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Advisory & Management

## PLANNING FOR THE ONCE-MIGHTY ESTATE

By Barbara Pinckney

In a difficult economy, estate planning may be one of the first things to go.

People feel less wealthy, and may be more concerned about preserving their assets than about passing them on. Or they may believe the down market will put their estate under the taxable level – currently \$1 million in New York and \$3.5 million at the federal level – and therefore, they do not have to worry about it.

“But estate planning is a forward-thinking thing,” said JulieAnn Calareso, an estate attorney with Burke & Casserly P.C. in Albany. “It may be a good time to talk to your attorney or financial planner about strategies.”

Experts say this may, in fact, be an ideal and inexpensive time to transfer assets. There are opportunities to be had in an environment like this, when asset values are depressed and interest rates are low. Taking advantage of those opportunities can allow people to safeguard their wealth now while protecting those inheriting their stocks, real estate or family businesses in the near or distant future.

### SQUARE ONE

Philip Toffel, managing director of Sage Hill Advisory & Management in Albany, said he counsels clients to first evaluate their net worth and determine how much they need to live comfortably. That amount should be invested conservatively, to protect the individual or couple’s financial independence.

“That should be square one,” he said.

Tim Casserly, a partner in Burke & Casserly, said conservative investors may want to consider a Roth IRA. With a Roth account, taxes are paid immediately as opposed to when funds are withdrawn – as is the case with a 401(k).

“So, with the value of your IRA down in this market, you will pay less taxes,” Casserly said.

Also attractive in this environment, experts say, are so-called Grantor Retained Annuity Trusts, which allows the head of an estate to both collect an “income” and give gifts to beneficiaries. With a GRAT, the donor receives annuity payments for a fixed number of years. When that term ends, the property goes to the beneficiary.



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*Phil Toffel, managing director of Sage Hill Advisory & Management, at his Albany office.*

GRATs are most valuable when interest rates are low and the assets used to fund the trust – such as stocks – are depreciated but have upside potential. This is because the IRS establishes an interest rate “hurdle,” and any appreciation above that amount is tax free to the beneficiary. The current hurdle is 2.6 percent.

A GRAT is best used, experts say, to make gifts during the donor’s lifetime, to reduce the estate to be passed along at death. If the donor dies during the term of the trust, some or all of the trust assets may be included in the taxable estate.

### KEEP IT IN THE FAMILY

Often, the assets to be passed on come in the form of a family business. If that business is worth more than the federal exemption amount, heirs could face heavy estate taxes. At the moment, that means paying 45 percent of any amount over \$3.5 million. If the business doesn’t have the cash on hand, heirs may be forced to sell it to pay the taxes.

“So, what do you do about succession planning other than buy more life insurance to get around this problem?” Toffel said, “This is a very good time to gift some shares of your business to your kids.”

He explained that gifting shares now, when their value may be depressed, takes future appreciation out of the parent’s estate. Putting shares in trust allows a parent to retain control while limiting the heir’s tax liability later.

Low interest rates also make this a good time to consider intra-family loans. The rates set by the IRS currently range

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from just 0.83 percent to 3.6 percent, depending on the term of the loan.

“You can loan to your child at 2 percent [the current mid-term rate] and if the funds appreciate above that, the child keeps it for free,” said William Pfeiffer, an attorney with Girvin & Ferlazzo P.C. in Albany.

## **GIFT IDEAS**

The bottom line is, while the down economy may make people feel hesitant to part with certain assets, there is no time like the present.

“One good thing to gift now is vacation homes, like the family camp, and other real estate,” Casserly said. “With depressed values, you can keep it in the family and get it out of your estate without using up a lot of your [tax] credit.”

The IRS allows people to give away up to \$1 million in their lifetime before paying gift taxes. In addition, they may give up to \$13,000, per recipient, each year without reporting it.

If that gift is made in stock, the down market means more shares can be given away. For example, as of April 1, someone holding stock in GE could gift nearly 1,300 shares for \$13,000. A year ago, because GE was trading higher, the gift would have been limited to about 340 shares.

This removes the stock from the individual’s future estate, and allows it to appreciate on the children’s books. The children will face capital gains taxes, but those are much lower than estate taxes.

Futhermore, gifting shares now may lower capital gains liability.

“If you buy a stock at \$10 and gift it at \$50, the person who receives it inherits the cost basis of \$10, and must pay capital gains tax on the full \$40,” Calareso said. “But, in a down economy, if you give someone a stock you bought for \$10, it might only be worth \$15. So there is a lower inherited cost basis and lower capital gains liability.”

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