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Smart Estate Planning During an Economic Downturn

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Business

More People Are Thinking About Their Wills, Forcing Lawyers to Improvise

By [Erik Larson](#), [Malathi Nayak](#), and [Edvard Pettersson](#)

March 25, 2020, 1:41 PM EDT

Documents signed in parking lots, driveways to keep distance

Health care workers rush to finish their wills on West Coast

Source: Bloomberg News



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Review of Current Documents

- Personal representative/executor
- Trustee
- Guardian
- Revocable trust or will
- Beneficiary designations
- SECURE Act updates
- Planning for an uncertain estate tax exemption amount



Pre-COVID: 2020, A Good Year to Plan

- Higher exclusion amounts enacted in 2017 and set to expire on January 1, 2026
- Possibility that 2020 elections could accelerate the sunset on the 2017 exemptions
- Low interest rates



How COVID-19 Changed Things

- COVID-19 Relief – Who's paying for it?
- Further reduction of interest rates (less than 1% AFR mid-term rate)
- Decline in value of equity and fixed income securities



Post-COVID Planning Options

1. Roth IRA Conversions
2. Common Themes
3. Gifts or Sales of Ownership Interests in Privately Held Companies
4. Grantor Retained Annuity Trusts (GRATs)
5. Sale to “Defective Grantor Trust”
6. Intrafamily Loans



Roth Conversions

- Can be full or partial
- Factors to consider:
 - Is the account balance at relatively low value?
 - Do you expect the account balance to increase in value?
 - What is your income tax rate in the year of conversion?
 - What will be your income tax rate will when you withdraw the funds?
 - Will need to use your IRA in retirement?
 - SECURE Act planning



Common Themes

- Should trust benefit spouse or descendants?
- Grantor trust structure
- Defined value transactions
- Choice of jurisdiction considerations (e.g., dynasty trusts, state income taxation)



Grantor Trusts

- Donor treated as owner of trust assets for income tax purposes but not for estate and gift tax purposes
- Transactions between the donor and the trust are “non-events” for federal (and most state) income tax purposes
- Donor’s payment of income taxes = gift tax freebie



Transfer of Ownership Interests in Privately Held Companies

- Gift or sale
- Greater discounts are available during periods of market volatility
- Reduced multiples mean reduced values
- Forecasts look much different now than they did a month ago



Grantor Retained Annuity Trust

- IRS blessed technique to transfer future appreciation on assets
- No use of gift tax exemption
- Goal is to outperform the §7520 rate – currently 1.2%, May anticipated 0.6%



Sale to “Defective” Grantor Trust

- What is it?
- Why is it preferable to a GRAT?
- What are the risks?



Intrafamily Loans

- Shift income to lower tax rate beneficiaries
- Move future appreciation out of taxable estate
- Current AFRs (expected May 2020)
 - Short-term: .25%
 - Mid-term: .58%
 - Long-term: 1.16%





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