



Bailey Cavalieri LLC  
ATTORNEYS AT LAW

# CLIENT ALERT

## About the Authors:



Robert R. Dunn can be reached at 614/229-3284, or at Robert.Dunn@baileycavalieri.com



Harlan S. Louis can be reached at 614/229-3225, or at Harlan.Louis@baileycavalieri.com



David A. Omega can be reached at 614/229-3200, or at David.Omega@baileycavalieri.com



Maureen C. Duffy can be reached at 614/229-3261, or at Maureen.Duffy@baileycavalieri.com

**Bailey Cavalieri LLC**  
One Columbus  
10 West Broad Street, Suite 2100  
Columbus, Ohio 43215-3422  
phone - 614/221-3155  
facsimile - 614/221-0479

Kettering Tower  
40 North Main Street, Suite 1250  
Dayton, Ohio 45423-0001  
phone - 937-223-4701  
facsimile - 937/223-0170

## Estate Planning and Transfer Tax Updates February 2009

Due to the current state of our economy, many individuals are putting off making important decisions about their estate and wealth transfer plans until more prosperous times. Because of currently depressed asset values and very low federal interest rates, these individuals are missing a unique opportunity to maximize estate and gift tax savings, and potentially minimize their exposure to creditors.

Additionally, with the new Presidential administration and tax law changes, many individuals with older estate plans may find that their existing documents do not meet their current financial and estate planning goals. This client alert provides examples of estate and asset protection planning techniques and suggestions that may be helpful to your family.

### Current Opportunities for Estate Planning

The current economic downturn, while having many negative aspects, actually provides an excellent opportunity to pass wealth to your heirs at existing depressed values. On October 18, 2008, the *Wall Street Journal* ran an article entitled "Why Now is the Time to Help Your Heirs," which discussed several strategies that should be considered in light of currently depressed asset values and historically low federal interest rates. If you would like to take advantage of the current economic situation, there are several estate planning options that you may want to consider at this time.

- Grantor Retained Annuity Trusts (GRATs) are trusts where the transferor receives an annuity from the trust for a fixed period of time, and any remaining principal passes to the beneficiaries of the trust with significant gift and estate tax savings.
- Charitable Lead Annuity Trusts (CLATs) are similar to GRATs only the annuity is paid to charity rather than the transferor.
- Family Loans are currently an ideal planning technique due to the low interest rates the IRS requires the borrower to pay.
- Intentionally Defective Grantor Trusts are trusts that allow transferors to take advantage of low interest rates and increase estate tax savings by allowing assets to appreciate outside of the transferor's estate while the transferor pays income taxes on such assets.
- Other gifts can also be made to take advantage of the increased annual exclusion from gift tax. Beginning in 2009, the annual exclusion increased from \$12,000 to \$13,000. Thus a husband and wife could together gift \$26,000 per donee with no gift tax consequences.

### **Review of Estate Planning Documents**

Beginning January 1, 2009, the applicable exclusion amount increased from \$2 million to \$3.5 million (i.e. the amount that generally can pass free from federal estate taxes at death). With the stock market as well as real estate and other investment values in a general decline, many clients may find their estate plans provide their spouse with less support than they intended. For instance, certain estate plans may provide that the applicable exclusion amount passes to the children and/or grandchildren with the remaining assets passing to the surviving spouse. However, with the increased applicable exclusion, coupled with the recent downturn in the financial markets, this plan may leave a surviving spouse with insufficient funds to maintain his or her lifestyle (e.g. real estate taxes, insurance and maintenance for their personal residence and other living expenses). This is just one example of why you should review your current estate plan to verify that your documents are appropriate in light of the financial market and newly revised estate tax laws. Once reviewed, many estate planning issues can be resolved quickly and efficiently by amending the current documents to comport with your current wishes.

### **Integrating Asset Protection into Your Estate Plan**

Now is a good time to consider integrating asset protection into your estate plan. Family Limited Partnerships, Limited Liability Companies and Irrevocable Trusts continue to provide tax and asset protection benefits. You should also review your current estate planning documents to ensure that the assets passing to your children are adequately protected from their creditors.

### **Planning for Children and Younger Generations-College Savings Plans and Education**

College education funds, such as 529 College Savings Plans, may be underfunded as a result of the significant stock market losses. Those who may have thought they had fully funded a child or grandchild's education fund may need to re-evaluate. You should reassess your child or grandchild's college education funds to ensure that they will still be sufficient when your child or grandchild is ready to begin his or her higher education. Additionally, a recent private letter ruling permitted the prepayment of private K-12 education without such prepayment being considered a gift. This too can present opportunities for families.

### **Powers of Attorney, Health Care Power of Attorney, and Living Will Forms for College Students**

The tragedy of the Virginia Tech massacre brought another issue to the forefront in light of the strict privacy laws surrounding medical information – children who are legally adults often do not have documents in place that will allow their parents to obtain medical information about them or to allow parents to make medical decisions for their children if the adult child is unable to do so for him or herself. Parents of Virginia Tech students injured in the attack several years ago were calling local hospitals trying to obtain information about their injured children, but were unable to receive any information without the proper documentation. This is a horrible situation to find yourself should tragedy strike.

We recommend that parents discuss with their adult children the benefits of executing a Health Care Power of Attorney and a Living Will naming their parent (or another individual) as their agent to obtain medical information and to make medical decisions for the child during incapacity. A Durable Power of Attorney should be considered over financial assets of the children as well.

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These are just some of the strategies that may be used at this time to take advantage of current financial conditions and low interest rates. While the current market may stay depressed for some time, there is no guarantee that these opportunities will be around in the future. In addition, determining which estate planning techniques are best for you and your family is specific to your current goals and financial position.

Our attorneys are available to discuss any questions you may have on the issues discussed above. As this Alert illustrates, now is an important time, especially for those who have not updated their documents over the past few years, to have an estate planning review.

For additional information, please contact:

*Robert R. Dunn at 614/229-3284, or at [Robert.Dunn@baileycavalieri.com](mailto:Robert.Dunn@baileycavalieri.com)*

*Harlan S. Louis at 614/229-3225, or at [Harlan.Louis@baileycavalieri.com](mailto:Harlan.Louis@baileycavalieri.com)*

*David A. Onega at 614/229-3200, or at [David.Onega@baileycavalieri.com](mailto:David.Onega@baileycavalieri.com)*

*Maureen C. Duffy at 614/229-3261, or at [Maureen.Duffy@baileycavalieri.com](mailto:Maureen.Duffy@baileycavalieri.com)*