



The Wealth Advisor

Planning You Should Consider *Now*

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These are difficult times. The "experts" now acknowledge that we are in a recession - and that we have been so for some time. Consumer confidence is low. As a result many of us are concerned, wondering what planning we should do now, if any.

For the vast majority of Americans, planning is not discretionary. These individuals continue to have - or perhaps for the first time have - personal concerns that they need to address **now** because these concerns are unrelated to the economy. In fact, some of these concerns may even be made worse by our current economic situation.

In addition, for anyone who may be subject to federal or state estate tax in the future, unusual circumstances have created a "perfect planning storm" that will not last long. This newsletter addresses some of the planning needs unrelated to the economy and discusses strategies that create the biggest planning opportunities today.

Planning Needs Unrelated to the Economy

Many planning needs are unrelated to the economy. They include:

- Disability and retirement planning;
- Special needs planning;
- Beneficiary protection planning (for example, protection from divorce, creditors and/or perhaps the beneficiaries themselves); and
- Second marriage and "blended family" protection.

These planning needs are often more critical for those with fewer assets than for those with more wealth.

Disability Planning

According to the Family Caregiver Alliance and recent MetLife Mature Market Study, of those Americans currently age 65 and older:

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My practice is exclusively devoted to estate planning, trust and probate law, in which I am certified as a specialist by the State Bar of California, Board of Legal Specialization. This newsletter highlights legal issues which could affect you personally and financially.

- 43% will need nursing home care;
- 25% will spend more than a year in a nursing home;
- 9% will spend more than 5 years in a nursing home; and
- The average stay in a nursing home is more than 2.5 years.

Nursing home costs are increasing much faster than the inflation rate would imply. Thus, many of us quite appropriately are very worried about how we will pay for that kind of care if we need it.

Planning Tip: Careful consideration of how to pay for long-term care is critical for most individuals.

Also of concern to many people is who will provide long-term care and whether those caregivers will care for us in the way we desire. For many, there is a strong desire to stay at home as long as possible. For others, the companionship found in an assisted living facility makes that choice preferable. Still others need care that cannot be provided at home or only at a prohibitive cost. And, not surprisingly, these goals often change over time and with changing circumstances.

Planning Tip: A trust that sets forth your current, carefully thought-out disability objectives is the best way to ensure that your planning meets your personal goals and objectives.

Special Needs Planning

Special needs planning is another area unrelated to the economy. According to the 2002 U.S. census:

- 51.2 million people reported having a disability;
- 13-16% of families have a child with special needs;
- Autism occurs every 1 in 150 births and between 1 and 1.5 million Americans have an Autism spectrum disorder.

Failure to properly plan for a person with special needs can have disastrous consequences, especially if the person is receiving government benefits.

Planning Tip: A Special Needs Trust that incorporates specific care provisions is a critical component of the planning necessary for a special needs person who needs ongoing support.

Planning Tip: Insurance on the lives of the parents or grandparents of a special needs person frequently funds the ongoing care of that special needs beneficiary.

Beneficiary Protection Planning

Protecting an inheritance from being lost in a divorce or to a beneficiary's creditors is a serious concern of many individuals. Many from the older

generation fear that their children and grandchildren lack strong financial decision-making skills - and the potential for creditor attack or for beneficiary dissipation of an inheritance is greater during difficult economic times.

Also, divorce rates exceed 50% nationally. Many individuals express concern over their children and grandchildren divorcing - they don't want the assets they worked so hard to accumulate winding up in the hands of a former daughter-in-law, son-in-law, etc. Since divorce rates increase in difficult economic times, this planning is even more important now than in better economic times.

Blended Family Planning

A higher divorce rate also leads to more second and subsequent marriages - each with a higher statistical probability of ending in another divorce. With blended families (in other words with potentially his, her, and their kids), it is critical that each parent's planning protect his or her children in the event that parent predeceases the subsequent spouse. Failure of blended-family parents to do this type of planning practically guarantees that somebody's kids will be disinherited or a messy probate will result.

Planning Tip: Carefully drafted estate plans protect beneficiaries from divorce, creditors and themselves. Such plans can also provide for children from prior marriages, which is often the only way to ensure that these beneficiaries actually receive any inheritance.

The "Perfect Storm" for Taxable Estate Tax Planning

Certainty as to the Federal Estate Tax

The prospect for a repeal of the federal estate tax in the foreseeable future is essentially zero and, in half the U.S. jurisdictions, there is also a state estate tax (which can apply if you own property in that state or move there). Nobody knows whether the Congress and President will agree to a new federal estate tax exemption amount (the amount an individual, with planning, can pass free of federal estate tax). Despite rumors from Capitol Hill, we also do not know what that new amount might be - especially in light of the federal spending developments of the past few months. If that spending leads to greatly increased inflation, many more individuals may face being subject to the federal estate tax. Because of the virtual certainty that we will continue to have an estate tax, many individuals must plan if they wish to avoid paying it.

As the U.S. Supreme Court said:

"Anyone may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes. Therefore, if what was done here was what was intended by [the statute], it is of no consequence that it was all an elaborate scheme to get rid of [estate] taxes, as it certainly was."

For those who may be subject to federal or state estate tax, we are in a "perfect storm" that creates exceptional planning opportunities not likely to be seen again for many years. The factors that have come together to create this "perfect storm" are (a) reduced asset values; and (b) historically low interest rates.

Reduced Asset Values

Reduced values for stocks, real estate, businesses, etc., mean that individuals can transfer these assets for less today than they could have just a few months ago.

For example, if a particular stock you own declined from \$100 per share to \$80, now you can transfer 162.5 shares with a \$13,000 annual gift tax exclusion (it went up from \$12,000 on January 1, 2009) instead of 130 shares had it remained at \$100. Married couples can give twice that amount, or \$26,000 per person, per year. Typically, clients transfer this amount to children, grandchildren and other close family members.

In addition, reduced real estate and business values mean that you can transfer a larger percentage of these assets free of federal gift tax by taking advantage of your \$1 million lifetime exemption from federal gift tax.

Planning Tip: At a minimum, if you are subject to federal or state estate tax, you should take advantage of the annual gift tax exclusion (\$13,000 per person as of January 1, 2009) to transfer assets with reduced values to children, grandchildren and others. Ideally, you should make these gifts in trust to provide the beneficiaries protection from divorce, creditors, predators, and themselves.

Historically Low Interest Rates

The other piece to the "perfect storm" is today's historically low interest rates. The January 2009 Applicable Federal Rates (AFRs) - the "safe harbor" interest rates provided by the government for, among other things, loans among family members - are as follows:

- Short-term (not over 3 years): 0.81%
- Mid-term (over 3 but not over 9 years): 2.06%
- Long-term (over 9 years): 3.57%

Due to a number of reasons, these low interest rates make many estate planning strategies even more attractive, including:

- Strategies that involve the use of loans at current interest rates; and
- Strategies that assume (as required by the IRS) that the assets you transfer will grow at current interest rates. For transfers you make in January 2009, this rate is 2.4%.

We encourage you to contact your advisors to determine if one or more of these strategies is appropriate for you under the circumstances.

Conclusion

Despite these difficult economic times, there are many reasons why you should plan or update your planning **now** rather than wait until we have more economic certainty. Furthermore, in the current economic and political climate it is impossible to know which of us will be subject to federal (or state) estate tax in the future. We do know, however, that the federal estate tax is not going away. If you may be subject to estate tax, the current "perfect storm" creates a unique opportunity for the planning team to help you meet your goals and objectives.

To comply with the U.S. Treasury regulations, we must inform you that (i) any U.S. federal tax advice contained in this newsletter was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax advisor based on the taxpayer's particular circumstances.

You have received this newsletter because I believe you will find its content valuable. Please feel free to [contact me](#) if you have any questions about this or any matters relating to estate planning.

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