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Legal Matters®

Estate Planning
summer 2020

Review your estate plan basics

The Covid-19 pandemic has offered a great reminder to review the elements of your estate plan.

Below are some key items to consider. Set up a call with your estate planning lawyer to consider any specific details related to your own plan.

Review your health care proxy and power of attorney: Be sure you are comfortable with your choices of who will make medical and financial decisions on your behalf if you are unable to do so. For each, have a back-up in place in case the first person is unavailable. Now is the time to have new documents created if yours no longer apply. These choices apply for any decisions made for you while you are still alive.

Revise your will: Decide whether you want to keep the executor you have named for your estate, and make sure you name a back-up. This person will be responsible for validating your will when you die, handling your affairs and filing your income and estate tax returns. Be sure you have included a guardian for any minor children, as well as back-up for that guardian.

Review your trust: Take a look at the beneficiaries of your trust. Decide whether you want them to be given the income outright or over time, or if you want to have the funds held for them in a trust, especially if the beneficiaries are minors. Ensure that you feel good about your choice of trustee, whether it is an individual, such as your attorney or accountant, or a corporate entity, such as a bank.

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Make sure your trust is funded: It is helpful for you to fund your trust while you are alive, because that way your assets can be managed to support you while you're alive if you are unable to make decisions on your own. It also avoids a court's involvement to administer the trust after your death.

Review your beneficiaries on all of your accounts: These include retirement accounts, brokerage accounts and life insurance policies. Any joint assets, such as a bank account, will pass to the surviving owner.

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Pandemic downturn opens estate-planning opportunities

It's not new news that many financial investments and bank accounts have taken a hit as a result of the global spread of coronavirus. According to most predictions, it's likely to take some time for the markets to rally and the economy to pick up again.

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But there is a silver lining for some taxpayers, who might be able to take advantage of certain estate-planning strategies as a result of the economic climate. Talk to an estate planning attorney to find out if any of these strategies would benefit you.

Gift assets while the asset values are low.

Giving away assets is always a good idea if you expect you'll have a taxable estate. In 2020, an individual taxpayer can give up to $15,000 per recipient with no tax consequences. A married couple can gift $30,000.

Currently the annual federal estate tax exclusion is $11.58 million for an individual and $23.16 million for a married couple. Under the federal Tax Cuts and Jobs Act of 2017, the exclusion is scheduled to go back to the 2017 level — $5 million for an individual, adjusted for inflation— on Jan. 1, 2026.

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When you give a gift while the asset value is low, you essentially get more bang for your buck. That's because the value of the gift is likely to increase over time, benefiting the recipient in the long-run.

Let's say you bought shares of a company's stock at $50/share and the value increased to $100/share. However, let's assume that in the recent downturn the value went back down to $50/share. Today, you can give your child 300 shares of the stock, for a total of $15,000 in value, with no impact on your lifetime exclusion amount. Had the stock kept its value, you would have only been able to give half that amount.

Take advantage of low interest rates and low asset values with a GRAT.

A Grantor Retained Annuity Trust (GRAT) allows you to take advantage of low interest rates while taking money out of your estate by gifting assets.

A GRAT is an irrevocable trust that an individual (the grantor) funds with assets he or she expects will appreciate in value over time. It's a bit of a gamble sometimes, but currently many stocks have depreciated in value, so putting stock in a GRAT could be a safe bet.

The grantor retains the right to an annuity from the GRAT for a certain number of years. The annuity is calculated by applying an interest rate the IRS sets monthly, called the section 7520 rate, to the value of the assets in the GRAT. The rate is currently low, which also makes this vehicle favorable because the interest rate affects the value of the transfer for tax purposes.

Giving away assets is always a good idea if you expect you'll have a taxable estate.

When the term of the GRAT ends, any assets that remain are distributed to the beneficiaries of the trust.

The grantor can set the annuity amount to be equal to the section 7520 interest rate, which would effectively return all of the assets to the grantor in the form of the annuity payments. While a transfer to a trust for the benefit of someone else would normally be considered a taxable gift, the fact that the all of the assets *could* come back to the grantor makes the gift have a value of zero, or close to it. This is known as a zeroed-out GRAT.

That is where the grantor is taking a gamble. He or she is really expecting to survive the term of the GRAT and planning for the assets in the GRAT to appreciate in value beyond the amount of the 7520 rate.

The intended result, then, is a tax-free gift, where the beneficiaries end up with the underlying assets at their value. That's why this is a great vehicle when the 7520 rate is low.

Make additional donations to support causes you care about.

Under the federal CARES Act, which was signed

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Think twice before transferring your home to adult children

Your home might well be your biggest asset. Many times, parents think about giving their home to their adult children outright while the parents are still alive, or adding their names to the deed.

While doing so might avoid probate when you die, it's also likely to lead to significant gift tax consequences. And if anything happens that could affect your kids' assets, such as a bankruptcy filing or a lawsuit, your home could suddenly be in jeopardy.

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But if you wait to leave your house to your kids when you die, the benefits are much greater.

That is because your kids get a "step-up in basis" when they inherit the house, which means that the amount that your house increased in value while you were alive won't be taxable when you die.

Parents also sometimes attempt to transfer a home to their children in an attempt to qualify for Medicaid. However, that only works if you do it more than five years before the parents need to use the benefits. Otherwise, the person or people who transferred the home are barred from receiving Medicaid.

It's important to realize that gifting your home to someone can open you up to their financial issues. That means their creditors could file liens against your home and land. If your son or daughter gets a divorce, the value of your house could be divided as part of their case.

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However, even if someone does transfer a home during his or her lifetime, there is a creative way to potentially get around paying a high tax bill on the gain in value.

Under section 2036 of the Internal Revenue Code, if a taxpayer retained a "life interest" in the property, including the right to continue to reside there, then it wouldn't be considered a "completed gift" and instead would remain in his or her estate.

A "life interest" is defined as having the power to decide what happens to the property and maintaining liability for its bills. To prove this, it helps if the adult child makes clear that he or she was gifted a "remainder interest" in the property to inherit the house after the parent dies.

If your goal is to avoid probate, there is something called a "transfer on death" deed allowed in many states that permits someone to leave their house to a beneficiary without probate.

You can also create a living trust, where your home and other assets are placed in the trust while you are alive and then transferred to your beneficiaries when you die.

Pandemic downturn opens estate-planning opportunities

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into law at the end of March, a taxpayer can get a federal income tax deduction for charitable contributions of up to 100 percent of their adjusted gross income. The goal was to encourage people to donate to COVID-19 related causes. The provision increases the maximum of 60 percent to 100 percent for 2020.

This 100 percent limit applies only to direct, cash contributions to charities. It does not apply to contributions to donor advised funds, supporting organizations or private foundations.

Beyond the 100 percent amount, donations can be carried forward for five years, subject to the limit of 60 percent of adjusted gross income.

A charitable lead trust (CLT) can also be used to support a charity or charities. This type of irrevocable trust is set up to support the charities for a certain amount of time, with the remainder going to family members or other selected beneficiaries.

Refinance any loans or debt.

Low interest rates make it a great time to refinance. That applies to anything from mortgages to loans made to family members.

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call our firm today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.

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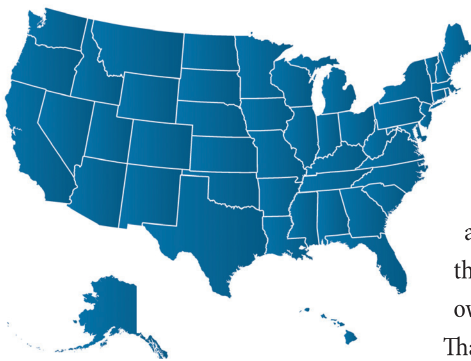
Where can you live to lower your estate tax?

In retirement, you might move to a different state for a wide range of reasons, such as being close to your kids and grandkids, or for a warmer climate.



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Another key thing to consider is the state estate tax.

The federal estate tax applies to all U.S. taxpayers, whether they live in the U.S. or abroad.

With the current federal estate tax annual exclusion set at $11.58 million, there are many taxpayers who wouldn't owe an estate tax if they died in 2020. That exclusion is set to hit a number that affects more people again in 2026, when it reverts to the 2017 level of $5 million, adjusted for inflation.

State estate taxes range widely, and 12 states plus the District of Columbia have estate tax exclusion levels that are lower than the federal estate tax.

In Connecticut, Hawaii, Maryland, Maine, New York and the District of Columbia, your wealth at death will be taxed if it is greater than between $5 million and $6 million.

The states of Illinois and Vermont tax amounts that are greater than between $4 million and $5 million. In Minnesota, the state estate tax will be imposed for estates that are over $3 million. In the state of Washington, your estate will be taxed at amounts exceeding $2.193 million. Rhode Island taxes estates over $1.58 million in value, and both Massachusetts and Oregon impose an estate tax for amounts over $1 million.

The state estate tax rate typically ranges between 10% and 15%.

Another consideration on the tax front is whether a state has an inheritance tax. Such a tax exists in six states — Iowa, Kentucky, Maryland, Nebraska, New Jersey and Pennsylvania.

Often, the tax is imposed if someone who is neither a spouse nor a blood relative inherits money, but the way it works depends on the state. The amount of the tax can be 15% or more.