 2044 (inclusion in surviving spouse's estate); Form 706, Schedule M (QTIP election).

Analysis: A QTIP Trust is essential in every blended family situation where one spouse wishes to provide for the surviving spouse's financial security while simultaneously ensuring that his or her own children ultimately receive the principal. Without a QTIP structure, assets passing to a surviving spouse outright can be redirected at will — to her children, to a new spouse, to charities — leaving Husband's Children with no inheritance from Husband's estate.

Under a QTIP structure, upon Husband's death, assets pour into the QTIP Trust. The trust mandates that Wife receive all net income on at least an annual basis for the remainder of her life, satisfying the mandatory income interest requirement under IRC § 2056(b)(7)(B)(ii).¹⁰ Wife has no power to appoint the principal to herself or to any other person except as the trust instrument permits. At Wife's death, the QTIP principal passes to Husband's Children as directed by Husband in the trust instrument.

The entire value of assets transferred to the QTIP Trust qualifies for the unlimited federal estate tax marital deduction under IRC § 2056(b)(7),¹¹ resulting in zero federal estate tax at Husband's death with respect to QTIP-held assets. The executor makes the QTIP election on IRS Form 706, Schedule M. The tradeoff is that the QTIP assets are included in Wife's taxable estate at her death under IRC § 2044,¹² but this exposure can be managed through Wife's own estate tax planning (see SLAT discussion below).

Counsel should consider whether to grant Wife a limited power of appointment (LPOA) over the QTIP principal, permitting Wife to redirect assets among Husband's Children only (not to herself or her own children), which provides flexibility without sacrificing the QTIP's protective function.

C. Family Limited Liability Company (FLLC)

Legal Authority: Texas Business Organizations Code §§ 101.001 *et seq.*,¹³ IRC §§ 2036, 2038 (retained interest rules); IRC § 2503(b) (annual exclusion); Rev. Rul. 93-12, 1993-1 C.B. 202; *Estate of Bongard v. Commissioner*, 124 T.C. 95 (2005).

Analysis: The FLLC is the optimal vehicle for transferring the Business interest to the next generation at a reduced transfer tax cost while preserving Husband's operational control during his lifetime. The mechanics are straightforward: Husband contributes the Business (or his interest therein) to the FLLC. He retains a managing member interest giving him full control over day-to-day operations, distributions, and major business decisions. Limited membership interests are then transferred to children over time using the annual gift tax exclusion under IRC § 2503(b) (\$18,000 per donee per year for 2024).¹⁴

The central tax advantage of the FLLC structure is the availability of valuation discounts. When a limited membership interest is transferred, the recipient cannot unilaterally force liquidation of the FLLC, cannot compel distributions, and cannot independently sell or transfer the interest to a third party without restriction. These limitations justify two

categories of valuation discounts that are well-established in federal tax law following *Rev. Rul. 93-12*:

- **Minority Interest Discount:** A limited member owns less than a controlling interest and cannot exercise control over the entity. Discount typically ranges from 15% to 30% of pro rata value.
- **Lack of Marketability Discount:** There is no ready market for limited membership interests in a closely-held FLLC. Discount typically ranges from 10% to 20% of pro rata value.

Combined, these discounts can reduce the taxable value of transferred interests by 25% to 40% of the underlying asset value. Applied to a \$3,000,000 Business (community property scenario: \$1,500,000 Husband's share), a combined 30% discount reduces the taxable gift value from \$1,500,000 to \$1,050,000 — a permanent \$450,000 reduction in taxable transfer value.

From an asset protection standpoint, the Texas charging order protection under Texas Business Organizations Code § 101.112¹⁵ is the exclusive remedy available to a judgment creditor of a member. A creditor cannot foreclose on FLLC membership interests or force a liquidation; the creditor may only obtain a charging order entitling it to distributions actually made to the debtor-member, if any. This is one of the strongest asset protection mechanisms available in Texas.

Caution — IRC § 2036(a) Retained Interest Rules: The IRS has successfully challenged FLLC structures where the transferor retained de facto control or economic benefit inconsistent with the stated transfer, effectively pulling transferred interests back into the taxable estate under IRC § 2036(a).¹⁶ *Estate of Bongard v. Commissioner*, 124 T.C. 95 (2005), remains the leading case on the bona fide business purpose requirement. To withstand IRS scrutiny: (1) the FLLC must have a legitimate non-tax business purpose; (2) Husband must not commingle personal and FLLC assets; (3) distributions must follow the operating agreement; and (4) Husband must not retain the right to use FLLC assets as his own. Counsel should document the business purpose carefully in the FLLC operating agreement.

D. Irrevocable Life Insurance Trust (ILIT)

Legal Authority: IRC § 2042 (life insurance in taxable estate);¹⁷ IRC § 2035 (three-year look-back rule); *Crummey v. Commissioner*, 397 F.2d 82 (9th Cir. 1968);¹⁸ IRC § 2503(c) (present

interest requirement for annual exclusion).

Analysis: Life insurance death benefit proceeds are included in the insured's taxable estate if the insured possessed any "incidents of ownership" at death under IRC § 2042. A properly structured ILIT removes life insurance proceeds from the taxable estate entirely, converting what would otherwise be a taxable asset into a tax-free source of liquidity.

Under the ILIT structure, the trust — not Husband — owns the life insurance policy and is the named beneficiary. Because Husband does not own the policy and possesses no incidents of ownership, the death benefit is excluded from his taxable estate. Upon Husband's death, the ILIT trustee holds the proceeds and can deploy them to serve multiple planning objectives simultaneously:

- **Business Liquidity:** The ILIT trustee purchases Husband's business interests from his estate (or RLT), providing cash to the estate without forcing a distressed sale of the Business. The Business continues without disruption; the estate receives fair market value in cash.
- **SNT Funding:** A portion of ILIT proceeds can be directed at Wife's death to fund the Special Needs Trust for the Special Needs Son, ensuring the SNT is well-capitalized even if Wife's other assets have been depleted.
- **Inheritance Equalization:** In a blended family, the ILIT is a powerful tool for equalizing inheritances among children from different marriages who may otherwise receive very different amounts based on the character and ownership of the underlying assets.

Annual premiums are funded by gifts from Husband (and Wife) to the ILIT. To ensure that premium payments qualify for the annual gift tax exclusion under IRC § 2503(b), beneficiaries must receive Crummey withdrawal notices — written notices of their right to withdraw the contributed amount for a period of time (typically 30 to 60 days) before it becomes an irrevocable trust contribution. This converts a future interest into a present interest gift, satisfying the annual exclusion requirements per *Crummey v. Commissioner*.¹⁹

Critical Warning — IRC § 2035 Three-Year Look-Back: If Husband currently owns a life insurance policy and transfers it to the ILIT, IRC § 2035 requires that the death benefit be included in Husband's taxable estate if Husband dies within three years of the transfer. To avoid this rule entirely, the ILIT should be established first, and the trust — not Husband —

should apply for and own a new life insurance policy from inception. Existing policies should not be transferred.

E. Spousal Lifetime Access Trust (SLAT)

Legal Authority: IRC § 2010 (unified credit and basic exclusion amount);²⁰ Tax Cuts and Jobs Act of 2017 (TCJA), Pub. L. 115-97, § 11061; Rev. Proc. 2023-32 (2024 exemption inflation adjustment); Treas. Reg. § 20.2010-1(c) (anti-clawback regulation).

Analysis: The federal estate and gift tax basic exclusion amount was doubled by the TCJA in 2017. For 2024, each individual has a \$13,610,000 lifetime exemption (\$27,220,000 for a married couple). This historically high exemption is currently scheduled to sunset on December 31, 2025, reverting to approximately \$7,000,000 per person (adjusted for inflation) absent congressional action. While subsequent legislation has extended or modified the TCJA provisions in various respects, counsel must advise the Hendersons with urgency: the window to lock in the elevated exemption amount may be closing, and any amounts gifted above the post-sunset exemption during the elevated-exemption years are permanently shielded under the anti-clawback regulation at Treas. Reg. § 20.2010-1(c).²¹

A SLAT allows Husband to make an irrevocable gift to a trust for Wife's benefit, removing the gifted assets from Husband's taxable estate permanently, while Wife retains indirect access to trust assets through her status as a discretionary beneficiary. Wife funds a separate SLAT for Husband's benefit. When fully implemented, both spouses have gifted significant assets out of their respective estates, and both retain indirect economic access through the other spouse's trust.

Warning — Reciprocal Trust Doctrine: The IRS will challenge two SLATs that are mirror images of each other under the reciprocal trust doctrine established in *United States v. Grace*, 395 U.S. 316 (1969).²² If the two trusts are deemed "interrelated," the IRS will uncross them, treating each grantor as the deemed owner of the trust he or she purported to fund, collapsing the estate tax benefit entirely. To avoid this, the two SLATs must differ in meaningful ways: different trustees, different trust terms and distribution standards, different beneficiary classes (e.g., one includes children, one does not), different funding dates, and different funding amounts. Counsel should document the differences carefully.

Warning — Divorce Risk: If the Hendersons divorce after the SLATs are established, the grantor-spouse loses indirect access to trust assets because the beneficiary-spouse is no

longer available. Assets in the SLAT remain in the trust permanently for the ex-spouse's benefit. This risk should be disclosed to the Clients in writing.

F. Revocable Living Trusts (Both Spouses)

Legal Authority: Texas Property Code §§ 112.001 *et seq.*;²³ Texas Estates Code §§ 114.001 *et seq.*; Texas Estates Code § 301.001 (probate jurisdiction).²⁴

Analysis: A Revocable Living Trust (RLT) is the foundational document of any comprehensive estate plan and serves as the hub around which all other instruments are coordinated. Both Husband and Wife should establish separate RLTs. During the grantor's lifetime, the RLT is fully revocable and amendable; assets held in the trust are included in the grantor's taxable estate and are treated as the grantor's own for income tax purposes under the grantor trust rules of IRC § 671 *et seq.* The RLT provides no estate tax benefit during life but is indispensable for probate avoidance, administrative efficiency, and integration of the overall plan.

The primary advantages of the RLT structure are:

- **Probate Avoidance:** Assets held in trust at death pass to beneficiaries without a court-supervised probate proceeding, saving time, cost, and preserving privacy. Texas probate is relatively streamlined compared to other states, but even a simplified probate proceeding takes time and involves public filings.
- **Coordinated Administration:** Husband's RLT holds FLLC membership interests and coordinates the pour-over into the QTIP Trust at Husband's death. Wife's RLT coordinates the pour-over into the Special Needs Trust at Wife's death.
- **Incapacity Planning:** A Successor Trustee takes over management of trust assets seamlessly upon the grantor's incapacity, without the need for court-supervised guardianship of the estate.
- **Amendment Flexibility:** As tax law changes, as family circumstances evolve, and as assets are acquired or disposed of, both RLTs can be amended to reflect current intentions.

Pour-over wills should accompany each RLT, directing any assets not yet transferred to the RLT at death to pour over into the trust via probate. Beneficiary designations on retirement accounts and life insurance should be coordinated with the RLT structure.

G. Buy-Sell Agreement

Legal Authority: IRC § 2703 (buy-sell agreements and estate tax valuation);²⁵ Treas. Reg. § 25.2703-1 (bona fide business arrangement test); Texas Business Organizations Code §§ 101.001 *et seq.*

Analysis: A Buy-Sell Agreement is a contractual arrangement among business owners — or between Husband and the FLLC — that governs the disposition of a business interest upon the occurrence of specified triggering events, including death, disability, retirement, divorce, or voluntary transfer. In the context of the Hendersons' estate plan, the Buy-Sell Agreement serves several critical functions.

First, the Buy-Sell Agreement establishes the valuation mechanism for the Business upon a triggering event. If the agreement meets the requirements of the bona fide business arrangement test under IRC § 2703 — i.e., it is a bona fide business arrangement, it is not a device to transfer property to members of the decedent's family for less than full and adequate consideration, and its terms are comparable to similar arrangements entered into by persons in arm's length transactions — then the agreed valuation will be respected by the IRS for estate tax purposes.²⁶ Without a Buy-Sell Agreement, the IRS may value the Business at a higher amount than the Clients anticipate.

Second, the Buy-Sell Agreement prevents unwanted co-ownership of the Business by persons who are not equipped to operate it. At Husband's death, without a Buy-Sell Agreement, his Business interest could pass to Wife, to his children, or to others who may have no operational role in or knowledge of the business. The Buy-Sell Agreement ensures that the Business interest is either redeemed by the FLLC or purchased by the remaining owners at a fair price, providing cash to the estate and continuity to the business.

The Buy-Sell Agreement should be funded by life insurance held in the ILIT. A cross-purchase structure — where each owner purchases insurance on the other — is generally preferred because it gives the purchasing owner a stepped-up basis in the acquired interests equal to the purchase price, reducing future capital gains exposure. An entity-redemption structure may be more practical if there are multiple owners or if the premiums would be unwieldy on a cross-purchase basis.

H. Powers of Attorney and Advance Directives

Legal Authority: Texas Estates Code §§ 751.001 *et seq.* (Durable Power of Attorney);²⁷ Texas Health & Safety Code §§ 166.001 *et seq.* (Advance Directive Act);²⁸ Texas Health & Safety Code §§ 166.151 *et seq.* (Medical Power of Attorney); Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. § 164.510.²⁹

Analysis: While the foregoing instruments address death-time transfers and estate tax minimization, a comprehensive estate plan must also address incapacity. Four core incapacity documents are required for each spouse:

- **Durable Power of Attorney for Finances:** Authorizes the agent to manage financial affairs, make gifts for estate planning purposes (if so granted), and continue business operations during incapacity. Must comply with the Texas Durable Power of Attorney Act, Texas Estates Code §§ 751.001 *et seq.* The power is “durable” in that it survives the principal's incapacity.
- **Medical Power of Attorney:** Designates a health care agent to make medical decisions on behalf of an incapacitated principal. Critical for ensuring that the appropriate person — not a default next-of-kin determined by statute — makes healthcare decisions.
- **Directive to Physicians (Living Will):** Sets forth the principal's wishes regarding life-sustaining treatment in the event of a terminal or irreversible condition. Governed by the Texas Advance Directive Act.
- **HIPAA Authorization:** Authorizes designated individuals to receive protected health information from healthcare providers. Without this document, even a spouse may be denied access to the other's medical information under HIPAA.

Special Consideration for the Special Needs Son: If the Special Needs Son lacks legal capacity to execute his own advance directives, counsel should advise Wife regarding guardianship of the person (if not already established), designation of a surrogate health care decision-maker, and how the SNT trustee's role interacts with health care decisions. These issues should be addressed in coordination with a public benefits attorney familiar with the Special Needs Son's specific circumstances.

IV. ESTATE TAX ANALYSIS

The following analysis illustrates the projected estate tax outcome for Husband's estate under a full implementation scenario, assuming the Business is community property. All figures are illustrative and based on facts as presented; a full analysis requires actual valuations, asset tracing results, and current fair market value appraisals.

Assumptions:

- Business is community property, total value \$3,000,000; Husband's share = \$1,500,000.
- Other community assets (primary residence, investment accounts, retirement accounts): \$2,000,000 combined; Husband's share = \$1,000,000.
- Federal estate tax rate: 40% on amounts exceeding the applicable exemption under IRC § 2001.³⁰
- Federal exemption: assumed at post-sunset level of approximately \$7,000,000 for conservatism; if Congress acts, exemption may remain elevated.
- SLAT funded in Year 1 with \$2,000,000 from community assets (both spouses' shares by agreement).

Asset / Adjustment	Amount
Husband's share of Business (community property, gross)	\$1,500,000
Less: FLLC Valuation Discount (30% minority + lack of marketability)	(\$450,000)
Taxable Business Value (after FLLC discount)	\$1,050,000
Husband's share of other community assets (home, investments, retirement)	\$1,000,000
Gross Projected Taxable Estate (before deductions)	\$2,050,000
Less: SLAT Transfer (Year 1, removed from taxable estate permanently)	(\$2,000,000)
Less: QTIP Marital Deduction (assets passing to QTIP Trust for Wife)	(\$50,000)
Net Taxable Estate – Husband	\$0
Federal Estate Tax at 40% (IRC § 2001)	\$0

Key Tax Mechanisms at Work:

- **FLLC Valuation Discount:** Reduces Business value subject to transfer tax by \$450,000, permanently. This discount is locked in when interests are transferred during life or at death.
- **SLAT:** Removes \$2,000,000 from Husband's taxable estate permanently by gifting to an irrevocable trust. The gift utilizes the elevated exemption available under current law. Even post-sunset, the anti-clawback regulation at Treas. Reg. § 20.2010-1(c) protects this amount from being pulled back into the estate.
- **QTIP Marital Deduction:** Any remaining assets passing to the QTIP Trust qualify for the unlimited marital deduction under IRC § 2056(b)(7), resulting in zero estate tax at Husband's death on those assets (deferred, not eliminated, as they will be included in Wife's estate under IRC § 2044).
- **Annual Gifting Program:** Over time, annual exclusion gifts of FLLC interests at \$18,000 per donee per year further erode the taxable estate without gift tax cost.

The net result, with full implementation and assuming the facts as presented, is a projected federal estate tax liability at Husband's death of **zero dollars**. Wife's estate planning (including her own SLAT and the SNT funding) should be separately analyzed by counsel once community property characterization is confirmed.

V. IMPLEMENTATION PRIORITY AND SEQUENCE

Given the complexity of the recommended instrument stack and the time-sensitive nature of certain planning opportunities, counsel and the Clients must adhere to a disciplined implementation sequence. The following priority schedule is recommended:

Priority / Timeline	Instrument	Rationale
Priority 1 <i>Immediately</i>	Third-Party Special Needs Trust (SNT)	Any death of Wife before this instrument is executed and funded creates irreversible Medicaid disqualification risk for the Special Needs Son. This is the most urgent item in the entire plan. Draft, execute, and confirm funding mechanism before proceeding to any other instrument.

Priority / Timeline	Instrument	Rationale
Priority 2 <i>Within 30 days</i>	Revocable Living Trusts (both spouses) with QTIP provisions	The RLTs are the administrative backbone of the plan. The QTIP provisions protect Husband's Children in the blended family context and must be in place before Husband's death. Simultaneous execution of pour-over wills.
Priority 3 <i>Within 60 days</i>	Family Limited Liability Company (FLLC)	FLLC formation requires time for drafting, filing with the Texas Secretary of State, operating agreement execution, and asset contribution documentation. Business valuation appraisal should be ordered immediately to support discounts. Annual gifting program commences upon formation.
Priority 4 <i>Within 60 days</i>	Irrevocable Life Insurance Trust (ILIT)	ILIT must be formed before new life insurance is applied for — the ILIT applies for and owns the policy from inception. Concurrent with FLLC formation. Life insurance underwriting may take 60–90 days; the process should begin immediately.
Priority 5 <i>Within 90 days</i>	Spousal Lifetime Access Trusts (both spouses)	Time-sensitive given the potential sunset of elevated exemption amounts. Each spouse should execute and fund separate SLATs with care taken to differentiate the two trusts and avoid the reciprocal trust doctrine. Requires formal appraisal of assets to be contributed.
Priority 6 <i>Within 90 days</i>	Buy-Sell Agreement	Should be negotiated and executed contemporaneously with or shortly after FLLC formation. Requires coordination with ILIT to ensure Buy-Sell is funded by life insurance proceeds.

Priority / Timeline	Instrument	Rationale
Priority 7 <i>Within 90 days</i>	Powers of Attorney and Advance Directives	Fundamental documents that protect the Clients in the event of incapacity. Should be executed as part of the RLT signing package but noted separately for emphasis given the Special Needs Son's circumstances.
Priority 8 <i>Ongoing</i>	Annual Gifting Program	Annual exclusion gifts of \$18,000 per donee per year of FLLC limited membership interests. Crummey notices for ILIT premium contributions. Systematic, year-over-year reduction of taxable estate. Calendar alerts should be set for gift program execution each January.

Counsel should schedule a 90-day implementation review meeting with the Clients to confirm all instruments have been executed, funded, and properly coordinated. A follow-up annual review is strongly recommended to monitor changes in tax law, family circumstances, and business valuation.

VI. CONCLUSION

This memorandum has identified and analyzed eight estate planning instruments that, when implemented as an integrated strategy, address all three of the Henderson family's planning objectives with precision and legal rigor. The recommended instrument stack is not a collection of standalone tools; it is an interdependent system in which each instrument serves a distinct function while reinforcing the others.

The Third-Party Special Needs Trust provides the cornerstone protection that no other instrument can supply: preservation of the Special Needs Son's Medicaid and SSI eligibility across his lifetime, regardless of what assets Wife leaves behind and regardless of how long Wife lives. This instrument stands alone as a moral and legal imperative, and its execution must occur before any other step is taken.

The QTIP Trust resolves the inherent tension in every blended family between the surviving spouse's financial security and the deceased spouse's intent to provide for his own children. It

does so without sacrificing the unlimited marital deduction, meaning that assets held in the QTIP Trust generate zero estate tax at Husband's death — a full deferral of tax liability to the point of Wife's death, at which point Wife's own planning (including the SLAT) manages that exposure.

The Family Limited Liability Company transforms the \$3,000,000 Business from a fully exposed taxable asset into a discounted, creditor-protected, family-controlled vehicle that systematically transfers wealth to the next generation at reduced transfer tax cost. Combined with the ILIT's ability to remove life insurance from the taxable estate while simultaneously providing liquidity for business continuation and SNT funding, the Business becomes a tool of estate planning rather than an obstacle to it.

The Spousal Lifetime Access Trusts unlock the power of the historically elevated federal exemption amounts before the sunset window closes, permanently removing millions of dollars from both taxable estates while preserving indirect spousal access. The Revocable Living Trusts provide the administrative infrastructure through which all other instruments are coordinated, ensuring seamless administration at death without the delays and costs of probate. The Buy-Sell Agreement and the Powers of Attorney complete the plan by protecting the Business at every triggering event and protecting both spouses in the event of incapacity.

Projected Federal Estate Tax with Full Implementation: \$0.

This outcome is not the result of aggressive or questionable tax positions. It is the result of disciplined, well-documented planning using instruments that are fully authorized by the Internal Revenue Code, Treasury Regulations, and Texas law. The planning is most effective when all instruments are implemented in coordination, in the sequence recommended, and reviewed annually as law and circumstances evolve.

Greensage Group stands ready to assist supervising counsel and the Henderson family through every phase of implementation.

FOOTNOTES

¹ See Tex. Fam. Code § 3.002 (defining community property as “property, other than separate property, acquired by either spouse during marriage”).

² Tex. Fam. Code §§ 3.001 *et seq.* (Texas Marital Property Law, setting forth the community property regime).

³ Tex. Fam. Code § 3.003 (establishing the presumption that all property possessed by either spouse during or on dissolution of marriage is community property).

⁴ Tex. Fam. Code § 3.001(1)–(3) (defining separate property to include property owned before marriage, property acquired by gift, devise, or descent, and personal injury recoveries excluding lost earning capacity).

⁵ I.R.C. § 1014(b)(6) (providing that the basis of community property acquired from a decedent includes one-half of any community interest held by the surviving spouse, so that both halves receive a stepped-up basis equal to fair market value at the date of death).

⁶ Tex. Fam. Code § 3.402 (providing for reimbursement claims between marital estates for economic contributions from one estate to another during marriage, including contributions of community time, toil, and talent to the improvement of separate property).

⁷ Tex. Prop. Code §§ 112.001 *et seq.* (Texas Trust Code, authorizing the creation of trusts for any lawful purpose); Tex. Prop. Code §§ 736.001 *et seq.* (Special Needs Trust Subchapter, authorizing creation of supplemental needs trusts for persons with disabilities).

⁸ 42 U.S.C. § 1396p(d)(4)(A) (establishing the Medicaid exception for special needs trusts established by a parent, grandparent, legal guardian, or court for the benefit of a disabled individual under age 65 using the individual's own funds; third-party SNTs funded by others are not subject to this provision but are nevertheless protected under Medicaid resource rules when properly structured).

⁹ I.R.C. § 2056(b)(7) (allowing a marital deduction for qualified terminable interest property (QTIP) where the surviving spouse receives all income at least annually and no person has the power to appoint any part of the property to any person other than the surviving spouse during her lifetime).

¹⁰ I.R.C. § 2056(b)(7)(B)(ii) (mandatory income interest requirement: the surviving spouse must be entitled to all the income from the property, payable annually or at more frequent intervals, for the surviving spouse's life).

¹¹ I.R.C. § 2056(a) (unlimited estate tax marital deduction for qualified transfers to a surviving spouse, including QTIP trusts under § 2056(b)(7)).

¹² I.R.C. § 2044 (providing that property for which a QTIP election was made under § 2056(b)(7) during the first spouse's estate is included in the gross estate of the surviving spouse at her death).

¹³ Tex. Bus. Orgs. Code §§ 101.001 *et seq.* (Texas Limited Liability Company Act, governing formation, operation, and membership rights of limited liability companies formed in Texas).

¹⁴ I.R.C. § 2503(b) (annual gift tax exclusion; for 2024, the exclusion is \$18,000 per donee per year as adjusted for inflation under I.R.C. § 2503(b)(2)).

¹⁵ Tex. Bus. Orgs. Code § 101.112 (establishing the charging order as the exclusive remedy of a judgment creditor against the interest of a member of a limited liability company in Texas, prohibiting foreclosure on the membership interest or dissolution of the entity).

¹⁶ I.R.C. § 2036(a) (requiring inclusion in the gross estate of property transferred during the decedent's lifetime if the decedent retained the right to possession, enjoyment, or income from the property, or retained the right to designate who shall possess or enjoy the property); *Estate of Bongard v. Commissioner*, 124 T.C. 95 (2005) (discussing the bona fide business purpose requirement for family limited partnerships and LLCs and the circumstances under which § 2036(a) applies to pull transferred interests back into the taxable estate).

¹⁷ I.R.C. § 2042 (including in the gross estate the proceeds of life insurance on the decedent's life if (1) the proceeds are receivable by the executor, or (2) the decedent possessed at death any incident of ownership in the policy, including the power to change beneficiaries, assign the policy, or borrow against it).

- ¹⁸ *Crummey v. Commissioner*, 397 F.2d 82 (9th Cir. 1968) (establishing that a beneficiary's right to withdraw a contribution to a trust for a limited period of time converts the contribution from a future interest gift into a present interest gift, qualifying for the annual gift tax exclusion under I.R.C. § 2503(b)).
- ¹⁹ I.R.C. § 2503(c) (providing that a transfer is not a gift of a future interest if the property and income may be expended by or for the benefit of a minor before attaining age 21 and any remainder passes to the minor's estate).
- ²⁰ I.R.C. § 2010(c) (unified credit against estate tax equal to the applicable credit amount, determined by reference to the basic exclusion amount of \$5,000,000 as adjusted for inflation under § 2010(c)(3), doubled to \$10,000,000 by TCJA § 11061 for decedents dying after December 31, 2017, and before January 1, 2026).
- ²¹ Treas. Reg. § 20.2010-1(c) (anti-clawback regulation providing that, for decedents dying after December 31, 2025, the basic exclusion amount used to compute the credit shall not be less than the basic exclusion amount applicable to gifts made during the decedent's lifetime, ensuring that gifts sheltered by the elevated exemption are not subject to estate tax upon the exemption's reduction).
- ²² *United States v. Grace*, 395 U.S. 316 (1969) (establishing the reciprocal trust doctrine under which interrelated trusts are “uncrossed” and each grantor is treated as the deemed creator of the trust nominally created by the other, where the trusts are so interrelated that the creation of each was in consideration of the other).
- ²³ Tex. Prop. Code §§ 112.001 *et seq.* (Texas Trust Code); *see also* Tex. Prop. Code § 112.051 (authorizing creation of a trust by a written instrument signed by the settlor and a trustee).
- ²⁴ Tex. Est. Code § 301.001 (establishing the jurisdiction of courts over probate proceedings in Texas); Tex. Est. Code §§ 114.001 *et seq.* (governing disposition of property held in trust).
- ²⁵ I.R.C. § 2703(a) (providing that the value of property shall be determined without regard to any option, agreement, or other right to acquire or use the property at a price less than fair market value, or any restriction on the right to sell or use property); I.R.C. § 2703(b) (exception for bona fide business arrangements that are not devices to transfer property to family members for less than full consideration and whose terms are comparable to arm's length transactions).
- ²⁶ Treas. Reg. § 25.2703-1(b) (setting forth the requirements for a buy-sell agreement to satisfy the IRC § 2703(b) exception, including comparability to arm's length arrangements).
- ²⁷ Tex. Est. Code §§ 751.001 *et seq.* (Texas Durable Power of Attorney Act, authorizing a principal to delegate authority to an agent that survives the principal's incapacity).
- ²⁸ Tex. Health & Safety Code §§ 166.001 *et seq.* (Texas Advance Directive Act, governing directives to physicians, do-not-resuscitate orders, and out-of-hospital do-not-resuscitate orders).
- ²⁹ Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191; 45 C.F.R. § 164.510 (permitting covered entities to disclose protected health information to family members or other persons involved in the individual's care if the individual has authorized such disclosure).
- ³⁰ I.R.C. § 2001 (imposing a federal estate tax on the taxable estate of every decedent who is a citizen or resident of the United States, with a top marginal rate of 40% on taxable estates exceeding the applicable exclusion amount).

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