FOR TAX AND M&A ATTORNEYS WHO DRAFT THE PURCHASE AGREEMENT

Drafting a Structured Installment Sale: The Exit Attorney's Checklist

A §453 installment sale, set up in the signed agreement before closing. What goes where, what breaks it, and the open question your client should hear from you.

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1. One-Page Summary

A structured installment sale is an installment sale under IRC §453 in which the buyer's deferred payment obligation is assigned, at closing, to an assignment company that funds it with an annuity (or, in some programs, a funding agreement) from a life insurer. The seller reports gain as principal payments arrive; the interest in each payment is taxed separately as ordinary income. There is no special statute, and there is **no IRS ruling approving the structure**. It relies on the general installment-sale rules, and on documents drafted so the seller never receives, controls or is secured by the cash.

How it moves:

1. **The signed purchase agreement** fixes the price, the cash portion, the deferred portion, the payment schedule and the interest, and obligates the buyer to pay the deferred portion at closing to the assignment company in consideration of its assumption of the buyer's payment obligation.
2. **At closing the buyer pays the Deferred Amount to the assignment company.** Whether it is wired by the buyer or runs through escrow (as title, lenders and the settlement statement usually require), it is the buyer's money, disbursed under the purchase agreement and the buyer's irrevocable instructions; it is never credited to the seller and the seller has no power to direct or withdraw it.
3. **Escrow pays the rest** as in any closing: loan payoffs, costs and the seller's cash portion.
4. **The assignment company assumes the buyer's obligation** to make the deferred payments, under an assignment and assumption agreement signed by seller, buyer and assignment company. In some programs the buyer stays secondarily liable; in others it is released. Confirm which in the documents.
5. **The assignment company owns the annuity** and pays the seller on schedule. The seller is a general unsecured creditor of the assignment company and has no right in the annuity.

Why the seller's lawyer matters most. Deferral is decided by the documents signed **before** closing. Once the seller has received the proceeds, or had them credited, set apart or made available (Treas. Reg. §1.451-2(a)), **it is too late**: no later agreement turns received cash back into an installment obligation.

Where it fits: sellers of a business, real estate or other property with a large gain who want a fixed payment schedule instead of a lump sum and will not need the deferred money early. It can also take 1031 boot if set up before closing (Section 5).

Where it does not: inventory, dealer property and publicly traded stock (§453(b)(2), (k)(2)); depreciable property sold to a related party (§453(g)); a seller who needs liquidity (payments cannot be accelerated, pledged or sold); recapture income, which is taxed in the year of sale regardless (§453(i)).

The risks, stated once. No ruling approves the assignment step, and the IRS could argue the seller was paid at closing (Section 4). The seller takes the credit risk of the assignment company, without a lien on the sold assets. The client should have **your** opinion, or that of tax counsel not paid on the transaction, not only the provider's.

The one rule: if it is not in the signed purchase agreement (or a signed amendment) before the money moves, it does not exist.

2. The Drafting Checklist

Purchase and sale agreement

☐ **Terms fixed at signing.** Total price; cash at closing; the **Deferred Amount**; the payment schedule (amounts, dates, start date, any increase rate) attached as an exhibit to the signed agreement. Both parties are bound to it.

☐ **No seller option to take cash instead.** Do not give the seller a unilateral right to choose, up to closing, between cash and installments. Income is constructively received when "made available so that he may draw upon it" (Reg. §1.451-2(a)); an open cash option invites that argument. If the parties decide to structure after signing, do it by a written amendment signed by both, before closing and before the seller has any right to the cash.

☐ **Buyer's funding duty.** At closing the buyer pays the Deferred Amount to the assignment company in consideration of its assumption of the buyer's payment obligation. The buyer's added cost and liability are capped and stated; structuring does not condition or delay closing.

☐ **Interest stated.** Each installment carries stated interest at or above the applicable federal rate, or the schedule is built so the implicit rate meets it. Otherwise part of each payment is recharacterized as interest (§§483, 1274), which changes gain, basis and the buyer's numbers. Have the CPA test the schedule against the AFR.

☐ **Business sales: allocate the price.** An installment sale of a business is a sale of each asset (Pub. 537, "Sale of a Business"). Allocate price, cash and deferred payments among asset classes; a written allocation binds both parties, though not the IRS (§1060(a)); file Form 8594. Gain on a partnership interest attributable to unrealized receivables and inventory items is not installment-eligible (Pub. 537).

☐ **Earnouts.** A contingent price follows Temp. Reg. §15a.453-1(c). Structured schedules are fixed, so decide whether any earnout sits outside the structured piece.

☐ **Assumption, not release, unless the program requires it.** Describe the step as an assignment and assumption of the buyer's obligation. Whether the buyer is released or stays secondarily liable is a program term; draft to it, and know that a release makes the Section 4 question harder.

☐ **Buyer's lender.** If the buyer is financed, the lender may restrict or require subordination of any continuing buyer liability to the seller. Raise it early.

☐ **Buyer protections.** The buyer makes no representation about the seller's tax result. The seller indemnifies the buyer for costs and liabilities arising from the assignment beyond the stated cap. If the buyer stays secondarily liable, do not have the seller indemnify that liability: an indemnity running back to the claimant is circular and can empty the buyer's obligation that the structure relies on. Decide how the buyer's exposure is bounded (cap, term, the assignee's financial tests) instead.

☐ **Default and remedies.** The seller's remedy for a missed payment is a claim for that payment as it falls due, against the assignment company (and the buyer, if secondarily liable). No right to accelerate, commute or demand present value. The trade-off: the seller gives up the security interest and acceleration rights of ordinary seller financing.

☐ **If the assignment does not fund.** State what happens if the assignment company does not accept or fund at closing: closing waits, or the buyer issues its own installment note on the same terms. No fallback to cash for the seller, which would be a cash option.

☐ **Survival and cooperation.** The buyer signs the assignment documents and any acknowledgment the provider requires; the duty survives closing.

Escrow instructions

☐ **Buyer's funds, buyer's instructions.** If the Deferred Amount passes through escrow, the purchase agreement and the buyer's irrevocable instructions direct it to the assignment company. The seller has no power to direct, withdraw or redirect it. Avoid seller-only instructions that read as the seller directing its own money.

☐ **Never the seller's.** No part of the Deferred Amount is credited or disbursed to the seller, the seller's agent or a qualified intermediary. The closing statement shows it as paid by the buyer to the assignment company.

☐ **State withholding.** If the property's state withholds on installment payments, state who computes and remits it when the assignment company, not the buyer, makes the payments (Section 6).

Assignment and assumption agreement

☐ **Parties:** seller (payee), buyer (original obligor), assignment company (assignee), which acts **for its own account**, not as the seller's agent.

☐ **Seller's rights:** payee and beneficiary designation, the schedule, notice and payment instructions. Nothing more.

☐ **What the seller must not have** (each is a reason the IRS could say the seller was paid at closing): ownership of, or any lien or claim on, the annuity; a note secured directly or indirectly by cash or a cash equivalent (Temp. Reg. §15a.453-1(b)(3)(i)); an obligation payable on demand or readily tradable (§453(f)(4)); any right to accelerate, commute, sell, assign, pledge or borrow against the payments; a trust, escrow or account set aside for the seller (Reg. §1.451-2(a)); any funded, nonforfeitable interest in the funding asset, which invites an economic benefit argument (*Sproull v. Commissioner*, 16 T.C. 244 (1951)). The payee's beneficiary designation should be limited to who receives payments after death.

☐ **Anti-assignment and anti-pledge clause.** If the payment right secures a loan, the net loan proceeds are treated as a payment on the obligation (§453A(d), for sales over $150,000).

☐ **Know the obligor.** Get the assignment company's domicile, capitalization and most recent financial statements, and ask whether a parent guarantees its obligation. A third-party guarantee of the obligation is not a payment (§453(f)(3); Temp. Reg. §15a.453-1(b)(3)(i)); a note secured directly or indirectly by cash or a cash equivalent is.

Timing

When	What
LOI / term sheet	Structured portion named; buyer's cap and any consideration for cooperating
2 to 4 weeks before signing	CPA runs cash and structured paths; provider quote, schedule, assignee information (timelines vary)
Signing	Price split, schedule, interest, funding duty, indemnity, remedies, allocation fixed
Before closing	Assignment documents signed; buyer's irrevocable escrow instructions; lender consent if needed
Closing	Buyer pays the Deferred Amount to the assignment company; nothing to the seller
After closing	Seller files Form 6252 each year a payment arrives; no amendment can add a structure

Closing checklist: what varies by payer (confirm with the payer). (1) Payee at death: some payers allow any named payee (a trust or entity may need home-office approval); others pay the estate unless a trust is set up. A will does not avoid California probate (small-estate affidavit only if the gross California estate outside trusts and joint title is $208,850 or less, Prob. Code §§13050, 13100). Workarounds: a revocable trust established before closing, or the selling LLC or the seller's single-member LLC as payee, where the payer permits; the LLC interest still needs a succession plan. (2) Tax forms: some payers require W-9 + W-4P and issue Form 1099-B; others W-9 only and no information return. The seller reports on Form 6252 either way. (3) Some payers require their own purchase-agreement addendum. (4) Disclosure wording: "paid by the insurer, by commission or fee, when a structure is placed." (5) Medi-Cal: the asset limit of $130,000 (2026) drops to $21,000 for one person on 7/1/2027 (W&I §14005.62); treatment of an unpaid structured stream is unsettled: elder-law review for older sellers. (6) No commission or finder's fee is shared with members of the State Bar (Cal. Ins. Code §1724). Beneficiary specifics: confirm with the payer.

3. The Rules That Can Break Deferral

The drafting response is in the right column.

Rule	What it does	Drafting response
§453(a), (b)(1), (c)	Installment method applies to a disposition with at least one payment after the year of sale; gain recognized is the gross profit share of each payment	At least one payment after the year of sale
§453(d)	Seller may elect out by the return due date (with extensions); revocable only with IRS consent	The CPA decides on the return
§453(f)(3)	The acquirer's own obligation is not a payment, "whether or not payment of such indebtedness is guaranteed by another person"	The obligation starts as the buyer's and is assumed; whether it stays "of the person acquiring the property" after assumption is the Section 4 question

Rule	What it does	Drafting response
Temp. Reg. §15a.453-1(b)(3)(i)	A third-party guarantee or standby letter of credit is not payment; a note "secured directly or indirectly by cash or a cash equivalent" **is**; "payment includes receipt of an evidence of indebtedness of a person other than the person acquiring the property"	No cash, CD or Treasury security behind anything the seller holds; see Section 4
§453(f)(4)	An obligation payable on demand or readily tradable is a payment	No demand feature; no tradable form
Reg. §1.451-2(a)	Income is constructively received when credited, set apart or made available to draw on; not if control is subject to substantial limitations or restrictions	Terms fixed before closing; no cash option; no account for the seller
§453A(d)	If an installment obligation secures a debt, the net loan proceeds are treated as a payment	Anti-pledge clause; client told not to borrow against the payments
§453A(a)-(c)	Interest charge on deferred tax when obligations from the year's sales over $150,000 exceed $5,000,000 at year end; farm and personal-use property excepted (§453A(b)(3))	Size the structured amount with the CPA
§453(i)	Recapture income (§1245, §1250 and related §751) is recognized in the year of sale	Leave cash at closing for that year's tax
Reg. §1.453-12(a)	Unrecaptured §1250 gain **is** reported on the installment method, out of payments first	Affects the yearly tax model
§453(b)(2), (k)(2)	No installment method for dealer dispositions, inventory or stock traded on an established market	Allocate; structure only eligible assets
§453(g)	Depreciable property sold to a related person (§1239(b)): all payments treated as received in the year of sale unless no principal tax-avoidance purpose is shown	Check relationships first
§453(e)	If a related buyer resells within 2 years (no limit for marketable securities), the seller is treated as receiving the resale amount	Flag related buyers
§453B(a), (c)	Gain or loss when an installment obligation is satisfied at other than face, or distributed, transmitted, sold or otherwise disposed of; transmission at death is not a disposition, and later payments are income in respect of a decedent (§691(a)(4))	No sale, gift or transfer of the payment right without advice; see Section 4
§453(h); §453B(a), (h)	If the corporation sells during the 12-month period beginning when a plan of complete liquidation is adopted, and the §331 liquidation is completed in that period, shareholders may treat an installment obligation "acquired in respect of a sale" by the corporation as received for their stock and report it as paid; a C corporation distributing the obligation recognizes its own deferred gain (§453B(a)); an S corporation generally does not (§453B(h))	Corporate seller: whether an assumed obligation qualifies under §453(h) is untested; plan the liquidation with the CPA before signing
§§483, 1274	Inadequate stated interest is imputed	State interest at or above the AFR
Debt on the property	Qualifying debt the buyer **assumes or takes subject to** counts as a payment only to the extent it exceeds basis (Temp. Reg. §15a.453-1(b)(3)(i))	A loan **paid off at closing** from the buyer's funds is cash applied for the seller: plan on it as a year-of-sale payment (note below)

Note on loans paid off at closing. IRS Pub. 537's heading "Buyer Assumes Mortgage" opens: "If the buyer assumes or pays off your mortgage, or otherwise takes the property subject to the mortgage, the following rules apply." The basis-offset sentence that follows covers only a mortgage the buyer **assumes**, and the regulation speaks of debt "assumed or taken subject to." Escrow paying the seller's lender out of the price is cash paid for the seller's benefit. It also reduces what can be structured.

4. The Open Question, Stated Fairly

No statute, regulation, revenue ruling or published private letter ruling addresses the assignment-company structure. The IRS could challenge it on three grounds. Your client should hear all three from you.

1. The payment question. "Payment includes receipt of an evidence of indebtedness of a person other than the person acquiring the property" (Temp. Reg. §15a.453-1(b)(3)(i)). In a 2021 memorandum on monetized installment sales, IRS Chief Counsel wrote that debt instruments "issued by a party that is not the 'acquirer' would be considered payment" (CCA 202118016; not precedent). Read literally, those sentences reach a structure in which the seller ends up holding the assignment company's promise. Where the buyer is released at closing, the seller holds only the assignee's promise, which is the regulation's literal case: treat a release as the weakest form of the structure.

2. The disposition question. The substitution of a new obligor on a recourse debt instrument is a significant modification under Reg. §1.1001-3(c)(2)(i) and (e)(4)(i)(A), which invites a §453B argument. Treasury's preamble to those rules says a §1001 modification "does not determine if there has been an exchange or other disposition of an installment obligation under section 453B"; that question is "determined under the cases and rulings applicable to section 453B" (T.D. 8675, 61 FR 32926, 32930 (1996)). So the modification rule does not decide it. The closest published ruling helps: a buyer's resale with a new obligor assuming the note, an interest-rate increase and the original buyer released was not a satisfaction or disposition under §453B(a) (Rev. Rul. 82-122, amplifying Rev. Rul. 75-457). Those facts arose after a completed sale; a closing-day assumption funded by the buyer's cash is not the same, and the ruling does not answer the payment question in point 1.

3. Substance over form and step transaction. The IRS could argue that, in substance, the buyer paid cash at closing and the seller bought an annuity with it, so the seller received the full price in year one. The facts that answer this are in the documents: the deferred terms are a bargained term of the signed agreement; the seller never had a right to the cash; the buyer's obligation is real and is assumed by an assignee acting for its own account; the seller holds no interest in the funding. That supports the position. It does not settle it.

Context the client should know. The IRS listed monetized installment sales among potentially abusive arrangements in its 2022 "Dirty Dozen," and in 2023 proposed regulations to make them, and "substantially similar" transactions, listed transactions (REG-109348-22; confirm whether they have been finalized). A structured sale is a different arrangement (no loan to the seller, no intermediary that buys and resells the property), but expect any third-party payment structure to draw scrutiny.

Credit risk, plainly. The seller is a general unsecured creditor of the assignment company, which may hold few assets beyond the funding contract. The seller has no lien on the sold assets or the annuity. In an insolvency of the assignment company, the annuity is its asset, not the seller's. Payments are not FDIC insured.

State life and health guaranty associations cover annuity owners and certain payees within dollar limits that vary by state; do not assume they reach a payee who does not own the annuity. Confirm any parent guarantee and the insurer's financial strength.

If the IRS won, the deferred amount would be treated as received at closing: tax in year one on money that arrives over years, plus interest and possibly a 20% accuracy-related penalty (§6662). Reasonable-cause protection (§6664(c)) is stronger with an opinion addressed to the seller from counsel not paid by the provider or the producer.

Reporting. Ask the CPA whether to disclose the position on Form 8275. The structure is not among the IRS's published listed transactions (list reviewed October 2026; confirm the current list and any transaction-of-interest notices). A program becomes reportable if offered under conditions of confidentiality for a minimum fee, or with fees refundable or contingent if the tax result is not sustained (Treas. Reg. §1.6011-4(b)(3), (b)(4)). **Walk away** from either.

For the drafting attorney. Do not rely on this brief or on a provider's marketing materials as authority. Form your own view, or have the client engage independent tax counsel, and document the advice given on the open question.

5. 1031 Boot and Failed Exchanges

Boot can be structured, but only if it is written in before closing and never passes through the qualified intermediary.

- **Installment boot.** In an exchange that throws off boot, like-kind property is excluded from contract price and payments, and gross profit is reduced by the deferred gain (§453(f)(6)). The boot can be reported on the installment method; the Section 4 question applies equally to boot paid to the assignment company.
- **The carve-out.** The purchase agreement and the exchange agreement both state that the Deferred Amount is not exchange funds: the buyer pays it at closing **directly to the assignment company**. The QI agreement keeps its (g)(6) restrictions on everything else (Treas. Reg. §1.1031(k)-1(g)(6)). A taxpayer "may receive money or other property directly from a party to the transaction other than the qualified intermediary" without breaking the QI safe harbor (§1.1031(k)-1(g)(4)(vii)); that money is boot.
- **Money already at the QI cannot be structured.** Once the buyer has paid the QI, the buyer's obligation is discharged; there is nothing left to assign. An obligation bought with exchange funds is the obligation of someone other than the buyer, which is a payment (Temp. Reg. §15a.453-1(b)(3)(i)). Reg. §1.1031(k)-1(j)(2)(iii) protects only an evidence of indebtedness **of the transferee** received through the QI. We found no authority endorsing conversion of QI funds into a structured sale after closing.
- **What a failed exchange still gets.** With bona fide intent at the start of the exchange period (§1.1031(k)-1(j)(2)(iv)) and (g)(6) limits in the exchange agreement, gain is reported when the QI actually pays out (§1.1031(k)-1(j)(2)(ii)). That moves gain into the next tax year only when the release falls there. It is a timing shift, not a payment schedule.

Drafting point: for a client who might exchange or might not, put both cooperation clauses in the purchase agreement, the carve-out in the QI agreement, and fix the structured terms at signing.

A 1031 alone ignores the estate problem. The step-up at death erases income tax on the gain. It does not touch estate tax, which is 40% above $15,000,000 per person ($30,000,000 for a couple, 2026). See the estate layer in Section 8.

If the client holds suspended passive losses

Confirm with the client's CPA before closing (as of October 2026):

☐ **Entire interest,** not part of a grouped activity (§469(g)(1); Reg. §1.469-4(g)), and **fully taxable.** A 1031 releases nothing (§469(g)(1)(A)); boot gain is passive income the losses offset (§469(a), (d)). No regulation or IRS publication addresses boot by name, so the CPA documents the carryforward.

☐ **Unrelated buyer** (§267(b), §707(b)(1); §469(g)(1)(B)), and no related-party resale within two years (§453(e)).

☐ **Gifts and death:** §469(j)(6); §469(g)(2).

☐ **The backup:** both cooperation clauses stay in the contract.

6. State Checks

The installment method is federal. Each state decides how it taxes the gain, and the property's state may tax it even if the seller lives elsewhere. Confirm each point with counsel in the relevant state; rates and forms change every year.

1. **Does the state tax the gain?** Some states have no broad personal income tax on capital gains, for example Alaska, Florida, Nevada, South Dakota, Texas and Wyoming, plus New Hampshire and Tennessee. Washington imposes an excise on certain long-term capital gains that exempts real estate, and an entity interest only to the extent of real estate the entity owns directly (RCW 82.87.050(1), (2)).
2. **Does the state follow the federal installment method?** Most do, but not all, and not for every asset. New Jersey requires installment gain in the same year as federal, with its own computation if New Jersey basis differs (NJ-1040 instructions). Pennsylvania allows the installment method to a cash-basis individual for real and tangible personal property, **but not for intangible personal property** such as stock or a partnership interest (PA DOR Personal Income Tax Guide).
3. **Who taxes the gain after the seller moves?** Gain on real property is generally taxed where the property sits, in each payment year. New York requires a departing resident to accrue items accrued before the move, including installment gain, unless a bond or other security is filed (N.Y. Tax Law §639(a), (d); IT-203 instructions). Connecticut's change-of-status rule has the same structure (Conn. Gen. Stat. §12-717(c)).
4. **Withholding at closing and on later payments.** California withholds 3⅓% of the down payment and then on the principal of each installment, unless the seller elects out of the installment method and the FTB approves (Form 593 instructions; R&TC §18662). New York nonresident sellers compute total gain on Form IT-2663 but pay estimated tax at closing only on the year-of-sale part. New Jersey requires an estimated payment from nonresident sellers at closing (GIT/REP forms). A foreign seller also faces federal FIRPTA withholding at closing on the amount realized unless a withholding certificate reduces it

(§1445). **Name who computes and remits per-payment withholding when the assignment company pays.**

5. **The §453A interest charge.** Whether a state imposes its own version varies; we did not verify a general rule.
6. **Illustrations:** show federal layers (25% unrecaptured §1250 maximum, 15% or 20% capital gain, 3.8% net investment income tax where it applies) and the state as separate lines.

7. Clause Topics for Counsel

Topics, not language. Hans is not an attorney and does not draft. How the assignment is drafted bears on the open question, so do not adopt any provider's template without your own review.

A. Purchase agreement

- Definitions: Purchase Price; Cash Portion; Deferred Amount; Payment Schedule (exhibit at signing); Assignee.
- Buyer's obligation to pay the Deferred Amount on the Payment Schedule, with stated interest at least the AFR.
- At Closing, Buyer pays the Deferred Amount to Assignee in consideration of Assignee's assumption of Buyer's payment obligation, under an assignment and assumption agreement among Seller, Buyer and Assignee.
- Buyer's continuing liability, if any, per the program; lender consent or subordination; what happens if the assignment does not fund at Closing.
- Buyer's cost and liability cap; no tax representation by Buyer; Seller's indemnity of Buyer for assignment-related costs and liabilities.
- Seller has no right to receive, pledge, borrow against, sell, accelerate or otherwise obtain the Deferred Amount before each payment is due; no option to take cash in its place.
- Default: claim for each missed payment as due; no acceleration or commutation; no security interest.
- Allocation among asset classes (business sales); Form 8594 cooperation.
- [If an exchange is possible:] §1031 cooperation clause; the Deferred Amount is not exchange funds.

B. Escrow instructions

- Deferred Amount from Buyer's funds, by wire to Assignee under Buyer's irrevocable instructions; never credited or disbursed to Seller, Seller's agent or any intermediary; shown on the closing statement as paid by Buyer to Assignee.
- State withholding: who computes and remits on the down payment and on later payments.

C. Assignment and assumption agreement (review points)

- Assignee assumes for its own account and owns the funding; Seller has no ownership, lien or right in it.
- Seller's rights limited to payee, schedule and beneficiary designation; anti-assignment, anti-pledge, no acceleration or commutation.
- Parent guarantee, if offered; governing law; notices; what happens if Assignee fails to pay.

D. Exchange agreement (if any): (g)(6) restrictions on exchange funds; carve-out stating the Deferred Amount is paid by Buyer directly to Assignee and never held by or directed through the Intermediary.

8. The Estate Layer: When the Payments Also Fund an ILIT

For the estate-planning side of your practice. A 1031 or a deferred sale fixes the income tax. For a client worth more than $15,000,000 ($30,000,000 for a couple, 2026), the federal estate tax is 40% above the line. The same installment schedule can pay for a trust that covers it. You draft the trust and the gifts; the CPA

owns the numbers.

The ceiling, in one example.

Frank and Diane, both 68, Texas, worth $45,000,000	Same sale for cash, no suspended losses	Installment sale with suspended losses (the extreme case)
The sale	$10,000,000 building, basis $2,000,000, gain $8,000,000	Same building, 5-year note at 4.5%, $2,000,000 of principal a year
Suspended passive losses (Form 8582)	None	$10,500,000, freed in step with the gain (§469(g)(3))
Federal income tax on the sale	about $2,054,000	**$0 on $11,350,000 received**
Estate tax at the second death ($45M less the $30M couple's line, at 40%)	$6,000,000	$6,000,000, paid by a $6,000,000 survivorship policy in an ILIT, funded by about $90,000 a year of gifts from the payments

Yes, this is an extreme example. Most people get part of it. It needs suspended losses about 1.3 times the gain (enough to cover the interest too), a short note, no state income or estate tax, a policy the owners can qualify for, and a fully taxable sale of the whole activity. Losses absorb only passive gain; raw land held for investment is not passive. Interest in each payment is still taxed. Coupons that cover half the gain cut the tax on the sale roughly in half, and a smaller policy covers part of the estate tax. The $90,000 premium is an assumption for illustration, not a quote.

The line only keeps up with inflation. The exemption is indexed, roughly 2.5% a year from 2027. A married couple, age 60 today, has a line of $30,000,000 that grows to about **$62.9M by age 90**. A couple worth $15M today growing 6% reaches about **$86.2M** and owes about **$9.3M** of federal estate tax; growing 8%, about **$150.9M** and **$35.2M** (future dollars; current law, steady growth, no spending; Waterfall Strategy model, October 2026). The client who says "we are under $30 million" may only be saying "today."

What to put in the documents. Three points belong in the sale documents and the trust, not in an afterthought:

- **Set the schedule before closing.** Payment dates and amounts are fixed in the purchase agreement and cannot be changed later. Time each payment at least 45 days before the premium is due: days to make the gift, the Crummey withdrawal window, and a cushion.
- **Gift cash after each payment arrives, never the note or the payment right.** Giving or assigning an installment obligation is a disposition that can make the deferred gain taxable at once (§453B(a)). Name the payee after death in the sale documents and match it to the plan. The note is income in respect of a decedent with no step-up (§§691(a)(4), 1014(c)).
- **The trust buys a new policy, and the client holds no incidents of ownership** (§2035(a), §2042(2)). Crummey notices go out for every gift (Rev. Rul. 81-7). Allocate GST exemption if grandchildren benefit.

ILIT or an irrevocable real-estate trust? Both move wealth out of the estate. They do different jobs, and the choice can cost the heirs the step-up.

	ILIT (trust owns a life insurance policy)	Irrevocable real-estate trust (gift, or sale to a grantor trust)
Step-up at death	**Kept** on the real estate the owner still holds	**Lost.** Heirs take the old basis and the deferred gain (Rev. Rul. 2023-2)
Suspended losses	Still the owner's to use on a sale	Usually stuck with the property; a gift does not free them (§469(j)(6))

	ILIT (trust owns a life insurance policy)	Irrevocable real-estate trust (gift, or sale to a grantor trust)
Control	Owner keeps the buildings, loans and decisions	A trustee controls the property
Lenders and deeds	Nothing changes	Deeds change; a due-on-sale clause may need lender consent
Insurability	Owner must qualify for the policy	Nearly anyone can use it
Biggest risk	Policy lapses if premiums stop; an existing policy transferred in is pulled back if death comes within 3 years (§2035)	Low-basis property and an income tax bill the heirs inherit

The ILIT fits when the client is over the line or growing toward it, wants to keep the real estate and its step-up, has losses to cash in and can qualify for the policy. A real-estate trust fits high-basis, fast-growing property or an uninsurable client ready to give up control. Many large estates use both. You decide the mix.

Illustration on assumed facts, not tax, legal or investment advice. Hans is a licensed insurance agent and may earn a commission on a policy or an installment sale (see Disclosures). Have the client's CPA and estate attorney run the numbers.

9. What Hans Does, and What He Doesn't

Hans does: prepare side-by-side illustrations for the CPA's review (the CPA owns the conclusions) (cash sale, seller financing, structured sale and, where it fits, a full or partial 1031, with federal layers and the state as separate lines); place the annuity that funds the assignment, as a licensed insurance agent; and coordinate timing with the provider, escrow and the QI so documents are ready before signing.

Hans does not: draft or review legal documents, give legal advice or give a tax opinion. **You draft. The client's CPA owns the return.** He does not contact the buyer's side without the seller's broker and counsel, and does not accept or pay referral fees.

Disclosures

Who he is. Hans Goldstein publishes tax education as **Hans Goldstein: Tax & Exit Planning**. He is an Enrolled Agent (EA), admitted to practice before the Internal Revenue Service. He is not an attorney, not a CPA, and not a registered investment adviser.

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Not advice. General education about federal and some state tax rules as of October 2026, checked against primary sources. Not legal or tax advice, not a tax opinion, and not an offer of any annuity or insurer. Each client should rely on their own counsel and CPA. If you refer a client or receive anything of value, follow your own professional rules.

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