

Planning Ideas for 2017

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Dear Clients and Friends:

Ben Franklin said that, "in this world nothing can be said to be certain, except death and taxes." We would like to add "change" to Mr. Franklin's famous quote. This year has already begun with some exciting changes at The Blum Firm. We have welcomed four seasoned attorneys into our group – **David Bakutis, Dyann McCully, Kory Nelson, and Beth Hampton**. David, Dyann, Kory, and Beth have a skill-set that expands and compliments the services traditionally provided by The Blum Firm. In addition to handling all of your estate planning, tax planning, and asset protection needs, we now have experts who can assist in guardianship, estate and trust litigation matters.

In 2016, we also welcomed **Lani Payne** to our Dallas office. Lani joined us by way of Deloitte & Touche in Denver and then KPMG in Dallas where she gained six years of tax experience. She earned her LL.M. from Georgetown University Law Center in 2011, her J.D., *cum laude*, from Southern Methodist University School of Law in 2010, and her Bachelor's of Business, *magna cum laude*, from Baylor University in 2006. In addition to being an excellent attorney, Lani is fluent in English, Spanish, and French and is proficient in Italian. We are thrilled to have Lani as part of our team!

We are pleased that several members of our team were once again recognized in 2016 for their excellent skills as attorneys. **Steve Novak** was named among the "Best Lawyers in Dallas" by D Magazine in the areas of Tax and Trusts & Estates for the third year in a row.

Marvin Blum, Gary Post, John Hunter, Steve Novak, Len Woodard, David Bakutis, and Dyann McCully were recognized as 2016 Super Lawyers by Thomson Reuters. **Marvin** was again named as one of the Top 100 Super Lawyers in Texas. **Marvin, Gary, Steve, David, and Dyann** were recognized in the areas of Estate Planning and Probate law, **John** was recognized in the area of Tax law, and **Len** was recognized in the area of Business/Corporate law. **Amanda Holliday** was also named as a 2016 Rising Star Super Lawyer in the area of Estate Planning and Probate.

Fifteen of our attorneys were recognized by *Fort Worth, Texas* magazine as 2016 Top Attorneys. **Marvin Blum, Gary Post, Amanda Holliday, Amy Ott, Rachel Saltsman, David Bakutis, Dyann McCully, Laura Haley, Cathy Moon, Kandice Damiano, Julie Plemons, Emily Seawright, and Beth Hampton** were designated as Top Attorneys in the area of Probate, Estates, and Trusts. **John Hunter and Len Woodard** were designated as Top Attorneys in the area of Tax.

In addition to experiencing these exciting changes, we have all learned in the past few months that the future can be difficult to predict, maybe now more than ever. With a new President and a Republican-controlled Congress, there has been much talk of anticipated changes to the tax laws, although there does not seem to be a consensus about what the new laws will look like. This has led many to adopt a "wait and see" approach, especially when it comes to planning. We believe this is a bad idea. As you will see, much of the planning that we do with our clients is not motivated by taxes and should be undertaken regardless of the state of the tax laws. Read on for some planning ideas and useful information, and please don't hesitate to let us know how we can assist you.



The Blum Firm, P.C.

PROTECTING THE ELDERLY FROM FINANCIAL ABUSE

According to numerous recent articles and studies, senior citizens are losing millions due to financial scams, bad advice, and fraud. On average, financial abuse is reported to cost seniors who are victimized in this way about \$140,000 each. Senior citizens are prime targets for financial exploitation for a number of reasons. The elderly are likely to have readily accessible assets, such as a “nest egg,” retirement income, and they tend to own their homes. People who grew up in the 1930s, 1940s, and 1950s were generally raised to be polite and trusting. Con artists exploit these traits, knowing that it is difficult or impossible for these individuals to say “no” or just hang up the telephone.

Understanding the types of financial exploitation that are perpetrated against the elderly is useful in taking steps to prevent such abuse. **One of the most effective tools to stop fraud against a senior with incapacities is to seek a temporary guardianship.** The court can suspend all powers of attorney, and the temporary guardian can then forward the mail to a new address, cancel credit cards and close financial accounts of the proposed ward that have been compromised, redirect income to a protected guardianship account, prohibit access to the ward, and much more. If the facts support a permanent guardianship, a permanent guardian can keep the safeguards in place. The Blum Firm now has attorneys specializing in guardianship law available if you need legal advice or legal assistance in this area.

GET THE MOST BENEFIT FROM YOUR CHARITABLE GIFTS

Many of our clients are charitably minded and give to worthy causes. For tax purposes, however, all charitable gifts are not created equal. For example, when taxpayers gift an appreciated asset to public charities, they may deduct the full fair market value of that asset (not just their cost basis) AND avoid paying capital gains on the appreciation. Because of this dual benefit, **we often recommend that clients consider gifting interests in companies, mineral interests, or other complex assets.** This can be an especially beneficial planning technique whenever there is a liquidity event.

Another gifting option is a Charitable Lead Trust (“CLT”). With a CLT, you transfer assets to an irrevocable trust. The trust then pays to the charity a specified amount each year for a certain term. The trust may be structured so that you receive an immediate charitable income tax deduction for the present value of the charitable payments. CLTs can be useful to achieve a large income tax deduction in the year of a liquidity event and may allow the assets to revert back to the donor. Placing high growth assets in a CLT can also be very beneficial for gift and estate tax planning because the growth can occur outside of your taxable estate. At the end of the term, the remaining trust assets become available to you or other family members. Please contact us to discuss this technique in more detail.

DON'T FORGET TO PROTECT YOUR FAMILY

You may have heard the old adage, “Shirtsleeves to shirtsleeves in three generations.” The oldest generation works hard, possibly starting from nothing, and amasses great wealth, but by the time the grandchildren and great-grandchildren reach adulthood, that family wealth has disappeared. The assets that should have served as a precious resource, sustaining and promoting the future well-being of the family, are instead depleted due to family politics, poor communication, or a general lack of knowledge and appreciation for the family wealth and the amount of work it took to create it. Truthfully, even the best tax strategies can do nothing to actually prepare your family to receive your assets.

We understand that no matter how large your estate, your biggest asset is your family, and the consequences of neglecting this irreplaceable asset during the estate planning process are too costly—both for your estate and for your family itself. **Accordingly, we have made it our mission to incorporate family legacy planning into our estate plans, so that while we prepare your money for your family, we are also helping you prepare your family for your money.**

Family legacy planning is multi-faceted, varies largely from family to family, and depends on an array of different techniques. From designing a trust created specifically to help families achieve multi-generational success to aiding families in establishing family meetings as a way to facilitate the edification of younger generations, The Blum Firm has experience in helping our clients take the requisite actions today that will positively impact their family, and their assets, for generations to come. Let us know how we can help your family succeed.

ESTATE PLANNING FOR BLENDED FAMILIES

Do you and/or your spouse have children from a prior marriage? Does one spouse have a much larger estate than the other spouse? If so, you have a “blended family.” **Estate planning for blended families is critical because spouses may have different views about how their assets should pass.** This is complicated by the fact that the passage of property upon death can be radically different depending whether the property is characterized as community property or separate property. For example, assume a spouse wants his separate property to pass to his children at death; but, during the marriage that separate property lost its character and became community property. In that case, upon the spouse’s death, one-half of that property would pass to his children and the remaining half would be owned by the surviving spouse.

How could that happen? Texas law favors a community property outcome, and there is a presumption that all marital property is community property unless proven otherwise. As critical an issue as this is, it is frequently overlooked and it is important to note that the title of the property (especially for financial accounts) does not always control. To avoid this, be proactive in your planning. A marital property agreement allows spouses to identify which assets will be considered community property versus separate property, can designate that income from separate property is separate property, and can control how assets are divided upon death. A clear premarital agreement can avoid conflict amongst members of the blended family. We can help you find a solution that works best for you and your family.

BUSINESS SUCCESSION—EXIT ON YOUR TERMS

If you are a business owner, do you know how you are going to transfer the ownership and management of your business when you are ready to exit? A successful exit strategy goes well beyond selling the business at the right price ... it considers and plans for continuity of the employees, the business structure, the assets, as well as the tax obligation upon sale or transfer. A majority of family businesses fail to successfully pass to the 2nd and 3rd generations largely due to relationship issues among the family, lack of competence, and being unprepared, all of which a carefully designed exit strategy can address.

Start the planning process now by **creating an action list with priorities for the transition, forming a planning team of trusted advisors (such as your CPA, lawyer, and financial advisors), and developing a working plan** to bring all of the stakeholders to the table to develop a plan and implement the succession process.

THINK ABOUT SENDING THOSE ASSETS UPSTREAM

While it is common to want your assets to flow “downstream” to your children eventually, looking “upstream” to your parents can be advantageous if you expect to receive an inheritance from them or if their estates fall below the exemption level.

Even a small inheritance from a parent could push your estate over the exemption limit. **Encourage your parents to create a “Standby Trust” to receive assets for your benefit to keep those assets out of your estate.** Not only will this minimize the size of your taxable estate, but it will also protect the inherited assets from the claims of creditors and spouses in the event of divorce.

Similarly, if you have significant wealth and your parents’ estates are below the exemption, you may want to consider gifting some of your assets to a special Trust for their benefit. This technique works particularly well for low-basis assets because appreciated assets that are includable in your parents’ estates will receive a step-up in basis at their death (resulting in income tax savings when the assets are later sold). If the assets flow back to you in trust, they will also have creditor and spouse protection when you inherit them.

PRIORITIZE PROTECTING YOUR ASSETS

Many of our clients have considerable asset protection concerns. Whether the concern is potential liability from operating businesses or real estate, or just protecting family members from themselves, good asset protection planning can save money and insulate assets from liabilities, divorce, and immature heirs. While no one wants to think they will be involved in a messy situation, it is our job to ensure you are prepared for the worst. **If you own substantial assets outright in your own name or plan to leave family members large bequests outright, you need more planning.** This planning can take many forms, including trusts, limited liability companies, family limited partnerships, and marital property agreements.

IRAs may also need protection planning. Surviving spouses who inherit IRAs have the option to rollover the inherited IRA into their own IRA or to be treated as the beneficiary of the inherited IRA in order to obtain access to the benefits before age 59 ½. Non-spouse beneficiaries of qualified retirement plans and IRAs must comply with complex distribution provisions and may be required to withdraw (and pay taxes on) the entire account balance within 5 years. This can be avoided with proper planning. Leaving an IRA to a trust may be appropriate, but any such trust needs to be drafted correctly to ensure maximum tax deferral. Contact us to discuss how we can address your concerns.

PLAN BEFORE INTEREST RATES RISE

With interest rates set to rise in 2017, now is the time to take advantage of tax-free wealth transfer techniques that work best in a low interest rate environment. **One popular technique is to sell appreciating and/or income-producing assets to a trust that is outside of your estate for estate tax purposes**, e.g., a Beneficiary Defective Trust (“678 Trust”), Children’s Trust, or Spousal Trust, in exchange for a promissory note at the applicable federal rate (2.10% for a 9-year note in February 2017). To the extent the appreciation and income generated by the property sold exceeds the interest, you will have reduced your estate tax exposure. Supercharge this technique by selling assets to a “grantor” trust so that the assets sold grow tax-free while you pay the income taxes out of your own pocket, which further reduces your estate tax. When combined with valuation discounts currently available on the sale of a minority interest in a closely-held business, the estate tax savings can be significant.

A similar technique is to sell assets to a trust in exchange for an annuity. Also consider making a low-interest loan to a family member or to a new or existing trust that is outside of your estate for estate tax purposes. Each of these techniques reduces your potential estate tax so long as the investment grows at a rate in excess of the interest rate. Using a 678 Trust, you can implement any of these techniques without giving up any of your assets. Lastly, if you have an existing note with an interest rate in excess of 3%, consider renegotiating the note to take advantage of the lower interest rates. Please contact us to discuss how we can help you take advantage of low interest rates.

DON'T BE AN IRS TARGET

IRS data shows that, in 2012, more than half of estate tax returns for estates between \$5 million and \$10 million were audited, and all of the estate tax returns for estates greater than \$10 million were audited. On average, the IRS collected an average of \$300,000 to \$800,000 from each estate audited. So, what should you do? **Engage in planning during your lifetime so that your estate will not be required to file an estate tax return.** There are many estate planning techniques that can ultimately obviate the need to file an estate tax return and save your heirs the hassle of an IRS audit. If your estate is required to file an estate tax return, we can assist in making the return as audit-proof as possible by guiding your executor through the preparation process. We recommend beginning this planning sooner rather than later.

NUMBERS TO KNOW IN 2017

Lifetime Gift Tax Exemption	\$5,490,000	Annual Gift Tax Exclusion	\$14,000 per donee
Estate Tax Exemption	\$5,490,000	Top Estate/Gift/GST Tax Rate	40%
GST Tax Exemption	\$5,490,000		

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Planning Ideas for 2017

ESTATE PLANNING RESOLUTIONS TO KEEP IN 2017

1. Review/Create Estate Plan. If you have an existing estate plan, election years are perfect years to review your documents and determine whether changes in your assets or family require modifications to your plan. If you have not finalized an estate plan, this is a good time to move forward with such planning.

2. Consider Estate Planning for Adult and/or Disabled Children. If you have a child who is eighteen or older, or if you have a child with disabilities, there are various estate planning documents that are advisable to have in place for those children. We will be happy to help you and your children navigate this process.

3. Review Account Titling and Beneficiary Designations. Review the titling and beneficiary designations on all of your accounts (e.g., your bank accounts, investment accounts, life insurance policies, annuities, and retirement accounts). These should be coordinated with your overall estate plan so that assets do not inadvertently pass to an unintended beneficiary or become unnecessarily subject to probate.

4. Consider Naming a Trust as Beneficiary of Retirement Plans. Historically, individuals name their spouse, children, parents, siblings, or other relatives as the primary and/or secondary beneficiaries of retirement plans to allow those individuals to take distributions based on the beneficiary's life expectancy (i.e., "stretch-out"). However, a trust can be named as a beneficiary of a retirement plan while still allowing for the stretch-out based on the identified beneficiary of the trust. If the beneficiary is required to take distributions from the retirement plan, but does not need the funds for their current living expenses, those assets can remain in trust, where they will be protected from creditors, including potentially divorcing spouses.

Please call us to help you stay on track with your 2017 estate planning resolutions.



2016 Super Lawyers

Marvin E. Blum (2003-2016)
Gary V. Post (2006-2016)
John R. Hunter (2004-2016)
Steven W. Novak (2013-2016)
Len Woodard (2014-2016)
David Bakutis* (2007-2016)
Dyann McCully* ('08, '09, '11, '13-'16)

2016 Rising Star Super Lawyer

Amanda L. Holliday*
(2008-2016)
*not pictured

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 and obtaining the advice of counsel. 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. By providing this information, The Blum Firm, P.C. does not assume any obligation to provide notification of future changes in laws. Please contact us if the information we have provided affects you and you would like to discuss. The content of this letter was prepared by Marvin E. Blum.