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NOVEMBER 2019

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Well, I'll Get Around to It – A Cautionary Tale

Being in the financial planning business since the Ford Administration, we have developed a network of trusted professionals with whom we collaborate to help our clients get to where they need to go. One of them is Overland Park-based super-attorney, Jessica Kimbrell of Seck Associates. This month she is writing about estate planning.

- Peter Knutson CFP®, CLTC, AIF®

Do you put the "pro" in procrastinate? Nah…you're a get-it-done-as-soon-as-it-comes-up kind of person, right? Don't worry. If you're like most people, you procrastinate from time to time.

Did you know that procrastination is the #1 reason why over 75% of the U.S. population does not have an estate plan? According to a study by Merrill Lynch, only 18% of those 55 and older have the basic recommended essentials of a Will, a Healthcare Directive and a Durable Power of Attorney. The most common reason is: "I haven't gotten around to it." The main drawback to postponing this particular "to-do" item is that "someday" becomes the day when an unforeseen event or crisis happens.

Believe it or not, everyone over the age of 18 needs an estate plan, whether you make minimum wage or are ready to build a family dynasty. Why? Here are a few reasons:

1. To protect your privacy,

2. To give what you want, the way you want, when you want (both during and after your lifetime),

3. To minimize the expenses your children will have after your death,

4. To protect children's and others' inheritances from creditors,

5. To plan for beneficiaries, including those with special needs,

6. To plan for incapacity during your lifetime,

7. To fulfill charitable intentions,

8. To set up a structure which minimizes conflict between family members and allows smooth transition of assets and

9. To keep the government from deciding what happens to you and your estate.

The second reason people haven't completed their estate plan is due to a lack of knowledge and/or confusion about what estate planning is. Also, estate planning strategies have changed a lot over the years. What was typical a few decades ago is no longer the norm.

Thirty-ish years ago, the Will was the centerpiece of the estate plan. Will-centered plans had to be probated, which is a public process overseen by the court. Attorneys created bare-bones plans at the outset with the promise of significant probate fees to come when the client died. This was great for attorneys, but not so great for the decedent's loved ones.

Twenty-ish years ago, estate planning evolved to lifetime planning with the "Re-

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Market Commentary: It's Getting Late

Written October 24, 2019

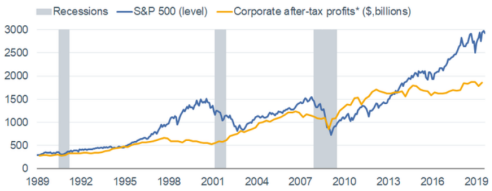
We're in the thick of 3rd quarter earnings season. Meanwhile, the S&P 500 (to the right) is trying to make new highs for the second time in three months after hitting that auspicious mark back in July.

But more than price movement of the stock market, what we're always on the lookout for is recession risk. Is now a great time to invest in stocks? In the short term, momentum in the market is strong. I wouldn't be surprised to see new highs before the year is done. But what about the next 12 months? While we can't predict the future and the trend of the market can definitely go against rationality for a long time, we do want to look at what's going on under the hood of the economy to guide our expectations for the next 1-2 years.

First, we see a dichotomy between investor behavior and stock prices. Year-to-date, funds have actually had net outflows from equities in larger amounts than even 2008. The money is going to bonds and cash.

But if money is leaving equities, what's driving stocks higher? In a word, buybacks. Companies are buying back their own shares at record levels in 2018 and 2019, which drives the price of their stock higher and artificially inflates their earnings. And money is cheap right now, so why not borrow at next to nothing and use it to buy back shares? The problem is that formula hasn't ended well in the past. In fact, even though interest rates are low, S&P 500 companies in aggregate have taken on so much more debt that the interest they're paying on that debt is at its highest level in the past 10 years. And that's an expense that doesn't go away when profits decline during an economic slowdown.

To give you a visual, here's where we stand comparing S&P 500 companies' after-tax profits with the price level of the S&P 500. After-tax profits have been rising only slightly since 2012 while stocks keep climbing. Again, this is due largely because of buybacks. There's now a large gap between the price of the S&P and corporate profits:



*Source: Charles Schwab, Bloomberg, Bureau of Economic Analysis. S&P 500 as of 9/30/2019. *Profits as of 6/30/2019 and with inventory valuation and capital consumption adjustments.*

This doesn't mean that the market will fall tomorrow or we should batten down the hatches just yet. But it does show that in order for the market to continue to rise, a few ingredients are needed. Profits need to begin accelerating rapidly, buybacks need to continue to keep stocks climbing, interest rates need to remain low, and funds that left equities for bonds and cash need to be convinced to move back into stocks. Can all of that happen? Sure, it can.

But as far as economic indicators are concerned, we're seeing a slowdown. On the plus side, unemployment is at record lows, interest rates are low and not going up anytime soon, buybacks are strong, and consumer confidence is high. On the negative side, we are likely heading into a manufacturing recession due to high tariffs, we've seen the inversion (and un-inversion) of the yield curve which has preceded the last 7 recessions, industrial production is worsening, prices are overshooting earnings, and money is leaving equities at a record pace.

Taking all of what we observe into account, the combination of weak earnings growth and leading indicators that are decelerating imply we're still in the late stages of the economic cycle. It doesn't necessarily imply stocks are headed for a crash or we're on the precipice of a recession, but we continue to keep a close eye on the economy and markets.**

- Victoria Bogner, CFP®, CFA, AIF®

A Cautionary Tale

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vocable Living Trust" as the centerpiece and the avoidance of probate as the primary objective. Spouses having separate trusts, "A/B trusts" for the surviving spouse and tiered distributions (i.e. 1/3 at age 30, 1/2 at age 40, and the rest at age 50) to the beneficiaries were the norm. Additionally, landmark cases such as the Nancy Cruzan and Terri Schaivo cases, drew attention to the importance of living wills and incapacity planning. The costs of up-front planning increased while the number of estates being probated decreased.

Modern-day estate plans include Powers of Attorney (planning for incapacity), Wills and a joint Revocable Living Trust (for married couples and for individuals) designed to avoid probate, minimize estate taxes, provide asset protection, name incapacity decision-makers, and distribute property to beneficiaries over their lifetimes. These plans are the state of the art.

Today there are additional estate planning tools that may be implemented, when appropriate for clients. One such tool is a type of trust that provides creditor protection for beneficiaries, shielding the assets from lawsuits and from bankruptcy, as well as protection from divorce. This type of trust is attractive to many clients, especially given the divorce rate and the lawsuit-happy society we live in (remember the McDonald's "hot coffee" lawsuit that inspired a Seinfeld episode?). Another type of trust provides creditor protection for beneficiaries of retirement assets (IRAs, 401(k)s, etc.), and allows each designated beneficiary to "stretch" the benefits over his or her life expectancy. This can be very beneficial to people who have most of their wealth/savings in retirement accounts.

There are many other tools and strategies available to people when creating an estate plan today compared to a few decades ago. It is not necessarily a one-time event and is definitely not a "one-size-fits-all" process.

Additionally, due to the American Taxpayer Relief Act of 2012 (ATRA), the federal estate tax applies to very few people. About 4,000 estate tax returns will be filed for people who died in 2018, of which only about 1,900 will be taxable – less than 0.1% of the 2.7 million people who were expected to die that year (Source: www.taxpolicycenter.org). The good news is that today's estate planning techniques remain valid and it is easy to create trusts that: 1) will be exempt from future estate taxes and 2) provide creditor, predator and beneficiary protection.

So, what are the risks of procrastinating when it comes to putting an estate plan in place? One risk is dying "intestate." By having no documents in place, if you are married, your surviving spouse may get the same share as your child(ren), or maybe none at all, upon your death. If you have minor children, the court appoints a guardian for them and a conservator for the assets they inherit. If you die with no children, your surviving spouse may share your estate with in-laws. Another risk, if you die "testate" (with only a will), is that the will does not provide for decision makers during a period of incapacity, which frequently precedes death. Wills must also be probated, even if they create a testamentary trust. The bottom line? If you procrastinate, you are guaranteed a one-way ticket to probate, which is public, incurs extra expenses and is overseen by the court.

No one knows when they will die, but everyone has the ability to prepare for it by putting an estate plan in place. As an estate planning attorney, my job is to make it a simple and painless process, ensuring each client's unique goals and needs are memorialized in their documents.

At heart, we are all young and don't think that we will die before "our time". Don't let that stop you from making arrangements for your estate and family. As Benjamin Franklin once said: "You may delay, but time will not."

Disclaimers and Notes

If you would like to schedule your complimentary estate planning consultation, contact Jessica Kimbrell with Seck & Associates, at (913) 815-8481 or jkimbrell@seckassociates.com.

- Jessica Kimbrell
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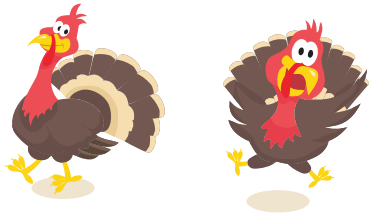

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5:30 pm until 8 pm

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