VAN LIEW TRUST COMPANY

as we see it

Fall 2011

### THOUGHTS FROM OUR CHAIRMAN

As we all know, there are many fundamental economic problems both here and in Europe. Those issues on top of our focus list include geopolitical instability, a struggling banking industry, an overleveraged consumer saddled with depressed real estate, and uncertainty in the job market. Yet despite the gloom and doom, we still expect modest GDP growth for the US in the months ahead.

Why so, you may ask. Many manufacturing, service and technology companies are financially stronger than ever. Better yet, they have active management taking the long view in formulating their operating strategies. We truly believe that investors willing to commit to companies with strong fundamentals in times like these will ultimately be rewarded. To be sure, it will take months more to work through the real and perceived problems both here and abroad. But equity markets often stabilize and start to recover well before it is obvious that the investment climate is on firmer ground.

Equity markets send signals just like early warnings for hurricanes and tornados. Although we try to interpret them using tools like fundamental and technical analysis, market reaction is often unpredictable much like the difficulties science has had trying to establish precisely where or when storms will hit and the extent of damage. There are, however, a few things we are certain of: death and taxes. My associate, Charlotte Yeomans, in this issue provides our readers with some options for possibly minimizing the latter.

*Alfred B. Van Liew*

## Every Good Deed . . .

*Charlotte A. Yeomans*

With the aging of the post-war baby boom generation, we are seeing more and more parents owning real estate, which is often times their largest asset, looking for ways to transfer their real estate to family members while avoiding probate. Many people have opted for the relatively simple approach of filing a deed to accomplish the transfer. One popular technique used by many is to place the names of the intended beneficiaries on the title to the real estate. The process used is a Quit Claim Deed which is done during the owner's lifetime and transfers the interest in the real property to someone else. However, this technique can create some problems. For example:

1. The execution of the deed creates a completed gift. This gift can result in the necessity of a gift tax return to be filed, depending on the value of the property.

2. When a gift is made to another person during their lifetime, the capital gains tax basis of that property remains the same as the original owner. In other words, the cost basis remains what the parents paid for it when first acquired. So, if the family members decide to sell the property after their parent's death, they will pay capital gains on the profit made over the original value.

3. Since a completed gift occurred, the family members are now owners of the property. If a family member becomes involved in a lawsuit, divorce or bankruptcy, the real property on which that family member's name has been added is subject to those legal proceedings.

4. If the parent needs to apply for Medicaid assistance for a nursing home within five years of the gift, a waiting period penalty will be imposed by Medicaid because the parent gifted the property to family members. The parent will have to pay for care themselves until the penalty period expires.

5. The property could lose the homestead exemption depending on the state in which the property is located, thus increasing the property taxes.

6. The parents could no longer sell or mortgage the property without the consent of all the family members listed on the deed.

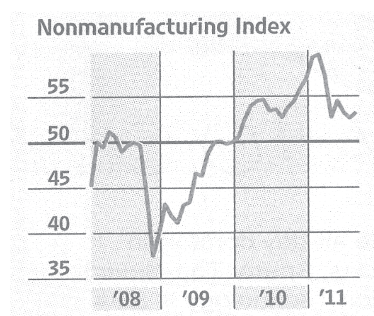
A second type of deed used to transfer property to others is the Life Estate Deed. Again, it is a simple document written and executed during the owner's lifetime. In it, the parent retains the right to possession and enjoyment of the property for their lifetime and upon their death, the property passes to the family members. The Life Estate Deed does eliminate problems 2 and 5 from the list above but the other problems could still exist.

The third technique is called the Enhanced Life Estate Deed, also known as the "Lady Bird Deed" because President Johnson was believed to have used this method to convey property to his wife, Lady Bird. The deed allows the parents to deed the property to their family members while reserving for themselves a life estate and keeping the ability to sell or mortgage the property at any time. Although none of the problems listed above come into play making this an attractive option, the "Lady Bird Deed" is only allowed in the following states: Arizona, Arkansas, California, Colorado, Florida, Kansas, Minnesota, Missouri, Montana, Nevada, New Mexico, Ohio, Texas and Wisconsin.

Moving beyond deeds, Trusts are another technique that can be used to allow parents to transfer their property to their family members. Depending on the type of trust and when the trust is completed, many, if not all the problems that occur with the Quit Claim Deed may be avoided.

In summary, the transfer of real estate to family members is not as simple as it may seem on the surface. Estate planning and deciding on your legal needs is an individualized process that requires professional assistance and consultation. There is no substitute for meeting with an attorney, accountant and professional financial advisor to discuss your particular situation and needs.

## T r e n d l i n e s




Source: Institute for Supply Management, Wall Street Journal

*Services, comprising more than 2/3rds of the economy, have shown weakness recently yet remain soundly in economic expansion territory (above 50). As such, we don't foresee another recession in the near future.*