

Summer 2020 Estate Planning Updates

We remain fully operational on a remote basis to meet our clients' needs for trust and estate planning advice, conducting meetings via videoconference and by phone, both with existing and new clients. We encourage you to take this time to review your existing estate planning documents to ensure that they reflect your current wishes. Life events such as marriage, divorce, birth, retirement, incapacity or serious illness, and changes in your relationship with or the capacity to serve of an individual you have chosen as executor, trustee, guardian, attorney-in-fact or health care agent, may necessitate adjustments to an estate plan. Our clients who wish to execute estate planning documents have generally been able to do so from home, in some cases by taking advantage of favorable legal guidance that temporarily permits witnessing and notarization via videoconference.

As summer approaches, we would also like to remind you of estate planning opportunities that may be particularly relevant in the current climate.

Funding Existing Revocable Trusts: Many of our clients use a revocable trust as part of their estate plan. Among other purposes, a funded revocable trust can minimize the expenses and delays of probate, thereby allowing your beneficiaries access to their inheritance more quickly and without a formal court proceeding. Transferring assets to your revocable trust is particularly important now since many probate courts are currently closed or operating at limited capacity.

Using Favorable Exclusion Amounts: The exclusion amount from federal gift and estate tax is currently \$11,580,000 per individual (allowing a married couple to transfer up to \$23,160,000 free of gift and estate tax). The generation-skipping transfer (GST) tax exemption is at the same level. Taxable gifts in excess of the gift tax exemption are taxed at a flat rate of 40%. Under current law, these exclusion amounts are set to revert to their pre-2018 levels (i.e., approximately \$5,850,000, indexed for inflation) after December 31, 2025. Depending upon the outcome of the November 2020 federal elections, it is possible that Congress will enact legislation to reduce these exemptions or increase the gift tax rate prior to 2026. We continue to recommend that individuals engage in established planning techniques designed to transfer wealth to younger generations and, given the political nature of the tax laws, many individuals are taking steps to fully utilize these higher exemption amounts in 2020. Recent economic turmoil may present an opportunity to make transfers at lower values that may rebound in later years, allowing additional future appreciation on the gifted property to be transferred to younger generations without a gift or estate tax consequence. Given economic uncertainties, a gift to a "spousal lifetime access trust" (SLAT) may hedge the risk of gifting assets to younger generations by providing a mechanism for a spouse to benefit from the trust.

Historically-Low Interest Rates: Treasury-prescribed interest rates applicable to certain estate planning transfers are at all-time historic lows. These rates continue to be favorable for individuals who engage in certain planning techniques that are tied to these measures, such as grantor retained annuity trusts (GRATs), sales to grantor trusts, and intrafamily loans. For example, the "hurdle" rate for a new GRAT created in June 2020 will be 0.6%. Rates applicable to intrafamily sales and loans in June will be 0.18% - 1.01%, depending on the term of the loan. Families with existing intrafamily notes may wish to consider refinancing them at current rates.

Charitable Giving: Given the present widespread need, many clients have expressed the desire to donate to public charities and private foundations. We are discussing with clients several estate planning strategies, such as charitable lead annuity trusts (CLATs), that provide individual tax benefits while achieving philanthropic goals.

If you have any questions about how these topics may impact your family or your estate plan, or what other planning opportunities are relevant for you, please contact us.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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