

# BLUM

THE BLUM FIRM, P.C.

Marvin E. Blum\*•

Gary V. Post\*

John R. Hunter•○

Daniel H. McCarthy\*•○

Steven W. Novak\*

Len Woodard•

Amanda L. Holliday\*•

Catherine R. Moon\*•

Laurel Stephenson\*

Laura L. Bower-Haley\*

Amy E. Ott•

Rachel W. Saltsman

Christine S. Wakeman

Kandice R. Killion•

Kerri M. Griffin

Kent H. McMahan\* Senior Counsel

[www.theblumfirm.com](http://www.theblumfirm.com)

777 Main Street,  
Suite 700  
Fort Worth, Texas 76102

817.334.0066  
Fax 817.334.0078

200 Crescent Court,  
Suite 520  
Dallas, Texas 75201

214.751.2130  
Fax 214.751.2160

Board Certified by the  
Texas Board of Legal  
Specialization

\*Estate Planning & Probate Law  
○Tax Law

•Certified Public Accountant

## To our clients and friends:

We are excited to begin a new year and hope that your 2012 is off to a good start. When it comes to taxes, we continue to live in a time of exciting planning opportunities. The 2010 Tax Relief Act, which provided for a \$5 million exemption from estate tax and gift tax, expires at the end of 2012 unless Congress acts. After indexing for inflation, the exemptions are \$5.12 million in 2012. When the Act expires, the estate tax exemption and gift tax exemption will decrease to \$1 million on January 1, 2013. This creates an important window of opportunity for planning that closes on December 31, 2012.

This past year was an exciting one for The Blum Firm! Many of our attorneys experienced both professional and personal accomplishments that we are excited to share with you.

- **Kent McMahan** received the Distinguished Probate Lawyers Lifetime Achievement Award from the State Bar of Texas for his significant and tireless contributions to the estate planning and trust law fields through his service to the Bar. Kent was only the 12th recipient of this prestigious award, which is one of the highest honors bestowed by the Texas State Bar.
- **Marvin Blum, Gary Post, John Hunter, and Kent McMahan** were named 2011 Super Lawyers by *Texas Monthly* magazine. Marvin, Gary, and Kent received recognition in Estate Planning & Probate Law, while John received recognition in Tax Law. Marvin was also named one of the Top 100 Super Lawyers in the State of Texas.
- **Steve Novak, Amanda Holliday, Amy Ott, Rachel Saltsman, and Christine Wakeman** were named 2012 Rising Star Super Lawyers by *Texas Monthly* magazine. We are proud to have so many up and coming attorneys on our team.
- **Kerri Griffin** joined our firm as its sixteenth attorney. Kerri graduated *summa cum laude* from Texas Tech University School of Law in May 2011. Kerri also graduated *summa cum laude* from Texas Tech with a B.B.A. in Marketing and an M.S. in Personal Financial Planning. At Texas Tech, she received numerous awards recognizing her academic achievements. In addition, she has authored and co-authored multiple articles on estate planning topics. We are excited to have Kerri as a part of our team!
- We welcomed three new support staff members, **Cat Bardin, Allison Atteberry, and Jaye Drew**. They have already proven to be great additions to our firm!
- Both **Gary Post** and **Cathy Moon** celebrated 25 years with the firm this year. In this age of ever-increasing mobility, we are proud to have loyal and seasoned attorneys with a significant depth of experience. Please join us in congratulating Gary and Cathy!
- *Fort Worth, Texas* magazine recognized eight of our attorneys as Top Attorneys. **Marvin Blum, Gary Post, John Hunter, Amanda Holliday, Amy Ott, and Rachel Saltsman** were designated as Top Attorneys in the area of Probate, Estates, and Trusts, with Marvin and Amanda receiving recognition as the highest vote getters in Tarrant County. Marvin, John, **Dan McCarthy**, and **Len Woodard** were designated as Top Attorneys in the area of Tax, with John and Dan receiving recognition as the highest vote getters in Tarrant County. Len was also recognized in the area of Corporate Finance/Mergers & Acquisitions.
- Our Dallas office, which opened on March 16, 2009, has experienced great growth and is moving to a new, larger space on March 1, 2012. The new Dallas office will be just a few floors up within the Crescent office building and will have more than double the space! We are excited to serve our clients in a more efficient, client-friendly environment.
- **Amanda Holliday** became our first female partner, effective January 1, 2012. Amanda has been with the firm for over 7 years, is a CPA, and is board certified in Estate Planning & Probate Law. We are pleased to be able to have exceptional attorneys like Amanda to offer our clients high quality service.
- **Dan McCarthy** is now board certified in Estate Planning & Probate Law, as well as Tax Law. Dan's double board certification is a rare distinction. Dan's achievement is another example of excellence within our attorneys, helping us continue to increase our effectiveness and ability to meet your estate planning needs.

- **Kandice Killion** passed the CPA exam and is now officially a CPA, in addition to an attorney. This achievement makes Kandice the eighth member of our firm to be both an attorney and a CPA.

In the pages to follow, you will find some of our top estate planning tips for 2012. Please let us know how we can help you take advantage of these techniques during 2012's window of opportunity. We wish you a wonderful 2012!

*The Blum Firm, P.C.*



*The Blum Firm's 2011 Holiday Party*

# Top Planning Tips for 2012

## **2012 - THE BEST YEAR FOR ESTATE PLANNING: THE LOWEST ESTATE TAX RATE IN ALMOST A CENTURY AND HISTORICALLY HIGH ESTATE TAX AND GIFT TAX EXEMPTIONS**

When Congress passed the 2010 Tax Relief Act, it ushered in an era with the lowest top estate tax rate (35%) seen in almost a century, along with historically high estate tax and lifetime gift tax exemptions (\$5,120,000 per person in 2012). Unless Congress acts, on January 1, 2013 the top estate tax rate will revert to 55% and the estate tax and gift tax exemptions will revert to \$1 million per person.

Consider the following planning opportunities currently available through December 31, 2012:

1. Consider Making Gifts in 2012. Some of the best assets to gift are interests in limited liability companies, limited partnerships, life insurance policies, or other assets with high growth potential. Explore ways to discount the value by first transferring assets into a limited partnership (LP) and then later making gifts of LP units.

2. Sales to Grantor Trust and GRATs. With interest rates at historically low levels and low asset values, this is the optimal time to efficiently shift future appreciation to younger generations. Sales to Grantor Trusts and GRATs can accomplish this with little to no gift tax cost.

3. Sales to 678 Trust. For these same reasons (low interest rates and low asset values), sales to 678 Trusts are also extremely effective. A 678 Trust is a vehicle that allows you to shift appreciation out of your estate, but you still have access to the appreciation as a beneficiary of the 678 Trust.

4. Use Trusts When Making Gifts. By making gifts of assets to a trust for your children (and future generations), you protect those assets from the beneficiary's creditors. Trust assets also enjoy divorce protection because they are not subject to division by a Court in a divorce proceeding.

5. Appoint a Special Trustee of Your Irrevocable Trust. In many recently drafted Trusts, the special trustee is given limited powers to amend the Trust, especially if changes are needed to address future changes in the tax laws and to ensure that the Trust purposes continue to be achieved.

6. Spousal Trusts. Spousal Trusts can be used to fully utilize the \$5,120,000 lifetime gift tax exemption during 2012. In this technique, husband creates a trust benefitting wife, while wife creates a trust substantively different benefitting husband. If structured correctly, each spouse can gift the lifetime gift tax exemption amount to the trust he or she created, and the trusts will not be subject to estate tax at either spouse's death.

Remember, this is a limited opportunity to take advantage of the high gift tax exemption amount. Unless Congress acts, this opportunity expires on December 31, 2012. Contact us now to discuss how you can take advantage of this rare opportunity.

## **BLUM TEAM NETS BIG WIN FOR ESTATE**

The Blum Firm, led by attorney Laurel Stephenson, recently represented an estate in a large IRS examination of an estate tax return. At issue was a \$1 million charitable bequest to a local hospital which, unfortunately, the IRS disputed because of some unusual drafting by the original attorney (not in our firm). Laurel worked closely with the estate's CPA firm and did some careful and in-depth research in order to combat the IRS with a compelling argument, which the IRS eventually accepted in full. Not only did the estate receive the full deduction, but the original attorney was likely also spared a lawsuit. Everybody wins!

## **IF YOU HAVE A CORPORATION, READ THIS**

Many of our clients own stock in closely-held corporations. Owning stock is not ideal from an asset protection standpoint. Under Texas law, stock may be seized and voted by a shareholder's creditors. As a result, a creditor could essentially gain control over your corporation and liquidate or operate the corporation as the creditor sees fit.

However, if an individual owns an interest in a limited liability company ("LLC") or in a limited partnership ("LP"), the creditor's options are much more limited with respect to that asset. In that case, Texas law restricts the creditor to obtaining a "charging order" against the LLC or LP interest, which allows the creditor to receive distributions that would otherwise be made to the LLC or LP interest holder. It does not allow the creditor to seize the interest or vote or otherwise control the interest. As a result, the individual will have a better bargaining position in negotiating to settle the creditor's claim.

If you own stock in a closely-held corporation, consider converting the corporation to an LLC or LP for Texas state law purposes. Such conversions can usually be accomplished with no income tax consequences, if structured correctly. Please contact us to discuss how we can help you through this process.

## **DO YOU HAVE A PERSONAL EFFECTS ADDENDUM?**

Who will inherit your personal effects? Without guidance from you, your executor faces a challenging task to divide these sentimental assets. Some of the most painful moments we have seen arise out of disputes over dividing personal items. By expressing your wishes, you can help avoid these hurt feelings.

Most of the Living Trusts we have drafted in recent years allow you to create an "Addendum" that sets out how personal effects will pass to your loved ones at death. We urge you to create a written document with the following information to make sure your personal items pass as you wish: (1) description of asset; (2) name of recipient; (3) date; and (4) signature. There is no need for a formal amendment to your Living Trust; you can simply write out the relevant information.

If you are a Co-Trustee of a Living Trust, you should deliver the Addendum to the other Co-Trustee to ensure compliance with your wishes. If you are sole Trustee of your Living Trust, you should deliver the Addendum to a successor Trustee.

What if you change your mind and want your antique writing desk to be given to your friend Terry instead of your son John? No problem. You can simply write a new personal effects Addendum updating your plan. Your most recent Addendum will supersede any previous Addendums.

If you do not have a Living Trust with an Addendum provision, you can supplement your Will with a "holographic codicil." A holographic codicil is similar to the personal effects Addendum except that it must be written entirely in your handwriting. If your current estate plan does not authorize a personal effects Addendum, or if you would like more information about an Addendum or holographic codicil, please contact us.

## **BUSINESS SUCCESSION PLANNING: ARE YOUR KIDS PREPARED TO TAKE OVER?**

Do you have a closely-held business that you want future generations to manage with the same business philosophy, leadership, and management style as you? A thorough business succession plan is integral to ensuring a business continues to be successful beyond the first generation. A successful plan develops and teaches the next generations how to continue the first generation's vision and allows you to influence how the business is operated after you are gone. We can help you and your family develop a customized plan to allow your heirs to carry on the family legacy.

## **PLANNING FOR DIGITAL ASSETS**

Digital assets are a new phenomenon, and it is becoming increasingly important to plan for these assets for both incapacity and death. Digital assets include all of your online accounts or files you store on your computer or in the cloud.

Family members may need access to online bank account information or contact lists, or they may want access to sentimental items stored online or on your computer, such as special pictures, journals, and emails. Most

web sites have their own “Deceased User” policies that generally prevent family members from accessing a Deceased User’s account with ease. Furthermore, few states have legislation addressing the rights of executors and beneficiaries with regard to digital assets. Thus, family members may have to go to court for legal authority to gain access.

Planning for digital assets can also help prevent losses to your estate. Post-mortem identity theft is increasingly common, and business owners could lose everything if a family member is unable to take over quickly and run the business. Additionally, by designating appropriate people to take care of your digital assets, you may prevent the discovery of personal information or secrets that you want protected.

While lawmakers develop laws to govern these types of assets, we recommend that you create an inventory of digital asset information in a trust or separate document. This inventory needs to be saved in a safe place that is easy to update when you change passwords, and someone you trust should be notified of its location. Please contact us to help with this process.

## DO YOU HAVE FOREIGN ASSETS?

The IRS wants to know about your foreign financial accounts, which the law requires you to report to the IRS each year. If you have more than \$10,000 in foreign financial accounts at any time during a year, you must notify the IRS on your Form 1040. **You must also file a detailed report of those accounts on the “FBAR” form TD F 90-22.1.**

The penalty for failing to file is very high, up to one-half of the account’s value per year. Criminal prosecution is also possible. Even if you can convince the IRS that you did not know of the requirement, then the penalty is still \$10,000 per year and can be \$20,000 per year for a couple under certain circumstances. Please report those accounts!

On a similar note, the U.S. is unusual in that it taxes the worldwide income of its citizens and residents. If you own rental real estate in Mexico, for example, you are required to report that on your Form 1040. Also, note that if any of your relatives or friends are U.S. citizens and work abroad, they are still required to file a Form 1040 and report all income.

## USE YOUR LIVING TRUST TO MAXIMIZE FDIC PROTECTION

After the fall of Bear Stearns & Lehman Brothers in 2008 and the market uncertainty that followed, many individuals have become more focused on maximizing FDIC insurance benefits. This can be accomplished through funding your Living Trust without the need to create multiple accounts with right of survivorship or pay-on-death designations. Using a Living Trust to maximize FDIC insurance is superior because it allows the account assets to pass as provided in your estate plan. Depending on how your Living Trust is structured and the number of beneficiaries named in the Trust, you may be able to obtain FDIC deposit insurance coverage of up to \$1,250,000 per individual trustor (or \$2,500,000 per couple). Please contact us if you are interested in learning how to maximize your FDIC deposit insurance coverage through the use of a Living Trust.

## PRIVATE FOUNDATIONS-PITFALLS TO AVOID

Private foundations are becoming a more integral part of our clients’ estate plans. While foundations can be extremely beneficial, you should be aware of the following pitfalls:

- A foundation cannot satisfy a personal pledge made by an individual.
- A foundation cannot make a grant that provides quid-pro-quo benefits (e.g., receiving a ticket to a dinner, golf event, etc.).
- When gifting assets to a foundation at death, be aware that family members who wish to own the assets may be prohibited from purchasing the asset from the foundation under the self-dealing rules.
- Be aware that engaging in prohibited transactions will trigger an excise tax (i.e., self-dealing, failure to distribute income for charitable purposes, excess business holdings, jeopardizing investments, and taxable expenditures).

If you are concerned about these pitfalls or if you would like to do a private foundation “check up,” please contact us.

## HELP YOUR CHILD BECOME A HOMEOWNER

Current low house prices coupled with historically low interest rates and an increased lifetime gift tax exemption of \$5,120,000 in 2012 gives you the rare opportunity to assist your child in the purchase of a residence. Some of the planning options include:

1. Gift. One option is to gift cash to enable your child to purchase a residence. Each person may give up to \$13,000 (\$26,000 for a married couple) per year to any individual without any gift tax consequences. Thus, if you and your child are both married, you and your spouse could gift \$26,000 per year to your child and \$26,000 per year to his or her spouse (\$52,000 total per year).

Another option is to simply purchase a residence and gift it to your child. If you have remaining lifetime gift tax exemption (\$5,120,000 per person in 2012), you may be able to transfer the entire residence to your child without paying any gift tax.

Alternatively, you could create an irrevocable trust for the benefit of your child and gift the residence to the trust. Gifting a residence to a trust has many benefits including protecting the residence from divorce and your child’s creditors.

2. Loan. You could loan your child money to buy a residence. The loan should be evidenced by a written promissory note from your child. The note should describe the term of the loan, the interest rate, and the payment terms. This option is especially appealing since the current interest rates the government requires are historically low. In order for your child to get a tax deduction for the interest, you need to make it a mortgage loan and file a Deed of Trust.

3. Refinancing Loan. If you have previously loaned money to enable a child to purchase a residence, you should consider refinancing the loan at the current lower interest rate. IRS rates for February 2012 are 0.19% (0-3 yrs.); 1.12% (>3-9 yrs.); and 2.58% (>9 yrs.).

4. Forgive Existing Loan. The increase in the lifetime gift tax exemption to \$5,120,000 per person may enable you to forgive outstanding loans owed to you by your child without incurring any gift tax.

## TIME FOR A CHECK UP?

Are your documents in need of a check-up? Contact us if any of the following apply to you:

- Your documents were executed prior to May 2001;
- You have not reviewed your documents in at least five years or your personal situation has changed since your documents were executed;
- You own real estate outside of Texas in your personal name;
- You have a charitable beneficiary listed in your Will; or
- You want to take advantage of the current exemption levels through lifetime gifts.

## NUMBERS TO KNOW IN 2012

*Lifetime Gift Tax Exemption... \$5,120,000*

*Estate Tax Exemption... \$5,120,000*

*GST Tax Exemption... \$5,120,000*

*Annual Gift Tax Exclusion... \$13,000 per donee*

*Top Estate/Gift/GST Tax Rate... 35%*

# The Blum Firm, P.C.

777 Main Street, Suite 700  
Fort Worth, Texas 76102

Presorted  
Standard  
U.S. Postage  
**PAID**  
Arlington, TX  
Permit No. 691

## Top Planning Tips for 2012

### Super Lawyers



**MARVIN E. BLUM, J.D., C.P.A.**  
Estate Planning/Tax Law  
NAMED TOP 100 IN TEXAS  
SUPER LAWYER ('03 - '11)

**GARY V. POST, J.D.**  
Estate Planning  
SUPER LAWYER ('06 - '11)

**JOHN R. HUNTER, J.D., C.P.A.**  
Tax Law  
SUPER LAWYER ('04 - '11)

**KENT H. McMAHAN, J.D.**  
Estate Planning  
SUPER LAWYER ('03 - '11)

Texas lawyers were asked  
to nominate the best  
lawyers that they have  
*personally observed*  
in action.

*Texas Monthly* magazine  
publishes the results and  
four of our lawyers were  
selected as  
**SUPER LAWYERS,**  
and five were selected as  
**RISING STAR**  
**SUPER LAWYERS!**



**STEVEN W. NOVAK, J.D.**  
Estate Planning  
RISING STAR ('06 - '12)

**AMANDA L. HOLLIDAY, J.D., C.P.A.**  
Estate Planning  
RISING STAR ('08 - '12)

**AMY E. OTT, J.D., C.P.A.**  
Estate Planning  
RISING STAR (2012)

**RACHEL W. SALTSMAN, J.D.**  
Estate Planning  
RISING STAR ('10 - '12)

**CHRISTINE S. WAKEMAN, J.D.**  
Estate Planning  
RISING STAR (2012)

The comments compiled for this newsletter are general in nature and are not tailored to any particular situation. As in the case with any estate, tax or financial planning recommendation, the planning tips suggested in this summary should not be implemented without carefully considering the total economic impact. The advice of an attorney, accountant, or other financial planning professional will provide valuable aid in analyzing the suitability of the particular estate, tax, or financial planning tip for you.

Unless otherwise set forth herein, to ensure compliance with requirements imposed by the Internal Revenue Service under Circular 230 for tax practitioners, The Blum Firm, P.C. must inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

*Top Planning Tips for 2012* is provided by The Blum Firm, P.C. to provide current information about developments in tax and estate planning.

© Copyright 2012. The Blum Firm, P.C. All Rights Reserved