

Current Developments and Opportunities In Estate Planning



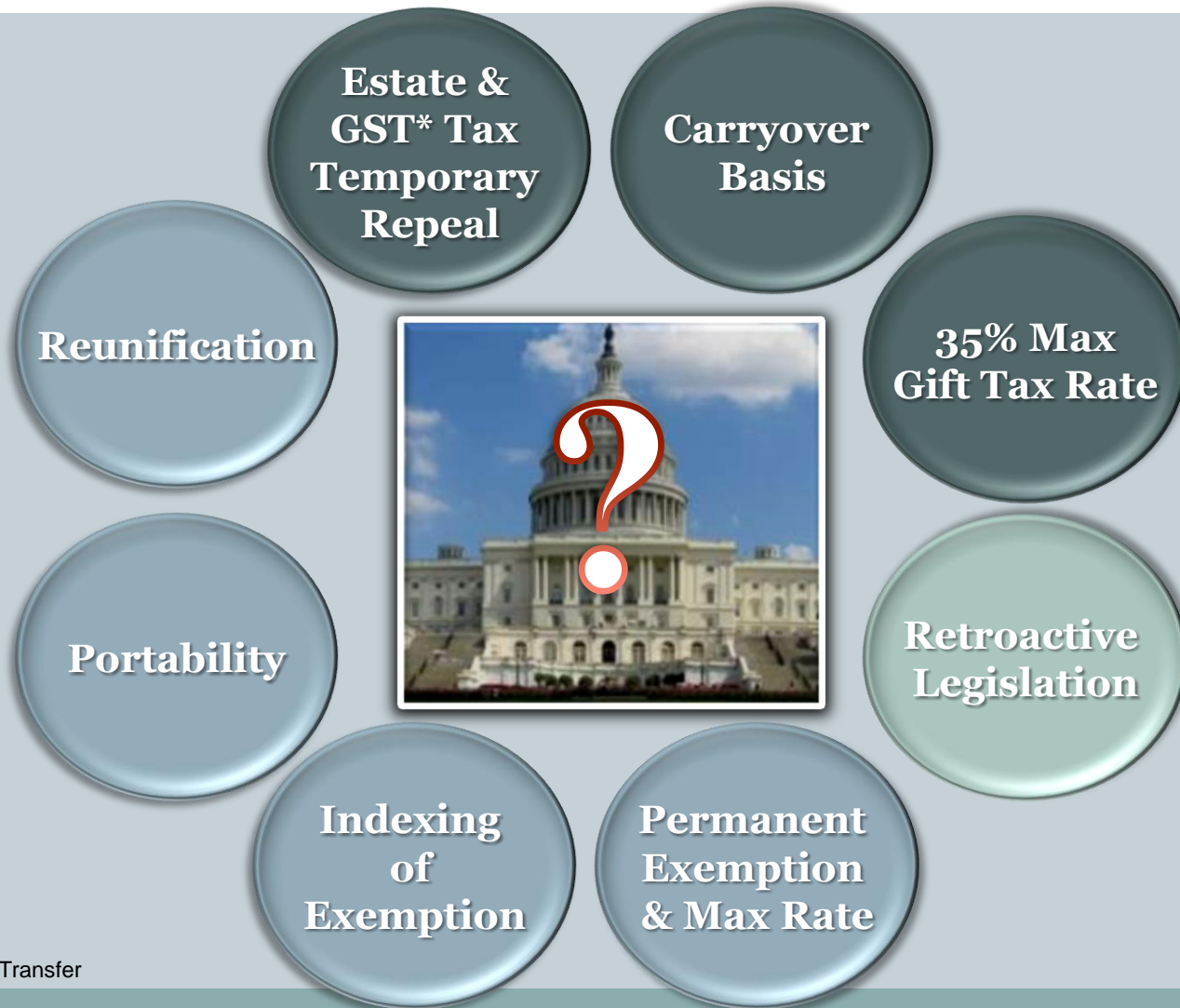
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PLANNING IDEAS THAT MAY
INCORPORATE LIFE INSURANCE

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Estate Tax Environment



*Generation-Skipping Transfer

Estate Tax Law as of 1/1/2010

Estate and GST taxes repealed until 1/1/2011

Lifetime exemption remains \$1 million, but maximum gift tax rate drops from 45% to 35% until 1/1/2011

Carry over basis rules apply (step-up in basis eliminated until 1/1/2011)

- Executor can allocate up to \$1,300,000 to increase the bases of assets
- Executor can also allocate up to \$3,000,000 to increase the bases of assets that the surviving spouse receives



Prospective Legislation?

- Permanent estate tax exemption?
 - \$5 million? \$3.5 million? \$2 million?
- Indexing of exemption?
- Portability?
- Reunification?



Potential Retroactive Legislation

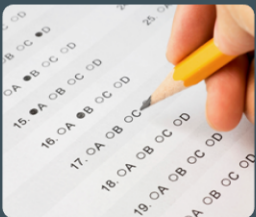


Could eliminate temporary repeal of GST and estate tax (as well as eliminate carryover basis and gift tax rate reduction).

- Freeze at 2009 exemptions and rates



Congress could also act just to eliminate the carryover basis component.



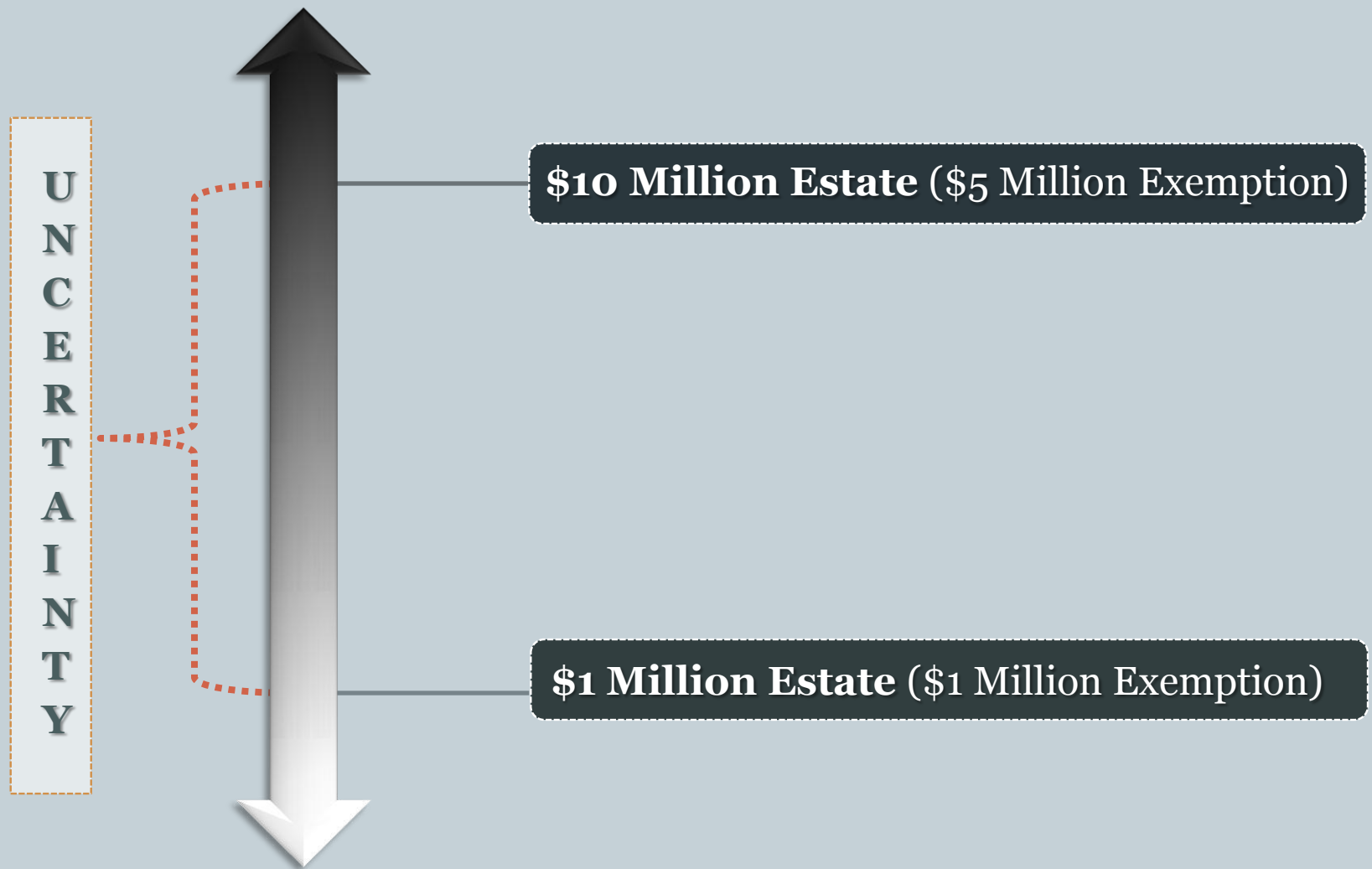
Constitutionality – 2 prong test:

- 1) Legislation has a rational purpose and is not arbitrary
- 2) Period of retroactivity is not excessive

Planning Uncertainty

- What will estate tax exemption look like going forward?
- Should clients base estate planning on current estate size or projected estate size?
- Do clients need to do first death planning in light of potential portability?

Estate Planning Spectrum



Planning Around Uncertainty

- **Review existing wills and trusts to ensure that formula driven clauses don't have adverse consequences, such as:**
 - Fund credit shelter or marital trust more than is necessary
 - Don't adequately account for state death taxes
 - Don't take advantage of carryover basis increase allocations
- **Review life insurance planning needs**



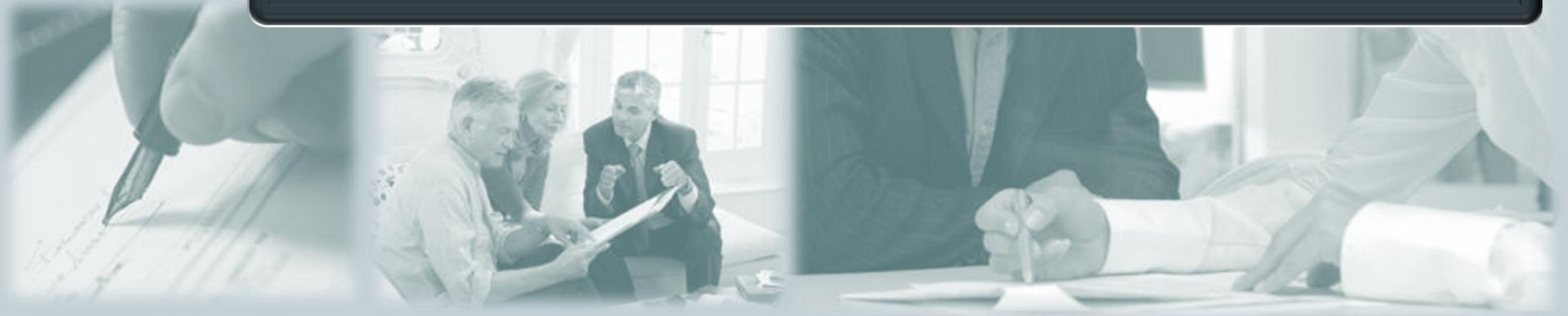
Planning Around Uncertainty (cont.)

- Incorporate flexibility into wills and trusts:

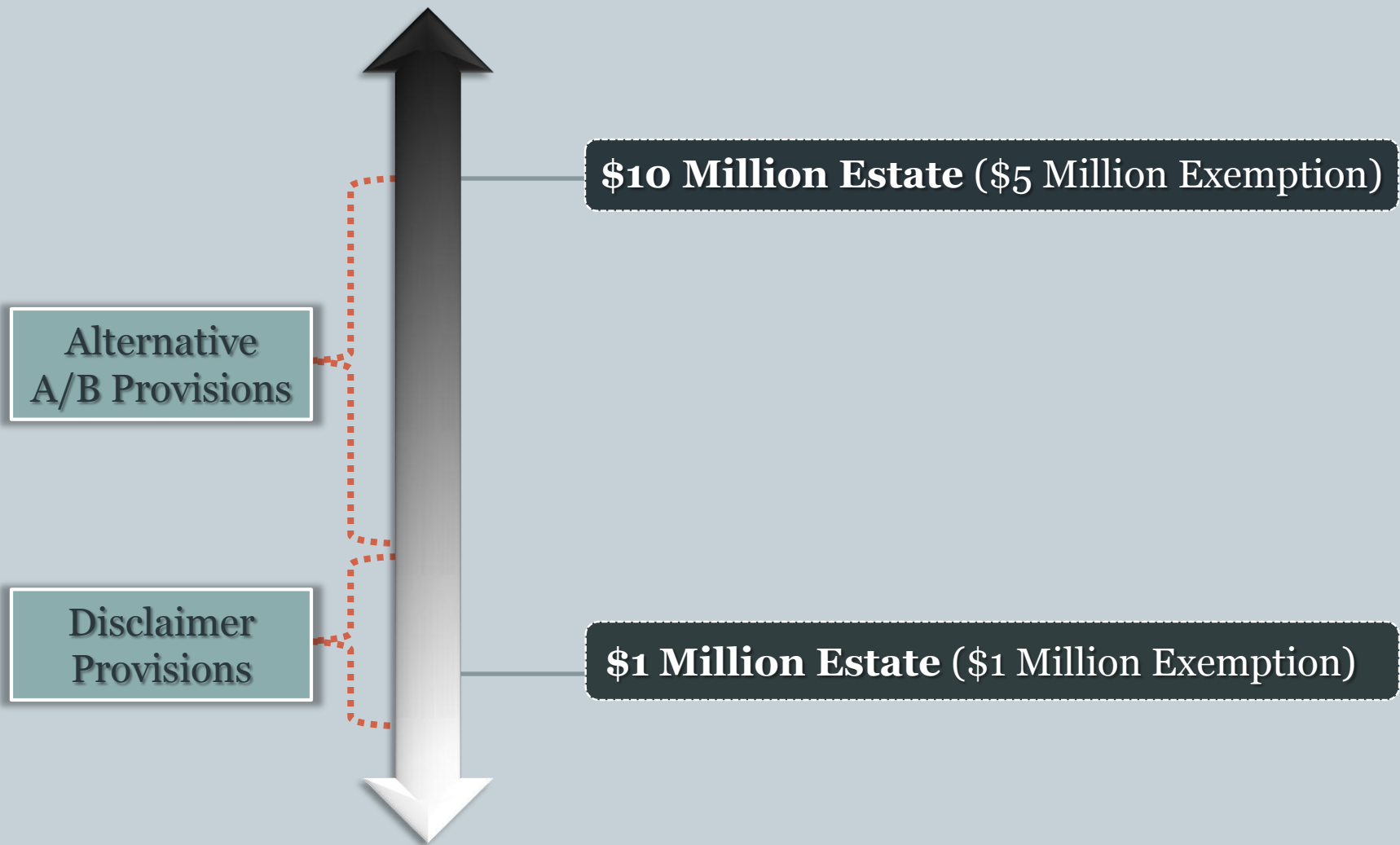
- Alternative A/B clauses
 - Discretionary rather than formula driven

- Disclaimer Provisions

- Partial QTIP election provisions
 - Formula driven, but also discretionary
 - Second marriages, etc.



Planning Around Uncertainty (cont.)

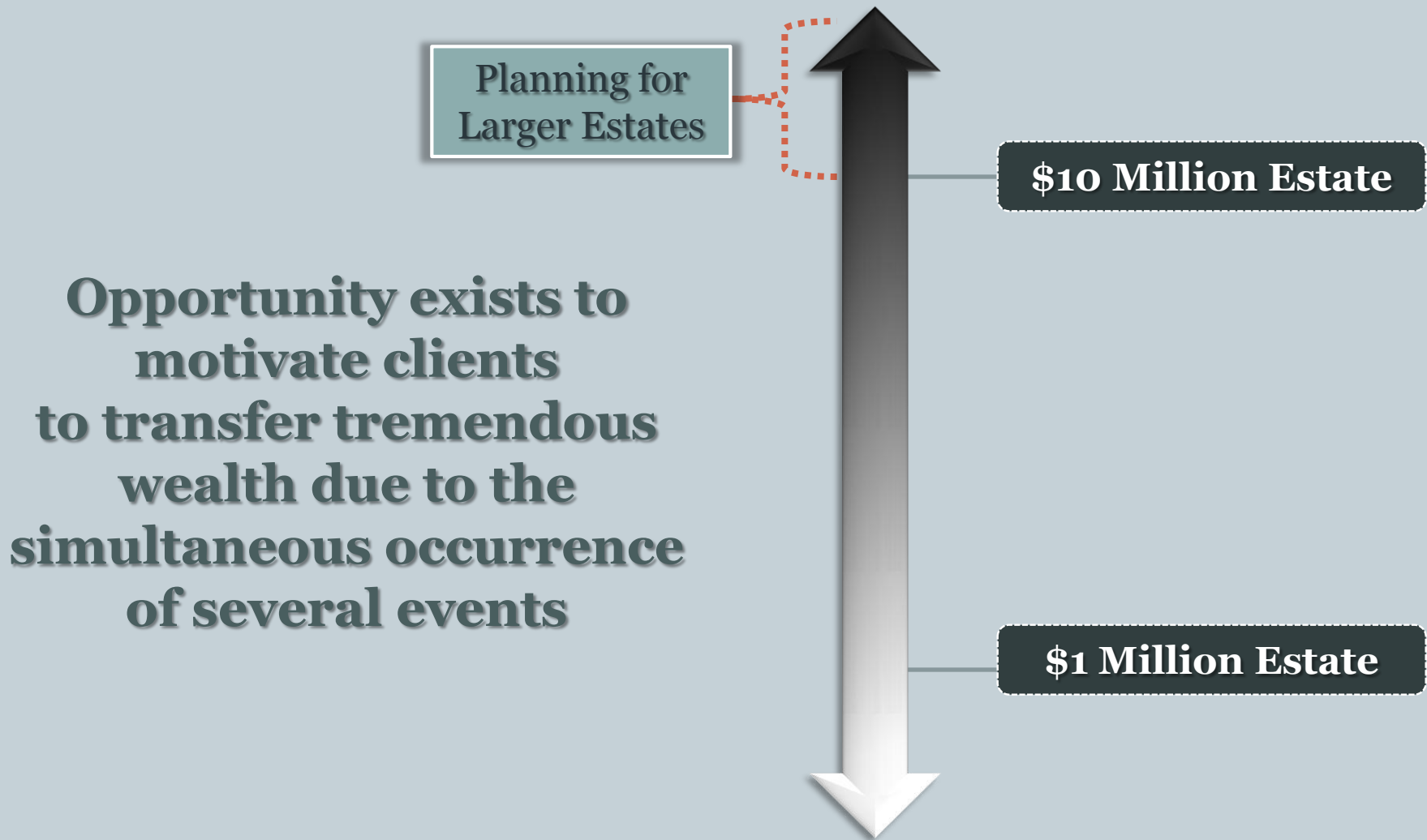


Planning Around Uncertainty (cont.)

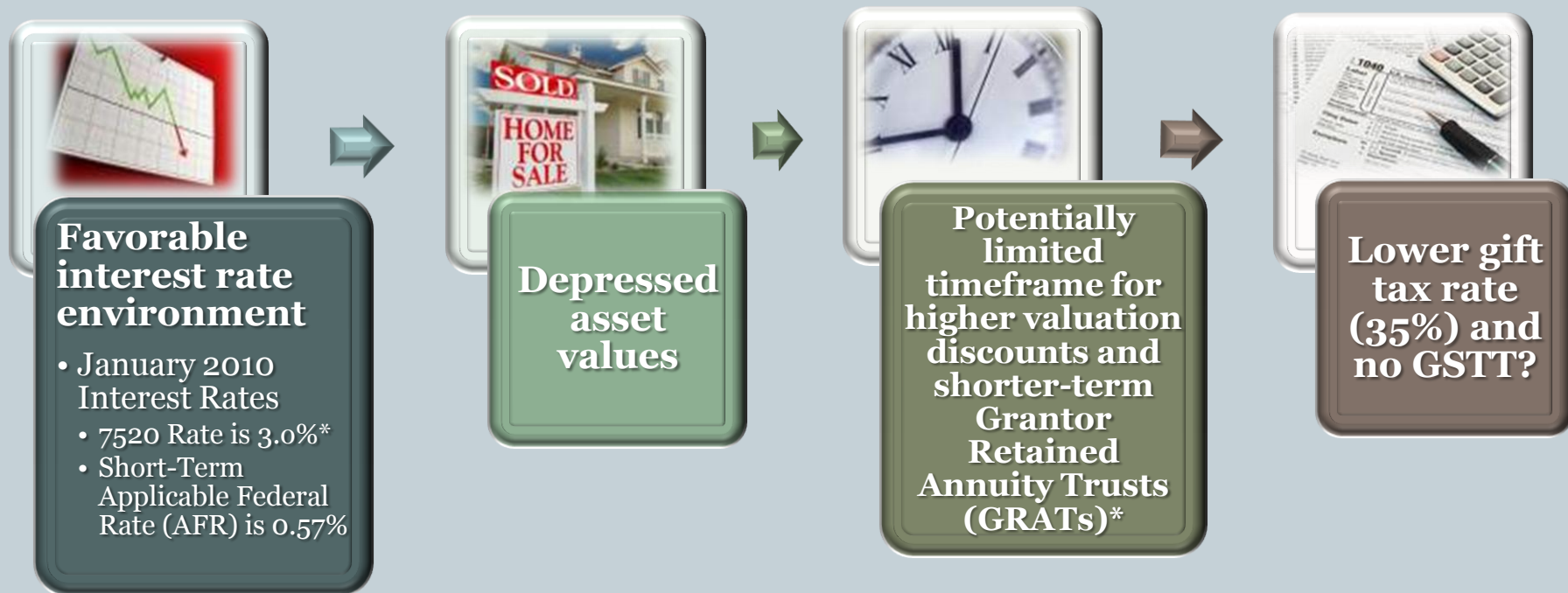
- Incorporate flexibility into irrevocable life insurance trusts (ILITs) – Flexible ILITs
 - Potential to unwind trust depending on outcome of estate tax legislation
 - Spousal beneficiary
 - Independent trustee:
 - Discretion to make distribution to spousal beneficiary for any reason
 - Discretion to make distributions to exclusion of other beneficiaries



Current Planning Opportunities for Larger Estates



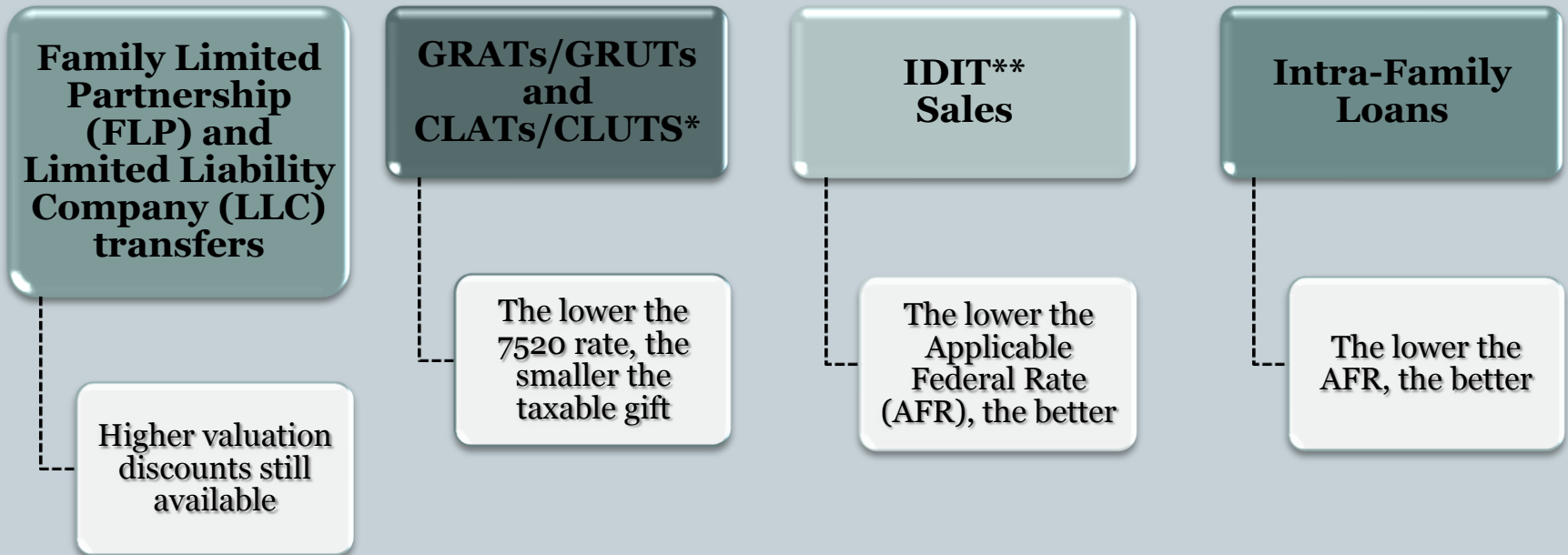
Unique Estate Planning Climate



* Pursuant to IRC section 2511(c), gifts to grantor trusts, such as Grantor Retained Annuity Trusts (GRATs) and Intentionally Defective Irrevocable Trusts (IDITs), may not be treated as completed gifts. Section 2511(c) applies to gifts after December 31, 2009 and provides that a transfer in trust is treated as a transfer by gift unless the trust is a wholly owned grantor trust as to the donor or the donor's spouse.

Current Planning Opportunities for Larger Estates

Enhanced Leveraged Gifting Strategies:

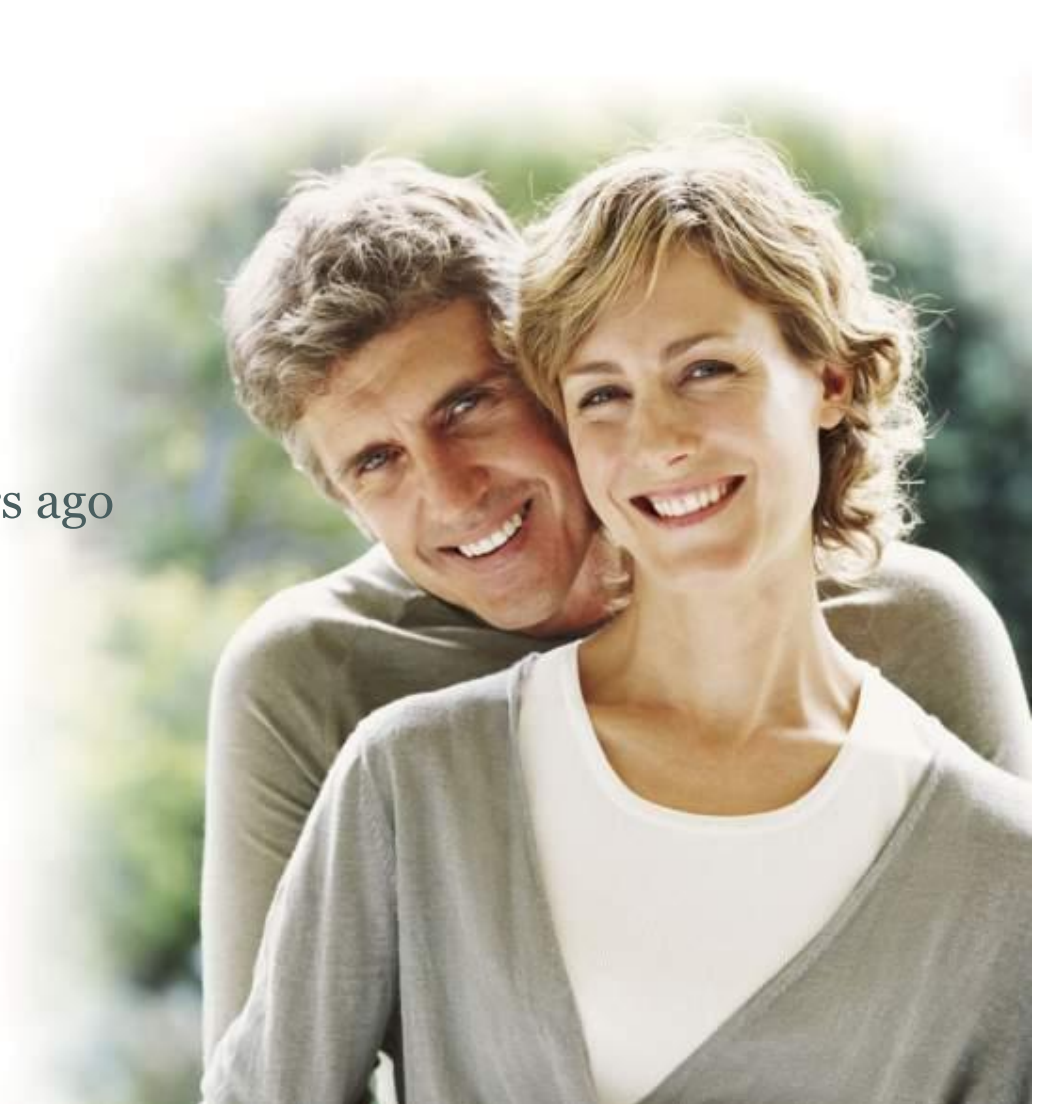


*Grantor Retained Unitrusts and Charitable Lead Annuity Trusts/Charitable Lead Unitrusts

**Intentionally Defective Irrevocable Trusts

Case Study

- Mr. and Mrs. Jones
- \$15 million estate
- Own a \$1 million piece of commercial real estate
 - Worth \$1.5 million just 2 years ago
- Reduce taxable estate and transfer the real estate to their children
- Efficiently use lifetime exemptions



Good Plan?



Gift real estate while it is still depressed to children using lifetime exemptions

Better Plan?

- Transfer real estate to FLP and gift LP interests to children at a discount



**\$1 Million Depressed
Real Estate**



FLP

**\$1 Million GP & LP
Interests**



**LP Interests
(valued @ \$650,000 with
35% discount)**



Best Plan? (Alternative 1)

- Transfer real estate to FLP and gift LP interests at a discount to GRAT with children as the remainder beneficiaries



FLP LP Interests
(\$650,000 after 35% discount)



Annuity Interest for
Term of Years



GRAT



Assets Remaining
Upon Termination
of GRAT

Best Plan? (Alternative 2)

- Transfer real estate to FLP and sell LP interests at a discount to IDIT with children as the trust beneficiaries



**FLP LP Interests
(\$650,000 after 35%
discount)**



Note Payable



IDIT



**Assets Remaining
Upon Termination
of Trust**

Questions?
Feedback or Comments?
Future Topics?

Please contact your
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or
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