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FLORIDA'S BUSINESS LAW FIRM

ESTATE PLANNING IN TIMES OF UNCERTAINTY

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We are currently living though a crisis without precedent. The COVID-19 pandemic has had an overwhelming effect on global financial markets and its full impact has yet to be determined. Beyond the uncertainty we are feeling about our financial well-being, we have been forced to confront the vulnerability of not only our health, but the health of those we care about the most. Even as we experience the upending of our everyday lives, it is important to maintain a balanced perspective, be prepared to the extent possible and even consider availing yourself to opportunities that emerge during troubling times.

Being Prepared – Having the Basics in Place. On a basic level, you want to have the necessary documents in place which allow for your assets to be distributed as you decide and that provide for the designation of trusted individuals to act on your behalf with regard to financial and medical decisions should you be unable to do so yourself. To the extent you have minor children, you also want to have documents in place which cover your wishes with regard to who will serve as a their guardians and health care agents. Having a validly executed Revocable Trust, Last Will, Durable Power of Attorney, Living Will and Designation of Health Care Surrogate in place will cover all of these decisions, in addition to helping your estate minimize taxes, avoid exposure to probate and avoid the need for a court appointed guardian over your minor children or yourself in the event of your incapacity. To the extent you have some or all of the above documents already in place, you should consider taking the time to locate and review them to re-familiarize yourself with their provisions. Doing so will allow you to immediately address any changes that need to be made. You can also take this opportunity to let your loved ones know where to find the documents should they be needed in an emergency. It is preferable to address these issues during less turbulent times, but the most important thing is to address any issues with your documents now as opposed to waiting until the worst occurs. Now is also an ideal time to check the beneficiary designations on any bank accounts, life insurance and qualified retirement plans you may have to be sure those documents are filled out and reflect your current wishes as to the beneficiaries of those assets.

Unique Opportunities to Transfer Wealth at a Deep Discount. Even before COVID-19, there was a underlying sense of urgency when it came to certain types of wealth transfer tax planning. With an upcoming presidential election, there was concern about how a major shift in Washington could impact estate and gift tax exemption levels, valuation discount planning and income tax basis step-ups upon death. In 2020, the current lifetime gift and estate tax exemption is $11.58 million per spouse or $23.16 million for a married couple. Given the high exemption level, the loss in value that has occurred as a result of economic downturn and the low interest rate environment, now is an ideal time to make substantial intra-family transfers for those who are inclined to do so. A gift or sale of depressed assets, whose value will have to be determined by a qualified appraisal, accomplishes the goal of removing the transferred assets from the donor's taxable estate at a greatly reduced gift tax cost and "freezes" the value of such assets for transfer tax purposes. This means that once the assets are transferred, the assets plus all post transfer appreciation will be outside of the donor's taxable estate. If a donor desires to transfer income-producing assets to the younger generations but wants retain some cashflow and control post transfer, the assets can be sold in exchange for a promissory note to a specially structured irrevocable "grantor" trust for the benefit of the donor's children and more remote

descendants. With a grantor trust, the “grantor” or creator of the trust remains liable to pay the income tax on the trust’s income and transactions between the grantor and his or her grantor trust are ignored for income tax purposes. Therefore, the donor will not recognize any gain or loss on the sale to the trust and the value of the assets inside the trust will compound even more dramatically as they are not being reduced by income taxes. Generally, the sale strategy described above is very effective at producing estate and gift tax savings if the assets inside the trust generate a total return (income and capital appreciation) in excess of the interest rate on the promissory note. Because the current applicable interest rates are so low, achieving a return in excess of he promissory note’s interest rate should be relatively easy, especially since the donor would continue to pay the trust’s income taxes. Whether it is a gift or a sale, the more depressed the transferred assets, the more value you will be shifting to the younger generations in your family tax free.

The COVID-19 pandemic is creating rapidly-changing issues for businesses, and government aid processes and measures designed to assist businesses may also change materially from when this post is issued. We therefore encourage you to monitor our website, review our future posts and generally remain alert for additional updates or modifications to laws and regulations.

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