Take Control: Planning in Unprecedented Times

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Key Takeaways:

• In these unprecedented times, many aspects of your life, including health, financial situation and daily routines, have experienced significant disruptions, possibly leading to anxiety and feelings of being overwhelmed. Know that there are actions you can take to help regain a sense of control.

• Making sure your estate documents, including your Health Care Directive, Powers of Attorney, Successor Trustee and account titling are in order, and encouraging loved ones to do the same can help you feel more confident.

• Low interest rates and depressed asset valuations can provide an opportunity to take some control of your financial situation.

What this may mean for you:

• Although there is much uncertainty, there are some actions you can do to take some control of your legal and financial situation.

We are collectively going through an unprecedented time, experiencing a wide variety of concerns and worries that most of us have not had to deal with in our lifetimes. While good health and the health of loved ones is of paramount importance, COVID-19 has created not just health but economic anxieties as well with its impact on
the economy, stock market, and employment. You may find yourself staying at home with your family around the clock while dealing with unique pressures at your job or impact to your business. You may be wondering what part of your life is still “normal”!

While there are many things out of your control it is important to keep in mind there are certain, and important, things you can control during this uncertain time, including legal and financial decision making. We believe the following key items are worth assessing and could help bring you confidence during a volatile time.

**Estate Documents**

When you developed your legal documents (or thought about doing so), you may have been thinking about perhaps the unlikely event of being incapacitated for an extended period of time. COVID-19 has brought to light the need to take account of potential short-term incapacitation. We recommend making sure your estate documents are updated, and to encourage your loved ones to update theirs.

Take the lead in your family and have conversations with your parents, adult children, aunts and uncles to express the importance of these documents. Remember, once your children turn 18, you will need a Health Care Power of Attorney order to engage with medical professionals. In addition, make sure your loved ones are able to access your documents, or know who to contact (such as your attorney).

- Review the Agent designation on your Health Care Directive to ensure the right person is designated to make any necessary medical decisions;
- Review account titling, Powers of Attorney and Successor Trustee provisions to be certain that families have access to funds, and;
- Determine who should have Information on electronic passwords and online banking access to ensure that families can access information, update automatic payments, etc.

**Planning and Investment Considerations**

Specific situations may call for action given this environment of low asset values and low interest rates. During this time of market uncertainty, risks can be high and should be fully addressed before moving forward. Consider a discussion with your advisor and wealth planner if:

- You have a large retirement plan
  - With the market decrease, if you have considered converting some or all of your IRA or 401(k) to a Roth IRA, now may be the time to act. You will have to pay taxes on the conversion (so liquidity to pay those taxes is key) but the Roth IRA will continue to have the potential to grow tax free.
  - This strategy may be more attractive given the passage of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). A beneficiary who inherits an IRA in 2020 and thereafter must withdraw the funds within 10 years of the IRA account holder’s death. Spousal, disabled, certain minor children, chronically ill beneficiaries and those not more than 10 years younger than the decedent are not impacted.
  - A Roth IRA would still be distributed within 10 years but there is no tax impact to the beneficiary.
- You have executive compensation
  - If you have restricted stock, consider an 83(b) election to pay the tax now at the presumably low stock value, with future gains taxed as capital gains.
  - If you have non-qualified stock options and intend to hold the stock, consider exercising now.

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• When you exercise an option, you pay ordinary income taxes on the difference between the grant price and the price of stock on the exercise date. At the point the stock is sold, capital gain rates apply.

• Recent grants of options may be higher than the current stock value, but if you have older options where the grant price is lower than the current stock price, this may be worth exploring. With lower prices, the ordinary income tax amount may be lower, shifting to capital gains if the stock appreciates.

• You wish to generate capital losses
  o Review your portfolio with your advisor to determine if positions should be liquidated to realize the loss. Consider re-investing the proceeds in a company in the same sector or an Exchange-Traded Fund (ETF) covering that sector while you wait for the 30 day wash-sale rule to expire.

  *Exchange-Traded Funds (ETFs) are subject to risks similar to those of stocks. Investment returns may fluctuate and are subject to market volatility, so that an investor’s shares, when redeemed, or sold, may be worth more or less than their original cost. Exchange Traded funds may yield investment results that, before expenses, generally correspond to the price and yield of a particular index. There is no assurance that the price and yield performance of the index can be fully matched.*

• You want to take advantage of market opportunities
  o Consider creating leverage on current assets to provide liquidity to take advantage of potential market opportunities.
  
  o As addressed above, there are options to consider if you have executive compensation. Given low interest rates you may wish to discuss using loans to fund stock option exercises and funding taxes resulting from 83(b) elections.
  
  o Low rates may make leveraging real estate more attractive. Real estate investors use leverage to increase potential returns (since a high percentage of credit is used for the purchase, leaving potential growth to the investor); however that higher potential upside can carry more risks if property values fall so be careful to consult with your advisors to make sure this approach is appropriate for your situation since there are special risks associated with an investment in real estate, including the possible illiquidity of the underlying properties, credit risk, interest rate fluctuations and the impact of varied economic conditions.

Wealth planning strategies

Low interest rates and asset values may present an opportunity to accelerate the implementation of your wealth transfer plans. The historically high federal estate exclusion amount may change prior to the scheduled expiration date of December 31, 2025, as a result of the 2020 election and an expanding budget deficit due to extraordinary fiscal measures the government is enacting during this crisis.

Low interest rates are favorable for the following strategies as they set a low “hurdle” for investments to clear to achieve the desired outcome. There are risks and costs associated with these strategies - further market decreases can eliminate the benefits of these strategies and should be discussed with your advisors, wealth planner, and tax and legal professionals.

• Consider intra-family loans which can provide the next generation (or a trust for their benefit) the opportunity to invest in a depressed market or buy family assets at low values. With this strategy it is key to work with your tax professionals to keep transactions within Applicable Federal Rate (AFR) guidelines. The mid-term AFR rate is 0.99% for April 2020.
  
  o If you have loans in place, consider refinancing given lower interest rates.
• Explore gifting securities to trusts. For those assets that have lost value, it is the time to consider the benefits and drawbacks of gifting to move any appreciation outside of your estate.

• Consider Grantor Retained Annuity Trusts (GRATs) and Sales to Intentionally Defective Grantor Trusts (IDGTs) which allow you to shift potential appreciation of various assets to the next generation and out of your taxable estate.

• If you have a family limited partnership (LLP) or family limited liability company (LLC) that is funded with cash and marketable securities, gifts of these interests to other family members may be considered given the depressed asset values. Family LLP and LLC gifts may include marketability or minority-interest discount in calculating their value. You may be able to apply a marketability/minority discount and apply that discount to assets with a lower value than they were just weeks ago.

• If you are charitably inclined, a Charitable Lead Annuity Trust (CLAT) is an option. A CLAT provides a reduced current income tax deduction via anticipated annual payments to a specified charity, with any remaining assets given to residual beneficiaries. While lower interest rates reduce the charitable contribution deduction, the benefit is that the eventual recipients may receive more than originally calculated.

• If you have a trust that should be Generation-Skipping Transfer (GST) tax exempt but gifts were made prior to automatic allocation rules, this time of reduced values and a high federal exemption makes this a good time to fix those GST tax trusts.

• If you are feeling nervous about transferring wealth after the recent market downturn, a Spousal Lifetime Access Trust (SLAT) may be a great option for transferring wealth while maintaining the ability to access funds if needed in the future.

Your Wells Fargo team is here to help you answer any questions you have during this time and are happy to set up a call to discuss any aspect of your plan. We hope that you and your family are healthy and remain resilient during these trying times.

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