

Estate Planning Affected by Recent Events: The SECURE Act, the New Illinois Uniform Trust Code, and the Coronavirus

by Michael D. Whitty

A FREEBORN & PETERS LLP CLIENT ALERT



Estate Planning in the first quarter of 2020 has been impacted by several recent events. This Client Alert provides information on five hot topics:

1. Health Care Documents and Estate Plans in the face of Coronavirus
2. Planning for Retirement Accounts After the SECURE Act of 2019
3. The new Illinois Uniform Trust Code and Its Effects on Trust Design
4. Planning for Possible Changes in Estate and Gift Tax Exemptions
5. Gift and Intrafamily Loan Refinancing Opportunities with Low Interest Rates

If any of these topics raises concerns or questions for you, contact one of the Freeborn & Peters attorneys listed below (Email would be best under current conditions, as most of us are working remotely for at least the balance of March 2020).

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NOTICE REGARDING 2020 TAX DEADLINES: As of the March 21, 2020 date of this Bulletin, in response to the Coronavirus outbreak, the Treasury Department [formally announced](#) both a deferral of the [payment deadline](#) for 2019 personal and corporate income tax returns and 2020Q1 estimated payments until July 15, 2020 (although certain larger payments will still be due April 15), as well as a [deferral of the deadline for filing](#) (or extending) those returns from the usual April 15 deadline. The deferral does not defer the deadline for gift tax returns. If in doubt, file an extension; Form 4868 will also extend gift tax returns.

1. Healthcare Documents and Estate Plans in the face of Coronavirus

You should check to confirm you have a current Health Care Power of Attorney. (In some states, these go by another name, such as Designation of Health Care Surrogate or Health Care Representative Appointment.) This document will allow your designated agent to make medical decisions for you when you are unable to do so. We also recommend clients have a Medical Information Authorization for compliance with the patient records privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and a Living Will (in some states, these are titled as Advance Medical Directives).

If we have prepared these healthcare documents for you in the past, we can usually locate electronic copies if you are unable to locate your own originals, or otherwise need a copy for whatever reason. (This is true even with our attorneys working remotely.) If you need new or updated healthcare documents, these do not take long to prepare once we have the necessary information from you.

If you are already working with us in preparing a new or updated estate plan, we are generally able to continue working on those documents while we are working remotely. Arranging for execution of completed documents with all the necessary formalities will be harder if you are unable to come to our office. Legal execution standards for estate planning documents, particularly wills, have not yet adopted electronic signatures in Illinois or most other states. However, this does not mean that you must wait until things return to normal before executing your documents. If you are able to arrange for two or three disinterested witnesses, we can send you the documents, help arrange for a notary, and provide detailed instructions for the proper execution of the documents.

2. Planning for Retirement Accounts After the SECURE Act of 2019

The SECURE Act of 2019 made significant changes in the rules for inherited retirement accounts and IRAs. The rules allowing a “rollover” to a surviving spouse’s IRA are unchanged. However, retirement accounts left to non-spouse beneficiaries who are not minors or disabled may no longer be “stretched” over the beneficiary’s life expectancy, but must be fully distributed (and taxed as ordinary income) within 10 years after the prior account owner’s death. Minors and disabled beneficiaries can still benefit from a longer withdrawal, but special planning is needed in those cases to avoid poorly timed and taxable lump-sum distributions.

For most estate planning clients, the changes in estate plan design resulting from the SECURE Act will be addressed in your next estate plan update. However, if retirement plan assets are a large fraction of the legacy you plan to leave to your children or other descendants, you may wish to consult with us sooner so that we could analyze your situation and make a recommendation as to whether an immediate change to your estate plan is needed.

3. The new Illinois Uniform Trust Code and Its Effects on Trust Design

In 2019, Illinois adopted a new Uniform Trust Code (IL-UTC) which went into effect January 1, 2020. While the IL-UTC made a number of minor changes to Illinois trust law, perhaps the most significant change deals with whether and when trustees are required to provide notices and accountings to trust beneficiaries. Previously, trusts were allowed to be

“silent” so that beneficiaries might not be entitled to notices or accountings. Under the IL-UTC, all non-disabled adult beneficiaries over age 30 now must receive notice (including notice of the existence of the trust and a right to see the trust agreement) and are entitled to annual accountings (although that right may be waived by the beneficiary).

Illinois trust donors who would prefer more of a “silent” trust approach will need to work with their estate planners to find an acceptable work-around to achieve their intent while staying within the law as changed by the IL-UTC. Freeborn & Peters estate planners have already helped design approaches to help trust donors achieve their goals for relatively “quiet” trusts.

4. Planning for Possible Changes in Estate and Gift Tax Exemptions

In 2020, the federal unified estate and gift tax exemption is \$11,580,000 per person. Under current law, that exemption is scheduled to be reduced (or “sunset”) by half at the end of 2025. Under recent regulations, the Treasury Department has confirmed that it will not apply a punitive “clawback” approach to the estates of donors who used their exemption while it was high, but then died after the exemption was reduced (whether by the “sunset” provision of current law, or by another reduction in the exemption due to a future act of Congress). So, donors who use their full gift tax exemption while it is high will not be punished if the exemption goes down later.

Several presidential candidates have proposed reducing the exemption by half or more sooner than the scheduled 2025 sunset, perhaps as early as January 1, 2021 if one of those candidates is elected and has a willing Congress to work with. While we would not encourage clients to rush into plans to use their currently high gift tax exemption, waiting until Election Day in November to even discuss the subject with your estate planner could lead to a “rush job” at best or an incomplete or inaccurate transfer at worst. Donors would be better off having a preliminary conversation with their estate planner earlier in the year to establish a plan of action to be implemented before year-end, with the plan identifying in advance the beneficiaries, the amount and source of the assets to be transferred, and the structure of the gift.

5. Gifting and Intrafamily Loan Refinancing Opportunities with Low Interest Rates

In response to the Coronavirus outbreak, the stock market has tumbled, and the Federal Reserve has responded by lowering interest rates to some of the lowest levels seen in many years. This provides donors with several opportunities to take advantage of these low interest rates to shift wealth without paying gift tax or using any gift tax exemption.

One such opportunity is the grantor retained annuity trust (“GRAT”), which functions like a non-recourse low-interest loan to a trust for children or other beneficiaries, with either the donated assets or the investments purchased with cash donations hopefully growing faster than the low interest rate used to calculate the annuity amount that the GRAT pays back to its grantor. The GRAT is structured to have a very low or even zero amount of current gift when it is funded. The beneficiaries designated in the GRAT agreement receive the remainder of the GRAT property after the last annuity payment is made to grantor, and receive the remainder gift-tax-free. GRATs work very well with appreciating assets (including temporarily depressed assets) and when interest rates are low.

For further illustration, see [Bill Russell's white paper](#) with a case study based on an actual client result using a GRAT. Another such opportunity would be to make intra-family loans at low interest rates and let the borrowers invest the loan proceeds or use the funds to pay off or consolidate other debt at higher interest rates. Even clients who have already made loans to family members might consider using the low interest rates to allow their borrowers to refinance. If these opportunities sound appealing, contact one of our Freeborn & Peters LLP estate planning attorneys to discuss how we can help you to take advantage of low interest rates.

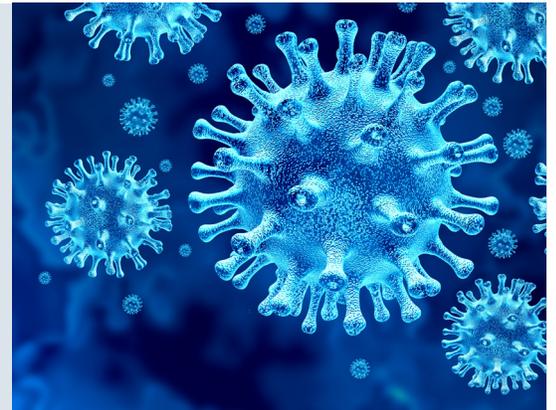
Freeborn's Response to COVID-19

Freeborn & Peters COVID-19 Task Force:

<https://www.freeborn.com/practice/covid-19>

Bill Russell's white paper on client result using a GRAT:

<https://www.freeborn.com/perspectives/real-life-example-transferring-growth-without-gift-tax>



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Michael Whitty is a Partner in the Corporate Practice Group. He concentrates his practice in estate planning, taxation, and estate and trust administration. Michael represents business owners, principals of venture capital and private equity funds, key executives, investors, and other highnetworth individuals in planning for the preservation and transfer of their wealth.

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