

Wills, Trusts & Estates: Plain & Simple

“Estate Planning In The Time Of Coronavirus”

This is a surrealistic time for most of us, but we will come out on the “other side” and we still need to plan for the future. We should continue to take at least basic steps to plan our estates, like preparing wills and/or revocable trusts to protect our families for the future, as well as powers of attorney, living wills and health care proxies.

If you already have a revocable trust in place that is unfunded, you may wish to consider at least partially funding that trust with assets that you hold in your own name (i.e., those that are not held jointly with right of survivorship or otherwise do not have a beneficiary designation). I suggest this because many New York courts are not accepting wills for probate during this crisis, which means that your family may not be able to access assets that are held in your own name for quite some time. Once the

courts do “open up,” there is sure to be a large back log in wills that need to be probated, which could cause a delay of months.

In addition, while not the first thing on anyone’s mind nowadays, the decline in the value of assets during this time presents an opportunity for more sophisticated estate planning, as well. Some of those opportunities are as follows:

- Making lifetime gifts of depreciated assets up to the federal gift and estate tax exemption amount (\$11.58 million per person, set to revert to \$5.49 million per person in 2026, or sooner, if there is a new administration in 2020);
- Using minority business interests, which can be discounted for valuation purposes, to make gifts to leverage the use of your federal gift and estate tax exemption;
- Making gifts to “dynasty” trusts to keep assets out of your children’s estates;
- Funding Grantor Retained Annuity Trusts (“GRATs”) or engaging in sales to defective grantor trusts while the IRS interest rates are so low;
- Refinancing intra-family loans to take advantage of the low IRS interest rates;
- Using the power to “swap” properties in certain trusts to trade low basis assets owned by the trust with high basis stock individually owned, especially if the trust creator intends to hold those low basis assets until death.

Anyone with a taxable estate (for 2020, \$5.85 million for NY and \$11.58 million for Federal) and/or children should have a Will and/or Revocable Trust. Anyone who does not want their assets to pass according to New York law should have a Will and/or Revocable Trust. And if you have substantial assets, you should consider using the current depreciated values, low-interest rates, and high estate and gift tax exemptions to “leverage” your estate plan at this time.

There are many factors to consider in any estate plan, which you should discuss with your estate planning lawyer if you are ready to address. If there is a trusts and estates topic that you would like to know more about, please feel free to email me at pmarcin@farrellfritz.com and I will do my best to cover it in a future

column. My previous columns are available on www.farrellfritz.com.



Patricia C. Marcin is a partner at the law firm of Farrell Fritz, P.C. concentrating in trusts, estates, and tax law. Patricia has lived in Lloyd Harbor since 2005 with her husband, John. They have two sons, Sam and Matt. Their faithful dog, Blizzard, still lives at home.



“I’m so glad we updated our wills. Farrell Fritz helped us understand all the recent changes and the best part is, we minimized our estate taxes. I feel so much more secure about our family’s future.”

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400 R X R Plaza, Uniondale, NY 11556
516.227.0700 | www.farrellfritz.com

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