

# Estate Planning Opportunities in Current Markets

While markets react negatively to rising inflation and fears of a near-term recession, there is one estate planning “silver lining:” the market downturn makes three estate planning techniques even more attractive.

1. **Lifetime gifts:** Large exemption amounts remain the law – at least until 2026 when they are scheduled to be reduced by half – and any person can give away up to \$12.06 million (twice that amount for a married couple) without incurring any present gift tax or generation skipping transfer (GST) tax.

While market values remain low, consider making large gifts of stock to your family members, either outright or in trust. Large lifetime gifts offer two key tax benefits, namely (1) they “lock in” your gift tax and GST tax exemptions before they are reduced in 2026 (if not sooner) and (2) they allow you to transfer assets out of your taxable estate at current reduced valuations. Gifts in trust have the additional benefits of protecting the assets from creditors (including divorcing spouses) and from estate taxes, potentially for multiple generations.

2. **GRATs:** Although interest rates are rising, they still remain relatively low by historic standards. A grantor retained annuity trust (GRAT) is a particularly attractive planning technique when asset values and interest rates are low. The ideal assets for a GRAT are investments that are undervalued now but have the potential to appreciate significantly in the near term, which may include biotech and technology stocks in the current market.

A GRAT is an irrevocable trust with a fixed term (generally between 2 and 10 years). During the GRAT term, the GRAT makes annuity payments back to the donor at a rate which returns the entire original funding amount back to the donor, plus statutory interest. As a result, no taxable gift is made when the donor funds the GRAT. At the end of the term, if the assets in the GRAT have appreciated above the statutory interest rate (3.6% for GRATs funded in July 2022), all of that appreciation passes tax-free to the donor’s chosen beneficiaries.

3. **Intra-family loans:** Also related to interest rates, now is a good time to consider intra-family loans before rates rise even further. Like GRATs, intra-family loans are an effective way to transfer resources (including growth in value of the loaned assets) to a family member without making a present gift. The interest rates used for intra-family loans are typically lower than commercial lending rates, which reduces the family member’s cost of borrowing. Furthermore, you can “lock in” today’s current rates for long periods of time (decades even), ensuring that the borrower’s interest cost remains manageable, even as commercial lending rates continue to rise.

Please contact a member of Choate's Wealth Management Group if you are interested in exploring any of these opportunities further.

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