

# COCHRAN † ALLAN †

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Helping families & small business owners plan successful futures



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## CLIENT ALERT

We hope that you and your loved ones are healthy and well in these challenging times. As the impacts of the coronavirus pandemic have spread, many clients have reached out to us with renewed focus on their estate planning. Their objectives have ranged from simply **reviewing current plans** to align dispositive provisions and fiduciary choices with their wishes, to **pursuing more sophisticated planning techniques to take advantage of historically low interest rates and high exemptions** from estate, gift and generation-skipping transfer taxes. We wanted to share with you some of these timely estate planning considerations and strategies and also provide an update on relevant new legislation.

### Working Together

We are so thankful that we have been able to continue to provide legal services without interruption, albeit in new ways. We continue to meet with clients by phone, e-mail, and video conference, and we hope to re-open our office for in-person client meetings soon. For now, if you have documents to sign, we can arrange for you to do so in your car outside of our building, where we can serve as witnesses and notaries.

### Financial Power of Attorney, Health Care Power of Attorney, and Living Wills

Financial Powers of Attorney and Health Care Powers of Attorney/Advance Directives are important documents for all of us. Now is a good time to confirm that the people you have selected to act on your behalf if you become incapacitated are still able and willing to serve. You also may wish to take this opportunity to confirm that your parents and other adult family members (including children over age 18) have these documents in place.

Many clients also are reviewing their Living Wills. A Living Will serves as a written expression of the specific end-of-life care you wish to receive (or not receive) if you develop a terminal condition or are in a permanent vegetative state, including whether you want to receive artificial respiration and the administration of food, water, and pain relief.

Once you have signed these documents to appoint your agents and clearly indicate your wishes, we recommend you provide copies to your named agents and loved ones so they are readily accessible if needed.

### Retirement Accounts

Earlier this year, the SECURE Act increased the age when required minimum distributions (RMDs) from retirement accounts must begin to 72 years. More recently, the CARES Act has provided that RMDs need not be taken at all in 2020, regardless of age. This waiver may be particularly helpful because the RMD dollar amount for 2020 and resulting income tax liability would have been based on the higher market values of your investments at the end of 2019. In addition to the increased age for RMDs, the SECURE Act overhauled many of the rules that apply to qualified retirement plans and IRAs. From an estate planning perspective, the most significant change is that beneficiaries of retirement accounts, other than a surviving spouse, must fully withdraw all assets from an inherited retirement account within 10 years of the original account owner's death (subject to certain exceptions for minors and disabled beneficiaries).

### Estate Planning With GRATs

The **Grantor Retained Annuity Trust** ("GRAT") is an optimal strategy in today's environment, when interest rates are low and the markets are volatile. With a GRAT, the donor gifts assets to a trust for the benefit of one or more selected individuals and in turn receives back a stream of annuity payments for a specified term of years. The term of years for these payments, as well as the amount of the annual payments, is chosen when the trust is prepared. During the term of years selected, the donor receives back, in the form of the annual annuity payments, nearly all of the value that the donor transferred to the GRAT at the start of the trust, plus the IRS's assumed interest rate (known as the Section 7520 rate). When the selected term ends, the remaining trust property may be held in trust for your chosen beneficiaries or distributed to them outright.

In the current low-interest rate environment, a GRAT is an ideal way to transfer significant value to your beneficiaries at little or no gift tax cost while retaining a temporary income stream from the gifted assets. The Section 7520 rate for GRATs funded in June 2020 is only

stream from the gifted assets. The Section 7520 rate for GRATs funded in June 2020 is only 0.60%, which is the lowest the 7520 rate ever has been. This low "hurdle rate" makes using a GRAT an especially effective strategy because it lowers the appreciation that gifted assets must achieve to confer substantial gift tax savings. The fact that many securities and other assets have depreciated in value due to the coronavirus pandemic makes GRATs even more effective right now. Further, if the donated assets do not appreciate over the term of the annuity stream, the remaining trust property will simply return to the donor as if the GRAT had never been funded, making this a particularly low-risk transfer technique.

By way of illustration, if a donor (grantor) transfers securities valued at \$1,000,000 to a GRAT in June 2020 and retains an annual payment right (an annuity) for 2 years, then the donor will receive an annuity payment of roughly \$500,000 at the end of each year. If the value of the trust property remaining after the payment of the second annuity payment is greater than zero, that value will pass to the beneficiaries free of gift tax. If, for instance, the securities appreciate by 20% to \$1,200,000, almost \$200,000 will pass free of gift tax.



#### Estate Planning With Loans

Low interest rates also make this an optimal time to make intra-family loans or refinance current loans. The IRS publishes monthly minimum interest rates (the AFRs), that lenders must charge family-member borrowers for their loans to be respected. In June 2020, the AFR dropped to 0.18% for short-term loans (up to 3 years), 0.43% for mid-term loans (3 to 9 years), and 1.01% for long-term loans (more than 9 years). These AFRs are the lowest rates in history.

Through intra-family loans, parents or grandparents can loan funds to less wealthy family members (generally children or grandchildren) at the currently low rates, enabling the borrowers (i.e., the children or grandchildren) to receive nearly all of the future appreciation without estate or gift tax consequences. This can be an effective way to shift the upside potential of appreciating investments. Intra-family loans also can be used as an alternative to commercial mortgages. We regularly help wealthy clients provide financing to their children to utilize the current low rates.

#### Gift and Estate Tax Exemption

As a reminder, the gift and estate tax exemption amount for 2020 is **\$11.58 million per person**. This amount is indexed for inflation and is scheduled to remain in effect through the end of 2025, at which time it will be reduced back to approximately half that value. However, there always is a possibility that Congress may accelerate this reduction following the 2020 election. Clients with large estates should consider taking advantage of the high exemption amounts and low asset valuations now, before changes occur in the gift and estate tax laws.

#### Paycheck Protection Program Updates

For our business clients, loan recipients of the Paycheck Protection Program ("PPP") can start applying to have their debt forgiven eight weeks after the loan disbursement date. The PPP Loan Forgiveness Application, available on the Small Business Administration ("SBA") website, includes several measures to reduce compliance burdens on borrowers. For example, the borrower has the option of calculating payroll costs during the eight-week period following the loan's origination or using an "alternative payroll covered period" that aligns with the borrower's regular payroll cycle. Additionally, other costs incurred or paid during the period, such as mortgage interest, rental/lease payments (including personal property leases) and utilities are eligible for forgiveness.

The forgivable amount of the loan is limited to the lesser of: (1) the total loan amount, (2) payroll costs divided by 75%, or (3) a modified total cost. The second option ensures that at least 75% of the forgiveness amount was used for payroll costs. The loan forgiveness amount may be reduced if the employer has cut the salary and/or wages of certain employees by more than 25% during the covered period or if the employer has terminated positions. If a borrower receives only partial forgiveness, the balance will have to be repaid in the next two years. However, at a 1% interest rate, it is still one of the best loans available to small businesses.

*Please feel free to contact us with any questions you may have, and we look forward to hearing from you soon! Stay well!*

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