

April, 2020

## CLIENT ALERT

### Estate Planning Techniques During Times of Depressed Markets and the COVID -19 Crisis

We hope that this email finds all of our clients and their advisors healthy and safe. We understand that the current situation in which we live is fraught with complications and concern, but it is also a unique opportunity to effectuate estate planning techniques which can result in significant tax savings for your families.

For better or worse, the (hopefully short-term) depressed value of assets lends itself to be the perfect opportunity to gift assets. Gifts use up some (or all) of your lifetime \$11,580,000 federal estate and gift exemptions per spouse. Therefore, if you gift assets which are currently worth 10% - 30% less than they were 4 months ago, not only are you using less of your lifetime exemption, but you are also removing all of the gain you will achieve as the markets rebound. Keep in mind that New York has no gift tax and only gifts made within 3 years of death are brought back into the estate for calculating estate tax. Connecticut is the only state in the country with a gift tax and the exemption in 2020 is \$5,100,000.

There are a number of gifting methods to consider:

- Annual exclusion gifts of \$15,000 to any individual (or \$30,000 for a married couple). Many clients make these gifts in the form of cash to family members.
- Gifts to Spousal Limited Access Trusts (or SLATs). We discussed this in our Spring, 2019 newsletter and can be found here at <https://danzigermarkhoff.com/newsletters/2019/NewsletterSpring2019-ChrisMiehl-SpousalLimitedAccessTrusts%E2%80%93HavingYourCakeAndEatingItToo.pdf> This has been the most attractive technique due to its flexibility. It removes future appreciation from the estate while still giving the spouse access to money. In basic terms, Spouse 1 makes a gift to a trust in which Spouse 2 is the trust beneficiary. Spouse 2 has the right to receive the trust's income (being dividends, interest, rent or K-1 profits from a business) and can have certain rights to principal. Spouse 2 will then create a reciprocal trust benefitting Spouse 1. This way, in essence, both spouses are still benefitting from the trust monies while both are alive. One problem is that these two trusts cannot be implemented at the same time due to a principle called the "reciprocal trust rule". However, if the trusts are drafted so that they are sufficiently different and are separated significantly in time, we can avoid this rule.

- Grantor Retained Annuity Trusts (also called GRATs). These trusts are used in order to remove future appreciation in a short period of time, such as 2-3 years. The concept with a GRAT is to transfer assets to a trust which pays you an annuity equal to what you put into the trust plus a government interest rate (which now is approximately 1%). For example, if you put \$1,000,000 in a 2 year GRAT, it will pay you \$509,000 after year 1 and \$509,000 after year 2. Then, you ask, why do this if the GRAT repays what you put in with some interest? The benefit is that any appreciation during the 2 year term will be distributed to your heirs without having used any of your lifetime \$11,580,000 estate and gift tax exemption.
- Sale to Intentionally Defective Grantor Trusts (or IDGTs). This transaction involves selling assets to a trust for the benefit of your heirs while taking back a promissory note. Since this is a sale, no estate and gift exemption is used. The benefit is that you, as the seller, have “frozen” the size of your estate by selling soon-to-be appreciating assets to a trust for the benefit of your heirs while your estate only has a promissory note which is fixed in value.

Besides these estate tax-savings techniques, the mandatory quarantine has created an opportunity to take a look at your Wills and trusts which haven't been reviewed in a while. We have heard from many clients who haven't dusted off their documents in 5-8 years to review executors, trustees, guardians and trust provisions for heirs as well as their health care proxies and durable powers of attorney. As time goes by, the people you chose to manage your assets upon your death are also getting older and may not be capable of handling the responsibility. Also, trusts for children which terminate at ages 30 and 35 may not make sense. As we have written before, as children are college age or older, our clients become focused on ensuring that their wealth pass to their children and grandchildren and not to sons-in-law and daughters-in-law. See our 2015 newsletter at [https://danzigermarkhoff.com/newsletters/2015/fall/Protecting-Your-Assets-From-Your-Children's-Creditors-After-You-Die\(00989642\).pdf](https://danzigermarkhoff.com/newsletters/2015/fall/Protecting-Your-Assets-From-Your-Children's-Creditors-After-You-Die(00989642).pdf)

Even though we are all homebound, New York and Connecticut have revised their laws to permit virtual notarization and also, in the case of New York, virtual witnessing of Wills. There are only so many movies on Netflix and HBO you can watch while sheltering in place. Now is an excellent time to revisit your estate plan and make sure that it is accomplishing your goals.

Please feel free to reach out to the estate planning partners at Danziger & Markhoff LLP, Michael Markhoff, Harris Markhoff or Christopher Miehl, with any of your questions. Since we are all working remotely, you can reach us at [mmarkhoff@dmlawyers.com](mailto:mmarkhoff@dmlawyers.com), [hmarkhoff@dmlawyers.com](mailto:hmarkhoff@dmlawyers.com) and [cmiehl@dmlawyers.com](mailto:cmiehl@dmlawyers.com)