



Farrell Fritz Client Advisory

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Recession Presents Opportunities for Estate Planning with Real Estate

As we all know, commercial real estate holdings have been significantly impacted by the recession. Vacancy rates have risen, rents have decreased; and most property values have substantially declined. While the economy has improved, real estate values have been slow to recover in most markets.

Accordingly, many of our clients who own real property have seen their estimated net worth shrink. On a positive note, however, these diminished property values, combined with historically low federal interest rates, have resulted in a favorable “perfect storm” for estate planning with real estate.

We all believe that real estate will recover and eventually surpass pre-recession values. Notwithstanding this, appraisal values have remained low due to a myriad of economic factors, including high capitalization rates for income producing properties, indicating reduced demand. Estate planning with real estate, while values remain low, means that future appreciation and income produced by the property you transfer to your heirs will be frozen out of your estate, essentially constituting an additional tax-free gift.

Using appropriate valuation discounts in properties enables further leveraging of these low appraisal values. It is important to note that federal lawmakers are now considering the imposition of rigid restrictions on the use of valuation discounting in estate planning with closely held family businesses. These discounts, while fully justified under current law, may not be available in the near future.

In addition, interest rates which are used in structuring popular estate planning techniques such as the Grantor Retained Annuity Trust (“GRAT”) and Intentionally Defective Grantor Trust (“IDGT”) are near historical lows. This means that required payments made to you in connection with the transfer of your real property to your children, grandchildren or others are significantly lower than they might otherwise be in a high interest rate environment.

When engaging in planning for the succession of real estate holdings, starting with depressed property values is obviously extremely advantageous. Taking advantage of the other economic factors described above, however, can enable individuals to gift substantially larger interests of real estate to their intended beneficiaries, with a much lower gift and estate tax impact.

The ongoing uncertainty about the federal estate tax only serves to magnify the need to consider these and other estate planning opportunities at this time. Barring congressional action, beginning on January 1, 2011, the estate tax exemption amount will revert to \$1,000,000 per individual. This essentially means that, if the value of your taxable estate exceeds \$1,000,000, each additional dollar would be subject to a federal estate tax

with a maximum rate of 55%. In light of the potential for such a punitive estate tax regime in the very near future, attending to your estate planning has become increasingly critical.

If you have been neglecting your estate planning and own real estate, now is the perfect time to consider your options. Farrell Fritz has a large and well-respected trust and estate practice, with extensive experience in estate planning with real property. Please feel free to contact your attorney below, and we will be more than happy to assist you in resuming your estate planning.

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From time to time, we send out important news and legislative updates that have a bearing on estate planning. If you would like to receive these notifications via email, kindly send your email address to Jennifer Friedrich at jfriedrich@farrellfritz.com.

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