

POSITIVE PLANNING IN TOUGH TIMES January 1, 2010

Over a hundred years ago, Stephen Foster wrote a song entitled "Hard times come again no more." Well, apparently he was a better musician than an economist, because here we go again.

Maybe our hard times aren't as severe as our forbears experienced in times past. However, this is a time of change-many are not thriving like they had in the past, and this can affect some estate planning choices. Here are some considerations to float past your advisors:

You should review beneficiary designations on retirement accounts and life insurance contracts. Just confirm what they are, and evaluate whether today's economic realities require any changes.

For charity in your estate plan you should consider helping them from your IRA rather than your will. However this can cause your children a massive tax hit if they have to share an IRA bequest with a charity. It is often better to split the IRA into two in such cases: One for the charity and one for individuals. This allows the individuals to stretch out their withdrawals (and the taxes).

You should review life insurance amounts. Is more needed to cover the gap of decline in wealth? Is less needed because of the increase in the estate tax exclusion from \$2 million to \$3.5 million?

Key family relationships constantly change with births, marriages, deaths and other moves in position. The interest rate reduction can have profound impacts on interfamily loans, estate planning transactions, and more.

Estate tax laws have changed again. They now allow \$3.5 million per parent to pass free of federal estate tax. Wills and trusts should have their language reviewed in light of these and other changes, to avoid some very undesirable inheritance outcomes (e.g. incurring too much state estate tax at the first death).

The annual gift tax exclusion has been increased due to inflation indexing. It now stands at \$13,000 per donor per donee per year. Be sure your Powers of Attorney accommodate the full use of this amount and are not limited to the old \$10,000 annual amount.

Review estate and business documents with HIPAA in mind. These documents must include lingo that gives family and business partners appropriate access to hospital records if needed for documentation or other purposes.

Grandparents may be able to prepay grandchildren's private school tuition without any gift tax issues. This reduces their estate size immediately, reducing gift and estate taxes. It can give huge financial relief to the children. See a tax advisor on the current income tax benefits, if any.

An unexpected benefit of declines in equity investments is that formerly taxable buckets may now be nontaxable for years to come. This makes IRAs, annuities and other tax deferred vehicles more attractive than at some times in the past. It reduces concerns about realizing taxable gains in taxable accounts.

You should take annual minutes for your corporation(s) to demonstrate that you respect formalities. This helps protect your personal assets from a scorched-earth attorney zealously pursuing a plaintiff's lawsuit against your business.

In a business, the owners should sign off on key decisions. Update buyout values. Check that insurance coverages match the updates. Review and update shareholder agreements, including working past an agreed age if needed. This avoids disputes later.

Everyone should consider wills (who gets my stuff and raises my kids), powers of attorney for healthcare decisions and powers of attorney for personal business decisions (so my spouse doesn't need to go to court if I am comatose), and a living will (to show my desires on pull-the-plug issues).

Above all, keep a positive mental position through this darker time. You will need it to quickly spot and profit from the inevitable opportunities that spring up during such times of dislocation and realignment.



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