Estate Planning

SUNDAY, JANUARY 5, 2020

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Palm Beach Daily News
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Contents contributed by members of the Palm Beach County Estate Planning Council, Inc.

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A Message from the President

Making time to plan can avoid discord

"Never put off for tomorrow, what you can do today."

All too often, we hear stories of the impact of failing to adequately plan. The consequences to your family may be devastating, creating unintended financial results and discord among your family. The planning process may give many pause as it forces us to consider our mortality and inability to act for ourselves in the future. As estate planning professionals, we advise our clients to complete their estate plans and to review periodically to address changes in their personal circumstances and to the tax law.

Andrew Shamp

The Palm Beach County Estate Planning Council is pleased to bring you the 21st annual edition of The Estate Planning Supplement containing articles from top estate planning professionals in our area. The Palm Beach County Estate Planning Council is a nonprofit organization with over 200 members, representing all disciplines critical to the estate planning process. Our members are highly experienced and knowledgeable in all facets of estate planning. Please feel free to contact the author or any Council member should you have questions regarding the information provided and to address your planning needs. Contact information for our members can be found at the end of the Supplement. I also urge you to visit our website at **www.pbcepc.org** for additional information.

On behalf of the Palm Beach Estate Planning Council and its members, I appreciate you taking time to review this publication and trust it sparked your interest in your estate plan. I encourage you to take the time to implement or revise your plan today!

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Professionals seeking membership information should contact Administrative Director Wanda H. Doumar at (561) 310-5442.

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The Delaware Trust Advantage

A Discussion on the Benefits of Using Delaware Jurisdiction for Trust and Estate Planning

By Erin Markham, CTFA
and Garrison duP. Lickle
Chilton Trust

Erin Markham

Garrison duP. Lickle

Delaware has been recognized as the leading jurisdiction for trusts for over 200 years. This is because Delaware promotes significant income tax advantages, unique trust planning vehicles and administrative flexibility. It also has one of the most highly regarded Chancery Courts in our country.

Income Tax Advantages

An irrevocable trust, created in Delaware, can avoid Delaware state taxes on accumulated income or capital gains. First, the trust must have at least one qualified Delaware trustee. So long as there are no Delaware resident beneficiaries, there will be no fiduciary income tax on accumulated income or realized capital gains in the trust. If one or more beneficiaries of the trust is a Delaware resident, a tax will be imposed on the pro-rata portion of the trust that is attributable to the resident beneficiary.

Dynasty Trusts

Delaware abolished the rule against perpetuities, which allows for the creation of a Dynasty Trust. Dynasty Trusts are typically created to last in perpetuity for the benefit and protection of multiple generations. One caveat is that real property held in trust continues to be governed by a 110 year limitation; however, you may avoid this limitation by placing real property in a limited liability company or a limited partnership.

Directed Trusts

A Delaware trust can be drafted as a Directed Trust to provide more investment flexibility by bifurcating the responsibility of the investment management and administration. Through proper drafting under the Advisor statute, the directed or administrative trustee is protected from liability for investment decisions made by the investment advisor or directing trustee, as long as the directed trustee does not engage in willful misconduct.

Another way of bifurcating the responsibilities of fiduciaries is via the Excluded Co-Trustee statute. This allows one trustee to direct another trustee over certain trustee powers, such as investments or distributions, and the trustee who is excluded from exercising such powers is explicitly excluded from all liability in connection with those powers.

Asset Protection Trusts

The Delaware Asset Protection Trust allows for an individual to create a self-settled irrevocable trust, from which the settlor can retain a beneficial interest, and protect assets from creditors. In order to qualify as an Asset Protection Trust the trust must contain a spendthrift clause, designate Delaware law to govern the trust, and appoint at least one qualified Delaware trustee. In addition to creditor protection, the Asset Protection Trust provides for significant tax benefits:

- The settlor can use all or some of his or her gift tax exemption, lowering his or her potential taxable estate, and still benefit from the funds gifted as a discretionary beneficiary. If the settlor does not retain lifetime and testamentary non-general powers of appointment and a power to veto distributions, the settlor will file a federal gift tax return (IRS form 709) and the Asset Protection Trust will not be includable in the settlor's gross estate.
- If the settlor files a gift tax return qualifying the funding of the trust as a completed gift, the settlor may also allocate a generation skipping transfer tax exemption at the creation of the trust.
- An Asset Protection Trust is typically drafted to be a grantor trust for federal tax purposes, which means the settlor is required to pay all taxes incurred. The settlor's payment of income and capital gains taxes incurred as a result of the inclusion of the Asset Protection Trust is not considered an additional gift and the Asset Protection Trust can include a provision that allows the trustee to reimburse the settlor for any taxes paid.

Privacy

Delaware allows for a trust to contain a "silent" provision, whereby the trustee is not required to notify a beneficiary or other interested party of the existence of the trust for a stated period of years or until an attained age. Delaware is known to be a proponent of settlor and beneficiary privacy. As such, Delaware does not require the trustee to file trust agreements with a court or

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Garrison duP. Lickle is Vice Chairman of Chilton Trust with over 35 years of experience in the fiduciary wealth management field.

Chilton Trust, a private, independent Trust Company, advises and provides wealth management services including fiduciary services and investment solution to high net worth individuals, families and foundations. 561.598.6330 www.ChiltonTrustCompany.com

How Should I Plan in a Dynamic Wealth Environment?

By Joseph C. Pauldine
Cypress Trust Company

Over the past decade, families have experienced a relatively uncomplicated environment when it came to protecting, growing, and transferring wealth. The climate in the stock market has been "investor friendly", interest rates have remained at near zero levels, property values have increased and there has been a steady rise in the estate tax exclusion amounts… most recently to $11.4 million for 2019.

The outlook going forward, however, gives us reason to pause and possibly rethink strategies for wealth protection and transfer. It is

Joseph C. Pauldine

widely expected that interest rates will continue to move higher, while concerns over the economy open up conversations about lower equity return expectations. Recent changes to the tax code with the introduction of The Tax Cuts and Jobs Act of 2017 also contribute to the mix.

In short, the environment looks quite different moving forward than it has in the past ten years.

Making periodic adjustments in direction, strategy and tactics is common whenever circumstances change. Longer-term wealth planning is more fluid than rigid, and consequently it is a good idea to revisit from time to time.

Consider, for example, the average savings rate for Americans has been hovering between 6 percent - 7 percent over much of the past decade. While this is lower than conventional thinking recommends, this deficiency has been mitigated by considerable investment returns. From a standalone perspective, this isn't much of a concern. However, a recession could very easily wipe out unrealized gains in investment accounts and may leave near-retirees in a deficit.

It is reasonable to believe that interest rates will rise after close to ten years at near-zero levels. Although it is unlikely that rates will rise significantly in the foreseeable future, it might be a good time for families that are considering transferring wealth to look at some strategies that could lock in current rates without using existing gift tax exclusions. Grantor Retained Annuity Trusts (GRATs) are still a smart option in periods of low rates and the prospect of appreciating assets. The challenge is that the rate of return required by IRS code 7520 will increase as interest rates rise. So as interest rates go up, the trust will have to perform well enough cover that requirement for the duration of the GRAT.

From a longer-term perspective, tax reform also added the element of uncertainty by doubling the estate tax exclusion amount to $11.4 million per individual for 2019. However, unless extended, this benefit is scheduled to expire and the exemption amount will return to $5 million for those who die after December 31, 2025.

It bears repeating that every family situation is unique. The value of the estate (current and future), requirements for income (current and future), tolerance for volatility (current and future), and tax considerations (current and future) are but some of the factors that require care and attention. Consult your trusted advisors to evaluate the range of options avail-

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Cypress Trust Company is a boutique corporate fiduciary that focuses on creating customized investment strategies, serving as a corporate trustee, personal representative or agent during estate settlement and as an administrative trustee for clients already committed to an investment plan.

More Choices in Long-Term Care Provide More Customized Coverage

By Steven Hein
Hein Wealth & Tax Solutions LLC

The cost of a private nursing home in Florida averaged more than $108,770 in 2018. By 2048, that same cost is projected to grow to more than $264,000 a year. A few years in a nursing home and the costs of long-term care (LTC) can be quite alarming. With a 72 percent chance of a long-term care event, the question is: Why are people not purchasing more long-term care? Some people are under the misconception that either Medicaid, Medicare or health insurance covers long-term care but each of these options has severe limitations. Despite the tremendous need for long-term care, traditional long-term care sales have plummeted for three reasons:

1. People think they will be lucky enough to not need it;
2. Premium increases of 100 percent on some policies haves left people angry; and
3. Limitations on submitting claims for care by licensed health care providers only, limits the options for care providers.

Fortunately, new options are available to provide for customized solutions that traditional long-term care does not provide

Life insurance/long-term care

Life insurance with a long-term care rider is growing in popularity because there is no scenario in which the insured or beneficiary will not benefit: People either die or utilize long-term care. Once a no-lapse policy is purchased and the premium is paid, there should be no future premium increases. Most of these policies are indemnity policies which means that once a person qualifies for long-term care, the benefit is a cash payment which can be paid to unlicensed caregivers including family members, utilized for home modifications, or utilized for other expenses or needs. These polices provide compelling income-tax free rates of return. They also help families by, for instance, enabling compensation to a particular family member who is providing most of the care. Further, long-term care policies can be offered in second to die policies and potentially in irrevocable life insurance trusts. Life insurance long-term care can also be utilized on the key caregiver spouse or for spouses in second marriages.

Annuities/long-term care

For people who are less concerned about providing a legacy but still want to provide for long-term care, annuity long-term care products are also increasing in popularity. These products usually provide for substantially more in long-term care than the cash that is put into the policy. A 60-year old female putting $100,000

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Steven Hein

Steven Hein C.P.A., J.D., M.B.A, LL.M., PFS, CFP® of Hein Wealth & Tax Solutions LLC® is an independent financial planner. He works with individuals, families and business owners to help them develop a strategic, long-term financial plan that helps them achieve their financial objectives. He helps clients fully understand all of their options.

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Note: Long-term care insurance benefits may be subject to limitations, waiting periods, and other restrictions. Guarantees and benefits provided by life insurance products are subject to the claims-paying ability of the issuing insurance company.

Colored Diamonds: Miracles of Nature

By Collin Albertsson
Doyle Auctioneers & Appraisers

Diamonds are crystals of pure carbon that are formed under extreme pressures and high temperatures miles beneath the Earth's surface billions of years ago. Occasionally, different elements such as boron, nitrogen and hydrogen accidentally find their way into the crystal lattice structure and create a multitude of dazzling color combinations. Colored "fancy" diamonds can be yellow, orange, pink, blue, green, purple, brown or black. Unlike a colorless diamond which is priced according to its absence of color, the value of a colored diamond is determined by the intensity and purity of color.

Collin Albertsson

Colored diamonds are often described using multiple colors and it is important to understand their significance. Very few diamonds have a pure hue such as red, pink, yellow or blue. Most have a combination of two, three or sometimes four different colors. For example, a stone could be described as orangy yellow pink which means the predominant color is pink with underlying hues of orange and yellow. To further complicate the matter, the intensity and the tone of the color can be described as Faint, Very Light, Light, Fancy Light, Fancy, Fancy Intense, Fancy Vivid, or Fancy Deep. The variations of color and intensity are endless! Doyle Auctioneers & Appraisers recently offered a very rare Fancy Intense Orangy Pink Diamond. Doyle sends diamonds to the GIA (Gemological Institute of America) which is the world's most trusted color grading laboratory. One should obtain a certificate even for stones with faint color. A diamond that has pale blue, pink or green can be very

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Collin Sherman Albertsson is Senior Vice President, Director of Florida Operations for Doyle Auctioneers & Appraisers, a full-service auction house headquartered in New York City. She received her B.A. in Art History and History from Southern Methodist University and her M.A. in European Decorative Arts from Parson's School of Design. Her specialty is jewelry and silver. Ms. Albertsson regularly travels throughout Florida to provide private collectors, heirs, families and fiduciaries advice on the sale of a single item, estate or collection.

GUARDIANSHIP LITIGATION

‘It’s Not About the Money’ (Well, actually...)

By Mitchell I. Kitroser
Kitroser & Associates

Robert (Bob) is 84 years old and a retired corporate executive. His net worth is approximately $10 million. Bob and his second wife, Laurie live comfortably in an affluent community and have had a good life together for the past 12 years. Bob is Laurie’s fourth husband. She has a net worth of $15 million. When Bob and Laurie got married, they signed a pre-nuptial agreement which set forth that if they divorced, each would take what they brought into the marriage and they would split the marital assets. The agreement further stated that upon

Mitchell I. Kitroser

the death of either of them, the other would not inherit anything from the other’s estate and that Laurie would have the right to live in their home for the rest of her life if Bob pre-deceased her.

Bob has three adult children, Stuart, Andrew and Donna from his first marriage. Bob’s children all live out of state and have stopped visiting as frequently since they have never really felt welcome around Laurie. They still try to stay in touch with their father by the telephone but are finding it more difficult to communicate with their father over the phone. The kids and Laurie have never had a close relationship but they recognize she has been there for Bob as he has transitioned from a vital and energetic 72-year-old active man into an 84-year-old with significant physical and mental health issues including, most recently, a diagnosis of Parkinson’s disease with dementia.

At this point, Laurie runs the household and Bob’s children cannot even get to their father without Laurie’s permission since they live in a gated community. What really alarmed the children was when their father’s financial advisor called last week and informed them that Laurie was moving all of their father’s money from his advisor to another investment advisor by using her Power of Attorney. The children were not aware that their father had signed a new Power of Attorney, appointing Laurie.

Since the children do not have a trusting relationship with Laurie, they feel that they cannot have a frank and open conversation with her to discuss what is going on. Fearing she may be exploiting Bob, they believe they have no other option but to begin incapacity and guardianship proceedings and seek to set aside their father’s new estate planning documents, even though they have not actually seen them. Bob, in a mentally weakened condition and completely dependent on Laurie for his daily needs, will be reluctant to go against his wife. Additionally, in his mind, she is his caretaker now and has stood by him for twelve years. Despite the pre-nuptial agreements in place, he believes that she should be entitled to something for that (or has she told him that he should believe that). The ensuing fight will be bitter and costly, both emotionally and financially. Situations like Bob’s happen all the time. This is only one example of guardianship litigation.

When an individual is unable to make decisions for themselves and when traditional estate planning (i.e. Durable Power of Attorney, Health Care Surrogate Designees

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Mr. Kitroser is the founder and managing attorney of Kitroser & Associates. A 1982 graduate of St. John’s University School of Law. Mr. Kitroser is AV rated by Martindale Hubbell, the highest possible rating for an attorney. He is a member of the National Association of Elder Law Attorneys, the Academy of Florida Elder Law Attorneys, the Real Property and Trusts Section of the Florida Bar, The Elder Law Section of the Palm Beach County Bar and is an affiliate member of the Florida State Guardianship Association. In addition to being licensed in Florida, he is also admitted to practice law in New York and Colorado.

Intentional Inheritance Planning

By Marguerite Weese
in collaboration with
Diane Peterson McNeal
Wilmington Trust

Diane Peterson McNeal

Uncomfortable conversations about wealth occur within families on a regular basis. What do you say when your children or grandchildren ask the simple question: Are we rich?

If you struggle with how to communicate about your wealth with your own family, you're not alone. In fact, a large percentage of the senior generation does not share information about wealth transfer with their inheritors.

Less than half of wealth holders say they have provided full details of their wealth transfer plans to younger generations, according to a survey Wilmington Trust conducted in partnership with the Institute for Private Investors and Campden Research. Fifty-seven respondents were drawn from Wilmington Trust clients who agreed to participate, as well as Campden Research's existing community of members in North America. Thirty were wealth

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Marguerite Weese is national director of fiduciary planning at Wilmington Trust, N.A. developing customized wealth management strategies and financial plans for prominent individuals, families, and business owners. She also oversees the organization's intergenerational family trust and estate educational offering.

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Strategies for Reducing Exposure to the Federal Estate Tax

By Stephen G. Vogelsang
Pressly, Pressly, Randolph & Pressly

The Trump tax cuts dramatically reduced the number of estates subject to the federal estate tax by doubling the estate tax exclusion amount from a base of $5 million to a projected $11.58 million in 2020. The Tax Policy Center estimates that only 1,700 estates were subject to estate tax in 2018 compared to almost 5,000 taxable estates in 2013 when the exemption was $5 million and more than 50,000 taxable estates in 2000 when the exemption was only $675,000. The larger exemption


Stephen G. Vogelsang

afforded by the Trump tax cuts are scheduled to sunset at the end of 2025 and return to the former inflation-adjusted $5 million base. Many wealthy families are actively pursuing lifetime strategies to reduce their exposure to estate tax before the window closes on the current $11.58 million exclusion. This article will briefly describe three strategies commonly employed by families seeking to whittle away at their estates prior to the sunset of the Trump tax cuts in 2025.

1. Gifts to Intentionally Defective Grantor Trust ("IDGT"): Intentionally defective grantor trusts – commonly referred to as "IDGTs" are one of the most powerful tools for reducing exposure to federal estate taxes. An IDGT is considered "defective" because gifts to these trusts are ignored for federal income tax purposes so that the settlor of the IDGT continues to pay income tax on income generated by trust assets. The continued payment of income tax by the settlor allows for assets contributed to the trust to continue to grow tax-free while depleting the settlor's taxable estate.

IDGTs provide a number of additional benefits when compared to outright gifts. First, assets held in an IDGT can remain in a creditor-protected trust for the benefit of children, grandchildren and more distant descendants free from federal gift, estate and generation-skipping tax. Florida trusts may be settled for as long as 360 years, allowing for many generations of transfer tax-free distributions to descendants. Second, IDGTs serve as a platform for more sophisticated planning to significantly reduce even the largest estates — typically through sales of discounted interests in closely held business entities such as family-controlled partnerships, or limited liability companies. While these more sophisticated techniques can provide extraordinary results for families, they are also a minefield for potential tax controversy and should only be considered after a thoughtful examination of each family's unique circumstances.

2. Lifetime Gifts: "Use It or Lose It": The current increased exemptions are scheduled to expire in 2025. Families that can afford to utilize their full exclusion amounts — $23.16 million for married couples — should consider doing so prior to the scheduled sunset of the Trump tax cuts. Families might even consider making taxable gifts; that is, gifts beyond the $11.58 million exclusion amount because the gift tax, even though imposed at the same 40 percent rate as the estate tax, is computed in a manner which is more favorable to taxpayers. Suppose, for example, Mrs. Taxpayer owns assets valued at $140 million. If

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Do Interest Rates Have You Down?

A Charitable Alternative May Be a Great Choice for You

By Irv Geffen
MorseLife Foundation

Joe Brown is 85 years old and a widower. At his age he prefers conservative, low-risk investments like Certificates of Deposit (CDs) from reputable banks, U.S. Treasury Notes and dividend yielding stocks.

Joe purchased a $50,000 CD with a local bank five years ago. It was coming due in October 2019, so he started to explore his options for reinvesting and was disappointed with his choices. He had hoped that yields would have increased since he purchased his CD, but they had not. As of mid-September, the best five-year rates he could find were below 3 percent and a five-year Treasury note was yielding just 1.85 percent. Joe was not worried about running out of money, but like most people, he had hoped to get the best return on his investment at the level of risk he was willing to accept.

Just when Joe was going to roll over his CD, his friend Bob told him about a vehicle that offered a great, guaranteed return for his lifetime and some very generous tax savings as well. It even provided a significant gift to a favorite charity. The vehicle was called a Charitable Gift Annuity, or CGA, for short, and Bob explained how it worked for him:

Irv Geffen

Bob transferred $100,000 to the MorseLife Foundation in return for a guaranteed payment of 8.3 percent or $8,300 each year for the rest of his life.

He received a charitable income tax deduction of about $54,000 which at Bob's marginal tax bracket yielded a savings of $17,000 for the year in which he made the gift.

In addition to the tax savings, a significant portion of Bob's annual

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Irv Geffen is the Senior Vice President of the MorseLife Foundation. The Foundation supports the charitable work of the MorseLife Health System which provides comprehensive living and healthcare solutions for seniors. Irv has worked with non-profits for over 30 years designing charitable gifts to accomplish the donors' charitable, personal and financial goals in coordination with their professional advisors. Please contact Irv Geffen at 561-209-6154 to explore if a Charitable Gift Annuity makes sense for you.

‘Hey, Siri, how is the taxation of estate and gift planning strategies tied to interest rates?’

Siri won’t answer that question, but what follows does

By Mark R. Parthemer, Esq and Leonard J. Adler, Esq.
Bessemer Trust


Mark R. Parthemer


Leonard J. Adler

The federal funds rate is the interest rate banks charge each other for short-term loans. The Federal Reserve uses it to influence the economy, seeking full employment, stable prices, and moderate long-term interest rates.

But what does the fed funds rate have to do with estate planning? Quite a lot, though not directly. An increase in the federal funds rate typically unleashes a chain-reaction effect on long-term rates. Basically, when the Fed raises the fed funds rate, banks raise their prime rate. An increase in the prime rate will increase costs for consumer borrowing (e.g., mortgages, business and car loans) and ultimately influence bond yields. Such yields determine the two primary interest-rate metrics used in estate tax planning:

The applicable federal rate (AFR) — minimum interest to be charged on loans to avoid triggering imputed income or gift tax. It is trifurcated into short, mid, and long terms based on the duration of the borrowing (3 years or less, more than 3 but not more than 9 years, and longer than 9 years). It reflects the average interest rate for relevant yields on similar-duration Treasury obligations.

The Section 7520 rate — legally required rate for several estate planning strategies. Defined in Section 7520 of the Internal Revenue Code, it equals 120 percent of the midterm AFR, rounded to the nearest two-tenths of one percent. It is recalculated monthly.

Since established on May 1, 1989, it has averaged 6.0 percent. But in this current extended low rate environment, it has not matched the average since January, 2001 (when the Baltimore Ravens won their first Super Bowl, a stamp cost 34 cents, and a gallon of gas cost less than a dollar).

Which Strategies for Which Rate Environment?

Gift tax value often is based on the “subtraction method,” by which the taxable gift is determined by subtracting the computed value of the retained interest from the fair market value (FMV) of the transferred asset (i.e., FMV – retained interest = taxable gift). The retained interest is computed using the 7520 rate. Thus, the interest rate directly impacts the taxable gift amount.

Following are seven common planning strategies:

1. Charitable Remainder Annuity Trusts (CRATs) – annuity paid to one or more persons for a term of years or lifetime; remainder to charity.

2. Qualified Personal Residence Trusts (QPRTs) – residence placed in trust with a retained

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The Process of the Estate Planner

By Clifford S. Gelber
Gerson Preston Klein Lips Eisenberg & Gelber PA

Clifford S. Gelber

The focus of estate planning has developed into a highly complex, multi-dimensional process. Many estates are now below a taxable threshold, yet significant enough to merit legacy stewardship. Accordingly, the planner must be cognizant of many factors when a plan is devised. The planner should consider a "team approach" and include the estate planner, accountant and financial advisor.

Initially, the planner needs to identify the assets in a potential estate. This involves a comprehensive look at the assets held by the individual. The most basic of outcomes is to ensure that all assets are properly titled. Property held in the individual's name could be subject to probate proceedings which will unnecessarily increase filing fees and tie up assets until certain statutory time periods have expired such as notice to creditors, etc. Ultimately, all assets that are improperly titled should be transferred in accordance with the estate plan.

Another reason to review the assets is to identify the type of assets. Becoming familiar with their fair market value and basis, as well as having the ability to track these items after the planning has been completed should be an ongoing process. Once this analysis is done, these assets should be reviewed periodically to ensure that the assets are placed in the correct structured entity. This process facilitates the income tax planning that has become an integral part of current estate planning. The current maximum estate tax rate is 40 percent. The maximum federal income tax rate is 37 percent and the maximum long-term capital gains rate is 20 percent or 23.8 percent (including the net investment income tax rate). Devising a plan that provides for moving assets to best utilize basis has the potential of saving income taxes. I have

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KIMBERLY RICE KAESTNER 1992 FAMILY TRUST:

State Income Taxation of Trusts

By Patricia A Giarratano, CPA
Caler, Donten, Levine, Cohen, Porter & Veil, P.A

How far can a state reach to subject a trust to taxation? The Kaestner Case highlights the issues relating to state taxation of trusts and the importance to consider state taxation of trusts when drafting, decanting and/or reviewing trusts.

In 1992, Joseph Lee Rice created a trust for the benefit of his children, including his daughter Kimberley Rice Kaestner. Mr. Rice and the trustee were both New York residents at the time the trust was created and none of the primary or contingent beneficiaries were residents of

Patricia A. Giarratano

North Carolina and none of the trust assets were located in North Carolina.

In 2002, the original trust was divided into separate trusts for each of Mr. Rice's children. At this time, Kimberley Kaestner was a resident of North Carolina. The assets of the trust were administered in Boston, the trustee was still a New York resident and the books and records were kept in New York City. Subsequently in 2005, the initial trustee was replaced with a trustee who was a resident of Connecticut. Pursuant to the trust document the trustee was given broad discretion to distribute trust assets and/or income to the beneficiary. The trust also required the trustee to distribute the trust assets to the beneficiary when she reached 40 years old. Prior to Kimberley turning 40, she had discussions with Mr. Rice and the trustee and expressed that she would prefer not to receive the assets of the trust. As a result of the conversation, the trust assets were transferred to a new trust thereby extending the trust term. During the years in question there were no distributions made to Kimberley. However, North Carolina taxed the Trust's accumulated income based solely on the fact that the beneficiaries were residents of North Carolina, disregarding the fact that the beneficiary never received distributions from the trust. The Trust paid income tax to North Carolina totaling $1.3M from 2005 through 2008. In 2009, the Trust sought a refund from North Carolina but the North Carolina Department of Revenue denied the refund. In 2012, the trustee filed suit in the North Carolina Business Court, seeking a refund of the income taxes paid from 2005 through 2008. The trustee argued that the tax violated the Due Process Clause of the U.S. Constitution because the trust did not have sufficient minimum contacts with North Carolina, and thus was unconstitutional. The trustee also argued that the tax on the Trust's income violated the Commerce Clause since the tax was not applied to an activity with a substantial nexus to the State of North Carolina. The Business Court agreed with the Trustee, holding that taxation of the Trust based solely on the residence of the beneficiaries deprived the Trust of property without due process of law under both federal and North Carolina constitutions.

The Department of Revenue appealed to the North Carolina Court of Appeals and later to the North Carolina Supreme Court. The Department of Revenue lost their appeal and appealed to the U.S. Supreme Court. The Supreme Court analyzed the Due Process Clause in context of state taxation stating that Due Process only allows individual states to impose taxes that bear fiscal relation to protection, opportunities and benefits given by the state. Furthermore, the tax must meet two requirements set forth in Quill Corp. There must be "some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax" and" the income attributed to the State for tax purposes

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Are you sitting on a virtual gold mine that could fund your investment portfolio?

By Art Samuels
EstateBuyers.com

Are your assets working for you? Assets come in many forms. What if you knew that a painting on your wall was worth $250,000, or even $1 million? What if a 5-carat ruby ring in your safety deposit box was worth $3 million? Would you rather own this property or convert it into cash which could improve your lifestyle and increase your investment portfolio? You may not have realized that you could easily and rapidly pull equity from your dormant valuables and immediately invest

Art Samuels

that cash into more profitable options. Whether you've inherited jewelry, art, and collectibles, or whether you personally purchased and collected these items over decades, you are probably unaware of their current cash value. You may now be wondering; how much money am I sitting on and how do I intelligently liquidate my property? If you've never sold valuable tangible personal property such as jewelry, art, collectibles, coins, etc., where do you begin? This may seem like a daunting task but if you make informed and correct decisions you will significantly increase your bottom line.

Do you have appraisals and do you need them? Important considerations concerning appraisals:

Your appraiser should have "no money in the game," meaning that your appraiser should not bid on the items they appraised. This is both unethical and a conflict of interest, and it should raise a red flag. Also, appraisal fees should not depend on the values stated by the appraiser, as this is also a conflict of interest.

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Art Samuels from EstateBuyers.com is a highly credentialed and experienced buyer of Jewelry, Art, Collectibles, Coins, Etc. Art is also a renowned and distinguished speaker, writer, and a Retired US Navy Commander. Art can be reached at Art@EstateBuyers.com and 888-970-4367.

Take care of all your children: Don't forget the furry ones

By Randell C. Doane and Rebecca G. Doane
Doane & Doane, P.A.

When developing an estate plan, we generally begin by thinking about the needs of our family and how their lives would be affected if we were suddenly gone. Who would take care of our minor children? Can the grandchildren afford college? Would my spouse be able to pay our monthly bills? However, one often overlooked member of the family is perhaps the most dependent of all, the family pet. Did you know that you can set aside funds and leave instructions for your pet's care as part of your estate plan?


Randell Doane


Rebecca Doane

Florida law allows pet owners to set up a trust for the care of their animals. Prior to the enactment of this legislation, pet owners could leave their pet to someone under their will and some money to care for their pet, but there was no mechanism to ensure that the funds were used for that purpose. Once your assets are distributed, the probate court generally provides no further oversight. Additionally, a will only takes effect after one's death, thus it is of no assistance when a pet owner becomes incapacitated.

Through the use of a pet trust, a pet owner can bequeath a designated amount of money for the care of their pet in the event of their death or incapacity, and name a fiduciary to manage those funds throughout the life of the animal. This fiduciary, known as the Trustee, can be given specific instructions as to how often the pet should visit a veterinarian, how often the pet should be groomed, what kind of food they should be fed, etc. The terms of the trust can be enforced in court by a person named in the trust, or if nobody is named, by someone appointed by the court. Anyone with an interest in the welfare of the animal may request that a court appoint someone to enforce the terms of the trust. The court can then remove the Trustee, name a new Trustee, or provide needed guidance to the Trustee.

Unlike a will, a trust can go into immediate effect without court proceedings. The funds can be made accessible immediately upon creation of the trust, or upon the happening of a specified future event, such as the owner's death or incapacity. This means that the trustee can provide uninterrupted care for the animal whenever the owner is no longer capable.

Before visiting your attorney to create a trust for your pet, you should consider who should be given physical custody of your pet, who should manage the funds for your pet's care, and who should provide oversight of your pet's care. Multiple people or organizations can be involved, so that a system of checks and balances is in place. You should also try to

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A principal of Doane & Doane, P.A., Randell C. Doane has practiced law in the area of estate planning, probate and taxation since 1975. He holds a post-doctorate degree in tax law and holds the highest ratings ("AV") from the premier attorney-rating service, Martindale Hubbell. He is board certified in wills, trusts and estates by the Florida Bar Board of Legal Specialization.

Estate Planning Considerations when Children Head Off to College

By Matthew N. Turko
Haile Shaw & Pfaffenberger P.A

Matthew N. Turko

Once a child attains the age of 18, under Florida law he or she is a legal adult. This would include the privilege of signing estate planning documents. Preparing some basic estate planning documents is usually the last thing on any client's mind when a child is preparing to leave home for the first time to attend college. However, to provide peace of mind to a client in the event of various unfortunate situations that can and sometimes do occur, it is important that a client consider having his or her child sign some basic estate planning documents prior to leaving home. In the event of a health emergency for the child, this can alleviate some complications associated with such emergency because the child has provided a clear directive as to who is to make decisions for such child if the child is unable to do so.

First, the child should sign a complete set of healthcare advance directives appointing the parent or parents as healthcare agents to make healthcare decisions for the child if he or she cannot make such decisions. This would include signing a Designation of Health Care Surrogate, a Living Will and importantly a HIPAA Authorization. The Designation of Health Care Surrogate appoints an individual who is authorized to make decisions regarding medical care for the child in the event the child is unable to make such decisions. A Living Will appoints an individual with authority regarding end-of-life decisions and to carry out the child's wishes. Since health information is protected as confidential under federal law,

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Deductions after the Tax Cuts and Jobs Act and Planning Opportunities

By Nancy Crowder-McCoy and Stephanie Murray
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Nancy Crowder-McCoy

Stephanie Murray

Now that we have the first tax filing year behind us after Congress passed the Tax Cuts and Jobs Act (TCJA), we can see that the legislation accomplished to some degree, the objective of simplifying the process for filing tax returns. For many of the American households the process of filing a return became simpler, but for many, the ability to itemize deductions disappeared.

This disappearing ability to itemize is the result of a near doubling of the standard deduction and the elimination or restriction of some of the itemized deductions. Some of these changes are discussed below:

Tax Cuts and Jobs Act

■ **Taxes:** Taxpayers can still deduct state and local income taxes, sales, and property taxes. However, this category of deduction is limited to $10,000 ($5,000 if married filing separately). This is a dramatic change for many taxpayers with ownership of multiple real properties or paying high state income taxes.

■ **Charitable:** Prior to the TCJA, charitable contributions to qualified organizations were generally deductible up to 50 percent of adjusted gross income (AGI). The TCJA increased the AGI limitation to 60 percent. The tax act also eliminated a charitable deduction for cash payments made to a college athletic department in exchange for athletic event tickets or seating rights.

■ **Interest:** Home mortgage interest deductions also took a “hair cut” under the TCJA. For loans originating on or before December 15, 2017, the taxpayer may deduct interest on up to $1 million in eligible debt ($500,000 if married filing separately). However, if the home mortgage was originated after December 15, 2017 then the debt limit becomes $750,000 ($375,000 if married filing separately). These limits apply to the combined amount of loans used to buy, build, or substantially improve the taxpayer’s main and second homes. In addition to the reduction in debt limit, home equity loan interest is no longer deductible unless the loan proceeds are used to buy, build, or substantially improve the main or second home.

■ **Other Itemized Deductions:** The TCJA suspended miscellaneous itemized deductions for tax years 2018 through 2025. These deductions were deductible to the extent they exceeded 2 percent of AGI. This includes tax preparation fees, investment expenses, hobby expenses and most unreimbursed employee expenses. The TJCA did not eliminate miscellaneous itemized deductions that were not subject to the 2 percent limitation, including gambling losses that are deductible to the extent of gambling winnings.

The TCJA also repealed the deduction for personal casualty and theft losses for tax years 2018 through 2025 except for those losses attributable to a federally declared disaster area.

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Seniors' Guide to Real Estate:

'Downsize to Rightsize'

By Nina Paul
Peters & Hyland Group/ Illustrated Properties

Nina Paul

Change can be challenging for anyone, but it is especially difficult for seniors and their families. As we mature, the question of staying in your home or moving, is one of the most difficult decisions we will face. When is the right time to make that transition? Selling a senior's most valued asset, their home, and "moving on", requires someone with expertise, experience and compassion. At this stage of life, the decision to sell a home can become more complicated due to a variety of reasons, including family dynamics, financial concerns, health issues and time constraints.

■ Is moving the best alternative? If so, where? Have other options been explored? For example, staying home with private duty assistance, modifying the home to meet your needs or moving to an Independent Living/Assisted Living Community.

■ Are close family members in agreement with the decision to sell?

■ What is the best way to downsize a lifetime's worth of treasures and family heirlooms?

■ Are there any tax-related implications following a sale?

■ What effects might a sale have on future income especially pertaining to Estate and/or Long-Term Care planning?

The financial, logistical and emotional issues involved in a move can be stressful for any family. Seniors and their loved ones may feel overwhelmed and confused as they navigate the multitude of options.

Once the decision is made to sell a home, the task of downsizing and parting with family treasures should be addressed. Many people are held captive by their belongings. It is recommended to schedule and commit to a timeframe and

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Impact Investing and Planning from X, Y and Z

By Suzanne S. Weston
The Glenmede Trust Company, N.A.

As Generations X, Y and Z begin to overtake the hugely influential baby boomers as trust beneficiaries, a fresh look at impact investing and how it affects your irrevocable trust and loved ones is a good idea.

Oceans of information about publicly traded companies is just a touch screen away — allowing investors to judge daily if a company's moral code and societal goals mirror their own. They then invest in the ones they like and shun those they find contrary. This growing investment paradigm is generally known as impact investing.

Suzanne S. Weston

Basically, impact investing includes two approaches: Socially Responsible Investing (SRI) and Environmental Social & Governance (ESG) investing. SRI is driven by negative screening. Meaning excluding certain companies and industries (e.g., "sin stocks" such as tobacco). This approach can lead to significant deviations of a portfolio from a benchmark — potentially increasing risk.

More recently, ESG investing has come into vogue. ESG investing employs positive screening. Meaning overweighting companies with high ESG profiles and underweighting those with low ESG profiles. This approach may allow a portfolio to be more closely aligned with a benchmark than if an exclusionary approach were used, resulting in potentially less relative risk.

According to the US SIF Foundation's "Report on US Sustainable, Responsible and Impact Investing Trends", as of 2018 there were more than $12 trillion assets using SRI strategies out of the $46.6 trillion under professional management in the U.S.

Importantly, impact investing crosses all generations. Allianz Life Insurance Company of North America's "ESG Investor Sentiment Study" reported that 64 percent of Gen Z (millennials) said ESG issues are important in their investing decisions compared to 54 percent of Gen Xers and 42 percent of boomers. Further, 61 percent of boomers, 51 percent of millennials and 48 percent of Gen Xers say the reason they want to participate in ESG investing is to encourage companies to be good corporate citizens.

So, what can trustees do when a beneficiary asks them to consider her personal values when investing irrevocable trust assets? First, trustees should look to the trust document to determine if it provides guidance. Then, trustees must consider the governing law of the trust, including the prudent investor rule and the duties of loyalty and impartiality.

Florida's prudent investor statute emphasizes a total return and diversification approach. Trustees' investment decisions are to be made in the context of the risk and return of the 'whole portfolio' rather than isolating individual investments for scrutiny. Thus, the prudent investor rule may alleviate the trustee's liability for investing in an individual security which underperforms when the overall portfolio has positive returns.

By incorporating ESG investing

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Creating a Roadmap with Goals-Based Financial Planning

By Lisa Bebout, CFP®, CTFA, ChFC®
Key Private Bank


Lisa Bebout

While financial planning always involves investing, it goes far beyond just building an investment portfolio and selecting investments expected to outperform their peers. At Key Private Bank we believe that to be truly effective, financial planning has to be centered around creating and implementing a long-term strategy to help you achieve your life's goals.

What is goals-based financial planning?

Goals-based financial planning focuses on identifying and understanding your aspirations and then crafting a plan to help you succeed in achieving them. Together we'll explore the possibilities and evaluate the trade-offs needed to achieve a desired end, discuss the relative importance of each goal and its cost and then help you come to a conclusion about your priorities. The outcome of this process is a mutually agreed-upon, actionable plan designed to achieve your vision. You may not have sorted through all of your financial goals, or identified those that are especially important to you. For instance, taking the family out for dinner on the weekends may be a goal that requires you to cut back on other expenses. However, this is a short-term goal, one that is not typically included in a financial plan (although it may be included in developing a family budget). In contrast, long-term goals involve major life events and targets, such as paying for college, retiring or purchasing a vacation home. Saving is the mechanism for funding future financial goals that are too large to be included in your regular annual budget without disrupting current personal spending. For example, you may be able to pay for college expenses using future earnings, but it could be very difficult given the significant cost and timing.

The goals-based financial planning process

Our approach to planning is interactive; along with your other advisors, we'll discuss the impact of your alternatives so that you can be well-informed during the construction and execution of your plan. This involves:

■ Defining each of your goals and then identifying the resources that can be used to help fund those goals.

■ Evaluating where you are today, using the current trajectory (current income and savings) to assess the likelihood of meeting your stated goals.

■ Determining what kind of adjustments can realistically be made to the plan if it is not possible to accomplish everything you wish. Your financial planner can help you identify which goals you will be able to fund and which resources will be used to pay for those goals.

■ Implementing the agreed-upon financial plan, which may require opening up new accounts or making changes in how savings are being directed.

Financial planning is a dynamic process. Individual goals and resources are likely to change over time, and your strategy should be reviewed annually and updated to reflect these developments. A goals-based financial plan can give you a clearer understanding of your ability to satisfy your hopes and dreams.

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About Key Private Bank: We deliver comprehensive, personalized advice to individuals and families that addresses their specific wealth planning needs. We also provide access to a highly credentialed team that is focused on ensuring that each client receives the highest level of service. Working closely with our clients to define their objectives and priorities, we then develop a roadmap to help them reach their goals. Note: Wealth management requires guidance from an expert who can coordinate the development and implementation of your total wealth plan while ensuring that you don't miss opportunities along the way. Only after asking the right questions to understand your objectives and know what's important to you will Lisa present an integrated wealth strategy and comprehensive, objective advice.

Avoiding Disasters in Drafting Charitable Remainder Trusts: Stakes are High

By Fatima Hasan
Saul Ewing Arnstein & Lehr LLP

Charitable giving is an integral part of society. The government encourages philanthropic activities by way of tax deductions for charitable giving to qualified tax-exempt organizations.

We are all familiar with claiming federal income tax deductions on our annual tax returns for gifts made to eligible entities within the taxable year. However, current and anticipated family financial needs often preclude families from immediately donating assets to charitable causes. Charitable remainder trusts

Fatima Hasan

("CRTs") are a popular vehicle for charitable giving that permit donors to retain use and control of wealth for personal use for a period of time, in exchange for making an unconditional commitment to future benefit for a charitable cause. CRTs may be drafted as charitable remainder annuity trusts ("CRATs") or charitable remainder unitrusts ("CRUTs"), the chief difference being in the payments made to the non-charitable beneficiary, which may be either a fixed annuity (CRAT) or a unitrust amount calculated every year as a percentage of the value of the underlying assets (CRUT). If properly drafted, these trusts provide significant present and long-term tax savings. It must be noted that if the drafting attorney sways from the strict and complex rules mandated by the internal revenue code, the trust is disqualified and no tax benefit is available.

The importance of skillful drafting cannot be over emphasized.

Example: Upon his death, Grantor (G) leaves $10 million in trust for his adult daughter (D) to get $500,000 per year from trust for lifetime, and remainder to the University of Miami (UM).

The value of the remainder interest going to UM is deductible both for federal income tax purposes, and for federal gift tax purposes. The trust shall be a tax-exempt entity for federal income tax purposes, and distributions to the daughter shall be taxed under a special statutory scheme, instead of the standard rules for trusts and beneficiaries. Distributions to D are deemed to come first from ordinary taxable income of the trust, then from capital gains realized by the trust, next from tax-exempt income of the trust, and lastly from trust corpus. The character of income distributions only impact the taxation of receipts by D, and a greater distribution is made to UM by virtue of not paying tax on assets retained in the trust.

If D is entitled to "trust income" instead of an annuity of $500,000 per year, no income, estate , or charitable gift tax deduction shall be available. Similarly, if the remainder is left equally to UM and G's daughter, no tax deduction shall be available.

The example highlights all the essential features of a qualified CRAT: a certain sum of not less than 5 percent or more than 50 percent of the initial fair market value of the property transferred in trust is payable annually to an individual for life, and the remainder is distributable to a qualified charitable organization upon the death of the annuitant. There is a limited menu of permitted variations in qualified CRATs, like the non-charitable beneficiary may receive an annuity for life, or a term of years, not to exceed 20 years. The amount payable to the non-chari-

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Ready or Not, Electronic Wills Have Arrived!

By Sasha A. Klein
Ward Damon

Mention electronic wills to a lawyer and you'll get one of two reactions – "Great! It's about time estate lawyers joined the 21st century!" or "Uh oh, on-line wills are ripe for mistakes, fraud and abuse." Regardless of which camp you may be in, get ready, because the Florida Legislature has passed an Electronic Will law, effective in 2020.

History of Will Execution and 3 Key Legal Requirements

For centuries, a ceremony had to be followed for Wills to be effectively signed. These formalities trace back to a pair of statutes enacted by Parliament centuries before the invention of the light bulb. They include an in-person review of the document, an expression of lack of coercion and demonstration of capacity to understand the import of the document's terms, followed by a pen to paper signing by the testator, two witnesses (and usually a notary), all in the same room.

There are three key requirements for creating a Will: (1) it has to be written or typed, (2) signed with a physical pen (inked), and (3) witnessed by 2 people who do not benefit under the Will, in the physical presence of the testator. These Will formalities exist for good reasons. They evidence the testator's intent, caution the testator as to the significance of making a Will, and protect the testator from fraud and duress.

Sasha A. Klein

Creating an Electronic Will

To execute an electronic will, the new Florida law still requires the three basic formalities above; however, what is different is it allows all this execution process to happen in cyberspace, aka over the Internet. There are 3 major changes to the law:

1. Paper Writing. Instead of only a paper writing, the Act allows a Will to be in electronic record form, like most contracts these days.

2. Pen and Ink Signature. In addition to an actual signature with a pen, the Act allows an Electronic Will to be signed with an electronic signature. Today, this is commonplace for many contracts with widespread use of programs like DocuSign.

3. Witnesses. The Act still requires 2 witnesses who are independent from the testator, but it expands the physical presence requirement. Witness presence can be achieved remotely with simultaneous video and audio connection (think Skype or FaceTime).

Remote Presence

During the bill's movement through the Florida legislative committees, there were concerns about the Act's authorization of witnessing via remote video webcam, in lieu of requiring physical presence. Many argued that safeguards should be put in place to thwart off-camera wrongdoing, such as someone holding a gun behind the camera pointed at the testator. These concerns were taken seriously and incorporated into the act relating to remote presence, such as:

(1) A vulnerable adult may not use the remote presence portion.

(2) The entire video session of the electronic execution ceremony must be recorded and stored by a qualified custodian for future reference in case there is a dispute. This goes beyond the requirements under current law that rely only on witness memory and other circumstantial evidence.

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Sasha A. Klein, Esq. is a partner at Ward Damon, Attorneys at Law in West Palm Beach. An active member of the FBA's Trust & Wealth Management Division, Klein is Chair of the Trust Legislative Committee and also serves on the Trust Executive Committee. She also lecturers nationally and is a frequent published author on a range of estate planning, wealth management and tax law topics. Klein has a Post Doctorate Degree in Tax Law (LL.M) from the University of Florida Levin College of Law, a Juris Doctorate and Law and Business Certificate from Vanderbilt Law School.

‘To IDGT or not to IDGT’

By Victoria W. Peaper
Inlet Private Wealth

Shakespeare gives us all some friendly advice, “Neither a borrower nor a lender be/For loan oft loses both itself and friend” (Hamlet Act 1, Scene 3). Perhaps Shakespeare is giving us all timeless advice, but maybe, if structured properly, lending money could be a good estate planning tool.

One way to lend money/stock/real estate to your family is through an installment sale to an intentionally defective grantor trust (IDGT). This is an estate planning technique that can ‘freeze’ the value of the assets in your estate and lower your potential estate tax. Let’s first look at what we mean by an Intentionally Defective Grantor Trust or “IDGT”.

Victoria W. Peaper

An IDGT is an irrevocable trust with an intended flaw, and therefore makes the irrevocable trust’s income tax taxable back to you rather than to the trust. You will be responsible for paying the taxes on all the trust income annually. This flaw allows the assets in the trust to grow income tax-free for the trust. For estate tax purposes, the assets held in the trust are not included in your estate upon your death. This trust is defective for income tax purposes, but effective for estate tax purposes.

The most common defects for making the irrevocable trust defective are:

- A power that allows the grantor to swap or substitute assets of the trust. (IRC Section 675)
- An authorization for the independent trustee to add beneficiaries. (IRC Section 674)
- An allowance for trust income to pay for grantor or grantor’s spouse’s life insurance. (IRC Section 677)
- The trust permits loans to be made without adequate security. (IRC Section 672).

Once your IDGT is established, the next step is that you will want to fund the trust with some cash or assets, i.e. “seed money”. Since the IRS will scrutinize this transaction, you want to ensure that the trust has cash available, “seed money”, to pay the interest on the note for the assets you are about to sell in exchange for a promissory note.

The general rule is to fund the trust with about 10 percent of the value of the assets to be sold to the trust, and the “seed money” should be liquid assets so the interest payments can be made. Note the funding of the seed money is a taxable gift to you.

As you can imagine, the IRS strictly scrutinizes these types of transactions due to the potential estate tax savings with this IDGT strategy. You must make sure the transaction is treated as an arm’s length transaction so the interest rate on the promissory note must not be lower than the published rates by the IRS. With the current low interest rate environment, this strategy is even more compelling.

Now you are ready to sell appreciating assets, such as real estate, stocks, or even a portion of your closely held business, to the trust in exchange for the promissory note equal to the full value of the assets. This value freezes at the time of the sale, locking in the value for estate tax purposes. If, for example, an asset was valued at $1,000,000 at the time of transfer, and then appreciates to $5,000,000 at the time of your death, since your estate is holding the $1,000,000 promissory note, the value at your death is the value of the note and the entire appreciation of the assets is out of your estate for estate tax purposes.

Finally, the value of the asset sold to the trust in exchange for

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Victoria W. Peaper, JD is Chief Executive Officer and co-founder of Inlet Private Wealth. Her deep understanding of the complexities of trusts allows her to work with attorneys, CPAs and other professionals to creatively structure estate plans that preserve legacy wealth for her clients. For further information go to www.inletprivatewealth.com.

Good Reasons to Use Life Insurance to Transfer Wealth

By Steven Trend CFP®, CLU®
Prudential Advisors

Many people focus their attention on growing and protecting their personal wealth. However, when it comes to planning for the end of life distribution of wealth, the plans we make may have profound consequences to those we care about most. Including life insurance with your estate plan can be an effective strategy. Applications for life insurance coverage requires underwriting to determine cost and eligibility. While life insurance is a financially important component of many estate plans because it provides money, the assistance of a knowledgeable attorney with wills, trusts and business agreements is essential.

Let's consider why life insurance could be used to plan for the transfer of wealth. Advantages include:

1. Life insurance policies are extremely tax efficient: They accumulate cash value on a tax-deferred basis and the death benefits are typically income tax free.

2. Leverage dollars: With life insurance, the total premiums paid are almost always less than the death benefit.

3. Rapid Distribution of Funds: Life insurance is not subject to the probate process and thus can usually be obtained within a week to 10 days from the date a claim is made.

4. The designated beneficiary is the one who receives the funds. A will can be contested, whereas the beneficiary designations of a life insurance policy are honored,

Steven Trend

difficult to challenge and can help avoid family battles. Beneficiary designations can be easily changed by the owner of the insurance policy during the insured's lifetime, if desired.

5. Insurance provides clarity to the amount the beneficiary(ies) will receive. While other assets may have an uncertain value at the time of death, the death benefit of insurance policies are clearly communicated. The face amount listed may ultimately be adjusted by policy provisions, cash value, loans, the timing of premium payments, and other adjusting factors.

Here are a few common situations where using life insurance can help address estate distribution issues.

■ **Estate Equalization:** Often an estate has one large asset such as a business or a piece of real estate. When there is more than one heir, there may be the desire to treat each equally. However, leaving the large asset to be owned jointly could be problematic. Often, it makes sense that one heir become the owner of the substantial asset and the other heirs(s) share the proceeds of life insurance.

■ **Business continuation:** Businesses, such as partnerships, can have multiple owners. When an owner dies his or her portion of the business becomes part of the deceased owner's estate. A surviving owner becomes partners with the heirs of the deceased owner, unless there is a pre-existing buy/sell business agreement funded with life insurance that requires the surviving owner to buy, and the estate to sell, at an agreed upon price.

■ **IRAs and life insurance**: Legislation currently pending in the Senate as of this writing, will require beneficiaries to completely

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Steven Trend CFP®, CLU®, ChFC®, RICP®, LUTCF®, MBA is a financial planner providing advice on purchase decisions related to life insurance and other personal financial products.

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The Value of Retaining an Aging Life Care Professional for Your Life Care Plan

By Connie McKenzie, RN, CMC
Firstat RN Care Management Services

Connie McKenzie

As we age, the questions and options we face grow more complex and often can be confusing and overwhelming. Managing medical issues, financial and legal decisions, where to live and how to maintain quality of life requires thoughtful planning. The US Department of Health and Human Services Administration on Aging, estimates that 70 percent of people over 65 will need long term care services in their lifetime. Who will guide these decisions if you are incapable due to frailty, incapacity or disability?

As an RN Care Manager, also known as Aging Life Care Professional® (ALCP), I am often contacted by family members asking for an assessment of their loved one's needs. Prompted by an observation of physical or cognitive decline, these are not urgent or crisis calls. These meetings provide an opportunity to discuss current care and tailor a care plan to the individual's needs and preferences, offering a roadmap for aging in place safely. Unfortunately, the majority of the calls that we receive from families and professionals are "crisis calls." Frequently, the family (or referring professional) is calling as their parent/client has been admitted to the hospital through the ER, discharge from hospital is imminent, or they are faced with end-of-life planning. They convey a sense of panic, they do not know how to manage from a distance and need a local professional advocate.

Professional Care Managers can intervene in an emergency, but prefer to have an anticipatory approach to the health, safety, well-being, and quality of life of elders and their families. With their expertise they will ensure that the individual has the appropriate care at home or residential community that will support their life care goals. A Care Manager can be the catalyst to help the client and family take the next step, and move forward with an informed plan. Often difficult interpersonal relationships in families come to the forefront in times of crisis; a Care Manager has the ability to work through unpleasant and sticky situations. Providing peace of mind that the right choices are made at the right time, for the right reasons, based on informed decisions is the goal.

Years ago, we were interviewed by a couple in their early 70s. They sold their estate home in Missouri and moved into a two-bedroom condo in Miami. Their goal was to establish themselves in a new environment, travel and continue their active lifestyle. The final piece of their life care plan was to retain a professional Care Manager before they needed one! An excellent plan, one defined by this couple as, "If I step off the curb and don't get up," then I want the first call to be to my Care Manager! They did not want all five of their children boarding planes from five different states! The gentleman was a retired attorney who understood the risks of vulnerability with aging or a disability.

Over the last six years, they have called us twice, due to a medical event, and successfully utilized our expertise. We update their file annually and they share any changes with their healthcare throughout the year. This is a perfect proactive life care plan for this couple

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Connie McKenzie, RN, CMC, Director at Firstat RN Care Management Services. Connie is a nationally Certified Care Manager, Advanced Professional and serves on the Executive Board of the Aging Life Care Association®. She developed a successful bio-psychosocial based program serving individuals with aging and disability needs.

Benefits of Bridging:

Long-Term Care Planning and Geriatric Care Management

By Karen Greene
Hired Hearts, Inc

The inevitable question I am asked when I speak to a prospective client is "Doesn't Medicare pay for that?!" In an ideal world it would. But the reality is different, as there are clear limits on what Medicare will pay and how much Medicare will pay.

For example, estimated cost for a typical live-in caregiver is at $275 per day. If care is needed during the hours of sleep, you then need 2- to 12-hour shifts, which are estimated at $500 per day. Roughly $180,000 per year. Unsustainable for most.

The answer to this problem is "Long Term Services." Which are paid through one or more of these possible sources: 1) personal savings 2) support from family 3) privately purchased long term-care insurance and/or 4) Medicaid for those with limited income and assets. But a client needs help in navigating and managing all of these options. The solution is a Geriatric Care Manager.

What is a Geriatric Care Manager?

Geriatric Care Managers are health care professionals with a background in nursing, social work, gerontology or psychology who specialize in elder care issues and are trained to help family caregivers by:

- Assessing the particular needs of a family, the level of care needed, and the living situation;

Karen Greene

- Helping the family and client navigate the medical system; and
- Planning and supervising care, among other services.

Successful care coordination maximizes the use of medical care, resources and community services. Medication management, home visits, care giver education/support and use of technology are all key factors to reduce exacerbations of medical issues, improve outcomes while reducing overall costs. Hiring a Geriatric Care Manager — either for a one-time assessment or for ongoing support — will lower expenses in the long run by helping the client plan and avoid unnecessary or expensive decisions.

It starts with working with your Geriatric Care Managers during an initial assessment to evaluate your immediate, short term and long term needs. As a community-based leader, Geriatric Care Managers are knowledgeable about needs, community resources, health care providers. From the assessment comes a rational plan that puts the person needs, values, and preferences first.

Case Review 1

Ben and Margaret have been married for 55 years. Hard working, frugal people, they never saw the importance of purchasing Long Term Care Insurance. Ben was diagnosed with Parkinson's five years ago. All along they have been managing Ben's care needs with some supplemental caregiver help. Margaret feels she is the only one who can properly take care of Ben. Unfortunately, Margaret's memory has been failing lately and she is finding it difficult trying to keep up with their needs. Appointments are

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Karen Greene founded Hired Hearts, Inc., a Geriatric Nurse Care Management and Nurse Consulting service 18 years ago. She recognized the many gaps in care for our most vulnerable citizens and since then, has helped improve the quality of life for many in southeast Florida. Karen has lent her considerable experience to the industry as the recent Florida State Guardianship Association President, as well as serving six years as the President for the local Palm Beach County chapter. Karen is nationally recognized, having served as the Co-Chair of the NGA conference and FSGA Annual Conferences 2010, 2012, 2013 and 2015. Karen is also a Certified Examining Committee Member for the State of Florida.

Avoid Income Tax Disasters on Early Trust Terminations

By Ed Morrow
U.S. Bank Private Wealth Management

Ten new IRS rulings highlight critically important income tax ramifications surrounding early trust terminations. These terminations are often referred to as a commutation, wherein each beneficiary receives a percentage reflecting the value of their respective interests.

This is especially true regarding termination of bypass trusts perceived to no longer be needed for estate tax purposes, thousands of which have probably been terminated in recent years without con-

Ed Morrow

sideration or warning of the potential income tax disaster. These commutations might be a complete catastrophe that produces a much worse result than had the parties done nothing at all — or taken a different path.

In one of these rulings (IRS PLRs 2019-32001 to 2019-32010), a settlor established an irrevocable trust for his son and his son's descendants. The trust paid the son all net income, with no discretion for additional principal, and the remainder to his descendants' bloodline outright. The parties agreed to terminate the trust early, according to the actuarial value of the interests of the son, his four children and eight grandchildren, and went to court to approve the settlement agreement and terminate the trust accordingly. This was permitted under state law, provided no material purpose of the trust was frustrated. The court agreed and approved the settlement, contingent on the IRS granting a private letter ruling.

The IRS did grant favorable rulings regarding gift and goods and services (GST) taxes, but threw in an extra surprise on the income tax ruling. The IRS deemed the trust termination to be a taxable sale by the son and great-grandchildren to the grandchildren, triggering capital gains tax. But it gets worse as the son was deemed to have a $0 basis and had to pay long-term capital gains tax on the entire amount received.

This creates a huge income tax event, potentially worse than if the trustees had sold all of the trust assets. Even more troublesome, the son's estate is dramatically increased by the amount received net of tax — even though he didn't need the income — and may be taxed at 40 percent. Worse still, he will receive fair market value basis assets or cash that will only receive a step up at his death for any appreciation occurring after the transaction, if any. This is a heavy price to pay to get out of a trust, like cutting off an arm to cure the itch from a mosquito bite.

There are no dollar amounts in the various private letter rulings, but imagine you and your family have a trust established by your parent similar to the one in these rulings, with $10 million of assets and a basis in these assets of $5 million. The actuarial value of your interest is $4 million, your

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Ed Morrow is a Regional Wealth Strategist for U.S. Bank Private Wealth Management and is a Fellow in the American College of Trust and Estate Counsel (ACTEC).

Note: Investment products and services including annuities are: Not a Deposit; Not FDIC Insured ; May Lose Value; Not Bank Guaranteed; Not Insured by any Federal Government Agency. U.S. Bank and its representatives do not provide tax or legal advice. Your tax and financial situation is unique. You should consult your tax and/or legal advisor for advice and information concerning your particular situation.

Elder Abuse: An Alert for Fiduciaries, Advisors and Seniors

By Jay Rosen
and Stuart G. Berman,
CFE, CAMS
Capital Forensics, Inc.


Jay Rosen


Stuart G. Berman

It is estimated that hundreds of thousands of senior citizens over the age of 60 are physically abused and financially exploited annually. While all 50 states have passed elder abuse laws and have reporting mechanisms, these cases often go unreported. Elder people can be targeted for abuse by just about anyone, but are usually targeted by someone they know and trust such as family members, friends, caregivers, healthcare providers, attorneys, staff at care facilities, banks and other financial institutions. While abusers are comprised of both men and women, statistics indicate spouses and adult children are responsible for the abuse in two-thirds of the reported cases.

Financial elder abuse differs from physical abuse in that it is likely to happen with the consent of the senior, thus requiring more in-depth financial examination by an advisor. While fiduciaries and other advisors might have found the various privacy rules and requirements an obstacle to elder abuse reporting, the Senior Safe Act, signed into law on May 24, 2019, allows financial professionals to report an allegation of potential elder exploitation to an appropriate agency or covered agency without fear of violating any privacy requirements. Moreover, the Securities and Exchange Commission, the North American Securities Administrators Association, and the Financial Industry Regulatory Authority (FINRA) created and disseminated training materials encouraging financial professionals to detect and report allegations of senior exploitation.

Fiduciaries and other advisors looking for signs or examples of fraudulent financial transactions, should especially pay attention when several signs are present at the same time. A single indicator may not be indicative of elder exploitation, as there might be a reasonable explanation. Nonetheless, a fiduciary and/or other advisor must inquire and request information from the senior on all accounts, and from all sources to gain a thorough understanding of the elder person's financial affairs. The common theme is "changes," as changes of any kind to an account, often indicate potential issues.

Discovering elder abuse is a process that requires personal inquiry and document intensive reviews, and while the following list is not all-inclusive, it should provide fiduciaries and other advisors prompts to begin such inquiries:

1. Home repair, email, predatory lending, high-pressure tactics reverse mortgage, and charitable donation schemes are prevalent and often target seniors. Email, credit bureau information, lending documents, credit card statements, bank statements, contracts, invoices and materials should be reviewed and intensely scrutinized.

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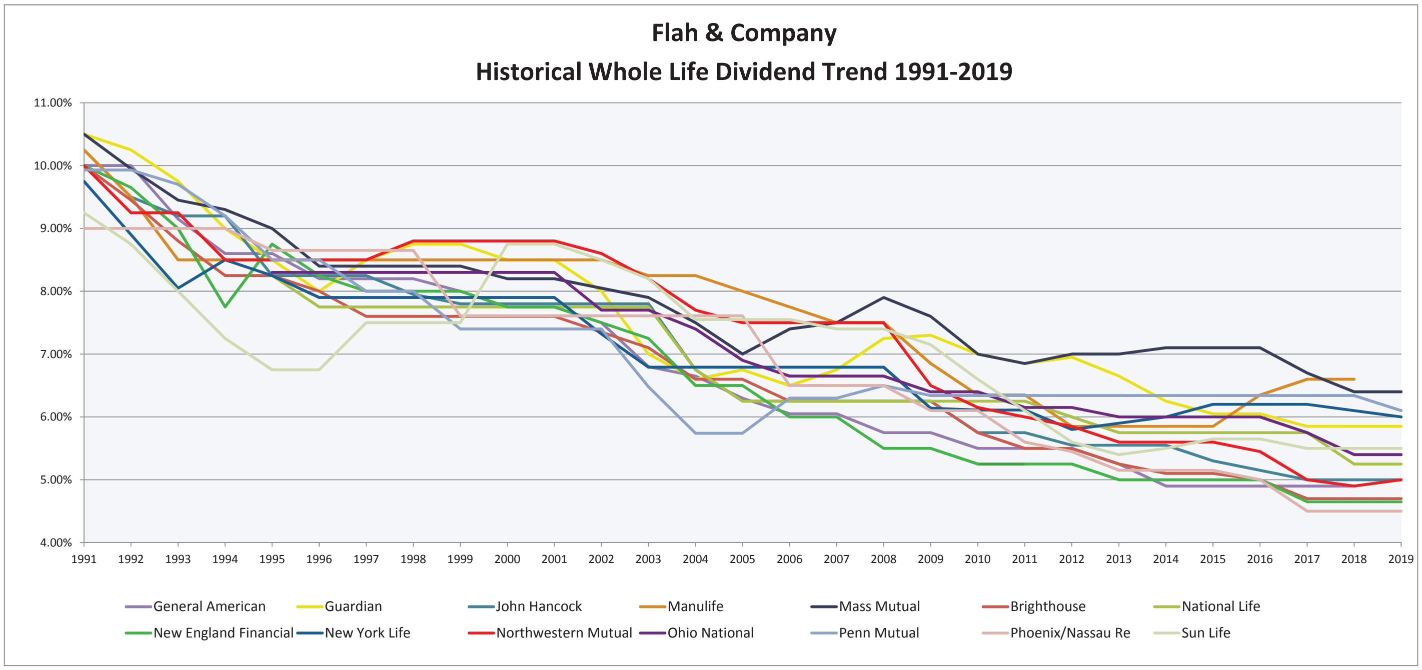
Jay Rosen, with more than 40 years securities industry experience, founded Capital Forensics, Inc. (CFI) in 1993. Jay is a recognized expert in Broker and adviser conduct, ERISA, Trustee duties amongst other related investment areas. Stuart Berman, a retired Special Agent In Charge, General Services Administration, Office of Inspector General, joined CFI as a Director of Risk Management and Investigations.

Bet You Didn't Know:

Life Insurance 'Truths'... and how to use them to enhance your own results!

Nathan Flah

Nathan Flah helps fiduciaries monitor and manage clients' insurance policies, oversees the firm's policy reviews and re-engineers existing insurance portfolios.



By Nathan Flah
Flah & Company

1. Fewer than 10 percent of all life insurance policies issued ever pay out a death claim.

When less than one in 10 of the products a life insurance company manufactures are put to the test, the manufacturer can afford to play it somewhat fast and loose.

Lesson: Have a policy custom built to exacting standards and let the other 90 percent of insureds enhance the performance of your policy!

2. Even fewer policies are routinely monitored.

As policy dividend, interest and crediting rates continue their 30-year ebb (see chart above), projected durations of in-force policies are reduced. When the policyowner recognizes their policy's trajectory has gone off the rails, she/he asks their agent/carrier for help. Unfortunately, carriers may be incented to allow older policies to lapse; even seasoned, well-intentioned agents receive no training in policy "re-engineering." Many, perhaps most policies written in the past 30 years are underperforming; assuming most insureds are disinclined to die early to match the reduced policy duration, what's an insured to do?

Lesson: Routinely utilize a methodical Policy Review & Optimization® process, avoiding ugly surprises and further boosting performance!

3. Underwriting likely has a bigger influence on the price of your policy than the carrier's dividend or interest rate, or its rating. The price difference between "Standard" underwriting class and "Best" class can be >18 percent! Industry wide, fewer than 20 percent of applications are approved at better

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Discuss important matters with family and attorney

By Janet Shamblin
Key Private Bank

Death or incapacity can create an avalanche of emotions and stress on all members of a family. That's why it's so important to have an estate plan in place. Even if your current estate is non-taxable, an estate plan addresses other important family matters and clearly defines your wishes.

There are many reasons — beyond tax issues — for individuals and families to create an estate plan. Consider the following questions:

■ Do I want input on where I go and who would take care of me if I become incapacitated?

■ Do I want input on who would take care of my minor children, and how the funds would be managed for them?

■ Do I want my assets to go to the people or organization I choose when I die?

■ Do I want to limit the amount of resources that would be available or would have to be used to provide for my long-term care?

■ Do I want to avoid the costs, time and public exposure that probate exposes my family to?

Let's take a more in-depth look at some of the non-tax reasons an individual or family would want to create an estate plan.

Family Issues

A properly structured estate plan can help provide peace of mind to family members by simply knowing what you want. A good estate plan addresses unique assets, such as a family farm, business or vacation home, or other legacies or heirlooms. Increasingly, this includes

Janet Shamblin

digital assets, such as a Facebook page or blog.

The estate plan also addresses unique family situations, such as the intricacies of second marriages, potential future divorce of children, addiction and irresponsibility, and physical and mental disability. Trust provisions can be included to protect beneficiaries from themselves, their creditors, and former or current spouses, and to insure that special-needs beneficiaries aren't unintentionally disqualified from crucial government benefits due to an inheritance.

Incapacity

Estate planning involves a dialogue and the necessary documents to spell out who will make decisions for you following disability or death. These documents will include Durable General Powers of Attorney, Health Care Directives, and a Living Will.

Key Takeaways

Estate planning is important for most individuals and families, even if your current estate is not subject to the estate tax.

Estate planning can help address important family issues and ensure your wishes are carried out if you die or become incapacitated.

There are a variety of planning strategies available to help individuals and families address the non-tax issues of estate planning.

Non-tax Estate Planning Issues

It is vital to appoint a person to make important decisions during difficult times—one who will do so in a timely manner.

It is often best if the agent under your Health Care Power of Attorney lives close to you in order to effectively act in this capacity.

If leaving an estate or legacy is important to you, different strategies can be implemented to help ensure that it will not be depleted during your lifetime. This may include Long-

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Janet Shamblin, CTFA, Fiduciary Strategist, Senior Vice President. As a Fiduciary Strategist for Key Private Bank, Janet proactively advises her clients on sophisticated estate, trust and charitable strategies to address their unique financial objectives and uncover new opportunities to manage and grow wealth. Janet is a seasoned professional and brings her expertise in trust and estate planning to help clients preserve, protect and plan to pass on their wealth to their family, heirs and the causes most important to them. She helps clients develop customized solutions for their challenges and ensures recommendations are in harmony with their total wealth management plan. For more information, contact your Key Private Bank Advisor. Go to key.com/kpb.

Should you have a family office?

By Jennifer Ridgely
Daszkal Bolton, LLP

As a high-net-worth individual, you are likely familiar with the term “family office,” however the purpose and benefits of such a specialized office may seem vague. Simply put, a family office is an organization that supports and protects the financial needs and assets of a family. Rather than placing all the trust of a family’s entire assets in the hands of one individual, the family turns to an external expert to serve as a centralized management hub for the day-to-day management of the family’s needs, as well as long-term strategic planning and risk management to sustain the family’s wealth. This creates a level of external controls and safeguards which a single person or family member is not capable of duplicating.


Jennifer Ridgely

Who Needs a Family Office?

Multi Family Offices (MFO) are best suited toward wealthy families or individuals with a net worth exceeding $15 million. Whereas a Single Family Office (SFO) is reserved for families with a net worth surpassing $250 million, as the costs associated with an SFO can be immense. However, it is worth noting that there are some families or individuals who could afford a SFO but prefer to utilize a MFO for the cost savings.

Families with the following characteristics would benefit most from a family office:

- A complex estate plan
- Extensive travel schedules and time constraints
- Multiple homes
- Assets highly scrutinized by the IRS, such as airplanes and yachts
- Need for multi-generational wealth succession oversight
- Private Family Foundation
- Need for high-level detailed income and net worth reports.
- Complex income and/or trust tax returns and advisory services
- Need for internal and external controls to ensure security and privacy

Benefits of the Family Office

A family office provides an objective team of professionals who are committed to protecting and furthering the family’s assets and legacy. There is no conflict of interest because the office works directly for the family. The family office brings together all of their trusted advisors to work together as one uniform team for the family. These professionals consist of accountants, attorneys, investment advisors, bankers, insurance advisors and more.

Additional benefits include:

- Breadth of experience and specialization for high-net-worth individuals
- Broad range of available resources
- Extensive internal controls to protect the safety of the client
- Cost savings of a Multi-Family office compared to a Single Family Office
- Accessibility
- Independence
- Family education
- Daily management of assets with comprehensive financial oversight
- Analytical oversight of bill payments
- Confidentiality
- Customization of services according to family’s objectives
- Neutrality and objectivity
- Synergistic sharing of ideas
- Integration of financial strategies

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Jennifer Ridgely is a Partner at Daszkal Bolton, LLP and leads the DB Family Office Services team bringing with her more than 20 years of experience in the high net worth domain. Her vast experience in the industry encompasses taxation, accounting, reporting, cash management, bill paying and comprehensive consulting.
Should you find that a Family Office is just what you need, please contact Jennifer Ridgely with Daszkal Bolton, LLP at 561-886-5205 or jridgely@dbfos.com.

RIDGELY

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■ Concierge services
■ Realization of philanthropic legacies
■ Comprehensive reporting

Family Office Structures

All family offices have some variations, no matter if they are a single family office or a multi-family office, and no two offices are exactly alike. It is important to consider the different services offered when examining, comparing and selecting the family office right for your situation. For example:

What concierge and professional services do they offer?

What is the breadth of experience of the staff and how many staff members are available?

What are the internal controls?

Who is responsible for your family and how does their personality fit with your family?

What other resources do they have available to assist your family?

What are the costs?

Family Office Services

As each family office is structured differently, their services also vary. Below is a list of different services that a family office can offer:

■ Bill Payment
■ Investment Performance and Reporting
■ Financial Reporting and Analysis
■ Cash Flow Forecasting and Cash Management
■ Family Governance & Meetings
■ Tax Planning, Compliance and Preparation
■ Foreign Currency Matters
■ Aircraft, Yacht and Collectible Consulting
■ Multiple Residence Management
■ Insurance Coordination and Evaluation
■ Document Management & Recordkeeping
■ Employment Issues and Benefits
■ Charitable Giving Strategies
■ Trust Planning, Implementation and Compliance
■ Risk Management
■ Contract Review, Negotiation and Compliance
■ Asset Allocation Monitoring
■ Generational Education and Planning
■ Asset Protection Strategies
■ Debt Structure and Analysis
■ Succession Planning
■ Estate Planning, Implementation and Compliance
■ Asset Reporting and Analysis
■ Private Equity
■ State Residency and Domicile Assistance
■ Real Estate Acquisition & Tax Planning
■ Foundation Management
■ Entity Administration
■ Bank Compliance Reporting
■ Concierge Services
■ Asset Management
■ Investment Management

Premier Family Office Solutions

No two families are the same, and your family office should reflect the values and objectives of your family. If the aspects of your wealth preservation are becoming burdensome, complicated or overwhelming, it may be time for you to consider a family office. Whether it's providing back-office functions for personal and business needs, or coordinating transactions and communications among your team of advisors, a family office should provide you with good financial health and a greater peace of mind.

CHILTON

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public agency, nor does it require the trust to file annual accountings.

The Delaware Chancery Court

Established in 1792, the Delaware Chancery Court has over 200 years in creating a sophisticated trust law infrastructure. The Chancery Court is largely recognized as the nation's leading forum for judicial disputes. Because of the experience and sophistication of the Chancery Court, it is likely for a matter brought before the Court to receive prompt, efficient and consistent relief. In addition, the Delaware Chancery Court regularly reviews and refines its many advantageous statutes to ensure its continued flexibility stays relevant to the current state of the industry.

HEIN

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into a long-term care annuity can accumulate a pool of over $780,000 of long-term care by age 85. This product typically allows owners the flexibility to: (a) cash in the product and get their money back or (b) die and leave the cash invested to their heirs. Some of these policies are also the indemnity polices described above with the flexibility to utilize the proceeds for many different uses. These annuities can either be paid for in a lump sum or be paid for over lifetime. An advantage of paying for the annuity/long-term care over a number of years is that a portion of the long-term care expenses can be paid from a health savings account. A health savings account enables you to receive a tax deduction for money contributed and the money grows tax-free to be used later for health care expenses, including long-term care premiums and some annuity/long-term care premiums.

With the cost of long-term care continuing to increase, planning should cover the probability of a long-term care event. With both the life insurance/long-term care and annuity/long-term care options, either you or your heirs will receive a benefit so there is no "use it or lose it" concern as with traditional long-term care. Once you qualify, the ability to receive cash that can be used as you see fit is a major advantage compared to a traditional reimbursement model. The reduced likelihood of a premium increase for life insurance long-term care and the inability to raise premiums in the long-term care annuity products are further advantages over traditional long-term care. Long-term care coverage in all forms helps with financial costs and additionally helps to ease caregiver strain and contribute to both quality of life and peace of mind.

ALBERTSSON

From Page 9

valuable.

One fact that may be surprising is that brown diamonds are the most common type of diamond, even surpassing colorless diamonds. Clever marketing of "Champagne" or "Cognac" colored diamonds has increased their popularity. Brown diamonds are the most affordable of all colored diamonds.

Yellow diamonds are a very popular color of fancy diamonds. They are created when nitrogen atoms take the place of carbon in the crystal lattice structure. Although yellow diamonds are found throughout the world, the most intense hues are mined in South Africa. Doyle sold a lovely Fancy Yellow (22.96 carats) that belonged to the Estate of Barbara Wainscott of Palm Beach for $384,500.

Red diamonds are the rarest and most valuable of all colored diamonds. Typically found as smaller carat weights with the largest red diamond in the world being The Moussaieff Red Diamond, measuring only 5.11 carats. The color is likely caused by deformities in the crystal lattice structure due to incredibly intense seismic pressure. Less than 30 red diamonds have been found and they were mined in Australia, Brazil and Montana. They very rarely come to the auction market and sell for well over $1 million per carat.

Blue diamonds are particularly lovely, rare and very desirable to collectors. They come in a wide range of color intensities and are formed when trace amounts of boron are included within the lattice structure. A few of the modifying hues include greenish blue, grayish blue, and violet blue. Blue diamonds are formed and mined in the deepest depths of the Earth's mantle. The most famous blue diamond is the Hope Diamond – a 45 carat diamond mined in India in the 17th century and notable for being cursed. Interestingly Palm Beacher, Mildred "Brownie" McLean, had ties to this famous diamond. Brownie McLean was offered the magnificent stone by her mother-in-law, socialite Evalyn Walsh McLean, and famously turned it down after claiming to see red sparks come out of it (and she very well might have, the Hope Diamond exhibits a rare red fluorescence when placed under ultraviolet light)! Doyle has been honored to sell several blue diamonds in the past year for very high prices. A Fancy Blue, 1.52 carats, sold for $855,000 and a smaller Fancy Blue, 0.80 carats sold for $212,500.

Green diamonds are almost as rare as red diamonds and have powerful modifying hues which can result in shocking colors. The color is caused by exposure to radioactive materials during formation. Careful microscopic study must be performed by the GIA to confirm the color was formed naturally and not in a laboratory. The most expensive green diamond sold in Hong Kong in 2016 for $3.3 million per carat.

Making up approximately 0.1 percent of produced diamonds, orange diamonds absorb green and blue light, typically resulting in intense orange and brownish and yellowish orange hues. Gemologists have not yet determined the defect that produces orange and the impurity may differ from one stone to another. Several years ago, the largest and most expensive orange diamond, a 14.82 carats Fancy Vivid Orange, was sold in Geneva for a whopping $35.54 million or $2.4 million per carat!

Driven by collector demand and limited supply, the prices of high quality fancy diamonds have increased dramatically over the past decade. Gem enthusiasts will continue to marvel at the unique color combinations and beautiful imperfections the Earth created billions of years ago.

PAULDINE

From Page 6

able based on your family's circumstances and make sure to build in flexibility along the way.

It is very difficult to predict what the next 10 years will bring. Consequently, careful consideration should be given to every family's needs and circumstances before implementing any plan. One final thing to keep in mind in all of this is to not worry about becoming overwhelmed. One of the reasons for both starting your estate plan (as well as reviewing it periodically) is to make minor course adjustments along the way without the pressure of feeling like you've run out of time.

BESSEMER

From Page 14

right to live in it; remainder to heirs*.

3. Split Interest Purchase – senior generation purchases a life income interest in an asset; younger generation purchases the remainder interest.

4. Grantor Retained Annuity Trusts (GRATs) – annuity paid to grantor; remainder to heirs*.

5. Charitable Lead Annuity Trusts (CLATs) – annuity paid to charity for a period of years; remainder to heirs*.

6. Private annuity – asset sold to younger generation*; paid for via an annuity to seller for a period of years or lifetime.

7. Intra-family loan – loan to a friend or family member* at the minimum interest rate needed to avoid imputed income or gift. Payments are often interest-only with a balloon at the end.

**Outright or in trust.*

Interest rate	More Efficient Strategy
Higher	■ Charitable Remainder Annuity Trusts ■ Qualified Personal Residence Trust ■ Split Interest Purchases
Lower	■ Charitable Lead Annuity Trusts ■ Grantor Retained Annuity Trusts ■ Private Annuities ■ Intra-family Loans

The table (above) reflects whether these strategies are more efficient in a higher or lower interest rate environment:

What Does An Inverted Yield Curve Mean For Your Plan?

The new tax act and current economy mandate "running the numbers" to ensure your plan remains accurate and tax-optimized. Exemptions have temporarily doubled, potentially wreaking havoc on a formula based estate plan. If you are unsure whether you have one, ask your attorney.

Recently, we have had a "flattened" and an "inverted" yield curve. In oversimplified terms, these occur when the yields of longer and shorter duration bonds are disproportionately close to each other (flattened) or a longer rate is less than a shorter one (inverted). This directly impacts AFR rates, as explained above.

Perhaps you extended a loan to help a family member or to a trusts/entity as part of a sophisticated tax strategy. With short, mid and long-term AFR rates less disparate than typical, it may be possible to refinance ("lock in") the current interest rate for a new (longer) term at little or no additional cost to protect against likely higher rates in the future.

Next Step: Speak with Your Advisor

Rising interest rates impact many aspects of our lives, including our estate plans. We've identified the basic characteristics of some of the most popular wealth-transfer strategies, and when they tend to be most efficient. However, the optimal wealth-transfer strategy for you entails many more considerations. Your advisors can help you weigh the potential benefits of different strategies.

DOANE

From Page 18

forecast a realistic budget for the care of your animal. Consideration should be given not only to what you currently spend on your pet, but what should be set aside for your pet's twilight years when more advanced or palliative medical care is likely to be needed. You should also put together a list of any specialized instructions that may be necessary for the care of your pet, so that they can be incorporated into the terms of the trust.

Your pet trust should be very specific as to the animal or animals that you intend to benefit. You can and should include any microchip information, photographs, and identifying markings. The life span of the animal or animals who are to benefit from the trust will also determine when the trust terminates. A pet trust cannot be designed to continue in perpetuity; rather, it must terminate upon the death of the last surviving pet identified in the trust.

Lastly, the pet trust should provide instructions for what you intend to happen when your pet reaches their final days. You can include guidance on euthanasia and provide burial or cremation instructions. The trust must designate who should receive the remaining trust funds upon the death of the pet. This can be any person or organization you choose. Many pet owners select a favorite animal shelter or rescue organization to receive the remaining funds in memory of their beloved pet.

When you sit down to create your estate plan, don't forget about the four-legged family members. Anyone who has ever brought home a pet immediately realizes that their care is an enormous responsibility, but far too often we forget that this responsibility may continue beyond our own lifetime. By creating a pet trust now, you will be assisting your pet's caregivers with the guidance and financial stability they need to ensure that your pet is well taken care of even if you are unable to continue to care for it.

WEESE

From Page 11

holders who have either created their family wealth or have already received more than half of their expected inheritance, while 27 were inheritors who have not yet received 50 percent of their expected inheritance.

The survey showed that only 29 percent of the senior generation has given their inheritors complete knowledge of when assets will be transferred, and just 10 percent have provided full specifics on how much heirs will receive.

What is the most common reason for not sharing inheritance details? It's concern that the anticipation of inherited wealth will demotivate or disempower family members. Of the survey respondents, 30 percent cited this as a reason for withholding information.

Are the concerns of the senior generation justified?

Perhaps. The survey found that 55 percent of inheritors will leave their current job after receiving their full inheritance, and 37 percent have no plans to continue working in their current position. This data may suggest that many inheritors truly do plan to jump off the "fast track" when they receive their inheritance. Or, they could be seeking different, more fulfilling jobs or pursuing their passions because they are financially able to do so.

It's important to acknowledge that some inheritors are demotivated by the perception of an anticipated inheritance, before they even begin to learn about specific wealth transfer plans. They are aware of their family's wealth by evidence of the family's lifestyle, and they go through life assuming they will eventually receive a large legacy.

Despite wealth holders' fears of disempowering heirs, not communicating can be the worst path to follow. While every family is unique, there are some best practices among families who have decided that preparing heirs is important.

1. Develop a plan for how the family communicates and shares knowledge

Families use various methods to communicate their hopes and plans surrounding money, and some work better than others. What doesn't work is lifelong lecturing forced upon younger family members.

Rather than parents having "one-off" conversations with children separately, many families are benefiting from having organized, prioritized group discussions around these topics. Often these discussions can begin as educational sessions. Gathering everyone in the same room, perhaps at a family retreat with a trained third-party expert, can strengthen the bonds among members as they share the learning experience.

2. Use philanthropy as a way to transmit values and work together across generations

Shared values and culture create much stronger bonds than money alone, so it's critical that families use shared experiences, such as philanthropy, to strengthen them. Creating a culture of giving within a family can form a lasting philanthropic legacy that can extend through multiple generations. The senior generation should encourage children to think about their own causes and leverage lifecycle events, like birthdays and year-end giving, to motivate the family. Families may want to volunteer together, and consider using planned gifts, like a scholarship fund, to promote a family's heritage. More complex philanthropic structures, like private foundations and donor advised funds, may be appropriate for some families as well.

3. Talk about the risks associated with inheritance

It's important the family collaborates to identify and mitigate risks to their legacy. They can determine a proper risk management approach, based on the family's priorities: growing wealth, preserving wealth, engaging in philanthropy, or a combination of factors.

They can also examine the risks of increasing their spending in anticipation of an inheritance and after receiving one. They should consider the sustainability of spending in different economic environments, as well as the desire to leave assets for future generations.

Risks can also emerge if inheritors don't feel they are being treated fairly. Families need to be on guard for any potential disconnects between anticipated inheritance and reality, as well as possible discord among multiple inheritors receiving unequal shares. It's critical to get a head start in managing the risk of potential acrimony among inheritors early, rather than waiting until after the current generation is gone.

For many families, discussing wealth transfer and inheritance issues can be challenging. But the rewards can prove significant when you work together to improve communications and strengthen trust.

PAUL

From Page 21

begin in the room least used. Think about repurposing favorite items to fit a new space then decide whether to sell, donate or give away the rest. Challenging items include: financial papers, photographs & keepsakes, clothing, heirlooms, china sets and special collections. Tips of the trade include the OHIO Rule: Only Handle It Once and move on. Removing clutter is empowering! In addition to downsizing, the thought of staging and showing a home can be taxing. The goal of staging is to not only make the house marketable, but to also protect objects that may have special meaning.

Are you considering an Independent Living or Assisted Living community? There are many options available in our area that include a carefree cruise ship-like lifestyle with fabulous food, new friends, and the freedom from worry. Including these possibilities in your estate planning can eliminate future concerns. Start early and explore all of your options.

A real estate professional experienced and empathic to senior's concerns, can be an invaluable resource at such a pivotal time. Their professional network may include specialists in the financial, legal, and personal services, from estate planning to downsizing. The ultimate goal is to help seniors and their families seamlessly navigate and simplify the process involved in selling a home.

GEFFEN

From Page 13

payments are treated as return of principal and as such are not subject to income tax.

As a result, Bob's effective payout rate, the rate of return he would have to receive on an ordinary investment like a CD to match the CGA return, is over 14 percent!

When Bob passes, MorseLife will use the remaining dollars in the CGA to provide care to seniors living in poverty.

Bob also explained that if he lived to his life expectancy, his CGA would produce nearly $70,000 of income, while a CD at 3 percent would yield about $25,000. When you include the income tax savings, Bob receives more than three times what he would have received with the CD.

Joe learned that CGAs are an excellent option for people who want to earn significantly better returns than CDs, Treasury Notes and dividend-producing stocks currently offer. They provide tax savings those other investments don't and produce a meaningful charitable gift as well.

Charitable Gift Annuities are viable options for those seeking the peace of mind that safe and secure income streams can provide. The generous, guaranteed income, tax savings and charitable gift make the CGA an attractive vehicle for seniors and those living on fixed incomes.

Charitable Gift Annuities are legally binding contracts between the donor and the charity. There are no fees for establishing a CGA. They can be created for one or two lives. The payout amount is set at the establishment of the CGA and is determined by the age of the donor(s). The older the donor(s), the higher the rates.

The MorseLife Foundation supports the charitable work of the MorseLife Health System, which provides comprehensive living and healthcare solutions for 3,600 seniors every day. MorseLife is the only organization to be designated by the Florida legislature as a Teaching Nursing Home and a Teaching Hospice.

Its 50-acre campus is home to exceptional all-inclusive independent and assisted living, state-of-the-art short-term rehabilitation, award-winning long-term care and innovative memory care. MorseLife's community-based services offer private and skilled home health care and compassionate end-of-life support through its hospice.

MorseLife delivers more than $10 million worth of free or subsidized services annually for the poor elderly living in our community, including many Holocaust Survivors. Contributions to the MorseLife Foundation, like those through Charitable Gift Annuities, are used to support services for the poor and to enhance the lives of all seniors in MorseLife's care.

KITROSER

From Page 10

and Successor Trustees) does not adequately address the needs of an incapacitated person, Judges are often called in to settle family disputes over control of a person's life, including their finances sometimes including where they should live and with whom. Often, there is an element of financial exploitation to the cases, sometimes involving spouses, sometimes children and occasionally strangers who have insinuated themselves into a vulnerable person's life. Sadly, but by no means surprising, the toughest fought cases usually involve those with significant wealth and the battle is really over the person's money. Evidence will include medical, financial and historical testimony and documents in order to provide the Judge with a clear picture of what has led to the need for court intervention.

An Incapacity and Guardianship proceeding should not be undertaken lightly. It is demeaning to the individual and results in the removal of many of the rights of citizenship. The law considers it to be an extreme solution, only to be implemented when no other alternative is available.

It is important as advisors that we work together to educate our clients and make them aware of the potential dangers and complications which they may face when families struggle with diminishment of capacity and control over assets and inheritance. Careful pre-planning and the implementation of an estate plan, along with a strong team of trusted advisors around a client before his or her capacity begins to diminish can help to avoid many of the most egregious outcomes. A client needs to take steps now to protect themselves and their wealth so their needs and their intentions as to legacy are preserved.

GIARRATANO

From Page 16

must be rationally related to values connected with the taxing State." A state must meet both of the elements above in order for the proposed tax to pass the due process standard. The Supreme Court held that North Carolina had no minimum connection with the Trust citing that the Trust's only connection to North Carolina was that the Trust's beneficiaries were residents of North Carolina, there were no distributions made to the beneficiaries, the beneficiaries did not have a right of withdrawal and the trustee had absolute discretion when making distributions to the beneficiaries.

What might have happened if one of the above mentioned factors was slightly different? Apparently it is not enough of a "minimum connection" merely if the beneficiary is a resident of the taxing state, is it enough if the resident beneficiary has some right of withdrawal? Is it enough if all of the trustees are residents of the taxing state (as California seems to be claiming)? The Kaestner case highlights the importance of understanding individual state trust taxation and the issues that may arise which could subject a trust unknowingly to state taxation.

VOGELSANG

From Page 12

Mrs. Taxpayer has used her entire exclusion amount and makes gifts of $100 million to her children, she will pay a gift tax of $40 million reducing her taxable estate to zero. If alternatively, Mrs. Taxpayer continues to hold assets worth $140 million when she dies, her estate would pay federal estate taxes of $56 million leaving "only" $84 million for her heirs — a whopping $16 million less than had she given her assets to her children during her life.

3. Grantor Retained Annuity Trusts: Grantor retained annuity trusts ("GRATs") are trusts which effectively "freeze" the value of a taxpayer's estate by passing future appreciation to younger generations at little or no transfer tax cost. If Mr. Taxpayer transfers $1 million to a two-year GRAT which pays him an annual annuity of $500,000 on each of the first two anniversaries of the funding of the GRAT, he will have received back from the GRAT an amount equal to what he initially contributed, $1 million. Assets remaining in the GRAT after the second $500,000 annuity payment will be distributed to Mr. Taxpayer's children. Because the aggregate annual annuity payments to Mr. Taxpayer are equal to the amount he initially contributed to the GRAT, the only taxable gift is the present value of the remainder interest in the GRAT at inception, which is zero or near zero. If the GRAT is funded with volatile assets which produce outsized returns during the two-year GRAT term, the taxpayer's children may receive a considerable sum without the imposition of gift tax.

While death and taxes may indeed be a certainty, taxpayers are not under an obligation to maximize the taxes their estates ultimately owe at death. Proactive families can utilize the foregoing strategies and many others to manage exposure to the federal estate tax.

GELBER

From Page 15

participated recently in numerous pre-death asset "swapping" exercises where low basis assets (assets that have the potential to have large tax gains when sold) are moved into the estate to get the basis adjustment (an adjustment of its basis to the fair market value of the asset at date of death). This process was extremely effective: as a result, the family inherited assets that can be sold off without incurring any income tax.

For those of us that are not big proponents of giving assets outright to beneficiaries, we instead believe in leaving the assets in trust for the beneficiaries. Advantages of leaving assets in trust range from preservation of assets, protection from creditors and avoidance of inheritance being included in marital assets, to name a few. For the most part, these trusts will span multi-generations. Accordingly, once the assets have been identified, the planner will want to understand the individual and their family dynamics. In order to keep property in trust, the grantor must be able to figure out how much access his or her heirs will have to the trust income and/or principal. This will vary among individuals as well as by size of trust and nature of assets held in trust, etc. Accordingly, the planner must acquaint themselves with the family dynamics of governance as well as help guide what the next generation of governance may look like.

The estate planner has a unique opportunity to explore all sorts of different dynamics with their client. Consideration is given to who successor trustees will be. If a spouse is a successor trustee, do the children ever become trustees? What if the children are married? What if they are married with children and you created trusts that extend to your grandchildren and great grandchildren? Who will be successor trustee if your child can no longer serve as trustee? What if your grandchildren are the current beneficiaries? If your child cannot be trustee, will you allow your child's spouse to become trustee? Will the spouse have complete control over the trust, or do you introduce a distribution trustee (trust protector) so there is oversight on disbursements from the trust, etc.? Further, any named person written into the documents should be monitored as relationships change over time. As you can see, this is extremely subjective and there is no right or wrong. However, when working with clients with multi-generational planning, the planner must discuss who they see having the maturity and responsibility to take on these roles. With enough guidance in the trust documents, the grantor's intent should be as clear as possible. With the appropriate provisions in the documents, mishaps and unintended consequences can be avoided. It is the planner's role to have these discussions and to provide guidance, and the client must be willing and ready to tackle these issues.

The planner must consider these matters when devising a plan. The planner must engage their client to get a sense of how the family functions or what the client's perception is of how their family functions. A properly crafted plan will achieve both estate tax mitigation, as well as family wealth legacy. The documents provide the map to the destination and should capture the intent of the client's thoughts about their legacy.

I really enjoy my role as planner. I find tremendous value in helping shape the financial legacy of my clients and bridging generations in the process. It is important to realize that an estate plan is only as complete as the last time the client met with their planner.

SAMUELS

From Page 17

When contemplating selling your valuables, appraisers should be asked to provide "Liquidation Values". This illustrates their opinion of what realistic offers you should expect to receive.

Note: If you already have appraisals which were written for Estate inheritance (Fair Market Value) or Insurance (Retail Replacement Value), you cannot expect to generally receive these "Retail" numbers when you liquidate your assets.

Unlike doctors, attorneys, etc., There are no requirements that appraisers be licensed, there are no educational or testing requirements, and no requirements that appraisers be knowledgeable in the items that they are appraising. Therefore, it is critically important that if you are relying on your appraisal, that you assess credentials and experience. Perhaps your attorney, bank officer, or financial advisor has a recommendation. Possibly search appraisal organizations such as ASA (American Society of Appraisers) which require credentials and continuing education. You can also search online but check ratings, read bios, ask questions, etc.

Clearly the appraiser you choose should be an expert in the pieces they appraise. Some will appraise every item in your home; however, no one is an expert in all valuables. Appraisers may call in other experts for assistance. For example, if you own a valuable jade collection, a jade expert should be consulted.

Your appraiser might offer to "Broker" your items. Brokering generally involves getting offers on your behalf for a fee. Brokering could be legitimate or it could be unethical. If your appraiser brokers, I strongly suggest that you also get your own independent offers and accept your broker's offer, only if it nets you the most money.

Be aware that appraisals are often inflated, and the stated values may not be achievable.

Appraisals are "opinions" expressed as descriptions and values. Appraisals are not offers.

Most importantly: getting offers — Offers are very different than appraised values. Offers are not opinions, they're actual bids that if you accept, you can literally "Take to the Bank."

To receive the highest offers you should obtain bids from multiple "Qualified Buyers." To be called a "Qualified Buyer," one must understand the item including its value, they must have the desire to own it, and must have the funds to purchase it.

Getting immediate cash is very different from placing your items on consignment or placing your items in auction. Consignment and auction routes do not offer all immediate cash and the time to actually receive the cash payment is often months. Also, after considerable passage of time, consignment and auction options provide no guarantees that your items will even sell at the consigned or the auction reserve price. They may then be returned to you.

Conclusion — High net worth individuals often have considerable wealth laying dormant in the form of Tangible Personal Property including jewelry, art, collectibles, coins, etc. Often these assets are not actively working for you and they could "instantly" be converted into cash to improve your lifestyle or fund additional active investments. By not turning these assets into cash you are probably losing money!

PLANNING

From Page 20

Planning Opportunities

They still exist but the TCJA has made this more difficult.

■ **"Bunching" of Itemized Deductions:** This is the planning tool used when taxpayers do not have enough to itemize in any year. The strategy works by "bunching" two years of deductions in one year. This, in some cases, allows the taxpayer to itemize every other year. This strategy works with taxes (up to the $10,000 limit) and charitable contributions.

■ **The New Qualified Business Income Deduction (QBI)**: This deduction pertains to business, rental, and certain types of partnership and dividend income. There are multiple factors to this new 2018 deduction that allow for some degree of planning. For a business client, consider adjusting the W-2 wages to increase the deduction. Depending on circumstances, it might be beneficial to convert independent contractors to employees as long as the deduction benefit outweighs the increased payroll tax burden.

■ **Mortgage Interest:** For some taxpayers, it could be beneficial to pay-off mortgages, particularly if the taxpayer is no longer able to itemize deductions.

■ **Qualified Charitable Distribution (QCD)**: For individuals who are at least age 70 ½ and using the standard deduction, a QCD is an option. A QCD is a distribution made directly by an IRA custodian to certain qualified organizations. The QCD amount is excluded from taxable income while it counts towards satisfying an individual's required minimum distribution (RMD) for the year. The total QCD for the year cannot exceed $100,000.

■ **529 Plans:** Under pre-TCJA law, withdrawals from 529 plans were tax-free only if used for qualified higher education costs. Taxpayers can now use up to $10,000 annually for kindergarten through 12th grade at public, private or religious institutions. Contributions to 529 plans qualify for the $15,000 annual gift tax exclusion per beneficiary. Taxpayers can elect to contribute up to $75,000 in one year and treat the contribution as made ratably over a five-year period.

■ **Estate Tax Exemption:** The TCJA doubled the estate and gift tax lifetime exemption to $11.4 million for 2019 and is indexed annually for inflation. Since the exemption will revert to $5 million in 2026 (or possibly sooner if changed by a new administration), taxpayers with sufficient wealth may want to take advantage of the increased exemption before it is too late.

TURKO

From Page 19

a HIPAA Authorization is very important for the parents to have in their favor so if there is a medical emergency the parents can access relevant health information and immediately communicate with the medical care professionals involved in the matter. These are three forms that all estate planning attorneys generally have their estate planning clients sign and they should also be put in place for any adult child of our clients.

Second, the child should have a Durable General Power of Attorney signed in favor of one or both parents. The average college student will not have substantial assets in his or her name. However, by signing a Durable General Power of Attorney, the child has enabled someone other than a child to manage any assets or other financial matters should this ever become necessary. For example, this would include common items such as terminating a rental agreement, paying outstanding bills, filing income tax returns and depositing checks.

Third, a child leaving home should consider signing a simple Last Will and Testament to at the very least appoint a person to act as personal representative and also name the beneficiaries of his or her estate. Most likely the child will not have substantial assets. The child may have a preference on naming the ultimate beneficiaries of his or her estate and his or her preference may vary from the default estate plan provided by Florida intestacy law. Under Florida intestacy law, assuming the child has no spouse or children, the parents would equally inherit such child's assets. A will is also important to appoint a personal representative to act on behalf of the child's estate. This could be important in the event of a wrongful death action as the personal representative would be the party to bring a lawsuit and represent the estate's interests in the lawsuit. Florida law also now has a statute addressing digital assets, such as social media accounts and e-mail accounts. In today's environment, with the younger generation, it could be important to have a Will that includes digital asset provisions authorizing a personal representative to access such accounts after death for various reasons. This can be more complicated without a Will in place without proper digital asset authorizations.

Lastly, clients should confirm that any insurance policies and/or retirement accounts or other financial accounts that the child has in his or her name have appropriate beneficiary designations completed and are up to date. This is particularly important with insurance policies and retirement accounts which generally could default to the child's estate in the event of death without a beneficiary designation and be potentially exposed to general creditor claims. As a result, any beneficiary designations should be confirmed to be completed and up to date.

A child leaving for college is an exciting time in a parent's and the child's life and a big first step to becoming an independent adult. Just as much as getting in place tuition payment plan, student housing, necessary school supplies and a student meal plan, a client should also have a child put in place a basic estate planning documents in the unlikely event of a health emergency or other disaster.

WESTON

From Page 22

and the prudent investor rule, it seems trustees may have the ability to diversify trust assets, potentially obtain overall positive returns and incorporate the beneficiary's values. However, there are additional hurdles trustees should consider.

Florida's prudent investor statute provides that trustees have a duty to invest trust assets "as a prudent investor would considering the purposes, terms, distribution requirements, and other circumstance of the trust." The statute does not specifically grant trustees the authority to consider the beneficiaries' personal values. As of 2019, Delaware was the only state to address this issue by revising its statute so that trustees when making investment decisions can consider "the beneficiaries' personal values, including the beneficiaries desire to engage in sustainable investing strategies that align with the beneficiaries' social, environmental, governance or other values or beliefs of the beneficiaries."

Although it is clear that under Delaware law trustees can consider a beneficiary's values, it does not appear that trustees may adhere to the values of one beneficiary, while ignoring differing values of other beneficiaries. Trustees have a duty of loyalty to administer the trust in the interests of the beneficiaries and, absent evidence of a grantor's intent to the contrary, a duty of impartiality which requires trustees to treat beneficiaries equally.

So, what can you do if impact investing is important to your family who wants the benefits, such as tax and asset protection, of a multigenerational irrevocable trust? Perhaps, consider the following: include impact investing provisions in the trust document permitting or directing the trustees to invest accordingly; name an investment advisor to direct the trustees to invest in impact strategies; and create the trust in Delaware to benefit from Delaware law.

For existing irrevocable trusts that have no reference to impact investing, trustees and beneficiaries may have options. Depending on the circumstances, it may be possible to obtain the beneficiaries' consent to impact investing strategies. Or, perhaps the trust could be decanted or the parties could enter into a non-judicial settlement agreement to add impact investing provisions.

As people are increasingly incorporating their personal values in their investing decisions, it is important to consider including impact investing provisions when planning for loved ones.

HASAN

From Page 24

table beneficiary is also subject to specific statutory limitations, of not less than 5 percent and more than 50 percent, of the initial net fair market value of the trust, and the remainder interest of the qualified beneficiary must not be less than 10 percent of the of the initial fair market value of the trust.

A CRUT requires an annual distribution to the non-charitable beneficiary of an amount equal to a fixed percentage, of not less than 5 percent or more than 50 percent of the value of the trust assets determined on an annual basis. The non-charitable interest may be limited to trust income in any year, and when trust income in any year is less than the fixed percentage amount, the deficiency for such year may be paid in a later year from any surplus trust income of such later year. The trust income ceiling and subsequent funding of deficiencies are options for the drafting attorney, and neither is a requirement for a qualified unitrust.

The standards for identifying non-charitable beneficiaries are fairly lax, and charitable organizations may be included as recipients during the non-charitable period as long as there is a non-charitable recipient that is living and ascertainable. However, including a non-charitable recipient along with a qualified charity as a residuary taker will disqualify the entire trust and no tax deduction shall be available.

While the principal risk of disqualification flows from detailed and complex requirements for non- charitable recipients, precautions must also be taken with respect to the charitable remainder interest. No deduction will be permitted if the designated residuary beneficiary is not a qualified charitable organization under IRC. sec. 170(c). It is best to contemplate the possibility of a qualified recipient's subsequent disqualification at the time of distribution, and either specify an alternative qualified beneficiary at the outset, or grant authority to the trustee to select a qualified alternative donnee.

TREND

From Page 27

withdraw inherited IRAs within 10 years and pay the resulting tax liability. The 10-year rule would not apply to some beneficiaries such as surviving spouses, disabled individuals, minors and those who are not more than 10 years younger than the account owner. Since more beneficiaries are likely to inherit a larger up-front tax bill, life insurance can help alleviate some of that cost. The life insurance proceeds can be used to pay for some, or all the tax liability caused by the inherited retirement account. It may now make more sense for the account owner to withdraw more of their retirement assets that they do not otherwise need for retirement purposes and leverage life insurance to provide a legacy to their heirs. In addition to repositioning taxable assets to a tax-free vehicle, life insurance proceeds are generally easy to use to fund a trust.

■ **Income Replacement:** Whether the insured is a high-income producer, has a pension or just social security, life insurance can help provide financial security in the event of death.

■ **Estate Taxes:** People with estates valued in the millions may have to pay substantial estate taxes. Planning with the use of an irrevocable life insurance trust allows the proceeds of the insurance to be paid outside of the taxable estate. The insurance proceeds can be used to offset estate taxes and transfer wealth either directly or with almost unlimited control with the use of trusts. It is important to consider that there may be federal and/or state gift tax consequences with the funding of a trust and the gifts necessary to pay the premiums may reduce the size of the estate and/or the amount of lifetime gift tax exemption and/or estate tax exemption.

Since no two estates are the same, and there can be complexities to any well written estate plan it is best to work with professionals who specialize in estate planning. Engaging the service of a competent life underwriter is a critical component of the estate planning process because the selection of the most appropriate product in an estate planning case will optimize the transfer of wealth. Life insurance can help provide cash, structure and greater control to every estate plan.

This is general information and is not intended to provide tax advice. You should consult your tax advisor regarding your personal situation.

PEAPER

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the promissory note must be fair and reasonable. If you fund with publicly-traded appreciating stock, then the value is the fair market value of the stock on the date of funding. If you fund the trust with real estate or a closely held business, you should get an appraisal of the asset to determine the fair and reasonable value for the transaction.

The installment sale to an IDGT is a very beneficial estate planning vehicle. The value of the assets sold to the trust freezes for estate tax purposes and all appreciation of the assets are enjoyed by your beneficiaries, usually your family, when the trust is finally distributed. The payment of the income taxes during the term of the IDGT allows the trust to grow income tax free, and your payment of the income tax is not considered a gift. This transaction must be structured properly and is very complex and closely scrutinized by the IRS, so it is important to contact your estate planning professionals for guidance.

KLEIN

From Page 25

(3) The testator is required to present a valid picture ID that may be scanned in and verified using appropriate software, and may be subject to an antecedent in-person identity proofing process (i.e., "out of wallet" questions which are frequently asked during a credit check, such as which of the listed addresses has the individual not resided, etc.).

During the video session, the testator also must be asked a series of specific questions and provide appropriate verbal answers to all these questions while being videotaped, including:

(1) Are you under the influence of any drugs or alcohol that impairs your ability to make decisions?

(2) Are you of sound mind?

(3) Are you signing this document voluntarily?

Modernizing Will Execution

Traditional will formalities need to adapt to the evolving technological context where most transactions – including massive end of life transfers under pension plans, brokerage accounts, life insurance policies – can be made electronically. The Act authorizes using Electronic Wills that are made in compliance with a similar set of formalities that are more suited for today's electronic age.

Conclusion

It is important to note that Electronic Will laws do not eliminate current law regarding will execution or notary standards. Instead, they simply add another tool to help facilitate estate planning locally and globally, physical presence is not always convenient or possible.

Just as our society has moved from the requirement that physical checks must be presented at a bank window, it is likely that this technology will move into the mainstream of our society and that one day creating or amending an estate planning document via the Internet will become not just possible, but indeed commonplace.

MCKENZIE

From Page 28

and a gift for their children. They achieved their goal of having an action plan for coordination of care, customized to their individual needs and preferences. This is self-advocacy at its best; we are their coach and they are the team leader!

How does a Care Manager differ from Health Care Surrogate?

A Care Manager is a professional with specific skills, who is retained by the client through a signed contract for services. Although the Care Manager can provide recommendations to assist their client and family in making medical and life care decisions, they do not make decisions for their clients. If the client were unable to make decisions then the Care Manager would consult with the family, Power of Attorney, Health Care Surrogate, or Guardian to review the recommendations and help direct decisions based on their professional experience, insight, and expertise.

A Care Manager has been educated in various fields of human services — nursing, social work, psychology, gerontology — and trained to assess, plan, coordinate, monitor, and provide services for the elderly, individuals with disabilities, and their families. Navigating medical and life care issues is the primary function of a Care Manager. Their expertise can be summarized into 8 core knowledge areas: Health and Disability, Financial, Residential Options, Families, Local Resources, Advocacy, Legal, Crisis Intervention.

To find a Care Manager or an ALCP go to the Aging Life Care Association® at www.aginglifecare.org. This is a nonprofit association that outlines Standards of Practice and Ethics for its members. ALCPs are required to be certified by the National Association of Certified Care Managers.

GREENE

From Page 29

missed, medications have not been refilled, and the home is in disrepair. Margaret is still driving.

In a Geriatric Care Management Assessment we would create a plan that works with both Ben and Margaret. Assisting with medication management, coordinating medical appointments and caregiver schedules to maximize hours with safety needs.

Case Review 2

Susie and Irv have been married for 15 years. Second marriage for both. Through the course of time, Susie has had 3 back operations that have left her legs weak, resulting in several recent falls. Subsequently, Susie takes multiple pain medications that have altered her personality. After a particularly difficult day Susie's behavior became erratic… she was Baker Acted. It is stated by the medical professionals that for Susie to go home she will need 24 hour supervision and medication management.

As a Geriatric Care Manager, we would advocate for Susie throughout her hospital stay. Transition home with the right team of caregiver's and medication management for a successful outcome.

Geriatric Care Managers improve health, functional outcomes and provide financial savings.

Without accessible and appropriate Long Term Care Services to meet daily living needs, chronic health conditions can worsen and create a spiral of functional decline.

Why Bridge Long Term Care Planning and Geriatric Care Management? By assembling your team of professionals that include a Geriatric Care Manager, along with medical care professionals, a Financial Planner and legal counsel, you create your specialized plan that works for you and your family.

Be Proactive. Not Reactive.

MORROW

From Page 30

children's interest is $5.5 million and your grandchildren's interest is $0.5 million (40 percent; 55 percent; 5 percent — this would vary based on the ages of the beneficiaries.) The $5 million of basis would be divided by the same percentage under the uniform basis rules: $2 million, $2.75 million and $250,000, respectively. On a commutation, you would pay long-term capital gains tax (20 percent + 3.8 percent net investment income tax) on $4 million (under these IRS rulings, you cannot use your share of $2 million basis). Your grandchildren would pay long-term capital gains tax on $500,000, but are permitted to use their $250,000 share of uniform basis to offset gain, incurring $250,000 of long-term capital gain. Your children would pay tax on the $4.5 million of total assets going to you and the grandchildren to "buy out" their share, minus the $2.25 million of basis attributed to those assets. Thus, the total gain triggered among the family is as high as $6.5 million ($4 million for you + $250,000 for grandchildren +$2.25 million for your children). Ouch! If we assume a 23.8 percent tax rate (not including any state income tax if they live out of state) on this $6.5 million, that's a $1,547,000 price tag to terminate the trusts. Even if the trust were invested 100 percent in cash, there would still be a nasty tax bill ($4 million times 23.8 percent = $952,000). This tax could have largely been lessened or avoided by waiting until death, releasing an interest, or amending the trust, selling to a third party or taking another path that would not cause such a horrific taxable event.

In short, these rulings point out significant income tax dangers to early terminations of trusts. Courts are not always going to approve these (such as the recent Florida case of Horgan v. Cosden,) but even in cases where they would, beneficiaries should consider alternatives such as extraordinary distributions, loans, releases/gifts or other lesser amendments before proceeding with an early termination that may trigger phantom gains. There are several potential solutions around these issues.

FORENSICS

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2. Securities fraud schemes range from promissory note Ponzi schemes to excessive trading and everything in between. Other financial abuses directed towards elders include conversion of customer assets, and excessive withdrawals or activity of any kind. Financial advisors often target the elder community for their savings and wealth accumulation. Inquiry should begin with a review of the brokerage statements, a conversation with the senior and a calculation of profit and loss. The fiduciary can seek further information from the financial advisor, and file complaints with the financial advisor's manager and FINRA, a government-authorized not-for-profit organization that oversees U.S. broker-dealers.

3. The use of deception to coerce an elder person to sign a deed, power of attorney, will, insurance policy beneficiary designation, or other assignment of assets is frequent and is often perpetrated by a family member. In these types of cases, the fiduciary or other caregiver should begin with a careful review of the original documents and a conversation with the senior to determine the senior's wishes and intent.

4. Abrupt changes in title, signatories, account status, wills and trusts, credit, and use of professionals may indicate potential exploitation, and should be carefully examined by the fiduciary or other advisor.

5. A fiduciary and/or other advisor must also closely examine any instance in which an elder person suddenly seeks to add an unknown person such as a "long lost relative" to an account.

Any case in which the older adult is in imminent danger, should result in an emergency call to 911. Barring those exigent circumstances, there are, thankfully, efficient reporting mechanisms in place. Though the process for reporting is different in every state, each state has an adult protective services system. In Florida, the Department of Children and Family Services Adult Protective Services provides for reporting via Florida Abuse Hotline at 1-800-96-ABUSE (1-800-962-2873) or online at https://reportabuse.dcf.state.fl.us/Adult/AdultForm.aspx. To register concerns about brokerage accounts or investments, the FINRA Securities Helpline for Seniors, 800-574-3577, is available Monday — Friday from 9 a.m. to 5 p.m. Eastern Time. In addition to FINRA, each state has a securities division to protect the investing public. The Florida Office of Financial Regulation (OFR), Division of Securities can be reached at 850-487-9687. Complaints can also be filed via OFR's Regulatory Enforcement and Licensing (REAL) System at https://real.flofr.com/datamart/loginFLOFR.do.

It is very unfortunate that unscrupulous individuals exploit the vulnerable, making it even more important for seniors to have a strong support network. Relatives, friends, fiduciaries, and other advisors are the best defense against abusers, and should be alert to any warning signs of abuse.

FLAH

From Page 32

than "Standard." This is why Flah & Company created our Underwriting Management Process®, and the reason over 78 percent of our policies are issued superior to "Standard" class.

Lesson: Thoughtful Underwriting Management Process ("UMP®") can save significant premium dollars! A prudent Policy Review & Optimization® process will often include the successful improvement of the underwriting class years after the policy was issued!

4. Current policies generally CAN be re-engineered to be an attractive asset!

Since most policies were saddled with a +/-150 percent (yes; 150,000 bps!) up-front sales charge, it's worth investigating restructuring the existing policy before lapsing or replacing it. This is the primary reason Flah & Company owns a Policy Review & Optimization® entity.

Lesson: Methodical Policy Review & Optimization® can get a policy back on track.

5. Most policies are carrier-designed to be mediocre investments. Agents take hundreds of hours of continuing education courses, but none on actuarial sciences, mortality curves or the "deconstruction" of policies. Carriers teach agents to proffer polices with a middle-of-the-road combination of death benefit with some "forced savings" (i.e. cash value), creating a dual-purpose policy. What asset; what tool do you own – that is "best" at performing two separate and distinct tasks? In fact, what multi-purpose tool is best at ANY task?

Lesson: Target the policy design to be a top performer for the desired task; pure death benefit or tax-preferred cash accumulation. Generally, having two separate policies – each performing their assigned task at a high level – provides much better performance than one dual-purpose policy. Our Policy Engineering Team builds "single purpose" policies targeted to provide either:

■ i. Term insurance until age 120 — where cost is a fraction of traditional dual-purpose or "whole life" policies. Our policies are designed to maximize the return (IRR) on premiums paid. In fact, we engineer term policies where at death, the carrier will pay-out the death benefit… and guarantees to also refund 100 percent of the cumulative premiums!

■ ii. Robust, very liquid cash accumulation contacts designed with smallest death benefit allowed by U.S. Treasury Department. These contracts enjoy enviable tax and creditor protection status and are often used by banks, contractors and ultra-high net worth families as a parking place for cash.

6. The market for "used" policies has risen like a phoenix! The market for selling unwanted or unneeded policy has matured to the point that competing institutional buyers acquire and manage large blind pools of purchased policies. This creates a competitive bidding marketplace that can enhance the value received for selling a policy.

Lesson: Before surrendering or letting a policy lapse, even term insurance, investigate the possibility of selling the policy for significant value.

In conclusion: Properly engineered and underwritten insurance can be a transparent, user-friendly single-purpose asset with very attractive non-correlated IRRs. Like any asset, it must be thoughtfully and regularly managed.

SHAMBLIN

From Page 33

Term Care Insurance, Life Insurance (individual or second to die), irrevocable trusts, and/or immediate gifts (directly or through Irrevocable Life Insurance Trusts).

Business succession

In the case of a family-owned business, it is important to:

■ Identify who would take over the business and confirm whether the individual or individuals wish to do so.

■ Direct the manner in which non-involved family members are awarded alternate assets of equal value and how the value will be determined.

■ Identify any issues limiting the children's ability to retain the business or existing financial arrangements after the founder's death.

■ Develop an exit strategy if family cannot or does not want to retain ownership, including providing the necessary liquidity if the estate is taxable.

■ Put a buy-sell agreement in place if you have a business partner.

■ Coordinate titling of probate and non-probate assets

Many individuals believe that Transfer on Death (TOD), IRA, and qualified retirement accounts such as 401(k) and 403(b) plans will be addressed through their wills. This is usually not the case. Ownership of these non-probate assets are primarily determined by the beneficiary designation on file. It is not unusual for these beneficiary designations to be outdated, lack contingent beneficiaries, or simply not reflect the individual's current situation. They should be updated periodically as part of ongoing financial planning.

Risk management and asset protection

Asset protection planning involves the implementation of strategies that limit an individual's exposure to lawsuits, divorce, and creditors. This may involve a review of liability and umbrella insurance policies, as well as examining titling and ownership of assets. Strategies may include the use of tenancy by the entireties, trusts or other limited liability entities. Additionally, techniques can be incorporated into the estate plan to protect beneficiaries.

Decedents often leave assets outright to a responsible beneficiary. But outright ownership exposes those assets to any third-party claims against that beneficiary, including lawsuits, bankruptcy, and even claims of the beneficiary's spouse. Asset protection planning need not limit your intended beneficiaries from the use of your assets. Planning can be done that retains the "good" aspects of ownership without any of the "bad."

Conclusion

Discussing important family issues with your attorney and wealth management team will give you a clearer picture of your wishes and identify potential problems that may need attention. This would be a good time to draft a letter with information about personal affairs (important account information, digital passwords, trusted advisors' contact information) or even address ethical and moral values (sometimes called an Ethical Will or a Family Mission Statement) that you wish to impart to the family.

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