

Private Clients Advisory: Planning for 2021 and Beyond: A New Year, the New Administration, and Some Thoughts from 2020

We have compiled our Top 10 ideas for your estate planning in 2021.

1. **Still Time for Gifts: Federal Estate, Gift and Generation Skipping Tax Changes.**

For several years, we have had the benefit of ever-increasing exemption amounts for federal estate, gift and generation skipping taxes. The current exemption of \$23.4 million for a married couple has eliminated estate tax planning for many clients. We know that the exemption amounts are scheduled to be reduced to \$10 million (adjusted for inflation) for a married couple beginning January 1, 2026 but expect changes before then as Congress grapples with the challenge of raising revenue. There have been a number of “Biden Tax Plans” suggested in the media with drastic reductions in the exemption amounts and uncertainty about the effective date of any changes, with some commentators even suggesting retroactive effective dates of January 1, 2021.

For clients who are able to take advantage of the current gift tax exemption amount, now is the time to consider gifts to family members. We are assisting clients in completing tax efficient gifts in ways that protect transferred assets from creditors of the gift recipient and his or her descendants and also mitigate the possibility of retroactive effective dates.

2. **Documents with Liberal Distribution Provisions.** Many documents are drafted from forms that have been in use for years. We often see formulations in trusts that require the trustee to pay income to one individual, while preserving the remainder of the assets for another individual or group of individuals. Instead of this approach, consider giving the trustee discretion to pay both income and principal currently to all potential beneficiaries regardless of generation. Preferences can be given for supporting children over grandchildren or more remote descendants, but given life’s uncertainties, we believe a more flexible approach provides greater security for all family members.
3. **Health Care Documents May Need to be Updated.** From the COVID-19 situation, we have learned that routine medical care may require intubation. Some health care directives were drafted with an absolute prohibition against intubation. Health care directives should be reviewed regularly, but especially in light of new treatment protocols.
4. **The Revocable Trust Revived.** Financial powers of attorney have often taken the place of revocable trusts for clients who wish to provide for financial management and custody of their assets in the event of illness or disability. Transfers of assets to revocable trusts create a



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management arrangement during lifetime that may remove the uncertainty of implementing a financial power of attorney during a client's temporary illness or the onset of a permanent disability. Clients seeking continuity are increasingly implementing revocable trust arrangements and employing corporate trustees to implement these arrangements as the limitations of relying on family members become more apparent.

- 5. Minors.** The provision of guardians for minors has always been an important, although sometimes overlooked, feature of estate planning. As parents think about naming guardians for minor children, some are also now focusing on providing directions or guidelines for guardians who might be given responsibility for raising their children. Some parents are creating aspirational wishes or guidelines while others opt for detailed instructions that may also involve directions to the financial entity that is charged with managing family assets. Whatever form directions or guidelines take, it is a subject that is of increasing interest to parents with minor children.
- 6. Liquidity from a Family Business.** A family business may be the single source of income and wealth for many generations of a family. The withdrawal of funds from a family business and the succession of control of a family business are often issues that consume much family energy. The pandemic highlights many of the stresses on family businesses as unprecedented financial strains may cause business failures. Clients increasingly are looking for practical and tax efficient ways to remove wealth from a family business while it is successful and to develop business succession plans that will help ensure continuation of a business for future generations.
- 7. Fiduciary Appointments.** A few families have reconsidered appointments of individual family members as executors, trustees or agents under powers of attorney or health care documents, particularly when the chosen family members live in a different geographic area than the beneficiaries or principals. With travel restrictions, it may be very difficult or impossible for a chosen fiduciary to act, at least in ways that are familiar. When possible, geographic proximity may be an important consideration. Where there are no suitable family members in the area, some clients have decided to name a corporate fiduciary to assume responsibility when a designated individual is unable to act. Individual family members also may not be able to devote the time and attention required in managing a parent's assets or administering an estate or trust. Unexpected loss of employment or reductions in business revenue and the responsibilities of working remotely while homeschooling and providing childcare may leave little time to take on the tasks of an individual fiduciary, even for a close family member.
- 8. Change of Domicile/Residential Status.** As new taxes and expenses or rules that impact living arrangements and mobility become more prevalent, clients are accelerating plans to change domicile. We have also worked with clients who no longer believe that congregate or

group living/social situations, including planned communities and clubs with organized activities or common dining facilities, are alternatives they wish to pursue. For those who have purchased or committed to purchase or lease a residence in one of these communities and now have a change of heart, there may be significant contractual impediments to changing status.

- 9. Charitable Giving.** The financial strains of the pandemic era are an unprecedented dislocation for arts and cultural organizations, educational institutions, social service providers, and every manner of traditional charitable activity. For those who are able, charitable giving is more important than ever, but so is the management of charitable activities. To implement long term charitable strategies, private foundations, charitable lead and remainder trusts and gifts to donor advised funds are some of the vehicles we are using to accomplish charitable goals while also allowing the donor and his or her family on-going participation in the determination of charitable gifts.
- 10. Non-profits; Foundations.** For our foundation and non-profit clients and for our clients who serve on the boards of nonprofits or foundations, new responsibilities and potential liabilities may be anticipated, particularly if the organization hosts members of the public. The implementation of guidelines for re-opening includes complex and overlapping rules and suggestions. If revenue and fundraising have been disrupted, the organization may face financial strains and competing creditors. For directors and trustees of charitable organizations, understanding the potential liabilities and responsibilities of serving on boards of charitable organizations, particularly those with interactions with the public, is more important than ever.

Meyer, Unkovic & Scott Private Clients Group

Meyer, Unkovic & Scott's Private Clients Group assists individuals and families with the accumulation, management, transfer, and protection of personal wealth. We are one of the few Western Pennsylvania-based law firms with a sophisticated business practice and a fully diversified practice accommodating private clients. Our resources allow us to provide comprehensive service to meet all our clients' personal needs. We are also qualified to handle complex estate disputes and disputed fiduciary matters.

Please contact any member of our Private Clients Group should you have questions.

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