

# Price & Farrington's Estate and Tax Planning FastFacts

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Estate, Tax and Family Wealth Planning for Advisors and Clients

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## Reevaluating Your Estate Planning in Difficult Economic Times

The markets are in turmoil and the daily volatility of the Dow makes your favorite roller coaster look tame. Investment portfolios are down dramatically, the housing market is paralyzed and the overall economic environment we're experiencing is extraordinarily uncertain. Every aspect of our and our clients' planning is impacted. Our advice to colleagues and clients? **Reevaluate all aspects of your estate planning with respect to the current environment and make sure that you have all of the planning basics in place.**

This article offers a brief overview of some of the points our advisor colleagues might review with their clients to help them determine whether their estate planning badly needs a tune-up — or more.

### Reviewing and revising wills.

Clients' *wills* (or *living trusts*) need to be reviewed in light of current developments. Dramatic stock market declines and real estate devaluation may wreak havoc with existing estate

plans. Some clients' wills bequeath some portion, or all, of their **applicable exclusion amount** (the amount that passes free of estate taxes) to children or other **non-spousal heirs**. This might have been done in anticipation that the surviving spouse would have more than adequate resources. **Important:** Recheck this assumption. If your home and securities portfolio are worth less than the value they had when this decision was made, the presumption that the surviving spouse would have adequate resources might no longer be valid.

**Rethink.** Reviewing the client's **distribution scheme** might be in order. Many clients' wills include bequests to a sprinkle **bypass trust** that names both the surviving spouse and children as beneficiaries. If appropriate, consider changing the distribution provisions. In light of recent economic conditions, should express language be added indicating that distributions favor the spouse over the children? What standards should apply? These are important issues to revisit with your attorney.

Some wills include **specific bequests** of assets to particular heirs, e.g., a vacation home to son William and family farm to daughter Millie. Whatever assumptions about the value of these assets formed the basis for these bequests should be reviewed; they may have all changed dramatically.

**Gift planning.** Gift plans to reduce taxable estates should be reviewed. Does the client still have adequate assets to continue a planned gift program? Have retirement assets declined to the point that gifts should be **deferred**? Should a **durable power of attorney** (DPOA) that includes broad gifting provisions be revised to prevent the agent from making gifts that might no longer be viable?



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**Accelerate gifts?** The opposite situation might also exist. The client's **heirs** might have been so negatively impacted by the economic downturn, e.g., job loss, house in foreclosure etc., that a parent's or other benefactor's gifts are essential and the impact on the parent/donor's economic position is of secondary importance. In such events a gift program, perhaps combined with intra-family loans and other measures, may be urgently needed. If such help is important, a number of issues should be reviewed with the client:

**Expand gifts?** Should gifts permitted under a DPOA be expanded? The **gift tax annual exclusion amount** increases to \$13,000 in 2009 but many DPOAs are capped at lower rates of gifting and don't refer to inflation indexing. **Example:** Shares of stock now worth \$6.00 that would have sold for \$12.00 in April allow a parent to gift 2,000 of them to a child now without having to pay a gift tax, compared to 1,000 shares in April. Another issue: Should direct gifts for **medical** expenses or **tuition** costs

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Happy Holidays from  
all of us at  
Price & Farrington!

Our best wishes to you and  
your family for a safe and  
joyous Holiday season.  
We hope your New Year is  
filled with health and happi-  
ness!

Glenn D. Price  
Chuck Farrington



(which are allowed to exceed the annual exclusion) be permitted?

**Reallocate gifts?** What about **gift equalization**? Many clients insist that gifts among children and their family lines be equalized. But if one child has lost his job and home, these mandates might no longer be desirable. If gift equalization isn't required in the estate plan, should a type of equalization or **adjustment for unequal lifetime gifts** be provided in the client's will?

**Rethink fiduciaries.** Who should be named to serve as the **fiduciary** (the **agent, trustee or personal representative**) to make these decisions? If under our client's current power of attorney gifts according to child family line are required to be equalized, the client may have had no problem designating his or her children, perhaps in the order of their age, to serve as agents. However, if gifts were to be made to children based on need, or other more qualitative or flexible criteria, the client might want to consider the use of a more **independent fiduciary**. Similarly, if a **sprinkle trust** (distributions sprinkled out to different beneficiaries) is to be used under the client's will to informally address some type of equalization, an independent trustee might be desirable or — depending upon the distribution standards to be followed — essential.

**Discounts and valuations.** **Discounts** are a cornerstone of many estate planning **leveraging techniques**. A dis-

count is simply illustrated as follows: a 30% interest in a \$1 million family business is difficult to market and has no voting control, justifying a discount in the value of that interest. Has recent turmoil in the markets legitimately increased the level of discounts on certain transactions?

What about **valuations**? While the decline in the value of marketable securities is obvious, other assets have also been compromised in value, such as residential homes and commercial properties. Credit risks may be far greater than they have been in years. For clients considering significant leveraged gifts, e.g., an **Intentionally Defective Irrevocable Trust (IDIT)** sale transaction, *now* may be the most opportune time for such strategies while asset values are depressed, interest rates remain low and higher discounts may be justified.

**Estate taxes.** The possibility of more restrictive estate tax rules in the next administration provides further encouragement for clients to avoid delaying or adjusting their planning.

**Life insurance to fund charitable bequests.** If a client has planned some substantial **charitable bequests** but is now concerned that the reduction in his or her estate will undermine the size of bequests to family members, life insurance may provide an option. The client may be able to have the charity purchase a **permanent life insurance policy** on his or her life and fund the charitable gift *outside* of the will, thereby preserving personal assets for non-charitable heirs (e.g., family members), to be distributed by the will or living trust.

**Probate planning through economic turmoil.** A fiduciary who invests and manages estate assets, including the **executor** of a probate estate (or the **trustee** of a trust), owes a duty to the beneficiaries that he or she will comply with the **Prudent Investor Rule**, which means investing and managing assets as a prudent investor would. This rule expresses a **standard of conduct**, not a specific outcome. The executor or trustee should consider a host of factors, including: (1) general economic conditions; (2) the



possible effect of inflation or deflation; (3) tax consequences of decisions or strategies; (4) the need for liquidity, regularity of income and the preservation or appreciation of capital; and (5) other resources available to the beneficiaries; and so on.

Advisors should be diligent in encouraging clients to select fiduciaries who will *document* their transactions and always *seek the assistance of professional expertise*. Clients should re-evaluate their estate planning to make sure that the individuals they've selected to implement their planning are the right choice in changing circumstances. This is a unique time in history for the transfer of wealth. Estate planning needs to be up to speed and up to date. In this difficult time, anything less places it in serious jeopardy. ■

**NOTE:** For insights into year-end planning, look for our upcoming issue of *The Wealth Counselor: A Monthly Newsletter for Wealth Planning Professionals* with the article, "Year-End Planning Opportunities: More Than You Might Expect." All back issues of *The Wealth Counselor* and our *Estate and Tax Planning FastFacts* are available on our law firm website at [www.pricefarrington.com](http://www.pricefarrington.com).

