Estate Planning

SUNDAY, JANUARY 7, 2018

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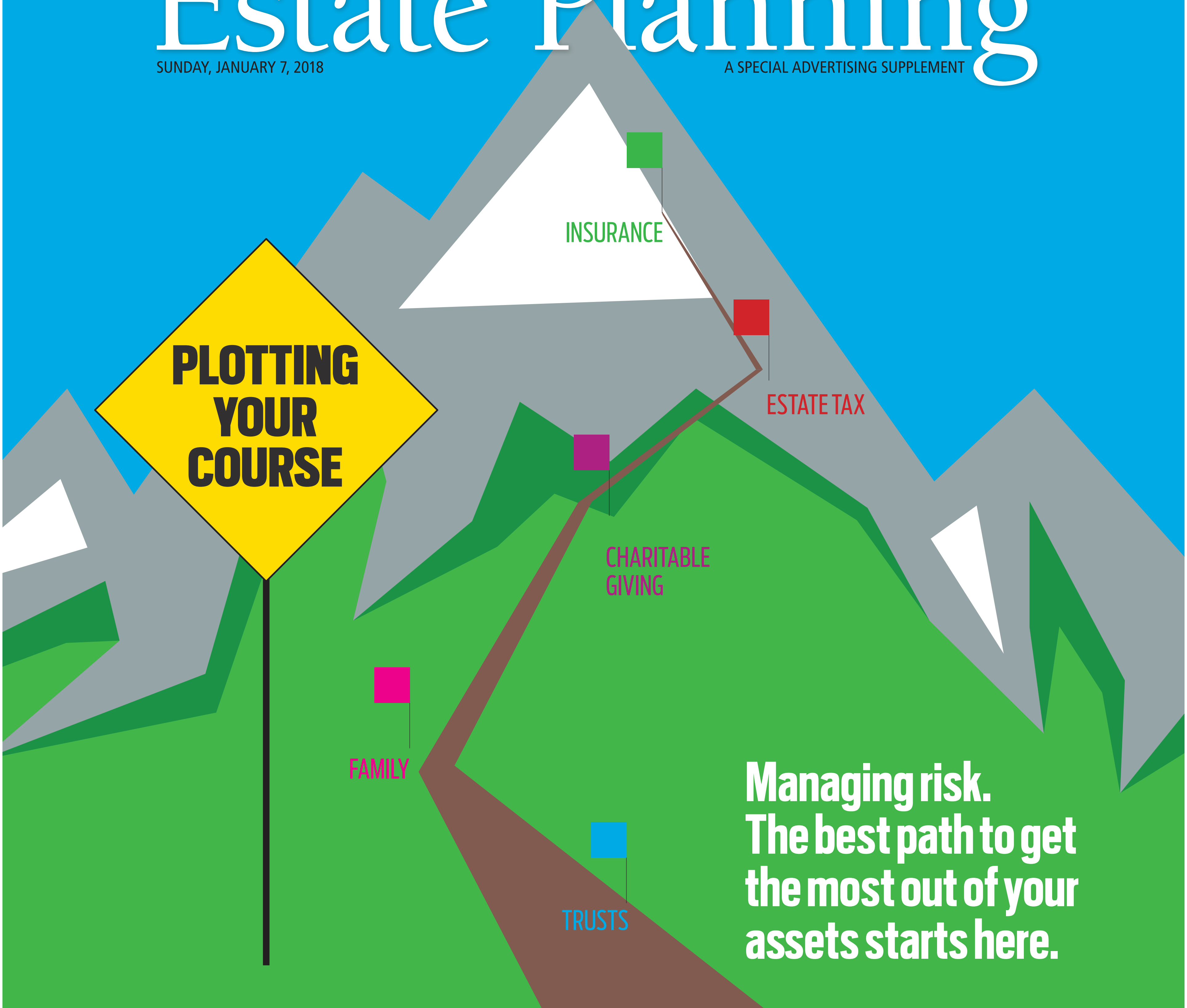

Managing risk. The best path to get the most out of your assets starts here.

Palm Beach Daily News
THE SHINY SHEET®

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

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A Message from the President

Estate Planning: A Process Focused on Your Story

Andrew R. Comiter, President

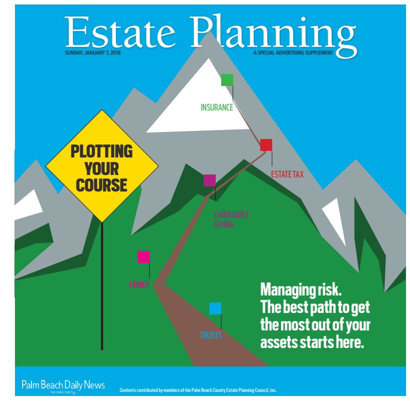
As practitioners in the Estate Planning field, our initial objective is to determine your intentions and desires for the disposition of your assets. This involves a process that evaluates your attitude towards various family members and how you intend for them to benefit from your estate. Historically, the goal was to provide for a surviving spouse and merely transfer what is left over to the remainder beneficiaries, often children. As society has evolved, what was normal 10 years ago is far from normal today. Additionally, what may have been normal for you 10 years ago may not be normal for you now.

People are living longer and life has many more complexities. The nature and complexity of assets classes are far more complex than just liquid assets and real property; individuals should contemplate digital assets, digital property, usernames and passwords as part of the estate planning process. Additionally, a good estate plan should not only contemplate what happens upon your death, but also during your lifetime if you are no longer able to act for yourself. In summary, estate planning should incorporate the here and now, as well as the distant future. Saying it in another way, estate planning should be a motion picture, rather than a snapshot of time.

As you read the articles in this 19th edition of our annual Estate Planning Supplement, you will read insightful articles by the members of the Palm Beach County Estate Planning Council. The Palm Beach County Estate Planning Council is a not-for-profit organization with more than 170 members. Our members are well trained, extremely knowledgeable estate planning professionals who provide services to focus on your estate planning needs. Our members are here to help you navigate through the complexities of constructing a plan, preserving your wealth, and passing assets in a tax efficient manner. I am confident that you will find these articles interesting and informative. Please feel free to contact any council member listed in this publication to learn more about the ways you can optimize your personal estate plan. Additionally, I urge you to visit our website at www.pbcepc.org for additional information.

On behalf of the Palm Beach County Estate Planning Council and its members, I want to thank you again for taking the time to read this publication. I sincerely hope this will help you increase your knowledge and expertise to help you plan for your future.

— Andrew R. Comiter



The Palm Beach County Estate Planning Council, Inc. is the resource for estate planning professionals in Palm Beach County. The two key purposes of the Council are to increase the overall knowledge of its membership and to enhance the professionalism and interaction of the members for the benefit of their clients and the public via academic exploration of specific topics of common interest.

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

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Robo-advisors, chatbots and artificial intelligence are changing the face of wealth management — However, personal relationships remain key

By Suzanne Weston
Chilton Trust

Suzanne Weston

With the insurgence of technological advancements in the world of wealth management, such as online financial and estate planning software, you may ask: Will artificial intelligence (AI) replace your wealth manager's role in providing financial advice including investment, retirement and estate planning? Will the digital generation migrate to machines for guidance to secure their wealth for themselves and their loved ones? The answer is: not yet.

According to Forbes Insights, people want both high tech and human touch. The majority of High Net Worth Individuals ("HNWI") say that the digitization of wealth management is good overall, but they still want to meet often with an advisor. In fact, per a recent report by Wealth-X for PWCStrategy, "Among HNWI, the rapport with their advisor is cited as the second most valued aspect of a wealth management service after investment performance." Further, over two-thirds of HNWI are seeking non-financial advice including health, career and family life.

Successful individuals and families are by their very nature unique. Most do not fit into an algorithmic box. They want personal and knowledgeable opinions, human opinions, to validate proposals generated by AI platforms.

Writing for Wealth Management.com, David Lyon, CEO of Oranj, a wealth management software company, put it nicely: "Traditional advisors bring to wealth management and investing what robo-advisory platforms don't - a personal relationship based on trust and market insights formed by years of experience."

While AI systems are great at analyzing what they know, they are not so great at recognizing what they don't know. How does a robo-advisor engaged with literally thousands of individuals deal with divorce, siblings battling over inheritance, parental care, or a host of events that call for unique and thoughtful advice? How is true concern built into software? How do you program a smile?

Successful individuals and families are by their very nature unique. Most do not fit into an algorithmic box. They want personal and knowledgeable opinions, human opinions, to validate proposals generated by AI platforms.

Therein lies the value of the human touch. Your wealth manager has perspective, compassion and skills to look at the big picture in ways no AI program can.

As your net worth and family grows, your life inevitably becomes more complicated. To accommodate busy schedules and guard against information overload, your wealth manager can initiate needed conversations, listen and assess your situation, and guide you through countless life events. The birth of a child, purchase of a home, death of a family member, or career change are a few examples that may affect your goals. Your wealth manager is with you to review and modify your plan accordingly. Remember the stock market crash of 2008? Your wealth manager - not a computer - was the one keeping you on track with your investment plan. Studies have shown that due to fear many self-directed investors sold out at the wrong time.

Take a situation where you have a dying parent. With personal knowledge of the estate plan and family dynamics, your wealth manager can assist in the transition of wealth during this emotional time.

Your wealth manager may incorporate AI for efficiency. Specifically, as you plan for retirement, they may use software which will consider a myriad of factors and provide numerous outcomes. They will then apply personal knowledge of your family to validate a suitable savings and spending plan for your unique circumstances. And, they will work with you to ensure that you implement and abide by your plan. Many need a coach with steady hands and guidance to help make wise decisions during difficult times.

Let's assume you're considering gifting some of your assets to your child. AI can show you the tax benefits of gifting during your life versus upon your death. But it may not answer more important subjective questions: How much is appropriate to give? Should your child receive assets outright or should the assets be held in trust? Does your child need to be protected from creditors? Who is best suited to act as trustee?

What if your child wants to buy his or her first home? AI can run scenarios on ways to fund a down-payment through a conventional loan, a loan from you at possibly a lower interest rate, or a gift from you. Only your wealth manager will have insight into your overall financial picture and family dynamics to guide you to the best solution.

Artificial Intelligence will continue to be an efficient and comprehensive tool increasingly used by more wealth managers. But as yet, only a human being can engender the personal trust and empathy so necessary for successful wealth management. Your wealth manager not only has the ability to understand your goals and risk tolerance, but, more importantly, your family dynamics and values. Wealth managers will continue to be an integral part in helping you plan for your future. Not even the most advanced software can tell you when that will change.

Suzanne S. Weston is Senior Vice President and Head of Fiduciary Services. Ms. Weston received her B.A. from Hollins College and her J.D from the University of South Carolina School of Law. She is admitted to the South Carolina Bar.

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

Inherited trusts and divorce

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

Randell C. Doane and Rebecca G. Doane

If an inheritance is left in trust for a child or other beneficiary, rather than being left outright, it will be much better protected from lawsuits, bankruptcies, divorces and similar misfortunes. However, in some cases, the protection afforded by a trust is not absolute, and inherited trust assets could be reachable by an ex-spouse of the beneficiary in some circumstances. The degree of protection will depend on a number of factors, including the terms of the trust and the applicable law.

In the divorce arena, the law is evolving and in some recent cases the ex-spouse of a trust beneficiary has succeeded in directly or indirectly obtaining a benefit from the trust, contrary to its wording and contrary to the intention of the person who established the trust. Fortunately, there are steps that can be taken to strengthen a trust against possible attacks by an ex-spouse of the beneficiary.

In the absence of a prenuptial agreement, an inheritance, even if held by a protective trust, may be directly or indirectly at risk when a divorce court judge considers these issues:

■ **Alimony** — There have been cases where the divorce court judge has awarded greater alimony because an inheritance (even if held in trust) had provided a higher accustomed standard of living to the couple during the marriage and enhanced the trust beneficiary's ability to pay alimony to the ex-spouse to maintain that standard of living after the divorce.

■ **Property settlement** — There have been reported cases in some states where a greater share of marital property which had been accumulated by the spouses during their marriage was allocated to the trust beneficiary's ex-spouse because the divorce court judge believed that was an "equitable" result since the trust provided additional economic security to the trust beneficiary.

■ **Loss of trust assets** — Only in an unusual case would a divorce court award a portion of trust assets to the beneficiary's ex-spouse, but that has happened in a few cases where the beneficiary had an extraordinary level of control over trust distributions.

Some steps that can be taken to strengthen a trust in order to better protect the inheritance in the event of the divorce of the beneficiary are as follows:

■ **Grantor's intent** — Language can be added clarifying that it was the intention of the grantor who established the trust that it be considered the separate and individual property of the beneficiary and not subject to any interest of the spouse of the beneficiary. This adds only minimal additional protection, but could be helpful in some cases.

■ **Independent Trustee** — Significantly greater protection will occur where the beneficiary is not a trustee or the sole trustee.

■ **Fully discretionary** — A fully discretionary trust allows the trustee to make distributions in its sole discretion without a standard such as health, education, maintenance or support. In some states, fully discretionary trusts have been afforded greater protection from invasion to satisfy a marital claim. This is less of a problem under Florida law, but the applicable law may be where the divorce occurs and not necessarily Florida.

■ **Multiple Beneficiaries** — If distributions may be made not only to the beneficiary, but also to the children of the beneficiary or to other individuals, then it will be more difficult for a judge to factor in the primary beneficiary's interest in the trust.

■ **Trust protector** — A trusted individual could be appointed as a trust protector and could be given the authority to direct trust distributions to other family members in the event of a divorce by the beneficiary.

■ **Domestic Asset Protection Trust**

Please see DOANE & DOANE, Page A15

A principal of Doane & Doane, P.A., Rebecca G. Doane is Florida Bar board certified in wills, trusts and estates. She holds the highest ratings ("AV") from the premier attorney-rating service, Martindale Hubbell. She is also a certified public accountant and founder of the Guardianship Education Committee of the Palm Beach County Bar Association.

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 is also a certified public accountant. He is board certified in wills, trusts and estates by the Florida Bar Board of Legal Specialization.

Achieving personal goals versus beating a benchmark

By Suzanne Holmes, Vice President, Senior Relationship Manager
TD Wealth Private Client Group

Suzanne Holmes

Today, there are more investors in the stock market than ever before. According to the Investment Company Institute, total U.S. retirement assets were $26.1 trillion as of March 31, 2017, an increase of11.6 percent since 2000. Retirement assets accounted for 34 percent of all household financial assets in the United States at the end of March 2017. As wealth floods into the stock market, it's not surprising to see investors and advisors seeking new ways to measure progress that don't require advanced degrees or algorithms.

For most investors, at least one-third of their wealth is in liquid investable assets – i.e. stocks and bonds. For years, when it came to tracking financial progress, advisors used indices such as the S&P 500 or the Dow Jones Industrial Average (DJIA) as benchmarks to measure the success of a Client's portfolio. While beating a benchmark seemed like a good measure of success at the time, there was little to reflect whether or not investors were on the path towards fulfilling their life goals.

We are now beginning to witness a shift towards a goal-centric approach to wealth management. With a new focus on goals, investors and advisors work together to create a financial plan mapped to work towards their unique lifetime objectives. While the path may change over the course of many years, the inevitable detours may become easier to manage by staying focused on where you want to go instead of where the markets want to take you.

Whether you are a DIY investor or want to delegate the entire process to an investment manager, the most important factor is how you choose to measure your success. Know what you want to accomplish, set realistic expectations, and communicate your goals effectively.

When it comes to communicating your goals, clarity is key. Consider working with a financial advisor to develop a plan to help you work towards achieving your unique goals and aspirations – whether it's investing to generate income during retirement or legacy planning to ensure your money continues working for your family or philanthropy long after you are gone.

Knowing what you own and why you own it is essential to maintaining a psychological equilibrium, especially during market downturns. Reading Douglas Sease and John A. Prestbo's "Barron's Guide to Making Investment Decisions" or Benjamin Graham's "The Intelligent Investor" may help you stay grounded through market ups and downs. However you decide to manage your assets, taking advantage of the tools and educational

Please see TD WEALTH, Page A15

Suzanne Holmes' 35-year career has been devoted to providing investment management and trust services to her clients. Suzanne received a B.A. and M.A. at the University of Delaware. She is a CFP® and CAP®. Her community activities are many. Suzanne can be reached at 561-236-6671 or suzanne.holmes@td.com.

Investment loss recovery — what about 'unrealized' losses?

By Matthew N. Thibaut and Jason S. Haselkorn
Co-Chairs of the Investment Loss Recovery Team at Ciklin Lubitz & O'Connell [1]

With financial markets at or near an all-time high level and the 2008/2009 Financial Crisis in the rear-view mirror, many investments and portfolios are performing well. However, certain investments and asset classes have not performed well in recent years and continue to suffer significant declines, i.e. bonds issued by Detroit, Michigan and Puerto Rico, as well as a myriad of investment products correlated with the oil, gas and energy sectors.


Matthew N. Thibaut


Jason S. Haselkorn

There are many investors who still cringe every time they review another monthly account statement reflecting a losing investment that was recommended to them by their financial advisor. As the investment continues to be held in the account by the client, the loss remains "unrealized," and the next question is what (if anything) can one do to try to recoup that unrealized investment loss?

Some investors believe that they need to sell or "realize" the loss before addressing any recovery efforts. That is not always the case. Unrealized losses are often recoverable and commonly pursued for our clients, even if the unrealized loss position(s) is transferred and held at a new firm.

Our recovery efforts take several forms. Sometimes a simple letter laying out the issues encourages the financial institution to consider an early resolution. Other times, informal efforts fail and formal action is necessary, which generally requires a private, confidential arbitration claim to be filed (not a state or federal court case, no public docketing or filings, and no depositions or traditional discovery). Typically, those filings are with the Financial Industry Regulatory Authority ("FINRA"). While a complete description of the FINRA dispute resolution process is beyond the scope of this article, the process is intended to avoid a public court case, and further provide for a quick and efficient forum for dispute resolution. Most cases are limited to document-based discovery and they are handled on telephone conference calls by the lawyers and arbitrators. The client merely needs to be present for any final resolution through mediation (settlement conference) or arbitration (final hearing). FINRA maintains hearing location sites throughout the United States the final hearings generally occur at the location closest to where the client resides.

As to the question of what investment losses can be claimed, there are a number of considerations that must be examined to answer that question. Realized losses are certainly fair game, but that is typically just the beginning of the inquiry. The mere decline in value of an investment does not by itself mean a valid legal claim exists. There needs to be an underlying wrong or impropriety either in the investment recommendation process (sales practice) or with the investment product itself. An examination of when the alleged wrongdoing occurred must also be carefully examined in light of any applicable statutes of limitation issues. Experienced legal counsel in this area can help determine whether or not there was some underlying wrongdoing by the financial advisor or firm and when it occurred in establishing liability and damages.

However, prior to consulting with counsel, some investors try to go at it alone and argue points and issues that are not applicable, which unfortunately may only serve to prejudice or limit their future recovery. Just like you hear on television, "anything you say, can and will be used against you." You should use extreme caution if you choose to have telephone conversations or correspond with your advisor or firm representative via e-mail, text or letter regarding these matters unless and until you have spoken to an investment loss recovery lawyer. Depending on the nature of the relationship, some firms record their telephone calls and many investors have "given away" an otherwise viable claim for recovery by using the wrong terminology or by simply saying something unnecessary. Also keep

Please see CIKLIN, Page A22

[1] The investment loss recovery team at Ciklin Lubitz & O'Connell has more than 75 years of combined experience handling securities arbitration matters. They have experience as former registered representatives and defending financial institutions, experience that they believe sets them apart from the competition. The investment loss recovery team at Ciklin Lubitz & O'Connell now exclusively represents individual and institutional investors in pursuit of investment losses.

Matthew Thibaut and Jason Haselkorn are former licensed Financial Advisors who head the firm's securities/investment litigation group. Their securities litigation experience includes representing major broker-dealers and individuals nationwide, involving common law and statutory claims in connection with investments in equities, bonds, mutual funds, master limited partnerships, hedge funds, managed money, alternative investments, and structured products.

Estate tax portability election relief at long last!

Matthew N. Turko

Effective as of January 1, 2011, federal law has allowed a deceased spouse's estate to transfer (also commonly referred to as "port") the deceased spouse's unused estate tax exemption to the surviving spouse for future use. The deceased spouse's unused estate tax exemption is commonly referred to as the Deceased Spouse Unused Exclusion Amount (also referred to as "DSUE").

Overall estate tax exemption portability has allowed more flexibility in planning for estates hovering around the estate tax exemption amount. Also, larger taxable estates where appropriate tax planning may not have been implemented by allowing the deceased spouse's unused estate tax exemption to be transferred to the surviving spouse and not ultimately be wasted. There is no portability for unused generation-skipping transfer tax exemption.

However, a deceased spouse's unused estate tax exemption is not automatically transferred to the surviving spouse. In order to transfer a deceased spouse's unused estate tax exemption to a surviving spouse, a Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return must be timely filed making an election to port the unused estate tax exemption to the surviving spouse. An estate tax return is due within nine (9) months of the decedent's date of death unless properly extended for an additional six (6) months.

There have been many instances where an estate tax return was never filed and the opportunity to port the deceased spouse's unused estate tax exemption to a surviving spouse was lost. The IRS allows for a taxpayer to file a Private Letter Ruling under Treasury Regulation section 301.9100-3 in order to claim late election relief and the opportunity to file a late estate tax return making the portability election. In numerous Private Letter Rulings, the IRS has granted this relief to taxpayers. Unfortunately, a Private Letter Ruling comes with a high user fee and also legal fees for the preparation and filing of the Private Letter Ruling. In many cases, based on potential estate tax savings for a surviving spouse it still made sense for clients to move forward with a Private Letter Ruling to obtain the necessary late election relief.

The IRS issued Revenue Procedure 2017-34 providing taxpayer relief for late estate tax portability elections. Rev. Proc. 2017-34 limits its relief to estates that were not required to file a Form 706 and such request for relief under Rev. Proc 2017-34 is made by the later of January 2, 2018 or the second anniversary of the decedent's date of death.

Relief under Rev. Proc. 2017-34 is available if the decedent: (1) was survived by a spouse; (2) died after December 31, 2010, and (3) was a citizen or resident of the

Please see PORTABILITY, Page A24

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Do I really need a trust in my estate plan?

Patricia A. Giarrantano

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By: Patricia A. Giarratano, CPA MST
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When preparing your estate plan a question that is typically asked is whether there is a need to establish a trust. A trust may be established either during life or as part of your overall estate plan. A trust set up during your lifetime is known as an inter vivos trust and a trust established upon death is a testamentary trust. A trust is a legal document that allows you and your trustee to transfer assets prior to and after your death. As the person who sets up a trust (also known as the grantor), you can add specific requirements such as restrictions on distributions, require beneficiaries to meet certain conditions to receive trust property, and name successor trustees.

The federal estate tax exemption in 2017 is $5,490,000 per person, so you may ask if my assets do not exceed the exemption do I really need to establish a trust or have an estate plan? There are many reasons, other than estate tax savings, why it may be financially astute to consider placing your assets in trust other than estate tax savings. Some of these reasons include beneficiaries' medical issues, financial savviness, asset protection and control over your assets. A trust provides for your beneficiaries' care and well-being while assuring that the assets are protected from frivolous depletion. Whether you are subject to the federal estate tax or not, using trusts in your estate plan is a powerful tool to achieve your estate planning goals.

When considering whether to establish a trust as part of your overall estate plan there are a number of factors to consider: Do you have children from a previous marriage, does your spouse or children lack financial expertise, is your spouse or child disabled, would you like to provide a future gift to charity while providing for your surviving spouse and do you want to avoid probate court? Everyone wants financial security, protection from potential lawsuits, and minimum long-term care costs. Trusts provide this protection. In addition, in the case where special needs children are the beneficiaries of your estate, it makes perfect sense to have a trust to provide for their care and well-being. Assets placed in trust may be protected from irresponsible spending, creditors, divorce and from (unintended recipients?). In addition, a trust you may help in avoiding costly probate and also maintain privacy over your financial affairs.

There are two types of trusts: a revocable trust and an irrevocable trust. Although there are no income tax benefits to establishing a revocable trust, it allows the grantor to maintain total control of the trust and distributions. Revocable trusts also avoid probate and maintain privacy. An irrevocable trust may remove assets from your estate and provide income tax benefits. In the case of an irrevocable trust, an independent trustee needs to be appointed to oversee the trust assets.

There are also substantial benefits to having an insurance policy owned by a trust rather than outright. One of the primary reasons is that using an irrevocable life insurance trust provides that the insurance proceeds will not be subject to federal estate tax or includible in your estate. It also provides more control over the disposition of the insurance proceeds by providing asset protection and protecting the trust assets from being transferred outside the family. If a named trust beneficiary receives social security disability income or Medicaid, holding a life insurance policy in trust will not affect the beneficiary's eligibility to receive government benefits.

Another consideration to utilizing trusts in your estate planning is to maximize the stretch out of an IRA and keep the tax-deferred growth intact for as long as possible. There is a way to use a special trust to stretch out and provide long-term divorce and lawsuit protection. You may also make a charity the beneficiary of your IRA and the charity will receive the benefits tax-free. In summary, consideration should be given to establishing trusts as part of your estate plan for both non-tax and tax reasons.

When considering whether to establish a trust as part of your overall estate plan there are a number of factors to consider: Do you have children from a previous marriage, does your spouse or children lack financial expertise, is your spouse or child disabled, would you like to provide a future gift to charity while providing for your surviving spouse and do you want to avoid probate court?

Are you a woman who does not prioritize her retirement?

By Christina Worley
Castle Wealth Management

Are you a woman who does not prioritize her retirement?

Many of my best friends are women who have not prioritized their own retirements, so I have made it my passion to educate and cajole them about this much-ignored topic. Women need to save more than men for a successful retirement, a fact never emphasized enough to young women. I have seen the results of women getting organized to retire and realizing too late that they have not saved enough. It is too late at the end of your career to allow the power of compounding to work in your favor or to make your asset allocation suddenly aggressive. Mathematically, the most important and significant determinants of successfully saving for retirement are to start saving early and to invest aggressively while you are young.

Christina Worley

So, if women need to save more, how much more? A study published by TIAA CREF's Diane Garnick in 2016 concluded that women need to save 18 percent of their earnings during their working years (vs. men's need to save 10 percent) to be at parity at retirement. Why? Women tend to make about 75 percent of what men make for comparable jobs, which then translates into 75 percent of the employer match as well. Women also tend to work about 75 percent as many years as men work (28 years vs. 38 years for men), usually due to time off for care of children, parents or siblings. Women statistically live longer than men and spend seven percent more than men for health care costs during retirement. Women also, on average, invest more conservatively. Surveys indicate they tend to worry about losing money in their accounts. Instead, they should be concerned with running out of retirement savings early, because their conservative investments have not grown sufficiently over time.

What would I tell my daughter if I had one? I would start with Ben Franklin's quote, "Failure to plan is planning to fail". Women need a plan, and a written one is vastly preferable and monitorable. Carl Richards authored a terrific short book titled "The One-Page Financial Plan", which is a great read. Even back-of-the-envelope calculations are a great start for young women. Einstein said "compound interest was the eighth wonder of the world, he who understands it earns it… and he who doesn't pays it" (and who doesn't love to quote Einstein to one's daughter). The rule of 72 says your money doubles every ten years if you earn 7.2 percent. Compare that to a return of 3.6 percent, and it takes roughly 20 years to double your money. Earning a higher rate of return, and starting younger can

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In 1997, Christina Worley, CPA/PFS, CFP, CFA founded Castle Wealth Management, a Registered Investment Advisory located in West Palm Beach. Mrs. Worley graduated from the Wharton School at the age of 19 and worked in NYC before moving to Florida in 1993. She currently serves as President of the CFA Society South Florida.

Giving retirement assets to charity, tax free

Sheila Kinman

Sheila Kinman, CAP© is the Vice President for Development at the Community Foundation for Palm Beach and Martin Counties.

By Sheila Kinman
The Community Foundation for Palm Beach and Martin Counties

Did you remember to take advantage of the IRA Charitable Rollover last year? Current legislation allows qualified American seniors to make the gift of a lifetime by transferring a portion of their individual retirement accounts (IRAs) to charity, free from federal tax. Qualified IRA holders can transfer up to $100,000 annually without incurring income taxes today or estate and income taxes in the future. If married, each spouse can transfer up to $100,000 from his or her IRA annually.

Community Foundation for Palm Beach and Martin Counties is pleased to help members of our community give in this way.

Americans age 70½ or older can make tax-free IRA contributions to certain public charities such as a variety of funds at the community foundation. However, gifts to Donor Advised Funds, Supporting Organizations and private foundations do not qualify for preferential tax treatment.

Americans age 70½ or older can make tax-free IRA contributions to certain public charities such as a variety of funds at the community foundation. However, gifts to Donor Advised Funds, Supporting Organizations and private foundations do not qualify for preferential tax treatment.

You may be interested in this charitable opportunity if you:

- Have excess retirement savings.
- Are subject to a 50 percent of income charitable deduction limitation.
- Take the standard deduction on their tax return.
- Accept minimum distributions from an IRA and have alternative sources of income.
- Are planning to leave a charitable legacy through an estate plan.
- Have designated a favorite charity as beneficiary of retirement assets.
- Care about the community and want to know their gifts will make a difference.

Example: Mr. Smith, age 75, has accumulated approximately $2,000,000 in his IRA accounts. He has other sources of wealth and plans to leave a sizable estate to his heirs and charity. Under the renewed law, Mr. Smith can create a fund at the community foundation to address the causes he cares about most by transferring IRA funds tax free. Mr. Smith can transfer up to $100,000 annually and additionally, if Mr. Smith is married, his wife can also make a similar gift from her IRA accounts.

Individuals who may benefit most from this law include Americans who do not itemize income tax deductions. The tax law gives eligible donors the equivalent of a tax deduction for charitable gifts that they transfer from their IRAs. The IRS estimates that almost 65 percent of all individual taxpayers claim the standard income tax deduction and do not get any tax benefit from their charitable gifts.

"The community foundation can help you fulfill your charitable goals. This is the opportunity of a lifetime to make the gift of a lifetime," says Bradley Hurlburt, president and CEO.

Though this legislation has extended charitable possibilities for IRAs, it remains prudent for your wealth advisors to analyze your unique situation to determine the best assets to give. If you wish to liquidate appreciated stock, mutual funds or real estate, capital gains may be avoided by contributing these assets to the community foundation. Appreciated assets are usually preferable over IRAs for passing on to heirs.

The IRA Charitable Rollover is just one way the Community Foundation can work with you to help achieve your personal, financial and charitable goals. We are a single, trusted vehicle you can use to address the issues you care about most, while gaining maximum tax benefit under state and federal law.

We welcome the opportunity to discuss this charitable giving opportunity with you. Please contact Sheila Kinman at (561) 340-6503 or visit our website at www.yourcommunityfoundation.org.

'The community foundation can help you fulfill your charitable goals. This is the opportunity of a lifetime to make the gift of a lifetime.'

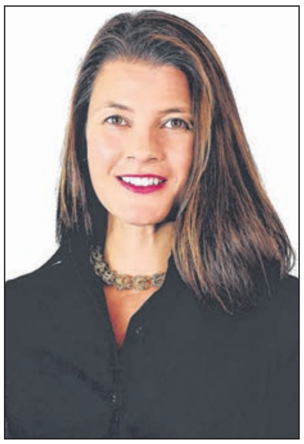
— Bradley Hurlburt, president and CEO of the Community Foundation

Gem appeal: Global trends in the jewelry market

By Collin Albertsson
Doyle Auctioneers & Appraisers

During the last decade, the biggest impact on the jewelry market has been the growth of China and India. Due to their rapid population growth and increase in urbanization, a younger and more sophisticated consumer has emerged. These new consumers are well-travelled and well-educated. They have been exposed to luxury brands and are driving the market for diamonds, colored stones, signed jewelry and natural pearls. China is now the world's largest consumer of luxury products and jewelry is their third largest investment group, behind real estate and cars. Asian collectors are tech-savy and are increasingly comfortable buying jewelry online. As a result, auctioneers are seeing increased competition from foreign bidders via the Internet. More and more jewelry lots sold in New York auctions are finding new homes overseas.

Gems such as diamonds, rubies, and sapphires have international demand. The diamond market is relatively easy to navigate once a client understands "The Four Cs"—cut, color, clarity and carat weight. This systematic protocol to grade diamonds was invented by the GIA (Gemological Institute of America), the most widely respected and trustworthy source for graded diamond certificates. In order to obtain a certificate, a diamond is submitted to the GIA laboratory in New York City for examination. The GIA continually updates their state-of-the-art laboratory equipment, and we suggest that many diamonds with older certificates be regraded before offering at auction. Diamonds are priced according to quality, and a GIA certified diamond gives the consumer knowledge and confidence in what they are buying or selling.



Collin Albertsson

Rubies can bring the highest prices of any colored stone at auction. Natural unheated rubies with a vivid red color are more valuable and sought-after than diamonds. The per-carat price of high quality rubies has been consistently rising for years. The value is determined by the color, inclusions (inclusion-free rubies are almost non-existent), carat weight and country of origin. A high quality ruby should be graded by the GIA, AGL (American Gemological Laboratories), or the Gubelin Gem Lab in Switzerland. These labs specialize in testing colored gemstones and identifying their country of origin and any enhancements. Rubies from Burma

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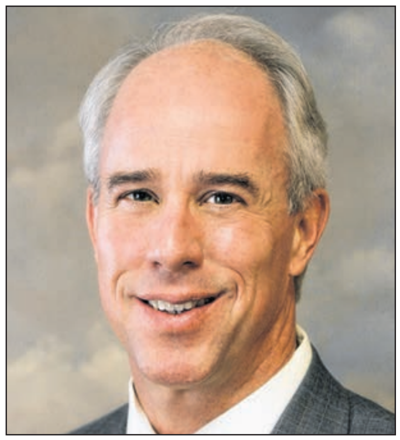
Collin Sherman Albertsson is the Florida Representative for Doyle Auctioneers & Appraisers, a full service auction house headquartered in New York City. She received her B.A. in Art History and History from Southern Methodist University and her M.A. in European Decorative Arts from Parsons School of Design. Her specialty is antique silver, textiles and wallpaper. Ms. Albertsson has over 10 years of experience at international auction houses and regularly travels throughout Florida to provide private collectors, heirs, families and fiduciaries advice on the sale of a single item, estate or collection.

Ethical Behavioral Finance: Six Guidelines for Great Client Relationships

By R. Marshall Jones and Adam D. Sendzischew
Jones Lowry


R. Marshall Jones


Adam D. Sendzischew

Sometimes good people do bad things. What would you do to for $1,000,000? What about $10,000,000? That's a lot of money. Would you find a way to make it happen? In a business world driven by "best practices" and a desire to maintain an ethical workplace culture, why do so many of us fail to live up to our own standards? Ethics expert, Ron Duska, PhD believes the answer lies in the field of behavioral ethics: how we think—consciously, subconsciously, and often irrationally—when we make decisions involving money.

Dr. Duska has identified 6 key behavioral factors to help financial advisors make decisions that are both good and ethical. This is a review of his article, Unethical Behavioral Finance: Why Good People Do Bad Things.* Duska uses the acronym, W-I-S-A-R-D as a memory cue to help advisors avoid making decisions that appear financially sound but are morally questionable.

W-I-S-A-R-D describes 6 ways we can go wrong. Assume $10,000,000 will become yours depending on what you do. Put yourself and your advisors to the test!

W – Weak Willpower. Until it happens, most of us don't believe we can be bought. It is critical to recognize that we are all weak and subject to temptation. According to a story about the offer of a bribe, President Lincoln didn't throw the man out for offering a bribe. He threw him out because he was getting close to his price! If you know that you can be bought, perhaps you won't be bought.

I – Ignorance is bliss. Improper framing keeps us ignorant. We all have ethical blind spots. Framing the $10,000,000 question as a financial decision helps you ignore the more important ethical decision you are about to make. Start by intentionally framing every business decision as an ethical decision. Otherwise, our minds will subconsciously frame every financial decision as a business decision that ignores any ethical issues.

S – Slippery slope. We typically promise ourselves that we will only act questionably just this one time. Duska: "Having done it once, it is easier to do a second time." It becomes a slippery slope that we gradually slide further down each time we make a business decision that violates our ethical code. For example, financial pressure can lead to making a one-time exception that develops into a culture of unethical behavior.

A – Arrogance. Arrogance is misguided pride. Duska: "We all have biased perceptions of our own ethicality." We believe we are intelligent people who think objectively and know what's right. As a result, we develop an illusion of objectivity that makes us blind to our own unethical behavior. We don't see our own ethical flaws because of a false confidence that we will do the right thing.

R – Rationalization. Duska: "Rationalization is coming up with bad logic to try to justify bad behavior." If you act badly, you have to rationalize it in order to keep thinking you are a good person. If you find yourself explaining a questionable decision as "That's just business", "Everybody does it", or "It's not as bad as [some worse action or worse person]", you are probably trying to rationalize your own bad behavior.

D – Docility. Duska: "We have a natural tendency to obey authority." It's how we were taught. It's part of our culture. It allows us to go along with bad behavior

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DOANE & DOANE

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("DAPT") — There are 15 states which grant greater protection in the event of a divorce. The most notable is Nevada. The efficacy of the Nevada rules is not certain where the divorce occurs outside of that state. It would be necessary to utilize a corporate trustee in the DAPT state.

■ **Distributions conditioned on pre/post nuptial** — The trust can provide that no distributions are to be made to a married beneficiary unless he or she has a valid prenuptial or postnuptial agreement which includes certain specified provisions.

An inheritance received outright may be vulnerable to attack from the beneficiary's ex-spouse. An inheritance received in trust will be much better protected regardless of the circumstances. However, in light of the new cases, If divorce protection is a concern, existing estate plan documents should be reviewed to assure that they will provide the most effective protection available.

TD WEALTH

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materials available on platforms throughout the financial services industry may help you stay informed and communicate effectively with your wealth advisors.

We believe the most important piece is to focus on the goal, not a benchmark. By measuring success against personal goals, progress reports may have more personal meaning beyond volatility in a specific timeframe. Be clear about your goals and communicate them often – even if they change – to ensure your financial success is measured based on the path you want to take.

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Investment Risks

Bonds are affected by a number of risks, including fluctuations in interest rates, credit risk, prepayment risk, and inflation risk. **Corporate debt** securities are subject to the risk of the issuer's inability to meet principal and interest payments on the obligation and may also be subject to price volatility due to factors such as interest rate sensitivity, market perception of the creditworthiness of the issuer and general market liquidity. **High yield, lower-rated securities are subject to additional risks such as increased risk of default and greater volatility because of the lower credit quality of the issues.** Interest on municipal bonds is generally exempt from federal tax. However, some bonds may be subject to the alternative minimum tax and/or state or local taxes.

Equities may decline in value due to both real and perceived general market, economic industry conditions, and individual issuer factors.

International investing may not be suitable for every investor and is subject to additional risks, including currency fluctuations, political factors, withholding, lack of liquidity, absence of adequate financial information, and exchange control restrictions impacting foreign issuers. These risks may be magnified in emerging markets.

We believe the most important piece is to focus on the goal, not a benchmark.

Just When You Thought It Was Safe — the *Powell* Case

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

Many wealthy families use Limited Partnerships or Limited Liability Companies ("limited partnerships" or "FLPs") to shift assets to younger generations at discounted values, saving significant estate tax. The IRS consistently challenges this structure. For the last 15 years, the war has been predictable; however, a recent case dramatically alters the battlefield.

Mark R. Parthemer

Leonard J. Adler

How Does It Work?

Typically, a senior family member creates a limited partnership with younger family members (or trusts for them). The partnership structure provides a 1% general partnership interest ("GP"), which controls investments and distributions, and 99% limited partnership interests ("LP"), with no vote over business operations. When combined with embedded transfer and other restrictions, this structure results in a 25% - 40% valuation discount on the LP interests.

Evolution of the Tax War

The IRS does not have a specific tool to dispute the FLP strategy. Instead, it has resorted to using tax code section 2036, which is ill-designed for this purpose.

The early results under §2036(a)(1) were mixed, but in all 14 major court victories by taxpayers, §2036(a)(1) was thwarted by demonstration of a valid, non-tax business purpose for the FLP. This is a lesson learned.

The IRS has won two of the four major §2036(a)(2) cases. In both IRS victories, the funding family member retained full or partial ownership of the GP interest (directly or indirectly). Never had the IRS won a §2036(a)(2) argument when the funding partner held only LP interests… until now.

Building on a 2003 case, Strangi v. Commissioner, T.C. Memo 2003-15, the IRS in 2017 successfully pulled the value of a discount back into a decedent's estate in Powell v. Commissioner, 148 T.C. No. 18. The facts in Powell were egregious, so it is not surprising the IRS won. It was shocking that they succeeded under §2036(a)(2), and it is concerning that the methodology creates a potential mismatch that can be very costly.

The Powell Facts

Seven days before Mrs. Powell's death, her son, acting as her power of attorney, created an FLP in which she received only LP interests (the son contributed an IOU and received the GP interest). Next, he contributed his mother's LP interests into a charitable lead annuity trust ("CLAT"), paying an annuity to charity during her life and transferring to her two children upon her death.

The IRS successfully taxed (a) the value of the discount on the LP interests when funded into the CLAT, and (b) the value of the LP interests she gave to the CLAT.

The Estate Mismatch

The IRS and Estate agreed that the value of the underlying assets were the same on funding as on her date of death. Thus, the total value of the FLP assets were included in her estate. However, the Court acknowledged that if the assets had appreciated in value, then a double counting of assets could have been possible due to the interplay among §§2033, 2036 and 2043.

Critically, this methodology can create a penalty beyond what was traditionally feared - that the assets would be included as though no planning had been done. Now, it may be that more tax is owed than if nothing had been done, adding substantial risk to FLP strategy.

What Should Wealthy Families Do

For families with a non-tax business purpose for an FLP, efforts should be tak-

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Florida Family Trust Company Act: Considerations in the Application Process

By Stephen Vogelsang
Pressly, Pressley, Randolph & Presseley

On June 13, 2014, Governor Rick Scott signed into law the Florida Family Trust Company Act (the "Act") establishing a statutory framework authorizing the organization, operation, and regulation of family trust companies ("FTCs") in Florida. An FTC is a company which provides trust services similar to those that can be provided by an individual or public financial institution, such as serving as trustee of trusts held for the benefit of family members, as well as providing services typically provided by a family office including investment advisory services, wealth management and general administrative services. The Act as initially enacted was burdened with shortcomings which were addressed in a "Glitch Bill" signed into law by Governor Scott on March 10, 2016. The Act, as amended by the Glitch Bill, provides Florida with very attractive family trust company legislation addressing the needs of families considering the formation these specialized family governance structures.

Following enactment of the Glitch Bill, many existing family offices began considering the formation of an FTC. Several families have already formed FTCs and completed the registration process with Florida's Office of Financial Responsibility ("OFR"). The Act provides for the option of organizing an FTC as either an unlicensed FTC or a licensed FTC. Unlicensed FTCs were intended to allow families to form their trust company without concern for intrusive oversight from OFR. Licensed FTCs will be subject to considerably more

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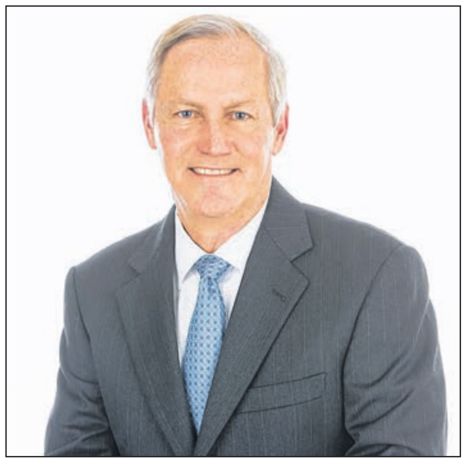

Stephen Vogelsang

burdensome OFR supervision. Although the Act's draftsmen anticipated that more families would choose to organize as unlicensed FTCs, the licensed FTC option was added in order to allow certain families to organize their FTCs in a manner which would qualify for the so-called "bank exemption" from the Investment Advisors Act of 1940. As expected, all of the initial applicants under the Act have chosen to organize their FTCs as unlicensed FTCs.

Families thinking about forming an FTC should consider the following prior to filing:

■ **General Observation:** OFR has undergone significant personnel changes over the course of the last several months. These changes have generally been favorable as OFR has made it very clear that they want the Act to be successful in attracting and encouraging families to form their FTCs in Florida.

■ **Limiting Services to Family Members:** The primary consideration of OFR in reviewing FTC applications is ensuring that the FTC limits its services to family members. FTC applicants should be prepared to illustrate the structure of their family and be able to represent that any trusts to be serviced by the FTC will have only family members as beneficiaries.

■ **Segregation of Fiduciary Accounts:** OFR will also scrutinize an FTC's internal accounting procedures to ensure that fiduciary accounts serviced by an FTC are segregated from the FTC's operating accounts. OFR is keenly interested in ensuring that fiduciary account books and records are properly segregated from operating account books and records and that all such records are maintained in a form and at a location which can be readily examined by OFR.

■ **Capital Accounts:** Family trust companies are required to maintain capital in the form of cash or United States Treasury Obligations in an amount not less than $250,000. FTC applicants must be prepared to illustrate capital account balances in a manner which conforms to the definition of required capital under the Act.

■ **Statement Regarding Maintenance of Corporate and Fiduciary Records:** The OFR will require FTC applicants to describe the software or service providers who prepare their fiduciary account accountings and tax filings.

■ **Structure of FTC Ownership. Holding Companies:** FTCs must be owned by family members, which can include trusts for the benefit of family members as well as holding companies owned and controlled by family members. If a family determines that the best structure

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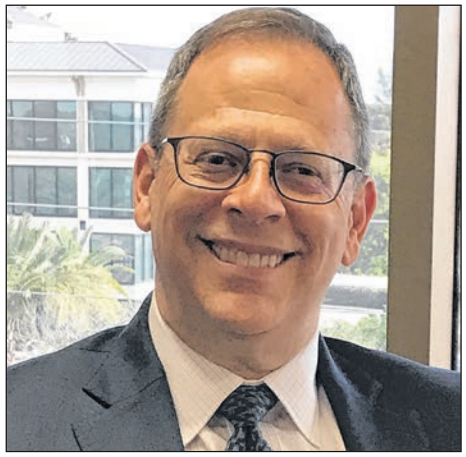
The best laid plans … when Medicaid planning blows everything up and why

By Mitchell Kitroser
Kitroser & Associates



Mitchell Kitroser

You have taken great care of your clients. You have advised them well and carefully made certain their legal documents are in order, their assets are titled correctly and their estate plan is fully implemented. You have planned for every scenario. Measures are in place for death, succession, taxes, and successors are named to step in and assist if there is an accident or sudden illness. Everything is completed. Or is it?

Despite the best planning, the wheels can and sometimes do fall off. A sudden catastrophic accident or illness requiring long term care in a nursing home can deplete the assets of most families with a net worth under $2 million. A family may escape with minimal financial damage but, tragically, that may only happen if the death of their loved one occurs quickly. Even then; there may still be a significant loss of family wealth that a family has worked a lifetime to achieve. We will explore a typical example of what could happen when nursing home care is needed and the family must provide for unexpected long-term palliative care.

We start with certain facts: 1. Annual costs for nursing home care for an individual in Palm Beach County are approximately$100,000*

2. For an individual to qualify for Medicaid benefits, that individual must have less than $2,000 of countable assets. If the applicant is married, his or her spouse cannot have more than $120,900 of countable assets or the application will be denied.

3. Income in excess of $2,205 per month will disqualify an applicant for Medicaid but there is a workaround for this problem.

4. Any attempt to give away assets to anyone other than a spouse in the five years leading up to the filing of an application for Medicaid benefits will result in a penalty called the "look-back penalty".

Now we can look at our example couple: Henry and Maude are 85 and 82, respectively. They have been married for 60 years. They have been to their attorney who prepared a Revocable Trust for them and they are the co-trustees. Their other documents, including durable powers of attorney, health care surrogates and HIPAA waivers are in place. Their three children are residual beneficiaries of their Estate after the second parent passes away. The children get along and have been successful in their lives. Henry and Maude have done no major gifting to the children in the past five years. Henry and Maude have a condo worth about $400,000.00 with a reverse mortgage on it with $40,000.00 outstanding. They have investments of $900,000.00 and $50,000.00 in their savings and checking accounts. They each receive monthly social security ($1,900.00 for Henry and $1,400.00 for Maude). Henry receives a modest pension ($1,500.00 per month). They live within their means especially as they have gotten older. Unfortunately, bad things are about to happen…

Last Sunday, while watching his beloved NY Giants lose again, Henry suffered a massive debilitating stroke. He is in the hospital and will soon head for rehabilitation. Thereafter, Henry's family will learn that the damage is permanent and severe. Henry will no longer be able to care for himself. Maude will take him home and do her best. The children will come to Florida and rally around her, but they have their own lives and cannot stay forever. Maude is neither trained nor able to provide long term care on a 24/7 basis. In the months to come, the family will make the heartbreaking decision to move Henry to a nursing home to receive the care he needs. Between in-home care before the move and the cost for the first six months of nursing home care, the family savings will diminish by $150,000.00. Maude, now 83, in good health and with more years ahead of her, is worried about what will happen if their money runs out. What's more, they always wanted to leave money for their children and now this seems unlikely.

These are our typical Medicaid clients. They do not need to go broke for Henry to qualify for Medicaid. Maude can and should keep the assets they worked hard to accumulate without fear she will outlive their money. The planning needs to change to meet their new circumstances and their carefully crafted estate documents need a major revision. They can move assets around and with proper planning, they can make the best of their unfortunate situation. By taking care of Henry with government benefits, Maude can continue to live a comfortable life without fear of bankruptcy. It begins with the right planning, even during a time of crisis.

With the right plan, Maude can pay off the balance on the reverse mortgage, because the home is an exempt, non-count-

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Getting your money's worth: appraising a coin collection

By Kyle Johnson
Skinner

Trading goods and services for money has been the basis of financial systems since early civilization. Prior to the minting of coins, beads, stones, livestock, and grain were used as currency. As societies progressed, a need to store value increased, manifesting itself in the creation of coinage. Around the 7th and 6th century BC, Anatolia, Greece, India, and China began independently minting coins, each with varying designs, values, and compositions. By placing value in precious metals and alloys, the use of coins quickly spread. This proliferation in the use and production of coins created the first coin collectors and scholars. Even Octavian was known to gift coins of ancient Roman kings to his company during Saturnalia, as noted by the historian Gaius Suetonius Tranquillus in the 1st century AD.

Today there are hundreds of thousands of numismatists and thousands of coin clubs and numismatic associations worldwide. Coins appeal to a variety of people, whether it is the historical aspect of money and mints, the artistry involved in their creation, or the investment opportunity of precious metals. Regardless of reason, the popularity of coin collecting is undeniable. The rare coin and currency market is a multi-billion dollar market, with prices for extreme rarities trending upwards every year. With a re-energized market from significant collections coming to auction, it may be time for an appraisal, an update of a previous appraisal, or at the least, begin to properly catalog your collection.

One of the greatest challenges that face those dealing with a deceased family member's coin collection is the overwhelming quantity of material. Coins take up relatively little space and are easy to acquire in significant numbers over time. Whether it be in silver and gold coins, mint and proof sets, or complete albums, it's difficult to know the true value of what's in hand. Individuals may be sitting on thousands of dollars of gold and silver based on their metallic content alone, but there may be additional numismatic value to these coins that were previously unknown. With a proper appraisal of the collection, you'll know the potential for this material when it comes time to bring it to market, donate it, or leave it as inheritance.

Kyle Johnson

This appraisal or update must be completed by a qualified individual who is USPAP compliant and competent with numismatics and evaluating condition. A coin's condition can vary greatly, from the most circulated and almost unrecognizable to untouched and mint state. Coins and currency are graded on the Sheldon Scale, from PO1 through MS70, 70 being an absolutely pristine specimen. Apart from the mintage and rarity of a coin, condition is the second greatest factor when determining value. Even between one or two condition points, you might see a change in value of four or five figures. These subtle differences can add significantly to an individual's tax burden. With a competent appraiser proficient in grading a coin's condition, you'll get the most accurate evaluation, with a potential tax savings in the thousands of dollars. Unlike other collectibles, furniture, or decorative arts, coins and currency have relatively set prices as their quantities are well documented, allowing for a steady and predictable market. With large marketplaces and thousands of searchable comparables, appraisers can give the most accurate and current fair market value for your collection.

The importance of knowing the value of your collection is immense for many reasons. You may want to carry insurance against a sudden loss or theft. An appraisal can help decide how a collection is distributed among heirs, be the basis for the possibility of sale, and an updated appraisal may even save taxes. If you purchased an 1893-S Morgan dollar decades ago for $200 today it may be worth in excess of $10,000. If the appraisal represents the current market value for the item and your heirs are interested in selling the Morgan dollar, they will be taxed on the proceeds greater than $10,000 as opposed to having no cost basis and taxed on all the proceeds.

By having your collection appraised, you're embarking on a mission of discovery. You may already be well aware of its contents, but you never know what surprises lie in every pile of coins or stack of notes. An appraisal will give you a detailed inventory of each piece in your collection, from circulated wheat cents to unexpected finds of a rare variety of a note. A group of unremarkable Confederate currency came in recently for evaluation. After sifting through the pile of rice paper these $10 and $20 Confederate notes were printed on, a small folded bill made itself apparent. Slowly opening the note, it read "Republic of Texas" with a familiar name signed in the lower right: Sam Houston. This 1843 12 ½ cent Republic of Texas "Exchequer" note was the last paper currency issued by the young republic. As one of a dozen or so known 12 ½ cent notes extant, this $32,500 discovery found itself in a $100 pile of old bills. With the proper evaluation and appraisal of your collection, you might also find yourself with a pretty penny.

Kyle Johnson joined Skinner in 2013 as a specialist in the Discovery Department. Following his passion for history and lifelong interest in numismatics, in 2016 Kyle founded the Coins & Currency Department at Skinner. The department has enjoyed success since its inception, bringing to market important collections of early gold, New Hampshire banknotes, and Massachusetts silver coinage.

Downside protection strategies in an aging bull market

By Steven Hein
Hein Wealth & Tax Solutions

With the stock market reaching all-time highs, and the bull market aging, people are concerned about how do I protect the downside. This article will discuss using life insurance, annuities, notes and cd's to participate in the appreciated market, while protecting some of the downside.

Steven Hein

Life insurance

An attractive vehicle to participate in market gains and limit losses is to utilize equity indexed universal life. This vehicle has many attractive features in which to choose from. For example, you can participate in some of the gains of the S&P 500, while limiting your downside exposure.[1] The upside is capped ("cap rate"), but the important thing to note is that in years when the market goes down, the client does not get credited with any market losses.[2] If clients want loans from this product to come out income tax free then this policy should be funded up to IRS limits. Unlike a Roth IRA, there are no limitations on the amount or income limitations. It is taxed like a Roth Ira with no deductions going into it, and if structured properly, tax free loans going out. For those not concerned about taxes, money can be put in up front and not over several years and gains coming out would be taxed like an annuity at ordinary income tax rates with a potential 10% penalty. For doctors and others concerned about lawsuits residing in Florida, amounts placed in the life insurance policy are asset protected.

Annuities

Equity indexed annuities can also offer market participation but in general with no market downside but the limited participation in market gains makes utilizing the life insurance structure above with its higher cap rates more attractive. Fixed annuities offer return of principal and are attractive when compared to CD rates but, they do not offer much appreciation potential.

A new form of variable annuity offers market participation in many different markets in the US and outside the US where clients can receive appreciation with higher cap rates than equity indexed annuities. Owners can limit the losses to amounts beyond a 10%, 20% or 30% buffer and determine how long of a segment they would like to participate: one year, three years or five years. For example, an owner can invest in an emerging market index today with a 10% one year cap rate and 10% buffer if the market goes up in a year by 20%. The owners will receive only $110,000 because of the market cap and if the market goes down by 20% in a year they will receive $90,000 because of the buffer. Other companies offer the ability for the owner to experience the initial loss and to be protected for any amounts in excess of that amount.

Notes

An additional way to participate in the market and limit downside risk is with structured notes, which offer market protection. For example, you may receive 100% of the gains of the S&P 500 for the next 5 years while limiting the initial downside by 25%. In this example, if the market went up by 50% the client would receive 50% of the appreciation in the index while if the market went down by 50% clients would lose 25% of their investment. The note is an obligation of the company issuing it and if the company goes bankrupt clients may lose their principal but if any of the institutions offering these products failed the rest of the market may do poorly.

CD's

Another way to be in the market with even more downside protection is to invest in a market based certificate of deposit. These cd's pay no set interest but offer appreciation by looking at participating in indexes. For example, a cd can invest in a basket of exchange traded funds over a period of time and provide owners with the appreciation on this basket of exchange traded funds. If this index goes up clients participate but if the market does poorly clients are guaranteed by the issuing company to receive back 100% of their principal and if the issuing company is bankrupt the client would have FDIC insurance up to the $250,000 limit. These market based cd's should be in a retirement account due to the taxable component of the product. If not structured properly you may be taxed for a period of time and not have the cash from the product to pay the possible taxes.

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[1] The amount in the insurance policy is subject to the claims paying ability of the insurance company.
[2] This product and the products discussed below look at an index today and at some snapshot in time and provide the appreciation in the index from one point to another without paying dividends. The examples provided are for illustrative purposed only.

Steven Hein J.D.,M.B.A, CPA, LL.M. 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.

A concerning trend in long-term care: Why even the wealthy need a plan

By Julia Lembcke, CFP®
and Erik Lembcke, CFP®
URS Insurance

Today, we still see couples retiring with plenty of assets who lose control over the disposition of their final care. Seventy percent of those now 65 and older will need long term care, and most of them prefer to have it at home. However, when family members are called in to decide for you, the choice may be the opposite of what you desired.

Imagine the following:

You're in your early 80s and have just suffered a paralyzing stroke. In the hospital fighting to recover, you're worried about your spouse who is already receiving long-term care from the comfort of your home. You both prefer to receive care from home - you have enough money, and you've found a wonderful home health aide who comes to the house seven days a week. You have a relationship with this person, they know your neighbors and friends, and they know your routine. You don't want to end up in nursing home where you may be neglected or forgotten, and neither does your spouse. When your children fly in to see you, they're devastated to find that you now have some cognitive impairment due to your stroke. Your children talk to your doctor, and it's clear you'll have to rely on them to make financial decisions. You gave them medical and financial power of attorney, but they aren't familiar with your financial situation. They have a vague idea of your holdings, but they don't know where to get the money for full-time care, don't know what stocks to sell or holdings to liquidate. They also have to make these decisions quickly because they have their own lives. Once they compare the cost of a semi-private room in a nursing home for $89,064 annually against the cost of round the clock, full-time care at home for $176,904, the decision seems obvious, and so, even though you told your daughter you only wanted care in your home, both you and your spouse end up in a nursing home.

We've also seen this happen when there is a surviving spouse who needs care, and well-meaning family members step in trying to "do what's best." According to the Genworth 2016 Annual Cost of Care Study, most people underestimate the costs of at home healthcare, yet this kind of personalized care is by far what people prefer.[1] The median rate for the state of Florida is $3,766 a month for a home health aide, but that's for part-time care.[2] When you need twenty-four-hour care, seven days a week, and you have two health aids splitting the shift, the cost can be much higher than what you'd pay for a nursing home. Fam-

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[1] *http://newsroom.genworth.com/2016-05-10-Genworth-2016-Annual-Cost-of-Care-Study-Costs-Continue-to-Rise-Particularly-for-Services-in-Home*

[2] *https://www.genworth.com/about-us/industry-expertise/cost-of-care.html*

Erik and Julia are the founders of URS Advisory, a comprehensive retirement planning firm, and URS Insurance, serving clients throughout Florida. They are both CERTIFIED FINANCIAL PLANNERS™ and Florida natives serving their hometown communities. They believe that skillful planning makes the difference between an enjoyable, relaxing retirement that leaves plenty of assets to those you love, versus spending the hindmost years of your life worrying about money.

When you need 24-hour care, seven days a week, and you have two health aids splitting the shift, the cost can be much higher than what you'd pay for a nursing home. Family members left to make this decision often worry, consciously or unconsciously, about spending down the assets in the estate.

Julia Lembcke and Erik Lembcke

CIKLIN

From Page A8

in mind that many firms encourage their financial advisors to document discussions with clients.

The above examples apply to recommendations of individual investments (stocks, bonds, mutual funds, master limited partnerships, exchange traded funds, unit investment trust, alternative investments and annuities) and investment managers, as well as overall investment strategies. Investment accounts are often some of the largest assets impacting a client's estate plan, and the investment strategies, investment managers, investment products should all be carefully reviewed, especially if clients have significant realized or unrealized investment losses.

While a complete description of the FINRA dispute resolution process is beyond the scope of this article, the process is intended to avoid a public court case, and further provide for a quick and efficient forum for dispute resolution. Most cases are limited to document-based discovery and they are handled on telephone conference calls by the lawyers and arbitrators.

POWELL

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en to navigate around the Powell case:

1. In both Powell and Strangi, the general partner was the decedent's power of attorney. These roles should be separated.

2. The partnership agreement in Powell required the consent of all partners to dissolve. This forms an ability to control (by denial) beneficial enjoyment by each partner, even limited partners. The partnership agreement should exclude the funding family member from such voting right. Caution: eliminating such a right in an existing FLP may be ensnared by the §2035 three-year rule.

3. As noted in the Byrum case, if the decedent's LP interests are in a trust, the trustee's fiduciary duty to the beneficiaries should sever any link between the assets and the decedent's right to some aspect of control of the FLP or enjoyment of its assets.

Conclusion

FLPs can be effective estate planning vehicles, providing a consolidation of assets, consistency of management and many other benefits. In addition, potential tax savings may be captured. However, the IRS continues to attack FLPs with whatever weapons the tax law provides. In the recent success in Powell, the IRS has pierced the once-thought safe harbor of holding only limited partnership interests. Further, because of a potential mismatch, the stakes are raised. Clearly, FLPs may be an excellent vehicle for your family, but be sure to work with an expert advisory team when establishing yours.

JONES LOWRY

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docilely—without thinking about it. The results can be catastrophic for you, your business and our culture. The explanation, "I was just following orders" doesn't pass muster.

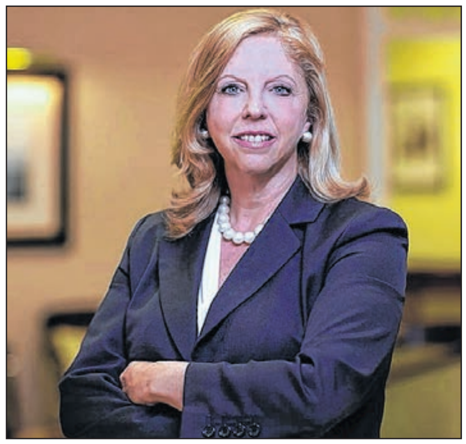
That's it: W-I-S-A-R-D. It can help us maintain a personal and corporate culture of ethical behavior. Each of us must choose to be responsible for our own actions and inactions. W-I-S-A-R-D is a reminder that we can trick ourselves into acting badly. It's not simply a question of avoiding blatantly greedy or selfishness behavior. It must be a conscious decision to monitor our thoughts and actions so that we pass the W-I-S-A-R-D's ethical tests.

A great financial firm will hold each team member accountable to always do the right thing. Don't ask your fellow team members to engage in unethical behavior. Pass the Test: Do the right thing even if it means walking away from $10,000,000.

* Unethical Behavioral Finance: Why Good People Do Bad Things, Ronald F. Duska, PhD; Journal of Financial Services Professionals,

The workout that didn't work out — have you really changed your domicile?

By Lisa A. Schneider
and Alyse Reiser Comiter[1]
Gunster



Lisa A. Schneider

Alyse Reiser Comiter

A change of domicile to Florida requires a great deal more than a new driver's license, a voter's registration card and filing for Homestead. Typically, the driving force behind a change of domicile is the avoidance of state income and estate taxes imposed by many northern and mid-west states such as New York, New Jersey, Connecticut, Massachusetts, Ohio and Michigan. There are even a few Californians moving to Florida to escape California's onerous income tax. A change of domicile to Florida is often accompanied by fear of an income tax audit. Although many taxpayers believe concluding a successful income tax audit with the client's prior state of domicile will preclude any further entanglement with their former state upon their death, this reliance is unfortunately misplaced. Rather, even though a taxpayer wins or settles a challenge with a state such as New York, the domicile challenge can rear its ugly head again upon one's passing when the filing of a non-resident estate tax return necessitated by real estate or tangible personal property ownership triggers the request by one's former domicile to complete a Domicile Affidavit. The completion of the Domicile Affidavit by one's Personal Representative or Trustee should not be underestimated as it should deliver the best argument possible for why the decedent was no longer domiciled in his or her former state.

A domicile challenge for income or estate tax purposes involves the taxpayer or the taxpayer's estate representative and the taxpayer's former state. Where does Florida fit in? Does Florida have any interest in whether your change of domicile was accomplished? Until recently, Florida was generally a passive observer and beneficiary of taxpayers' migration south. Since Florida has neither an income nor an estate tax, it has no basis for becoming involved in a taxpayer's fight with his or her former state. Florida's interest in a taxpayer's migration to our state lies with an increase in our spending base. In exchange for this promised increase in spending, the Florida Constitution bestows upon new Florida domiciliaries the right to claim a homestead exemption for his or her principal residence. One of the better known benefits of the homestead exemption is the cap on ad valorem taxes on one's homestead. A lesser known but arguably more valuable benefit is the homestead exemption from creditor claims which protects one's homestead from forced sale as long as certain basic requirements are met. First, one must become a Florida domiciliary under Florida law. Second, one must file for homestead. Last, one must claim the homestead exemption from creditors if faced with a

Please see GUNSTER, Page A26

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[2]*Ramos v. Motamed, was reported in "Should Have Skipped Leg Day: Gym Records Crush Defendant's Protection Against $2.2 million Judgment", The Daily Business Review, an ALM Publication, Vol. 63, No. 190 (July 11, 2017).*

A change of domicile to Florida is often accompanied by fear of an income tax audit. Although many taxpayers believe concluding a successful income tax audit with the client's prior state of domicile will preclude any further entanglement with their former state upon their death, this reliance is unfortunately misplaced.

PORTABILITY

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United States on the date of death. Furthermore, the estate must not be required to file an estate tax return. That is, the value of the decedent's gross estate must be less than the applicable estate tax exemption (for 2017 this is $5.49 million). If an estate tax return was previously timely filed for the estate, the relief under Rev. Proc 2017-34 is not available.

In order for an estate to avail itself for relief under Rev. Proc. 2017-34, a person permitted to make an election on behalf of the estate of a decedent must file a complete and properly prepared estate tax return on or before the later of January 2, 2018 or the second annual anniversary of the decedent's date of death. Generally, this is an executor or personal representative of the estate. However, if there is no fiduciary appointed by a court, it may be any person in actual or constructive possession of any property of the decedent. For example, the trustee of a living revocable trust the decedent created during his or her lifetime. The estate tax return must state at the top of the form that the return is "FILED PURSUANT TO REV. PROC. 2017-34 TO ELECT PORTABILITY UNDER § 2010(c)(5)(A).

In summary, through Rev. Proc. 2017-34, the IRS is providing a surviving spouse a generous two (2) year window from the decedent's date of death in which to make a portability election on an estate tax return in the event an estate tax return was not timely filed within nine (9) months of the decedent's date of death. This procedure avoids the cost and hassle of a Private Letter Ruling. Should that two (2) year window be closed, a Private Letter Ruling is still available to a surviving spouse to request late election relief. In any event, we hope a surviving spouse is advised appropriately early on of his or her ability and the desirability of porting any DSUE amount to him or her so appropriate elections are ultimately made on a timely filed estate tax return.

The IRS issued Revenue Procedure 2017-34 providing taxpayer relief for late estate tax portability elections.

CASTLE

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make a dramatic difference in your retirement account balance. Start saving for retirement at age 25 instead of age 40. If you have saved $250,000 by the time you are age 50, it would compound (grow) to ~$709,000 by age 65 (~ 15 years) if it earned 7.2 percent.

What can you do you, even as a novice investor to increase your rate of return over time? Keep your investment expenses as low as feasible. "Passive" investing sounds boring, and couch-potato like when compared to "Active", but when you change the names and call them "evidence based" vs. "conventional", you will feel better about loading up with inexpensive index funds or ETF's. Vanguard has a stellar reputation and offers passive funds with some of the lowest expenses in the industry. TIAA-CREFF and Dimensional Fund Advisors are other good fund families with inexpensive funds offered often in 401(k) plans. Most retirement models and advisors suggest that young women start with a primarily equity-based portfolio, with more than 10 percent in international markets (including emerging markets). As you age, more fixed income should be added to your asset allocation.

Do you need a financial advisor? This is a question that depends a lot on the investor. If you can't or won't inflict self-discipline into your saving and spending plans, hiring an advisor can help you. Vanguard published a study in 2014, authored by Francis Kinniry Jr., that estimated the economic benefit of a financial advisor's advice to be as much as 3 percent a year. However, if you can do the work yourself without an advisor, you can save that fee, which can be up to 1%. If you do hire a financial advisor, I suggest you hire one that is a fiduciary and that you first check them out on the government site Investor.gov for complaints, judgements etc. before you meet with them. The site FINRA.ORG also lets you compare the professional designations of your advisor candidates. There are well over one hundred financial advisor designations, and knowing the experience, education, and ethical requirements for each designation can be quite helpful in determining who is most qualified to advise you.

THE ACT

From Page A17

for owning an FTC is through a holding company, they should be prepared to provide a "pro-forma statement of condition" to OFR during the application process. The required "statement of condition" is essentially a balance sheet for the holding company..

■ **Confidential Information:** FTC applicants should submit a redacted version of their application to OFR specifically identifying all items they wish to be kept confidential. The Act provides for a "public records exemption" which excludes from public scrutiny any "personal identifying information". Items not identified as confidential will not be treated as confidential.

While family trust companies are not for everybody, they offer unique planning and governance opportunities to families which already utilize the services of a family office. The first year of operating under Florida's FTC Act has generated a great deal of optimism that Florida's Act will provide an excellent solution for those families considering the formation of an FTC.

KITROSER

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able asset. Funds will be drained from the revocable trust and placed in her name alone, assets will be converted to income for Maude so she drops below the asset threshold to allow Henry to qualify for benefits. Additionally, Maude's entire estate plan must be re-written to address the possibility that she passes away before Henry. This will ensure he will have use of their money but will not lose his Medicaid benefits should Maude die first. When the second spouse does finally pass, there will still be a legacy to pass on to their descendants.

Clients facing catastrophic medical expenses or expensive long-term care situations, should seek the advice of a Medicaid planning professional before resigning themselves to simply spending down their assets. Whether married or single, there are planning options available which will result in an enhanced life for the nursing home resident and often a better outcome for loved ones.

Directed and delegated trusts: Embracing vision in a pragmatic environment

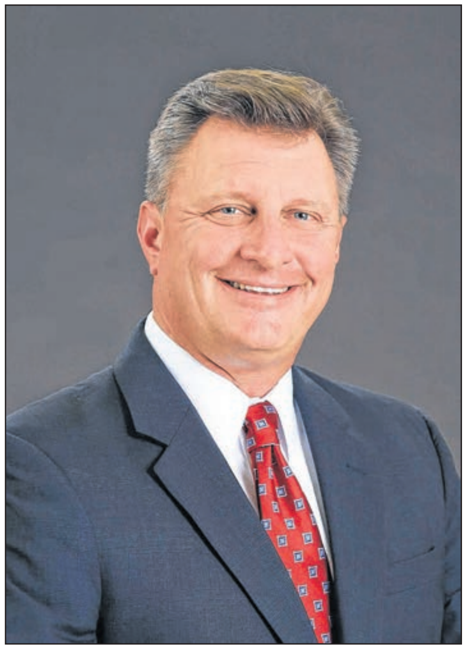
By Joseph C. Pauldine
Cypress Trust Company

Families are demanding more flexibility and control over their estate plans – a trend that we feel will continue to develop. The growth in popularity of bifurcating administrative duty and investment responsibility in revocable and irrevocable trusts has encouraged corporate fiduciaries such as Cypress Trust Company to expand beyond traditional service offerings. Directed and delegated trusts, of course, are nothing new – affluent and successful families have been using these concepts for more than a century and today, all but a handful of states have some form of directed trust statute.

So, it's easy – right? Not so fast!

When it comes to trust code, not every state is created equal. Although Florida has made progress toward defining the responsibilities (translated to mean "liability") between administration and investment management, the Sunshine State still has a long way to go before its trust statutes are on par with those of, say, South Dakota and Delaware as it relates to division of duties. Although there is nothing stopping the parties involved (grantors, beneficiaries, trust companies and investment managers) from "making it work," the underlying concern of accountability gives all of the above reason to pause.

And therein lies the conundrum. How does a firm go about embracing a visionary position when it's mired in the pragmatic reality of statutory framework? Although Florida does not currently have a "pure" directed trust statute, there are some creative ways to accomplish the goal of separating responsibilities using the existing trust code.



Joseph C. Pauldine

Directed vs. Delegated: In a directed trust, the trustee is directed in the actual document to have another party manage the assets. In a delegated trust, the trustee is merely delegating the function of investment management to a third party.

Let's start with directed trusts.

The cleanest way to implement this bifurcation is, of course, at the beginning. When drafting initial trusts and restatements, clients should be encouraged to incorporate language in support of FS § 736.0808 which states that if "the terms of a trust confer on a person other than the settlor of a revocable trust the power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust."

Essentially, this statute gives the grantor an up-front opportunity to identify responsible parties as part of the terms of the instrument. However, even here the trustee is still faced with liability – after all, what constitutes a "serious breach of fiduciary duty?" We have found that a good practice during the drafting process of sections permitting directed trusts is to include language that provides clear indemnification of parties for the actions of the others.

The process becomes a little more involved with delegated trusts. Typically we run across these scenarios after a trust has become irrevocable. FS § 736.0807 provides that a "trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate

Although Florida does not currently have a 'pure' directed trust statute, there are some creative ways to accomplish the goal of separating responsibilities using the existing trust code.

Please see CYPRESS TRUST, Page A26

Joseph C. Pauldine is a Senior Vice President of Cypress Trust Company. Mr. Pauldine assists successful individuals and their families with custom investment management solutions and trust administration services. He received his B.S. in Business Administration from Old Dominion University.

Cypress Trust Company is a boutique corporate fiduciary that focuses exclusively 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

JEWELRY

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(Myanmar) are the finest and rarest, and therefore bring the highest prices at auction. The most valuable rubies are a vivid red and are often described as the color of pigeon blood. A Burmese ruby weighing 6.29 carats, signed by Cartier from the Alice Appleton Hay Collection sold for the astonishing price of $1,314,500 at Doyle. At over $200,000 per carat, this is one of the highest prices per carat ever achieved for a ruby at auction. Rubies are particularly attractive to Asian collectors. In the Chinese culture, colors carry significant meanings, and red symbolizes good luck and happiness.

Blue sapphires from Kashmir and Burma command the highest prices at auction; however, the most valuable sapphires are not blue. The orange or salmon colored padparadscha sapphire is one of the rarest and most valuable stones in the world. American buyers are not typically attracted to this unusually colored stone; however, there is great global demand, specifically from the Asian market. An extremely rare 9 carat padparadscha sapphire brooch from the Estate of Cora Nunnally Miller sold for $162,500 at Doyle last year. Most padparadschas are under 2 carats, so a 9 carat example was highly sought after by collectors.

What about pearls? Pearls are always in fashion, but unlike the saturated market for cultured pearls, the demand for natural pearls is rising. Due to polluted oceans, finding natural pearls has become increasingly difficult, and it can take years to assemble strands with well-matched pearls. Recently, there was a sale of an important pair of natural pearls formerly from the collection of Empress Eugenie of France. The pair of perfectly matched large drop-shaped pearls measured an inch in height and a half inch wide and had been described by the Swiss grading laboratory as "a very exceptional treasure of nature." The pearls achieved the world record price of $3,301,000, surpassing the prior record set less than one year earlier by $900,000.

Although jewels are intrinsically valuable, a piece's provenance can significantly affect their final sale price. Having been in a distinguished collection enhances the value of jewelry, often greatly. We witnessed strong competition, and exceptional prices, for auctioned property from the estates of Consuelo Vanderbilt Earl, Nelson Doubleday (publisher and owner of the New York Mets and Islanders), Aileen Mehle (known as Suzy, the society columnist) and Marjorie D. Dye (granddaughter of Marjorie Merriweather Post). These collections had all the right elements that lead to successful sales -- quality pieces, excellent condition, recognizable brands/artists, and sterling provenance. The kind of property that keeps discerning collectors around the world looking to New York as their most important resource.

URS INSURANCE

From Page A21

ily members left to make this decision often worry, consciously or unconsciously, about spending down the assets in the estate. It's much simpler for them to just choose a nursing home, even if it's not what you wanted.

When you have a plan in place that will cover your expenses anywhere, either in a facility or from the comfort of your own home, then it's much easier for family members to honor your wishes. Instead of pulling the expenses dollar for dollar from your estate, they can use insurance to cover the majority or all of the cost, depleting your assets at a much slower pace. They don't have to worry about where the money will come from or if it will last, because the plan is already funded. Best of all, these plans have multiple benefits.

Asset-based hybrid solutions give you insurance against long-term care for pennies on the dollar. Should you never need the care, your family or beneficiary receives the death benefit as a tax-free inheritance. If you do use the benefit to fund in-home health care or any long-term care services, and there is money left over in the policy, then your beneficiaries still inherit the funds. By preparing ahead of time with a qualified advisor who has knowledge in this area, it's possible to live where you want, get the care you deserve, and preserve a meaningful legacy.

Don't put off planning until it's too late to qualify.

GUNSTER

From Page A23

creditor's judgment attempting to satisfy such claim with one's homestead or a part of its value. Typically, a determination of Florida domicile is not made by a Florida court but rather a court in a northern state determining whether a taxpayer had the requisite intent to change one's domicile as evidenced by facts and circumstances. However, in a recent Florida case,[2] a debtor unsuccessfully defended a creditor's claim that the debtor's residence was not protected homestead. Since homestead creditor protection is a Florida constitutional issue, a Florida court was faced with determining whether the debtor effectively changed his domicile to Florida. The court found that the debtor had not, in fact, made Florida his primary residence, citing, among other things, the debtor's gym records which showed that he had worked out in California 300 out of 365 days of the year. Accordingly, the Florida court determined that the debtor could not benefit from Florida homestead creditor protection afforded to a Florida domiciliary. This case evidences how important one's daily activities are to a determination of domicile.

Query whether other Florida cases will follow and whether this case and future cases will be cited by a taxpayer's former state when pursuing an income tax or estate tax audit challenging a taxpayer's change of domicile to Florida.

CYPRESS TRUST

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under the circumstances, including investment functions pursuant to § 518.112. The trustee shall exercise reasonable care, skill, and caution in:

(a) Selecting an agent;

(b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust;

(c) Reviewing the agent's actions periodically, in order to monitor the agent's performance and compliance with the terms of the delegation."

In terms of administrative fiduciary duty, this means that the corporate trustee may choose to delegate the investment management to a third party, but still retains the responsibility (again, translated to "liability") to monitor and review all of the activity for compliance. Investment oversight still lies with the trustee. In some instances while working with delegated trusts, we have found that giving consideration to approving the investment management firm as a sub-advisor has afforded us the ability to consolidate some of the oversight/monitoring requirements at the enterprise level, thereby freeing up time that would otherwise have been spent at the individual account level.

The opportunity in the administrative trust space is gaining momentum. Trust companies and investment advisors that can embrace finding ways to implement and support these clients together will be in the best position to offer the most comprehensive solutions. Until Florida trust statutes are revised, supporting directed and delegated trusts will require an investment of time and effort from everyone involved...but the benefits can be immeasurable.

In some instances while working with delegated trusts, we have found that giving consideration to approving the investment management firm as a sub-advisor has afforded us the ability to consolidate some of the oversight/monitoring requirements at the enterprise level, thereby freeing up time that would otherwise have been spent at the individual account level.

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