

ESTATE PLANNING STRATEGIES

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STRATEGIES TO PROTECT ASSETS AND PERSONAL NET WORTH



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Don't Miss the Boat: Take Advantage of Unparalleled Estate Planning Opportunities During the Economic Downturn

If you're like most people, you've pushed your estate planning to the back burner. The good news is that by doing so, you have inadvertently positioned yourself to take advantage of virtually unparalleled estate planning opportunities. The current combination of lowered asset values, reduced interest rates, and the prospect of estate and gift tax reform make now the time to capitalize on planning techniques that can result in significant tax savings. If you act soon, you can keep more money in your estate than at any time in recent memory. Some planning techniques to consider include:

Family Limited Partnerships (or "FLPs")

New legislation has already been introduced in Congress to eliminate the discounts available for gifts of limited partnership interests. Properly structured, a FLP is among the most powerful tools available for removing the economic value of assets out of your estate, while maintaining

control over how the assets are managed. If this law passes, the tax benefits of a FLP will be effectively extinguished. If you act now, you can ensure that your gift will be "grandfathered" under existing law.

Grantor Retained Annuity Trusts (or "GRATs")

GRATs are trusts used to make future gifts of appreciating property to children and grandchildren on a virtually tax-free and risk-free basis. Essentially, you transfer assets to a trust, retaining the right to an annuity for a term of years. If the value of the retained annuity is set at a level such that your retained interest is equal to the value of the property transferred to the trust, any amounts remaining in the trust at the end of the trust term will pass to the remainder beneficiaries gift tax-free. The amount of the retained annuity is based on the IRS prescribed hurdle rate, known as the 7520 rate. The current combination of an historically low 7520 rate and temporarily low asset values makes GRATs especially

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powerful right now. Even if the assets fail to outperform the 7520 rate, nothing is lost—the ultimate effect is the same as if you never created the GRAT.

Some of the factors you need to carefully consider in structuring a GRAT include the length of the trust term and which assets to fund the trust with. Moreover, it is critical that the trust meet the requirements of Section 2702 of the Internal Revenue Code. For example, you must retain an irrevocable right to receive a fixed amount at least annually in order to comply with IRS rules.

Intra-Family Loans

Low interest loans can transfer significant value to a family member without constituting gifts for tax purposes. The IRS prescribes minimum interest rates, known as the applicable federal rates (or “AFRs”), that must be charged to avoid triggering a taxable gift. With these rates currently very low, your children may be able to invest the borrowed funds and achieve returns substantially higher than the AFR. All of the income and appreciation on the investment—net of the low interest payments—belongs to your child, free of gift or estate tax. The funds could also be used by your child to refinance an existing loan that exceeds the AFR. Intra-family loans are a particularly useful way to assist a child in purchasing a home at today's reduced prices and may be structured with a balloon note, which allows a larger amount of appreciation before repayment of the principal. While simple in concept, intra-family loans must be properly papered with a promissory note and comply with various formalities in order to withstand IRS scrutiny.

Charitable Lead Trusts (or “CLTs”)

A CLT combines philanthropy with smart estate planning and is particularly effective in a low-interest environment. A CLT pays an annuity to charities that you choose and then, after a period of years, the principal is paid out to your children or grandchildren, free of gift or estate tax. Like a GRAT, if the value of the annuity is set at a level equal to the value of the property transferred to the trust, any amounts remaining in the trust at the end of the trust term will pass to the remainder beneficiaries gift tax-free. Some of the added benefits of a CLT are that it is not necessary that you survive the term of the CLT in order for it to be successful and you may be able to generate a current charitable contribution deduction.

Qualified Personal Residence Trusts (or “QPRTs”)

Low real estate values make this an excellent time to consider a QPRT. A QPRT is a trust to which you (and your spouse, if married) transfer your primary residence or vacation home while retaining the right to live in the residence for a term of years. After the trust term, ownership is transferred to the remainder beneficiaries but, don't worry, you can still live in your home! You could have a lease option for your continued use of the home, with the rent payments (which can be used to pay property taxes, insurance and other home expenses) further reducing your taxable estate. The QPRT can even be structured so that the rental payments are not deemed taxable income to the children. When properly structured, a QPRT allows you to remove the value of your home, and all future appreciation thereon, from your estate, while retaining use of the home for your lifetime.

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Regardless of the size of your current estate and what Congress ultimately decides regarding the federal gift and estate taxes, you should have, at a minimum, the following estate planning documents:

- 1) a will/revocable trust;
- 2) a durable power of attorney;
- 3) a living will declaration;
- 4) a health care surrogate proxy (with a HIPAA release);
- 5) a designation of pre-need guardian (if you have minor children); and
- 6) an irrevocable life insurance trust (if you own a life insurance policy).

Without these essential documents, you could lose a huge amount of your estate to Uncle Sam, the State will determine who receives your assets, and a judge will decide who takes custody over your children. Moreover, without these documents, total

strangers may end up making life or death decisions for you and/or your loved ones if you or they become sick or disabled.

There is simply no reason to be without any of these documents, and now is the perfect time to take advantage of economic conditions and laws that are highly favorable to estate planning strategies.

Until December 31, 2009, I am offering a free half-hour consultation to clients and friends of Becker & Poliakoff (if you are receiving this letter, you qualify for the free consult). If you want to determine how you may be able to take advantage of current estate planning laws and protect your assets, please contact my assistant, Tina Fritz, at (954) 364-6074, or tfritz@becker-poliakoff.com, and she will arrange a mutually convenient date and time for the consultation.

Andrew Berger is a tax and estate planning attorney with Becker & Poliakoff, P.A. He received his LL.M. in Taxation from New York University School of Law, his J.D. from Fordham University School of Law, and his B.A. from Emory University. He is admitted to practice law in Florida, New York and New Jersey.

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