

Ep35: Top Estate Planning Tips with Bob Cohen

January 17, 2020

PATTI BRENNAN: Hi, everybody, welcome back to “The Patti Brennan Show.” Whether you have \$20 or \$20 million, this show is for those of you who want to protect, grow, and use your assets to live your very best lives.

Folks, that introduction is an introduction I do for every podcast and as you listen to this one in particular, you might think “Oh, that doesn’t apply to me, I don’t have millions and millions of dollars.” OK, stay tuned in because what Bob Cohen has to talk about applies to everyone.

Bob, welcome to the show.

BOB COHEN: Thank you, Patti.

PATTI: Why don’t you tell everybody a little bit about your background, whatever got you into this field of estate planning you don’t know that I’m going to about to say this you all should know, he’s one of the most respected estate planning attorneys in the Philadelphia area.

When it comes to this, he is the best, or one of the best. Thank you so much for joining us.

BOB: Thank you for that kind introduction. By way of background, I’m an attorney with Riley Riper Hollin & Colagreco. I’ve been with the firm about 17 years. I’m a partner in the firm and I head up our estate and tax practice group.

I got into estate planning about 20 years ago. It was transitioning from doing litigation actually, into estate planning for more of a work life balance, believe it or not, because litigation required me to travel all over the country.

I had small children at the time and wanted to find a practice area that would allow me to utilize not only my skills as an attorney but my prior skills as a CPA and a former controller for our division of a Fortune 500 company.

PATTI: OK, so you’re one of those guys that has more letters after your name than in your name, right?



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BOB: That's true.

PATTI: I do think that your litigation background probably serves you, if in the event that you're face to face with the IRS trying to argue a particular strategy and justify certain deductions.

BOB: I do a fair amount of federal tax controversy work and some state tax controversy work as well. In fact, I'm in the process of settling a case right now that's scheduled to go to trial in January. The good news came out this morning that it looks like we've reached a settlement with the IRS on this matter.

PATTI: Good for you.

BOB: Needless to say, the client's very happy.

PATTI: Yes.

BOB: That's always our goal. To try to have a client have a good outcome.

PATTI: Yeah, minimize the out of pocket cost. That is terrific and good to know that we've got that in your background. Let's talk tax.

BOB: Sure.

PATTI: Let's talk a little bit about the federal estate tax, where it stands today, where it might be headed, and really, who needs to worry about it? Who needs to care about it?

BOB: If we take a little step back and we look at history for a very long time, the federal estate tax was a \$600,000 exemption that most people had in that estate kind of dormant for a very long time.

The last 10 years or so, it's had wild gyrations in terms of going up to \$5 million, it went up to \$10 million. For one year there was no federal estate tax at all.

More recently, we've been dealing with a more concrete law which says, "We currently have \$11.4 million of federal exemption available to each individual." That's a lifetime exemption for both gift tax and federal estate tax.

PATTI: In English, each individual can leave \$11.4 million to the next generation or to people that they care about. They don't have to worry about a federal tax of...Is it 40 percent?

BOB: It's 40 percent on the excess over the exemption amount that is available. The exemption amount, again, has fluctuated. That \$11.4 million is actually a number that has escalated based on inflation, but it is currently at \$11.4 million for 2019.



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It is an interesting law in that it is set to sunset at the end of 2025 and revert back to a five million dollar exemption. Therein lies the interesting planning opportunity for many clients.

Many say, “We don’t have anything close to \$11.4 million,” or for a married couple, \$22.8 million. Why do I need this?”

You may have five million or six million. If you are fortunate enough to live long enough and these laws revert back to the lower limit, you may suddenly be faced with a planning issue.

The opportunity exists right now to do some planning, providing flexibility in the estate plan documents so that you will have the ability to make decisions at a later date and some today.

For example, if you have a married couple who has \$12 or \$14 million they say, “We don’t have \$22.8 million, we’re safe. We don’t have to do anything.” They may want to look at their lifestyle, determine what their needs are.

I always say, determine what your needs are first because you don’t want the tax tail wagging the dog, right?

PATTI: Agreed.

BOB: We all want to save taxes but we don’t want to put ourselves in a financial situation that we don’t like, merely to save tax dollars.

PATTI: There’s nothing worse than looking back and saying, “I wish I hadn’t done that.” Because in estate planning, once you set it up, it’s usually irrevocable.

BOB: That’s correct. Most of these types of planning, you do make an irrevocable type of decision in order to gain the tax advantage.

PATTI: Some of the things that you and I’ve done together, I love the fact that you build in so much flexibility so that maybe husband and wife aren’t necessarily losing access to that money right away, or over the survivor’s lifetime, and that’s called the Survivor Lifetime Access Trust.

That’s a pretty neat planning tool that can take advantage of this, maybe inflated exemption, without losing access to the money that you might need later on.

BOB: In this situation, we’re talking about what we call Spousal Limited Access Trust. Assets are being transferred, but during the surviving spouse’s lifetime, has the ability to reach in, dip



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into those assets and utilize them when necessary.

PATTI: That's terrific.

BOB: The other thing that I wanted to mention, it's important to develop the flexibility in these documents because there are multiple ways to take advantage of the exemption.

For example, there's this concept called portability, where a husband and wife, a married couple...Today, we have same sex marriages. A married couple has the right to transfer any unused exemption to their surviving spouse.

PATTI: If I hear you right, let's go through a real case example. Let's say husband and wife have five million dollars, don't really need a estate planning, etc., but they have access to this portability clause. Husband passes away, wife wins the lottery.

Now, all of a sudden she's got \$20 million. Because they have the portability clause, she can actually leave a lot more to the next generation, right?

BOB: Right. We still have the concept of unlimited portability, if you will, between spouses. That's not always the best type of planning, because if you just leave everything out right to your surviving spouse, when the second to die, that surviving spouse, could end up with a highly taxable estate, when much, if not all of it, could be eliminated or minimized by doing some planning.

We typically recommend to clients in that range of asset wealth to develop portability in there but also to allow the spouse to do what's called a Disclaimer Trust, so that at the end of the first person's lifetime, they get to get a second bite at the apple, so to speak, and they can look at what the current laws are.

They can look at what the health and needs are of this surviving spouse. They can make a decision as to whether or not to take some of those assets and fund a Credit Shelter Trust, put it away for the next generation, and avoid tax on it on the second to die.

PATTI: Therein lies the flexibility that you are referring to, to not make it a mandatory, but make it at a game day decision based on the information they have at the time and when it's most relevant.

BOB: We also recommend that the clients build that type of flexibility into all their documents. Sometimes it's the will, sometimes it's a living trust. Some of these are more technical than others, but they also provide opportunities. If proper planning is done, you can avoid probate.

In Pennsylvania, probate is not a big deal, but there is still a cost associated with it.



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Depending on what county you're in, they usually charge X number of dollars per million dollars of assets.

You can do the math and see that if somebody that has \$50 million, and if the county they live in charges \$700 per million, that can be a pretty hefty probate fee that can be avoided by doing a living trust. Living trust allows you all the flexibility of a will, but you don't have to pay that probate fee.

PATTI: Let me play devil's advocate here, Bob. Here we are in Pennsylvania. What is the exact process of this thing called probate? Is there a potential downside of a family not going through the probate process in terms of accountability or the trust itself?

Because the way that I think of a living trust, correct me if I'm wrong, but it's a substitute for the will. Pretty much everything you'd put in your will, you put in your living trust.

One, will, you have to go through probate, the other one, you don't have to go through probate. What are the pros and cons of each strategy?

BOB: When we're planning with clients, we always talk to them about whether or not it pays to have a living trust. We always recommend a will.

Whether there's a will or just a trust, we typically recommend that a will should be done. There may be a situation where you get assets after the trust has been created, and you didn't get around to transferring those assets into the trust. Now, you potentially have an issue that you wouldn't have otherwise had if you just had the will.

We always recommend doing a will, and we do what's called a pour over will in most cases where there's a living trust. We say, any assets that I may have that are titled in my name, that are subject to probate, we ask that you transfer them over...or we do not ask. We direct that you transfer them over into my revocable living trust.

PATTI: In other words, it's a, "Oops, I forgot about this account. I meant to put it in the name of the living trust," which by the way, the living trust is in your social security number also.

BOB: That's correct.

PATTI: It's really, from a tax perspective, same outcome. It's a catch all of those things that every once in a while, we forget that there's this account, and then, therefore, there's no intestacy issue, right?

BOB: Right. We try to avoid intestacy issues because that can create challenges, and...

PATTI: Hassle, cost, all of that.



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BOB: Challenges by beneficiaries that maybe were not intended to be recipients of someone's assets. It's important to do planning regardless of the overall value of your estate, whether you have \$500,000 or \$500 million. There really are advantages to you determining how you want your assets distributed to your loved ones or to charity.

PATTI: That's a really important point, as I said in the beginning. You don't have to have \$12 million for this to be relevant. I think the distribution is really, who do you want to have what you've worked an entire lifetime to accumulate?

I think about that as, what a legacy. It represents 30, 40 years of hard work, sacrifice. When it's all said and done, who would you like to hand that over to and when? That's really the goal of this, right?

BOB: That's correct. It's really a hard decision and it's a hard topic for people to focus on.

PATTI: I don't want to die. I don't want to talk about it.

BOB: Nobody wants to talk about that subject. As part of overall strategy for planning, which is the business you're in as well, Patti, you need to have the right team of advisors working together, all helping the client to reach their goals and objectives.

That's one of the reasons I really enjoy working with your organization because we have a common goal in mind. There's no egos involved. It's what's best for the client.

PATTI: Exactly. Let's talk a little bit. We talked about the federal estate tax. There is this wonderful opportunity between now and 2025. We've got five years to do some pretty cool stuff.

BOB: Maybe less.

PATTI: That's a good point.

BOB: I do want to point that out. While the law is fixed for this point in time...as we know, Congress at any time can enact new legislation.

PATTI: And have.

BOB: And have and may in the future. Certainly, if there's a change in the White House, the Democrats have certainly expressed an interest in reducing the overall exemption that's available to the people.

PATTI: I've heard rumors, Bob, of going back from \$11.4 million, all the way back down to three million.

BOB: Three, three and a half million, are the numbers I've heard tossed around. Again...



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PATTI: You don't know.

BOB: I try to avoid speculating on these things because it's always a moving target. The best thing we can do is planning based on what we know the law to be, and again, providing as much flexibility in the documents as possible, so that we can adjust and adapt to what the law may be at the time of one's passing.

PATTI: The word planning, I wish that we could come up with another word for planning. This is a sidebar commentary. It sounds hard. It sounds complicated. I don't want to go through all this, etc.

The way that you and I like to approach this, at least, based on the history is, "OK. What is your situation? Here are three potential ideas. Here are the pros and cons of each. Here are the implications, short and long term. What do you feel most comfortable with?"

BOB: Yeah. I think planning can say, "Oh, I don't have enough assets to really worry about planning." Your point is valid. I think what we need to do is, focus more on the individuals. To me, it's a very important concept that any clients I'm representing feel comfortable with me, can share their thoughts and concerns with me.

Oftentimes, I'm getting into very difficult conversations with a client. "I have a child with special needs," or "I'm worried about a spouse, or a child spouse." How do we protect those types of situations?

PATTI: Very important.

BOB: If you don't have that trust with one another, it's really hard to do this type of work. It's a very personal relationship, to help in the situations.

PATTI: It is very personal, especially with what's happening in America today, kids are underemployed. They're not quite earning, etc. I think also, what I often find, is the parents don't necessarily want to create a disincentive for their children. They don't want to take away their drive.

There's some pretty neat things that you've done, to create more of an incentive, maybe more financial security for the children, but, encouraging them to go out and create their own wealth on their own, based on their own efforts.

BOB: We've done that with a number of families, particularly families that are second and third generation business owners, where the money that is accumulated from generation to generation goes into trust. It's handled in such a way that, it's not the silver spoon type of approach.



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Oftentimes, these families will set up family foundations. They'll set aside a chunk of money for that. They'll ask the children to get involved in the family foundation, so they can understand needs in their community. They may have grown up in a very privileged environment. It's a good way to help them learn about those less fortunate, and how to give back to the community.

PATTI: Sure. Let's talk a little bit. We talked about the federal estate tax. How about state inheritance taxes or state estate taxes? We could talk about Pennsylvania first, and then maybe we can expand more.

BOB: I would probably focus primarily on Pennsylvania because that's really my primary area of expertise. That's where I'm licensed. I'm licensed in both Pennsylvania and in New York, as well. Pennsylvania is a relatively simple procedure.

It's Pennsylvania inheritance tax. There's technically an estate tax on the books, but currently, they are not assessing any estate tax under Pennsylvania law. Federal Pennsylvania inheritance tax for a spouse is taxed at a zero percent rate. Any transfers between spouses has no tax associated with it.

For bequests to children, it's a four and a half percent tax. For siblings, it's a 12 percent tax. For anybody else, other than a charity, it's 15 percent.

PATTI: It can add up as well.

BOB: It can definitely add up. You are entitled to certain deductions in the course of administering the estate, to reduce that amount that is subject to Pennsylvania inheritance tax.

PATTI: To get ahead of it, even if we don't have a federal estate tax, what about avoiding the Pennsylvania inheritance tax? Is there...

BOB: Certainly gifting is one way to do that. You can be as simple as utilizing the annual exclusion amount, which is currently \$15,000 per year, per person.

Believe it or not, when you have larger families, that can add up to quite a bit. If it's a situation where you're married, you essentially can give away \$30,000 per year, per person.

PATTI: Their spouse and their children.

BOB: Their spouses and anybody else they want to give it to. It doesn't have to actually be a familial relationship to do that type of gifting.

I have clients that are literally giving away hundreds of thousands of dollars a year



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without having to file a federal gift tax return, without having to do anything other than documenting the fact that they've made this \$15,000 gift to 25 people.

PATTI: Aside from the will, aside from the revocable living trust as an alternative, different gifting techniques, etc., what other documents would you recommend?

BOB: I always have a standard basic set of documents that I believe everybody needs. You need some form of will either just a will or a pour over will, perhaps a revocable living trust if you're using a pour over will. You should have a durable power of attorney which is a document that authorizes someone else to act for you during your lifetime.

People are sometimes familiar with a power of attorney. They may give someone to complete a real estate transaction. Well, this this one is one in which you are naming someone to act as your agent to do as you would do in a fiduciary capacity if you become incapacitated in some way.

PATTI: They have that fiduciary obligation. They are accountable...

BOB: Right.

PATTI: ...so it is important.

BOB: Yeah, and two other documents that you should also have. One is a living will and a healthcare power of attorney because not oftentimes the person you name as your financial power of attorney may not be the same person you want making medical decisions for you, so we always recommend that they be two separate documents.

PATTI: The living will and the healthcare power of attorney, you need both of those documents or are they one in the same?

BOB: The way I draft is I draft them as two separate documents. The living will expresses your end of life wishes. What do I want or what treatment do I want with health if I'm in a terminal situation, under current medical technology?

I do or do not want resuscitation. I do or do not want antibiotics. I do or do not want hydration and food. It is a bit of a morbid topic but most people, oftentimes, tell me, "I don't want to do anything that's going to prolong the act of my dying." That's the language that we typically use.

The healthcare power of attorney references that document so that people aren't making counter decisions to what that individual may have had in their living will.

PATTI: The healthcare power of attorney authorizes certain treatments, surgeries, things of that



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nature.

BOB: It authorizes, based on the person who's signed it, an agent to make those decisions.

PATTI: Let's go back to the financial power of attorney, what is the difference between a durable power of attorney and a springing power of attorney, if any?

BOB: That's a great question. A durable power of attorney, let's say, I gave you my power of attorney, you would have the right to act upon the signing of that document. I would sign it, I give Patti Brennan my right to act as my power of attorney. You sign as agents and you're going to accept that role, you can act...

PATTI: At any time.

BOB: ...at any time. A springing power of attorney, on the other hand, is the one that goes into effect upon a certain event. It could be becoming incapacitated in some way. It could be unavailable for traveling purposes. It can be very specific. It could be a limited springing power of attorney.

PATTI: You're recommending the durable, so let me play...

BOB: I recommend...

PATTI: The power of attorney.

BOB: ...a power of attorney, and I really have a discussion with the clients as to whether or not they want it to be springing or durable upon signing.

PATTI: I think the reason for the question, Bob, and the distinction is that a lot of people, when they get their powers of attorney, they don't realize there is a difference. When you're giving me this power, how much power do I really have? When can I start using it? How are you going to know?

Does that create some unintended consequences? What are the penalties, if you will? I mean, let's say I'm taking on the role of power of attorney. What responsibilities am I assuming? Who am I accountable to? Is it a lot of work?

BOB: The agent is taking on a responsibility. It's a fiduciary role, similar to perhaps what you do for your clients, in terms of investing their money.

PATTI: Fiduciary is a whole different animal, right? It is not just a suitability or you try to do the right thing. You must act in the best interest of that individual. End of discussion.



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BOB: That's correct. That's absolutely right. There is no leeway there. You are actually signing a statement under Pennsylvania Law that you are acting in the best interest of that principal.

PATTI: No co mingling of the assets.

BOB: Certainly not. [laughs]

PATTI: None of that funny stuff. You pay the bills. You take care of that person.

BOB: You're opening yourself up to tremendous liability and risk by doing anything other than acting in the best interest of the principal.

PATTI: It doesn't really have to be that much extra work. You're just taking care of the financial decisions and bills and that sort.

BOB: I don't think it should be taken lightly. It can be a very benign type of role, but it also depending on the family situation and the amount of investments one may have. If, let's say, somebody is managing or owns 47 properties, and suddenly they become incapacitated, well...

PATTI: Guess what, you're up.

BOB: ...that agent could have a lot of responsibility. It should be someone that has the ability. It's really important to think hard as to who you want to be that agent. It shouldn't just be automatically your brother or you spouse. It should be someone that has the requisite skills for the types of things that might come up in your life.

PATTI: And/or at least that person needs to have access to someone like you for that ongoing guidance that they're probably going to want and need, right?

BOB: You always want to have the right team of advisors in place. I've always been a big advocate of that. No one person is going to have all of the answers. Very few clients, quite frankly, have all the answers.

Surrounding yourself with bright people that can help you and are willing to work together and don't have egos, let's all focus on getting the client to where they want to be and putting them in the best position.

PATTI: Bob Cohen, I am so grateful to know you. I so enjoy working with you, because that is the spirit that you take every client meeting. Folks, again, this is such an important subject. In fact, we're going to continue the conversation, Bob, if that's OK with you.

Thank you for joining me. I hope this has been helpful.



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If you have any questions, please feel free to go to our website. That's at keyfinancialinc.com. We will have the show notes with all the different particulars that Bob has talked about.

We're happy to hear about any topics that you'd like to learn about. Feel free, send us your cards and letters. Until next time, I am Patti Brennan. I hope you all have a fantastic day.



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