Estate Planning

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A Special Advertising Supplement

HOW TO ENSURE A LASTING LEGACY

A comprehensive guide to estate planning from the local experts

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

Palm Beach Daily News
THE SHINY SHEET®

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A MESSAGE FROM THE PRESIDENT

"The only thing you take with you when you're gone is what you leave behind." ~ John Allston

Finding the Right Team to Help Create Your Estate Plan

How do you choose estate-planning advisors? Word of mouth is always a good place to start, but it should not end there. Do some research, read about their background, and see what professional groups they belong to.

By Sharon Lindsey
President of the Palm Beach County Estate Planning Council, Inc.

Why do people create an estate plan? There are a myriad of reasons including:

1. **Insuring that their heirs receive their assets when and how they want them to**
2. **Creating a bond between family members or guaranteeing that bonds are not broken**
3. **Creating a philanthropic legacy that has a true impact**
4. **Tax savings**
5. **A mixture of one or more of these reasons**


Sharon Lindsey

Creating an estate plan is often fraught with emotional and/or technical issues that few people look forward to dealing with. However, it is something that is usually a necessity. Here are a few items to consider when choosing the team of advisors that will help you achieve your optimal estate plan.

First, determine what your overall goals are for creating your plan. They may include one or more of the reasons previously listed or they may include other more personal goals. Second, be prepared to communicate these goals to your selected advisors. Keep in mind that a good advisor, like a good doctor, is not a one-stop shop. You may need a team of advisors specializing in varied areas including two or more of the following professionals: an attorney, an accountant, an investment specialist, a wealth manager, and/or an insurance professional, to name just a few. The trick is putting the right team together.

How does one go about choosing these advisors? Word of mouth is always a good place to start, but it should not end there. Do some research, read about their background, and see what professional groups they belong to. Our group, the Palm Beach County Estate Planning Council, has as its sole mission "to provide a forum for education, collaboration and networking in order to enhance membership knowledge, promote a multi-disciplinary approach to estate planning and strengthen the quality of estate planning services offered to the public." Our members are highly qualified in various fields of practice.

Keep in mind, a good advisor will help you accomplish your goals and will also make you aware of some family, tax and philanthropic planning possibilities that you may not have previously known of. The advisor will listen to your needs and desires and base recommendations on these conversations. You should never feel that you are receiving cookie-cutter advice. Every client is different and needs very specific planning.

Our council's main goal is to ensure that our members have the best training and networking opportunities to provide you with the services you deserve. Feel free to take a closer look at our members on our website at www.pbcepc.org. Should you have any questions about any of these articles, please contact the authors. Their contact information can be found in the membership directory at the end of this supplement.

I hope you enjoy this 15th edition of our annual supplement and wish you a wonderful year to come. ■

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The Palm Beach County Estate Planning Council, Inc., is the resource for estate planning professionals. The purposes of the organization are to promote cooperation among the various professionals engaged in the field of estate planning, and to foster a better understanding of the relationship which each professional bears to the other and to the general public in the field of estate planning.

The Palm Beach County Estate Planning Council, Inc., seeks to increase the overall knowledge of its membership and to address specific topics of common interest, enhancing the professionalism and interaction of the members for the benefit of their clients and the public.

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

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Trustee's Duty to Diversify Investments

By John C. Rau, Esq.
Chilton Trust Company

A trustee of a trust has fiduciary duties to the beneficiaries of that trust and can be personally liable for damages

Most individual investors subscribe to the theory that an investment portfolio which is diversified among different securities and asset classes is likely to result in a portfolio which has less volatility and provides better risk/return characteristics than a non-diversified portfolio. Recent experience (Enron, WorldCom and AIG, to name a few) emphasizes the danger of holding large concentrations of even once highly regarded companies. Whether the individual investor follows through on that knowledge and actually diversifies his or her investment portfolio is another matter, however; the investor answers only to himself or herself for any mistakes made.

A trustee of a trust, however, has fiduciary duties to the beneficiaries of that trust and can be personally liable for damages for a failure to meet those fiduciary duties.

The Florida Prudent Investor Rule (modeled on the Uniform Prudent Investor Act which has been adopted in most states) provides that:

"The fiduciary has the duty to diversify the investments unless, under the circumstances, the fiduciary believes reasonably it is in the interests of the beneficiaries and furthers the purposes of the trust not to diversify."

Thus, while an individual investor may understand the benefits of a diversified portfolio, but is free to follow his or her own wishes, a trustee has an affirmative legal duty to diversify, absent special circumstances.

An example of the "special circumstances" contemplated by the statute is illustrated by a New York case, Matter of Hyde. That case involved trusts that held concentrated positions in the stock of a family company. Despite their duty to diversify, the trustees decided to retain the stock. The beneficiaries objected to the retention of the stock and made a claim for damages against the trustees. The Court sided with the trustees' decision not to diversify based on the following reasons: there were no buyers for the stock at a reasonable price because of the corporate structure of the company; the trustee periodically tested the market for the stock; the trustee met with financial advisors and regularly reviewed the financial condition of the company; the high capital gains tax cost of a sale; and the high dividend paid on the stock which served the needs of the income beneficiaries.

John C. Rau

The Prudent Investor Rule provides that the trust instrument may expand or restrict the provisions in the statue:

"[The Prudent Investor Rule] may be expanded, restricted, eliminated or otherwise altered by express provisions of the governing instrument… The fiduciary is not liable to any person for the fiduciary's reasonable reliance on those express provisions."

One of the most well-known cases which addressed the issue of whether the language in a trust instrument could overcome the trustee's general duty to diversify is Matter of Dumont, a New York Surrogate's Court case (the decision was later overturned on technical grounds). Charles Dumont's estate primarily consisted of stock of Eastman Kodak. His Will included the following language:

"It is my hope and desire that (Kodak stock) will be held and my…trustee shall [not] dispose of such stock for the purpose of diversification of investment and it shall [not] be held liable for any diminution in the value of such stock…The foregoing provisions shall not prevent my trustee from disposing of all or part of the [Kodak] stock in case there shall be some compelling reason other than diversification of investment for doing so."

The trustee, relying on the foregoing language, held the Kodak stock for 50 years. Only after the beneficiaries brought a claim against the trustee for over $39 million in damages did the trustee sell 95% of the Kodak stock.

Despite the retention clause, the Court found in favor of the beneficiaries and awarded them damages of $20 million. After a review of the facts, including the woeful failure of the trustee to evaluate the trust's investments on a regular basis and to communicate with the beneficiaries, the Court held that "a retention clause cannot trump the application of prudence in the management of an estate. [A] retention clause does not exculpate [a trustee] from poor judgment and liability, but instead… almost requires a greater level of diligence and work, as prudent management…will demand a delicate balancing act."

There are many other cases interpreting language allowing the trustee to retain a specific trust investment. The decisions are fact specific and language that seems virtually identical has led to differing conclusions as to whether a trustee has violated its duty to diversify.

In summary, a trustee generally has a duty to diversify its trust investments. This duty can be modified by the terms of the governing instrument or the particular circumstances of the trust and its investments. Although every trust will be unique and it is difficult to ascertain a general rule, provisions authorizing retention of a particular asset should be carefully analyzed by the trustee before a retention provision is relied upon in deciding that diversification is not required. ■

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Hedge Funds: An Alternative Investment

Alternative Investments are often recommended due to their low correlation with traditional investments and may also provide portfolio protection during down periods.

By Sandra Fuentes,
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Sandra Fuentes

John W. Tinnemeyer

Alternative Investments is a broad term that refers to investments other than traditional stocks, bonds or cash. It can include collectibles, commodities, real estate, private equity, hedge funds or managed futures. Alternative Investments are often recommended due to their low correlation with traditional investments resulting in potential diversification benefits. These investments may also provide portfolio protection during down periods. A significant benefit may be realized by preserving capital in times of market volatility. This article will focus on hedge funds and their different structures and benefits when utilized in a diversified portfolio.

Hedge funds were created in the 1940s as a conservative investment for wealthy individuals who were interested in investing in the equity market but were still skeptical after the Great Depression. Originally, the strategy was to participate in the equity market while utilizing hedging strategies that would limit losses. The investors were seeking consistent absolute returns irrespective of market activity. However, with the hedging strategies, investors have to be willing to give up significant upside during strong equity markets in exchange for preserving capital on the downside.

A hedge fund is a pooled investment arrangement which can be accessed through a Limited Partnership (LP) structure or a mutual fund structure. The goal of these vehicles is to provide positive absolute returns regardless of the direction of the market through non-traditional strategies. Some of these strategies include short selling, trading derivatives and using leverage, all of which can enhance the risk/return profile of the investment if monitored and kept within stringent parameters. This is why the governance policy and risk oversight of the hedge fund is an integral part of the due diligence process. A Limited Partnership structure has a General Partner who essentially creates the fund and manages all of the fund's ongoing activities. The limited partners are those individuals who invest in the fund and have no input into the fund's operations or management and as a result have limited liability. The liability is limited to their capital investment.

Hedge funds structured as Limited Partnerships are not required to register with the Securities and Exchange Commission (SEC) by qualifying under Section 3(c)(1) or Section 3(c)(7) exemption of the Investment Company Act of 1940. Under Section 3(c)(1) the number of limited partners cannot exceed 99 and the investors must be considered accredited. An accredited investor must have a net worth of $1 million excluding one's primary residence or at least $200,000 in annual income for the past two years (if married, $300,000). Under Section 3(c)(7) the number of investors is limited to 499 and the investors must be qualified purchasers or super accredited. A qualified purchaser must have at least $5 million in investable assets.

Typically, there is a 2% management fee and a 20% performance fee, though they can range from 10% to 50%. The performance fee is paid to the hedge fund manager from the fund's profits. Performance fees usually include a "high water mark" which means the fee applies to profits after losses in previous years have been recovered. Investors are willing to pay these fees to talented managers who are able to consistently generate compelling risk adjusted returns on a net of fee basis. The fund managers and General Partners are often required to invest their own capital in the fund along with the other investors. There are typically liquidity restraints and lock-up periods; therefore, the capital can only be accessed during specific times of the year. The minimum investment required to initiate a position in a hedge fund is typically $1 million. If properly vetted, hedge funds can be very useful in providing relatively small draw downs during times of significant market declines.

A mutual fund structure may utilize some of the same non-traditional strategies as a Limited Partnership but fall under the Investment Company Act of 1940 and as such is subject to SEC regulations and oversight. Hedge fund mutual funds are often viewed as being more accessible to investors due to lower minimums. For example, if an investor has a $2 million portfolio, he or she could invest $200,000 in hedge fund mutual funds to initiate 10% exposure to this asset class. Minimums could be as low as $25,000. However, with an LP structure the investor would be required to invest $1 million with a single manager, which implies a 50% allocation to the hedge fund space. This may not result in the most efficiently diversified portfolio. Therefore, the dollar amount of investable assets is also part of the decision process when selecting between an LP and a mutual fund structure. The mutual funds trade on a daily basis which provides for daily liquidity and transparency. Mutual fund structures issue 1099s as opposed to Limited Partnerships which issue K1's; both forms are used for income tax purposes.

In closing, hedge funds may be incorporated into a diversified portfolio when seeking additional strategies that may protect a portfolio during uncertain times in the market by tempering volatility. Always keep in mind, that like any other investment a thorough due diligence process is required and strongly recommended. This process will assist the investor in aligning individual goals, time horizon and risk tolerance with the appropriate structure. Working closely with a team of trusted advisors should prove beneficial in the decision making process. ■

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Same-Sex Couples Have Inheritance Rights!

John Pankauski

What are those inheritance or property rights and benefits, and how can a same-sex spouse enforce those rights?

By John Pankauski, Esq
Pankauski Law Firm PLLC
West Palm Beach, FL

Same-sex couples now have valuable inheritance rights! Sort of…

On June 26, the US Supreme Court, in Hollingsworth v. Perry and U.S. v. Windsor, paved the legal path for same-sex couples to enjoy billions, if not trillions, of dollars, in valuable inheritance and property rights previously denied them. This is an historic legal moment. For decades, only surviving spouses in so-called "traditional" or hetero marriages enjoyed legal benefits that the law provided. This has all been changed by the Supreme Court's decisions. What are those inheritance or property rights and benefits and how can a same-sex spouse enforce those rights? Read on.

Consider this: you are legally married to someone of the same sex. Perhaps you were married in Massachusetts or California, or a country that recognizes same-sex marriages. You move to Palm Beach County and then your spouse dies. You are the surviving spouse. The deceased spouse has an estate, some property, bank and brokerage accounts, a retirement plan, and a Palm Beach residence.

Florida provides many valuable inheritance rights which surviving spouses enjoy. Depending on any number of facts, a surviving spouse may be entitled to: the decedent's automobile, a "family allowance" (cash payment during estate administration), an "elective share" of the decedent's estate (guaranteed minimum 30%), a "pretermitted share" of the decedent's estate (if a spouse is "left out" of a will), certain personal property, homestead rights (to reside in or receive a "share" of the decedent's Palm Beach residence), and a legal preference to administer the estate of the deceased spouse.

These rights provide a surviving spouse with a specific interest in virtually all of the property of a deceased spouse, even if the deceased spouse died without a will, or had an old will which left everything to another person. Additionally, under federal law, a spouse has a right to a deceased spouse's retirement account. Lastly, there are a number of legal protections and presumptions which benefit a spouse, when, for example, two spouses' names are on the title to a bank account (which may be a so called "tenancy by the entireties" account).

These rights to a deceased spouse's estate are very valuable but they must be enforced or they will be lost. Failure to take the proper and timely action to claim a share, or enforce your rights, or failure to participate in the administration of a deceased spouse's estate means that you may never be able to "make a claim." If you do not act timely, you do not necessarily inherit; you may lose those rights. After all, the law does not favor those who sit on their rights. The law favors those who assert their rights.

These rights of a surviving spouse must be exercised upon the death of the deceased spouse, typically by "opening up" an estate and filing papers with the court to make your claim. If an estate is already open, you should claim your share and exercise your rights – and then monitor and participate in its administration. If you do not process your claim, other people may make choices which affect or diminish your rights and any possible inheritance. You may even ask the court to put you in charge of administering the estate. You should also contact all financial service providers and inform them of the deceased spouse's death and that you are a spouse. There will be others you need to contact as well.

Two points of importance: First, inheritance rights can be altered by a valid agreement, such as a "pre-nup" or postnuptial agreement which typically seeks to limit inheritance rights upon death. This means that if you signed a pre-nup, you may not get the rights described above. Second, actually getting your rights will take a bit of time. Why? Florida law still does not recognize same-sex marriages. This means you need to obtain a determination from a court that recognizes the US Supreme Court cases and that strikes down the Florida law, something many in the estate planning community believe will happen. On a related issue, Florida has a statute that also prohibits a homosexual from adopting a child, and this, too, is expected to be struck down when challenged.

Same-sex couples now have very valuable, much sought-after Florida and federal inheritance and property rights they never had before. As people pass away each year, surviving same-sex spouses will now be able to enjoy inheritance rights as never before – rights to a house, bank accounts, personal property, retirement accounts and other assets. Until Florida law gets in line with the June US Supreme Court cases which created billions of dollars in property rights for same-sex spouses, it will take a little more work to make sure those rights are achieved and obtained. While those cases do not specifically grant same-sex couples inheritance rights in Florida, it sets the stage for a new chapter in Florida estate and trust law. ■

John Pankauski is a trial attorney with the Pankauski Law Firm PLLC in West Palm Beach, which restricts its practice to disputes, disagreements, trials and appeals for wills, trusts, estates, guardianships and property rights.

A New York State of Mind: Mind Your Residency

By Marc De Paul
Alvarez & Marsal Taxand, LLC

New York's statutory resident rules have long been a source of contention between nonresident taxpayers and the Department of Taxation and Finance. A case decided late last year, In the Matter of John Gaied v. New York State Tax Appeals Tribunal, has fanned the flames surrounding the Department's interpretation and application of the "permanent place of abode" rules of statutory residency. (957 N.Y.S.2d. 480 (App. Div. 2012))

The issue of whether an individual is a resident or a nonresident is of critical importance. Individuals can have only one domicile - typically, the state in which they maintain their closest contacts (e.g., immediate family, driver's license, abode, bank and investment accounts, car registration, doctors, country club memberships and the like). The state of domicile has the right to tax individuals on 100 percent of their income. If, however, another state can claim the individuals as statutory residents, the individuals might be subject to tax on more than 100 percent of their income.

Under New York law, an individual is generally subject to tax as a resident if the individual is domiciled in New York or if the individual spends more than 183 days during the taxable year in New York and maintains a "permanent place of abode" in the state. (N.Y. Tax Law § 605(b)(1) (Consol. 2013); N.Y. Comp. Codes R. & Regs. tit. 20, § 105.20(a) (2013)) A "permanent place of abode" means a dwelling place of a permanent nature maintained by the taxpayer for substantially all of the tax year, whether or not owned by the taxpayer, and generally includes a dwelling place owned or leased by the taxpayer's spouse. (N.Y. Comp. Codes R. & Regs. tit. 20, § 105.20(e)(1) (2013)) A permanent place of abode will not include a property that is suitable and used only for vacations or a property that does not contain facilities normally found in a dwelling — i.e., facilities for cooking, bathing, etc. A dwelling place maintained by a full-time student enrolled at an institution of higher education in an undergraduate degree program and occupied by the student while attending the institution is not a permanent place of abode with respect to that student.


Marc De Paul

Maintaining a permanent place of abode means doing whatever is necessary to continue living arrangements in the property. While this typically means owning or leasing the property, maintenance can also mean making contributions to the household in the form of money, services or other contributions, regardless of whether the property is owned or leased by the contributing party.

John Gaied was a resident of New Jersey who commuted daily into Staten Island for work at an auto repair shop that he owned. Gaied purchased a multi-unit apartment building near his business in Staten Island as an investment property. A short time after the purchase, his elderly parents moved into one of the building's apartments. Both parents were ailing and had no source of income, so Gaied paid all of the utilities and other living expenses for his parents while they resided in the apartment. The parents occasionally would ask Gaied to stay overnight, and since he had no room or bed of his own in the apartment, he slept on the couch on those occasions. At all other times during the relevant tax years, the taxpayer resided at his home in New Jersey. The Department of Taxation and Finance determined that Gaied was maintaining a permanent place of abode at the Staten Island apartment occupied by his parents and assessed tax against him as a New York resident.

When the case was first heard in July 2010 by the Tax Appeals Tribunal, the Tribunal reversed the earlier determination of an administrative law judge and held that the taxpayer had not established a permanent place of abode in New York. The Tribunal cited its ruling In the Matter of John Evans v. Tax Appeals Tribunal of the State of New York et. al., holding that "the physical attributes of an abode, as well as its use by a taxpayer, are determining factors in defining whether it is considered permanent." (606 N.Y.S.2d.404 (App. Div. 1993)) The facts that the taxpayer did not have a bed or a room in his parent's apartment, did not keep personal belongings there and stayed only when required because of his father's poor health were relied upon by the Tribunal in determining that the apartment was not a "permanent" abode of the taxpayer.

In a surprising twist, the Department submitted a motion for reargument on the grounds that neither the statutes nor the regulations nor the controlling case law require that a taxpayer actually live at the subject property for it to be considered a permanent place of abode. The Tribunal granted the motion for reargument and reversed its earlier decision, holding that "where a taxpayer has a property right to the subject premises, it is neither necessary nor appropriate to look beyond the physical aspects of the dwelling place to inquire into the taxpayer's subjective use of the premises." In other words, the statutory requirement is "maintain," not dwell. (In the Matter of John Gaied, DTA No. 821727 (N.Y.S. Tax App. Trib., June 16, 2011))

The taxpayer appealed the Tribunal's decision, and in December of last year, the Appellate Division affirmed the Tribunal's determination, holding that although "a contrary conclusion would have been reasonable based upon the evidence presented, we are constrained to confirm, since our review is limited and the Tribunal's determination is amply supported by the record." *(In the Matter of John Gaied v. N.Y. Tax App. Trib., 957 N.Y.S.2d. 480 (App. Div. 2012))*

While the Appellate Division upheld the Tribunal's ruling, it did not affirm the Tribunal's conclusion that ownership and maintenance alone are sufficient to establish a permanent place of abode. Furthermore, two of the five judges dissented, pointing out that the purpose behind the statutory residence provision is to tax those who really are for all intents and purposes residents of the state, calling the majority's decision "irrational and unreasonable." The dissent by two of the Appellate Division justices allows the taxpayer to appeal the decision to the New York Court of Appeals.

The taxpayer's counsel has filed a Notice

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Marc A. DePaul is the Family Office Services Leader of Alvarez & Marsal Taxand, LLC. A&M's Family Office Services practice serves the needs of high net worth families by providing a clear picture of the client's overall financial landscape.

Communicating With Your Children

About Responsible Financial Values

How can you, as a parent, instill in your children the importance of saving?

By: Michele Vogel, J.D., LL.M
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It's a question that weighs heavily on the minds of many parents, and with good reason: The way we communicate with our children about wealth today will shape their financial experiences in the future. Will they enter adulthood confident and prepared to manage the family wealth? Or will they find it a confusing and burdensome process? Much depends upon how you relay information to them about money matters, great and small.

You convey your financial values to your children through your interactions with them, and the financial planning steps you take on their behalf. For example, you may fear that an outright gift or trust fund may negatively impact your child's work ethic or career choices. By setting up a trust that matches a child's income, you can articulate the value you place on work. In this way, your child receives the benefit of the family wealth, as well as an understanding of your feelings about the relationship between work and money.

If you wish to communicate philanthropic values, involving your children in the life of your private family foundation can be an effective approach. When you encourage your children to research recipient organizations and become involved in grant-making decisions, they can witness your enthusiasm about giving and may even develop a philanthropic conscience of their own. Other options include doing volunteer work with your children or simply explaining to them how a charitable donation fits into the broader family plan.

Michele Vogel

There are also many less structured ways to share financial values with your children. "Can I have another video game?" "Can I drive the new SUV to school?" "Can I have my own credit card?" These types of questions provide an opportunity to share your feelings about displays of wealth and spending decisions. When you provide more than a yes or no answer, your child will begin to understand your feelings about money matters. Certainly not every trip to the store should end with a finance lecture, but these moments do provide an opportunity that shouldn't be overlooked. Of course, the clearer you are about your feelings regarding money, the clearer your message to your child will be.

Finally, consider the way money is discussed in your family. In previous generations, it was taboo to discuss financial matters such as stock market holdings or salaries or inheritances. Today, children are growing up in a world where money is discussed frequently. If there's silence surrounding money matters in your home, it can create confusion. A child who grows up discussing age-appropriate financial matters may be more comfortable with money issues and will be more likely to discuss wealth issues with you in adulthood.

The best way to share your financial values with your children is to communicate early and often, using words as well as financial structures. This will allow your children to better understand your feelings about the relationship between wealth, spending, saving,

Please see COMMUNICATING, Page 28

Till Death Do Us Part...

Or At Least Until The Ink Is Dry

By Lisa A. Schneider, Esq.
and Alyse M. Reiser, Esq.
Gunster's Private Wealth Services Group

If you are contemplating divorce or a second or later marriage, it is important to be aware of issues beyond the contemplation of those entering into a first marriage. Unfortunately, divorce planning has become increasingly more common and necessary in the Facebook world in which we live where nearly half of recent first marriages end in divorce (with Facebook credited as a cause of a third of all divorces). Although the Internet may be the cause of many divorces, expert advice regarding how to avoid planning disasters should not be based on Google searches.

When planning for marriage or divorce, a nuptial agreement often plays a key role, setting forth each spouse's rights upon separation, divorce and death. For example, nuptial agreements usually contain waivers of the following rights upon a party's death: (1) rights to elect against the other party's Will or other testamentary instrument (i.e., elective share rights); (2) rights in intestacy (statutory rights in the absence of testamentary instruments); (3) rights as a pretermitted spouse (marriage after testamentary instruments are prepared); (4) exempt property rights; (5) family allowance rights; (6) homestead rights (Florida law restricts both lifetime and testamentary transfers of the homestead of married persons); (7) rights to serve as personal representative of the other party's estate or as trustee or trust protector of any trust created by the other party; and (8) rights to retirement benefits. It is important that these waivers meet any requirements imposed by state and federal law.

The nuptial agreement should also address estate and gift tax issues. Under current law, so long as the deceased spouse's personal representative takes the appropriate steps, a surviving spouse may take advantage of the deceased spouse's unused gift tax and estate tax exemption amounts (collectively, the "DSEUA"), worth up to $5,340,000 currently. Accordingly, it may be advisable for the parties to disclose in their nuptial agreement any lifetime taxable gifts they have made and include an agreement to require the estate of the first-to-pass to make the DSEUA election. The agreement may also require that any future use by one spouse of his or her lifetime gift tax exemption requires the consent of the other spouse or that the personal representatives of the first-to-pass set aside a minimum amount of unused exemption for the benefit of the surviving spouse. Finally, the agreement could provide that one spouse consent to split gifts upon the request of the other, allowing the wealthier spouse to double the amount of both annual exclusion gifts he or she makes during the year (currently $14,000 annually, per donee) and lifetime taxable gifts (currently $5,340,000 per donor).

Alyse M. Reiser

Lisa A. Schneider

Though nuptial agreements can avoid lengthy litigation over the division of assets upon divorce or death, it is equally important that the proper estate planning documents are in place.

When contemplating divorce, for example, a new Will and Revocable Trust (or a codicil and amendment thereto) should be executed to (1) revoke the spouse's beneficial interest, (2) remove the spouse as personal representative or trustee, (3) change the name of guardians of minor children, and (4) revoke any benefits for the descendants of the spouse who are not your descendants. In addition, Durable Powers of Attorney, Designations of Health Care Surrogate and Living Wills in favor of the other spouse should be revoked and notice of such revocation should be provided to the spouse and any third parties who may rely on the Power of Attorney. Finally, if permitted under the terms of any applicable agreement, all beneficiary designations in connection with life insurance, retirement plans, annuities and similar assets naming the other spouse should be revoked.

In determining the dispositive provisions of the new plan, you must address any obligations to make testamentary dispositions to a former spouse or to children of a prior marriage. In addition, whether a plan is being changed in contemplation of divorce or a later marriage, it is important to consider the spouse's rights under state law (e.g., the right to an elective share and/or to a pretermitted share), unless such rights have been waived. The terms of the new plan may be further complicated in a blended family situation due to animosity among the families or a desire to treat the children of the prior marriage differently than later born children. The greater the age difference or wealth disparity between the spouses, the more potential there is for animosity among the parties involved.

Because everyone's familial and financial situations are unique, there is no "one size fits all" nuptial agreement or estate plan. Rather, your estate planner, family law counsel, accountant and financial advisor must work together and obtain a comprehensive understanding of your marital, financial and family history (as well as an appreciation of all personalities involved) to determine the plan that is best for you. ■

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Philanthropy: The Tie that Binds

By Adi Rappoport
Gunster Law Firm & Member of API
and Michael L. Kohner
WTAS LLC & President of API

What's keeping you up at night? This question (or some variation of it) is a common way for an estate planning professional to break the ice with a new client. The answers reveal an overlapping and perhaps surprising pattern. No, the typical worry is not a vendor relationship for the client's business, an estate planning technique, high taxes or rising interest rates. Rather, the most frequent answer is that clients are worried about their most precious asset - their kids. This concern transcends all wealth levels. Parents worry about whom their kids' friends are, or a child struggling at school or possibly even battling substance abuse. Parents worry about not being able to pass on the unique values and stories of their family. Parents worry about connecting with their kids and grandkids in a world where many of us now connect using 140 characters or less. Of course, these are all complex issues, and surely, estate planners cannot solve these problems through a well-drafted document. However, thoughtful planners can help the family engage in a process that can ignite their collective passion and can help build bridges among generations. The vehicle for this process is philanthropy.


Adi Rappoport


Michael L. Kohner

Philanthropy (or charity) may mean different things for different families, but in all events, it is a good idea to start teaching kids about charity early in their life by modeling charitable behaviors. For younger kids, parents can begin to teach their kids about charity and financial responsibility by making an agreement that a weekly allowance be split three ways: spending, savings and charity. Once sufficient funds have been set aside in the charity bucket, children can personally make a donation of "their" money and experience the fulfillment of altruism and outreach. Giving, however, is only part of the equation. The other part involves action, which includes participating in community events and taking the time to teach your kids about the sponsoring organization and why it exists. This creates an opportunity to discuss a problem in the world (disease, hunger, illiteracy or abuse) that requires thoughtful attention and assistance.

As kids mature into adolescence and adulthood, charity provides the opportunity to discuss which causes are important to the family. Parents and kids can serve on a committee together, work at a food kitchen or organize an event. The family can discuss an organization's governance, its programs, and its finances. What does the charity do well and what can it do better? How can we make an impact and improve our community? The lessons are valuable and can last a lifetime.

Some families choose to create their own charitable vehicles – such as a donor advised fund or a private foundation. These charitable vehicles create an important opportunity to get the next generation involved at a young age. Many times a foundation is not funded until the death of the first generation. This is a pity, because the next generation loses the benefit of the earlier generation's counsel and experience. Why not start the process now? Whatever form philanthropy takes in your particular family, the goal is to use the family's charitable aspirations as a way to engage your kids in a meaningful conversation about what matters most in their life. Instead of just telling your kids that unfortunately there are people in the world that have it much worse, actually show them, listen to them and interact with them to address how to make it better. This will help build a stronger family bond and give the younger generation a sense of purpose and belonging.

Please see PHILANTHROPY, Page 31

NIMCRUTS:

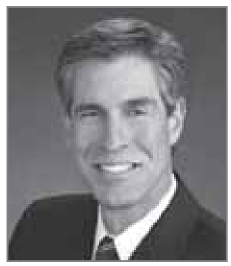
Increased Capital Gains Tax Rates Give New Life to an Old Planning Tool

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

A Charitable Remainder Trust (CRT) is an effective planning tool for individuals who want to (i) sell a low basis asset and minimize or defer capital gains taxes, (ii) maximize their cash flow, and (iii) give to charity. The increased top effective Federal long term capital gains tax rate (23.8% in 2013 from 15% for the past ten years) makes these trusts worth considering anew.

A CRT makes annual payments to the creator of the trust (or others, frequently a spouse). Those payments must be a fixed dollar amount (charitable remainder annuity trust, or "CRAT") or a fixed percentage of the trust assets revalued each year (charitable remainder unitrust, or "CRUT"), and continue for a defined period of time or the recipient's lifetime.

When the CRT terminates, the remaining assets are distributed to designated charities (hence the name charitable remainder trust). The creator of the trust receives an upfront income tax deduction equal to the present value of the charities' interests.


Leonard J. Adler


Mark R. Parthemer

A CRT is not subject to income tax on ordinary income or capital gains. The recipient of the annual payments will be taxed on the amount received to the extent of the CRT's taxable income.

CRT EXAMPLE

The following assume the individuals are single, in the maximum tax brackets, and have exhausted their gift/estate tax exemptions:

• *John* owns stock worth $1 million with a zero cost basis. If sold, the Federal capital gains tax would be $238,000. If the net proceeds of $762,000 are invested and earn 6%, they will produce $45,720 before income taxes. Assuming John spends the return, at his death the account will still be worth $762,000. If he leaves the funds to anyone other than charity, there will be an estate tax, leaving $457,000 net.

• *Jane*, on the other hand, contributes her shares to a CRUT paying her 6% of the trust value each year. The trust sells the stock, and incurs no capital gains tax. The trustee invests $1 million and earns 6% total return a year, producing $60,000 before taxes, which is distributed to Jane. At her death, $1 million passes to Jane's charities.

Jane receives $14,280 a year more than John and her charities receive $238,000 more at her death. Jane, who is 65, also gets a $400,000 income tax deduction when she creates the CRT.

[To illustrate the concept, the examples assume the assets annually produce a return equal to the CRUT payout, and that the full amount is taxable. Real world results will differ.]

NIMCRUTS:
AN IMPORTANT CRT VARIATION

Some variations are authorized for CRTs, and one we foresee regaining important status. Under a Net Income with Make-Up Charitable Remainder Unitrust (NIMCRUT), the current beneficiary receives the lesser of the stated percentage and the trust's net accounting income. If the accounting income exceeds the stated percentage in subsequent years, the excess may be distributed to the beneficiary to "make-up" for the earlier shortfall. Following are three situations when a NIMCRUT might be advantageous:

1. Unproductive, illiquid assets, such as vacant land. It would be difficult to make the required CRT distributions before the property is sold, but a NIMCRUT will not require payments while the trust has no income. The NIMCRUT may even be written so that at some point it converts to a standard CRUT, eliminating the income restriction entirely.

2. High growth assets. The IRS permits post-contribution capital gains to be allocated to income if the trust agreement so provides and state law doesn't prohibit it. This is useful if the unproductive asset increases in value significantly upon a future event, such as a public offering. Using this approach, a portion of the gain realized when the stock is sold will be "income" and can be used to "make-up" for the reduced distributions during the unproductive years.

3. Tax deferral. A wealthy family might use a NIMCRUT to defer tax on ordinary income and capital gains tax for many years by transferring assets into a limited partnership and contributing a 99% limited partnership interest to a NIMCRUT. Future earnings could continue to be invested inside the partnership. The NIMCRUT thus would have no "income" to distribute until it receives distributions from the partnership. For tax purposes, 99% of the partnership income is reported by the NIMCRUT, a tax-exempt entity. In effect, there is an almost complete tax deferral until the partnership makes distributions.

The IRS, presumably, doesn't favor this last transaction and for the past 10 years has refused to issue rulings on it. An attack likely would focus on the prohibitions against self-dealing that apply to all CRTs. As long as an independent person is controlling the partnership distributions, that trap should be avoidable. Regardless, higher (and new) taxes make CRTs arise like the proverbial Phoenix back into the stable of relevant tax planning strategies. ■

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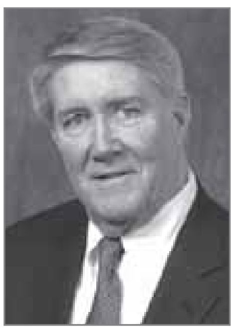
The "ART" in Estate Planning

By Michael P. Stafford, Esq.
Farrell Fritz, P.C.

There's a new "ART" to estate planning!

Until recently, no one connected Assisted Reproductive Technology ("ART") to the world of estate planning. It was only 35 years ago that the world's first "test tube baby" was born in England. But between 2000 and 2010, the number of children born in the United States using ART grew more than tenfold, to over 61,500 annually, representing approximately 1% of all live births in the U.S. As public awareness increases and reproductive technology steadily improves, this trend certainly will continue.


Michael P. Stafford

Because laws in Florida and virtually all other states have not kept pace with technological advances, it is incumbent upon consumers, guided by their estate planning professionals, to understand the basics of ART, and then to express their desires clearly in their estate planning documents.

As an example, what if your married son, a career soldier, is killed in action overseas? In contemplation of this possibility before his deployment, your son and his wife decided to freeze his sperm, and your daughter-in-law uses the sperm to conceive your grandchild two years after your son's death. You have a large life insurance trust under which your "descendants" will share equally after your death. In Florida, your ART grandchild would not be considered a "descendant," or "issue" of yours, because under F.S. 732.106, your ART grandchild was not conceived at the time of your son's death, but two years afterward.

Or suppose a son of yours is gay. With his family's support and encouragement, he has been in a relationship with his long-time partner (in a marriage or not), and the couple decides they want a child. The sperm of your son's partner is matched with the egg of surrogate mother, and the surrogate mother gives birth to a child, who is raised by your son and his partner.

In the first example, the ART child is in your bloodline, but will not be a "descendant" because of the time limitation in the statute. In the second example, the ART child is not in your bloodline and will not be a "descendant," unless legally adopted by your son. In both of these cases, you would probably want the opposite of what the law provides, and you could do so in your own documents. But what about documents created by your deceased parents? And suppose you never get around to updating your own documents?

Should Florida law be expanded to keep up with the realities of today's changing mores and exploding technology? In addition to F.S. 736.106, Florida has other statutes dealing with issues related to ART children, including "claims" by ART children against estates, rights to genetic material, and obligations of those involved in the ART process. But the statutes are unclear at best, and confusing at worst.

Because statutes are unclear, confusing and oftentimes conflicting, the Courts have been called upon to decide ART issues — many of them in the Social Security benefit context, or the Family Law context, like support issues.

In one such case involving a Florida couple, the Supreme Court of the United States denied Social Security survivorship benefits to two ART children, twins, who were born about 18 months after their father died of cancer. A natural child of the same couple received benefits. The Court said it had no choice because federal law said that to receive benefits, a child had to be entitled to inherit under the laws of the state where the family resided; and under F.S. 732.106, the twins did not qualify. If the family had lived in California or Colorado, the result probably would have been different.

The Florida Bar Real Property, Probate

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Michael P. Stafford of New York is an out-of-state representative to the Executive Council of The Florida Bar's Real Property, Probate and Trust Law Section, and a member of the ARTS Committee. He has served on the Board of Governors of The Florida Bar, and the Board of Directors of The Florida Bar Foundation.

Staying Out of the Rough:

WINNING STRATEGIES FOR PROFESSIONAL ATHLETES

David G. Bollis
and Michael L. Kohner
WTAS, LLC

In the midst of celebrating his British Open victory, one of America's favorite golf personalities was left begging for a mulligan after publicly expressing frustration over how little of his prize winnings he'd retain after U.S., California, and United Kingdom taxes. Although some empathy may have been lost on the fact Phil Mickelson earned several million dollars over a two-week period in Scotland, anyone with significant income and global affairs can sorely relate. Proper tax planning, as in the game of golf, demands a carefully aligned approach to avoid hazards and address opportunities.

As professional athletes' rankings and global popularity elevate, so will the complexity and scrutiny of their tax matters. Nevertheless, two fundamental issues every professional athlete should prepare for are their tax residency and classification of the various sources of their income (i.e., whether they are being paid for personal performance or royalties for the use of their image rights).


David G. Bollis


Michael L. Kohner

The U.S. and most states tax their residents on all worldwide income. As a California resident, Mickelson has the privilege of paying a combined federal and state income tax rate over 50 percent. He finds himself even deeper in the rough with additional foreign taxes (partially offset by foreign tax credits). To provide relief from a sizable portion of his total tax bill, Phil could do what many of us have already done; moving to South Florida could save him significant state income taxes.

For foreign athletes competing in the United States, classification as a nonresident alien in the U.S. results in only being taxed (for U.S. purposes) on earnings that are "effectively connected" with the U.S. Nonresident alien classification requires individuals to spend less than 183 days in the U.S. in any particular year and less than 120 days, on average, over a three-year period. Incidentally, competition days in certain charity events can be excluded from this calculation.

Effectively connected earnings, such as prize winnings and appearance fees, are taxed at graduated rates up to the federal maximum rate of 39.6%. This income can be offset by valid business deductions such as travel expenses to events and fees paid to managers, coaches, caddies, and trainers. This type of earnings is typically sourced to the location of the event and is subject to taxation by states with an individual income tax.

Endorsement contracts commonly include compensation for both the individual's performance of personal services and royalties for the use of the individual's image. Thus, payments received pursuant to these contracts should be properly allocated between each category. Any portion related to the performance of personal services will be treated as effectively connected income. If the individual competes internationally or has contracted with companies that have global sales related to the products they are endorsing, this income will need to be appropriately allocated globally (U.S. vs. non-U.S.). Again, state income sourcing determinations are relevant considerations because personal services income earned in an endorsement contract may be taxable where services are rendered.

Royalties earned from an endorsement contract may also be sourced partly within and outside the U.S. While U.S. sourced royalties earned by a nonresident alien are generally subject to mandatory tax withholding (at a 30% rate), tax treaty provisions between the U.S. and the nonresident alien's country of residence may provide more favorable provisions. Certain treaties apply a lower withholding rate or even effectively exempt royalties from U.S. income taxation.

Two recent U.S. Tax Court cases involving Retief Goosen and Sergio Garcia demonstrate important considerations regarding the allocation and character of the various sources of income. These cases highlighted several factors that are particularly relevant in determining the allocation of endorsement contract payments, including:

- Physical Presence:
  - Required attendance
  - Duration of time spent at specific events
- Personal Characteristics:
  - "Brand value" of the athlete/entertainer vs. absolute skill/ability
- Contract Provisions:
  - "On-course" (involving specific attendance requirements) vs. "off-course" characterization of contract arrangement
  - Exclusivity of endorsement

Regarding the allocation of the various items of income to the U.S. versus other jurisdictions, relevant considerations include:

- Days of physical presence
- Applicable global sales of the sponsor
- Applicable tax treaty provisions

Please see STAYING OUT, Page 26

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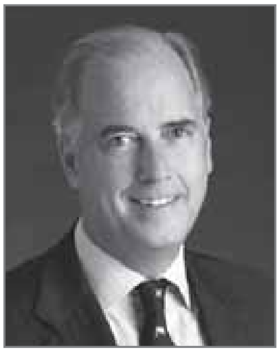
David G. Bollis, CPA, CFP® is a Director with WTAS LLC providing comprehensive tax, financial, and estate planning services to high net worth individuals, businesses, athletes, entertainers, and entrepreneurial families. His strategic areas of experience include income tax, wealth accumulation and transfer planning, and charitable planning, as well as investment and insurance consultation.

Current Threats to Your Retirement



Peter M. Burrus

When positioning one's portfolio for the future, investors should consider some current threats and how they can seek to mitigate them.

By Peter M. Burrus
PNC Wealth Management

Retirement planning often entails creating a portfolio that aims to meet individual cash flow needs while preserving capital and managing risk. These days it can be a tall order. With the goal of investing for retirement in mind, some current threats – including higher interest rates, loss of purchasing power, rising healthcare costs, and changes in net worth – are having a negative impact on the best-laid retirement plans. Fortunately, understanding these risks and implementing an appropriate asset allocation plan can help individuals achieve their retirement goals.

HIGHER INTEREST RATES

Following the financial crisis and subsequent Great Recession, the United States has been in an extended period of low short-term interest rates. Now, as the economy continues to slowly strengthen, it appears as though the low-interest-rate party could be drawing to an end. As such, it is important to look at all asset classes' potential reaction during times of higher rates when planning for retirement. We remind investors of the importance of fixed income to portfolios for preservation of capital, for income, and for low correlations of returns to stock returns, to name just a few considerations. However, it would be wise not to count on any price appreciation in bonds when projecting future returns.

LOSS OF PURCHASING POWER

Despite inflation remaining below the long-run average, investors preparing for retirement should be aware of the threat of declining purchasing power. Inflation chips away at purchasing power over time. Short-term interest rates are likely to remain low into 2015, creating a difficult environment for earning a positive real (inflation-adjusted) return from short-term bonds and cash at tolerable levels of risk.

Within bonds, an allocation to non-Treasury fixed income, such as municipal bonds, corporate bonds, or absolute-return-oriented fixed-income strategies, could be appropriate. A benefit of such an allocation is that it provides extra yield over and above Treasury bonds. There is also merit to adding alternative assets to portfolios, including Treasury Inflation-Protected Securities, as a method to retain purchasing power.

RISING HEALTH CARE COSTS

The consequences of a reduction in purchasing power are magnified when applied specifically to healthcare spending. It must be considered that health care could make up a larger share of consumption during retirement than in the younger years. The price of health care has been increasing rapidly over the past 70 years, which has likely already caught some retirees by surprise and is a reason government spending on health care (Medicaid and Medicare) has soared. The fast-paced rise in healthcare costs is problematic, leaving retirees on an uncertain path.

Although much uncertainty remains, it is not too hard to imagine a scenario in which government spending on health care declines, while the cost of health care continues to rise faster than inflation. This type of scenario is difficult to prepare for, but should be considered when developing a plan for retirement.

CHANGES IN NET WORTH

The threat of a sharp decline in net worth feels ever more pertinent in the context of the Great Recession. While the S&P 500 declined more than 50% peak to trough between October 2007 and March 2009, it has since rebounded. The decline in home prices has weighed heavily on net worth, and continues to remain a formidable threat for retirement.

Given our current expectations for a

Please see CURRENT THREATS, Page 26

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Offshore Trusts and Reporting Obligations

By Angela M. Klemack, Esq.
Duane Morris LLP

Offshore planning carries a false stigma of being something entirely illegal, particularly with the fierce and ongoing IRS crackdown efforts in recent years. However, under appropriate circumstances and when properly structured and maintained (including reporting and disclosure), offshore planning strategies are some of the most effective wealth protection strategies available.

THE BASICS OF OFFSHORE TRUSTS

A popular legal vehicle used in offshore planning is the offshore asset protection trust (commonly referred to as "OAPT") established in a jurisdiction outside the U.S. The goal of an OAPT is to assure that the trust assets are administered for the benefit of the grantor and the grantor's family, while protecting the trust assets from the reach of future unsecured creditors.

An OAPT is classified as a "foreign trust" under the Internal Revenue Code because the trust administration is not subject to the primary jurisdiction of a U.S. court, and no U.S. person has authority to control substantial decisions of the trust.

Certain jurisdictions are relatively more inviting for OAPTs for a variety of reasons, namely because the foreign jurisdiction does not recognize U.S. judgments, and it has implemented enabling trust laws and other favorable protections, such as shortened statutes of limitations and a higher burden of proof on a creditor for alleged fraudulent conveyances, each aimed at thwarting a creditor's collection efforts.


Angela M. Klemack

When a creditor has a U.S. judgment and demands payment from the OAPT, the non-U.S. trustee is not obligated to comply with the court order because the U.S. court does not have jurisdiction over the non-U.S. trustee nor the ability to levy on the OAPT. Thus, the creditor would have to re-litigate the suit on the merits under the laws of the jurisdiction where the trust is located in order to reach the trust assets. It is in the cost, uncertainty with a foreign court system and difficulty that a creditor encounters in attempting to collect from an OAPT that all add to the trust's appeal.

Robust asset protection stems from the grantor relinquishing control over the assets to a non-U.S. trustee. The protection the OAPT is designed to provide can be defeated if the grantor cannot part with control or any U.S. person retains too much control over "substantial decisions" (e.g. whether and when to make distributions, investment decisions, to remove and replace the trustee, etc.).

OFFSHORE TRUST REPORTING OBLIGATIONS

OAPTs are not designed to reduce or avoid U.S. income tax. Tax consequences can apply to the U.S. owners and U.S. beneficiaries of the foreign trust, and to the foreign trust itself, a discussion of which is beyond the scope of this article.

An OAPT necessitates tax filings with the IRS to report and disclose ownership interests and asset values held in foreign bank accounts. Taxpayers who maintain offshore entities and financial accounts and who do not comply with reporting and disclosure requirements risk severe penalties and fines, including criminal prosecution and prison.

In addition to income reporting, the following IRS forms must generally be filed annually to satisfy reporting and disclosure requirements:

- Form 3520 to report a U.S. person that creates or transfers money or property to a foreign trust, receives any distributions from a foreign trust, and receives certain gifts or bequests from foreign entities.
- Form 3520-A to provide information about the foreign trust, its U.S. beneficiaries, and any U.S. person who is treated as an owner of any portion of the foreign trust.
- TD F 90-22.1 (FBAR) to report a financial interest in or signature or other authority over foreign financial accounts.
- Form 8938 to report an interest in specified foreign financial assets.
- Form 1040, Schedule B, Part III to disclose an offshore interest.

CONCLUSION

Even though an OAPT may not protect a grantor's assets in every instance due to all the variables in each circumstance, including a creditor with the money and endurance to seek a local judgment to reach the trust assets, it provides one of the best (if not the best) asset protection devices available, and with proper planning can be extremely effective as a deterrent to creditors the vast majority of the time.

It should be apparent that while the cost of formation, maintenance and reporting may be considered substantial, for those in high-risk positions, the establishment of an OAPT integrated with their domestic estate plan will provide peace of mind for those looking to protect their assets and provide for their family, generations to come. ■

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Private Aviation and Your Business:

Important Factors to Consider

By H. Thomas ("Tom") Wagner
McGladrey, LLP

What you hear on the tennis court or golf course from a friend who owns an aircraft is probably not true. Let's begin by listing a few frequently misunderstood realities regarding private aviation and aircraft ownership:

1 *It's not like buying a car.*
2. *Tax benefits are not the reason to purchase an aircraft.*
3. *There is not one ownership structure that will solve all issues.*
4. *There is risk.*
5. *Assume that charging someone for transportation is not permitted.*
6. *Impatience will cost you money.*
7. *Single-purpose entities cannot operate an aircraft under Federal Aviation Regulation (FAR) Part 91 (General Operating and Flight Rules).*
8. *Documentation standards are not that onerous.*

Many entrepreneurs, businesses and ultra high net worth individuals will consider private aviation for a vast number of tangible and intangible reasons, including:

Tangible benefits

- *Travel-time savings for key personnel.*
- *Feasibility of last-minute trips without constraint of reservation availability.*
- *Costs of alternate transportation mode avoided.*
- *Enhancement of mental performance and physical endurance.*
- *Increased work productivity while en route.*
- *Transportation of company mail and cargo.*

Intangible benefits

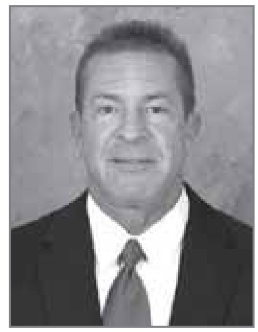
- *Business opportunities that otherwise would have been missed but for the use of a business aircraft.*
- *Flexibility of routing and scheduling which permits more efficient use of executive time.*
- *Enhanced customer relations resulting from closer personal contact, faster response to problems, convenient transportation to company and industry functions, expedited services and increased marketing impact.*
- *Enhancement of acquisition and retention of key personnel because executives recognize the value of effective use of business aircraft as a powerful business tool.*
- *Support of corporate community service programs through selective use of business aircraft in providing emergency services, special events and charitable transportation.*

As your analysis progresses in favor of private aviation, many important factors must be considered, such as 1) Federal Aviation Administration (FAA) rules and regulations, 2) federal income tax, 3) state and local tax, 4) financing, 5) corporate ownership structure, operating structure, and 6) overall risk and cash-flow analysis. Your decision process should be multidisciplined, requiring a team of aviation experts to ensure success, whether the aircraft will be used for business purposes, personal use only or a combination of the two.

HOW WILL THE AIRCRAFT BE USED?

Initially, the anticipated usage must be considered as well as a best estimate of the number of hours you expect to use the plane. Where will you be flying, how frequently, what kind of weather conditions at departure and destination are expected, what's the speed required to get to and from, and how many passengers are expected for each trip? These items will help to determine the best type of structure to consider, and what type of aircraft is appropriate.

Next, you must consider whether to buy, lease or enter into fractional ownership. Often the determinative factor in this step will be the forecasted amount of usage. Certain rules of thumb exist but must be considered in concert with your anticipated needs. Considerations like the need for depreciation expense, desire to reduce cash outflows, length of time needed, risk tolerance on long-term valuations, and frequency of on-demand and unplanned travel will impact this decision.


H. Thomas Wagner

CHARTER OR OWN?

Should charter be selected as a strategy to fulfill the need for private aviation, many options exist. Local charter providers offer reasonable pricing, yet sometimes provide limited options based upon the availability and type of aircraft found in the charter fleet. National charter providers may allow for more flexibility in aircraft selection and availability and offer fractional ownership programs, which allow you to have a direct interest in a particular type of aircraft without the full burden of ownership.

Ownership brings more flexibility but also more responsibility. Ownership requires the hiring of pilots, managing maintenance and repair needs, managing and maintaining detailed records, and determining and maintaining the location of a

Please see AVIATION, Page 28

H. Thomas ("Tom") Wagner, Jr. is a tax partner with McGladrey, LLP who oversees private aviation matters for the firm's Family Wealth Services practice. In this capacity, Tom works with serial entrepreneurs and ultra high net worth individuals and families on income, estate and gift tax planning, strategy, and compliance matters.

An Overview of Long Term Care Options

By Anné Desormier-Cartwright,
Esquire Charter Member of Elder Counsel

One of the greatest concerns for the elderly we serve and their families is that of long term care. Two-thirds of seniors will need care at some point in their life, and many have not planned for this likelihood. It is an emotional and unpleasant topic to broach, but helping those we serve to plan ahead empowers them. This article will focus on information necessary to assist the elderly in making decisions that will likely eventually affect them and their loved ones.

PLAN AHEAD

According to the Centers for Disease Control, the average life expectancy at birth in the U.S. is projected to be approximately 79 years by 2015 and is projected to continue to rise. Someone already 55 years of age has a higher life expectancy of around 84 years. Since health declines as we age and we become more likely to need help with everyday activities, it is smart to consider what options will be available if and when assistance is needed. Thinking about these things now helps avoid making improper decisions during more stressful times when health has already declined to the point of needing assistance.

CARE OPTIONS

There are several different levels of care available to elders as they age depending on their need for assistance. Each level of care may include a medical and health component, a personal care component, and/or a social and recreational component.

The least invasive type of care is adult day care, which costs, on average, $18,200 per year. These services include some combination of medical, health, and/or social services, and offer a supportive group environment for seniors with cognitive and/or functional impairments. These types of facilities are regulated differently in each state and are not federally regulated.

Home care, which consists of either a home health aide or a companion/homemaker, is another type of assistance available to seniors. The national average cost for home care is approximately $21,300 per year (based on a $20-$21 hourly rate). This type of assistance allows the senior to "age in place" as an outside service comes into the home to help. Caregivers are hired through a variety of methods including agency, registry, or private hire. Each state licenses and regulates its home care agency system except for Medicare-certified agencies, which must comply with Federal regulations.


Anné Desormier-Cartwright

The next level of care is an assisted living facility (ALF). The national average cost of staying in an ALF is $42,600. Depending upon the chosen level of care, an ALF may provide services ranging from care management, assistance with everyday activities, housekeeping, medication management, security, transportation, meals, and social and recreational activities. ALFs are governed by state standards and may include increased standards for communities with residents suffering from Alzheimer's or other forms of dementia. ALFs may also have staff training requirements or disclosure requirements relating to these diseases. Medicaid benefits may be available for residents of an ALF depending on current fiscal funding.

Finally, nursing homes are available to those who require the most assistance. The national average annual cost of nursing homes is $81,030 for a semi-private room or $90,520 for a private room. Nursing homes typically provide a secure environment and services to meet the physical, medical, and social needs of their residents, such as: room and board; nursing care; medication management; personal care; and social and recreational activities. Many patients in nursing homes require assistance with multiple everyday activities (bathing, dressing, eating, toileting, transferring in and out of chairs or beds, and continence) and/or have cognitive limitations due to various forms of dementia. Nursing homes, like ALFs, are subject to state and federal regulations. Certain nursing homes accept patients who are qualified for Medicaid, which helps cover the costs of nursing home services.

PLACEMENT CONSIDERATIONS

It is important for the senior and family members to comprehend the services needed and the service provider's policies on included services. Providers generally use a basic services contract specifying the included services as well as those they offer at an additional charge. It is imperative that the senior or the senior's advocate has a clear understanding of the contract being entered into on the senior's behalf, including who is obligated to pay for the services provided.

Another important consideration is the service provider's policy regarding staff qualifications and their training and education requirements. For example, some providers have staff trained in handling patients with dementia while others may not. Another consideration is whether the service provider is a freestanding facility/entity or whether it is connected to an-

Please see LONG TERM CARE, Page 28

Anné Desormier-Cartwright focuses her practice on the needs of the elderly including Medicaid and Veterans Pension Benefits planning, estate and trust planning, probate and trust administration and litigation, real estate matters and elder exploitation cases. She is a former assistant county attorney and has been involved in hundreds of civil trials in her almost three decades of practicing law.

*Statistics from: *The 2012 MetLife Market Survey of Nursing Home, Assisted Living, Adult Day Services, and Home Care Costs, November 2012. www. Metlife.com*

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To comply with the U.S. Treasury regulations, we must inform you that (i) any U.S. federal tax advice contained in this newsletter was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax advisor based on the taxpayer's particular circumstances.

The Benefits of Having A Corporate Trustee

By appointing a corporate trustee, you will have a team of dedicated, full-time trust professionals working to administer your assets.

Christopher Facka

By Christopher Facka
BNY Mellon Wealth Management

In trust planning, one of the most important decisions to be made is the appointment of a dependable trustee to ensure that your wealth is managed and distributed according to your wishes. When selecting a trustee, many people consider a trusted family member or a close friend for the role. Family members and friends, however, rarely have a full understanding of the issues and responsibilities involved in the process. In many cases a corporate trustee adds depth of resources and objectivity that an individual could not provide.

ROLE OF A TRUSTEE

A trustee is a representative of the trust's establisher or grantor and is responsible for administering the various terms set forth in the trust documents. It is the responsibility of the trustee to invest trust assets appropriately and prudently. The trustee also provides accounting (assets, liabilities, receipts, disbursements, records of trustee actions and routine trust actions; income, estate and gift taxes) and communicates information to the relevant parties. When working with multiple beneficiaries, the trustee should treat each impartially.

BENEFITS OF A CORPORATE TRUSTEE

By appointing a corporate trustee, you will have a team of dedicated, full-time trust professionals working to administer your assets. A corporate trustee can also be named to serve in the future as a successor trustee. Unlike with an individual trustee, continuity with a corporate trustee is rarely an issue. A corporate trustee will have professionals that are knowledgeable in the fields of tax, accounting, real estate, and closely held businesses. They also are current on tax and legislative changes affecting estate planning issues. Each trust professional should have a depth of experience collaborating with attorneys, accountants, and other advisors and be supported by extensive corporate resources.

Some corporate trustees can manage and administer all asset types, including non-traditional and unique assets and can employ strategic asset allocation in managing a client's investment portfolio.

Along with a depth of investment expertise, a corporate trustee is able to provide objective execution of trust provisions. A corporate trustee is not beholden to the special interests of beneficiaries, but acts impartially in the best interests of the trust. The trustee can also serve as a neutral intermediary to resolve any conflicts that arise among beneficiaries. Aside from providing specialized professional skills, a good corporate trustee should also have the tools to deal with heightened emotional issues and bring sensitivity, tact, and compassion to the fiduciary process.

A frequent objection to using a corporate trustee is that it will cost too much. In actuality, however, compensation paid to a corporate trustee is no greater than an individual fiduciary is entitled to charge. An individual trustee would most likely have to retain the services of a number of different professionals or entities, such as accountants, lawyers, and investment managers, who have likely never worked together or who may not be able to coordinate their efforts. With a corporate trustee, trained specialists minimize expenses through efficient trust management and administration and economies of scale. ■

Christopher Facka helps clients and their families assess various options for preserving, growing and transferring family wealth. He received his BA from Harvard University, MBA from DePaul University and has the CERTIFIED FINANCIAL PLANNER® designation. BNY Mellon Wealth Management is the world's oldest and largest corporate trustee encompassing all trust types including marital, generation-skipping and charitable trusts.

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Pursuant to IRS Circular 230, we inform you that any tax information contained in this communication is not intended as tax advice and is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

The New Paradigm of Retirement Income Planning

Here are some new ways for investors to produce income.

Anthony Cottone

By Anthony Cottone, CFP

Anthony Cottone

Today... income investors are battling a low interest rate environment, currently reinforced by the Fed's $85 billion-a-month Treasury bond purchasing spree. The time is now near for the Fed to consider easing its monetary policy, which could have a dramatic negative effect on current bond valuations. With interest rates at all-time lows, current bondholders could lose money until their bonds mature. This is because as interest rates rise, existing bond values may go down as new bond issues tout better rates. If current bondholders do not sell, they could wind up losing a considerable amount of their portfolio to bond declines and inflation. Of course, they will receive 'Par' at maturity —though what $1,000 will be worth in the future is impossible to tell.

It may be a very hard pill for bond buyers to swallow, but the 30-year bond bull market appears to be over and it may be time for investors to find new ways to produce income. One option is liquidating bond portfolios while values are up and attempting to boost income by utilizing BDCs, REITs, Royalties, Direct Energy Investments and Annuities.

BUSINESS DEVELOPMENT COMPANIES (BDCS)

One category of investment alternatives to consider is Business Development Companies (BDCs). In a nutshell, BDCs loan money to small and midsize businesses at high interest rates (9%-12%) and secure the loan with hard collateral assets. Investors can buy into a BDC loan portfolio and participate by receiving monthly income loan repayments. With distributions of about 8% annualized to investors, BDCs are currently receiving considerable investment inflows. Many BDC loans are "senior secured" debt, meaning that in the event of bankruptcy, they must be paid before junk bonds. Also, many BDC loans carry floating interest rates that help to mitigate the risk of price declines if rates broadly rise. In addition, BDCs typically have relatively little competition as their customers are generally too small to tap the bond market, and commercial banks are finding such lending less attractive in the wake of new capital requirements.

REAL ESTATE INVESTMENT TRUSTS (REITS)

REITs invest in different types of Real Estate such as hospitals, commercial and residential property, computer data centers, and storage facilities, to name a few. REITs receive income from rent payments that are then distributed to shareholders. The problem with some REITs in the past has been their exit strategy, so it is important to learn how to liquidate the investment.

ROYALTY INVESTMENTS

Another way to invest in income-producing assets is through the purchase of royalty licenses. This is one asset that sees little market liquidity as many owners hold on to them long term, but we were able to find one way to participate in the space. In the oil and gas energy arena, investors can purchase mineral land royalty rights of currently producing energy fields. Royalty owners receive a gross 20% licensing fee for any oil produced on their land and have none of the risk associated with the costs of drilling (note that the investment itself does still present risk of loss of some or all of the principal invested). Institutional investors like Harvard, Yale, and Stanford have been participating in this market for decades. One of the largest royalty acquirers in the U.S. has an audited track record of 8.7% annual IRR to its investors over the last ten years and holds $1.3billion in mineral rights. Investors can purchase a small percentage of over 1,000 wells in the hopes of receiving royalty payments. The royalties will fluctuate with the current price of energy, but can last several 35 years or longer.

DIRECT ENERGY INVESTMENTS

The demand for oil has continued to increase. In fact, the world currently consumes about 85 million barrels of oil per day , which means that drilling is happening almost everywhere on a massive scale. Oil is used in many household products such as tires, computers, paint, and about one million other products; even the environmentally conscious Toyota Prius owner cannot escape the fact that the car itself is made of 27 barrels of oil. One way to play this investment in your own back yard is by looking at the Bakken Shale oil region of North Dakota, now home to the second-largest oil supply in all of North America. New technology that allows for sideways drilling has created a huge burst of drilling in the region with some investors receiv-

Please see NEW PARADIGM, Page 28

Tax Tips that Could Save You a Fortune

By Jennifer Lynch Ridgely
Principal, Daszkal Bolton Family Office

What are the two things you can't avoid in life? Death and taxes, of course! Although we, unfortunately, can't help with the Grim Reaper, we can, with proper planning, help you significantly reduce your tax burden. Here are some tips:

Tip 1: Maximize Your Itemized Deductions

Deductions reduce taxable income. The higher your bracket the more valuable they are. Make sure they are being maximized!

Tip 2: Double Check Withholding

An additional 0.9% Medicare tax is owed this year on earned income greater than $200,000 (single) or $250,000 (married jointly). Employers are only responsible for checking their employees' income without regard to their spouses. Should your combined wages exceed $250,000, you will still owe the additional levy on your joint income and trigger an underpayment penalty. Beware!

Tip 3: Consider Investment Income Not Subject to New Medicare Tax

Municipal bonds and other tax exempt investments are not subject to the tax. Neither are Qualified Plan distributions from IRAs, 401(k)s, 403b plans or other qualified pensions.

Jennifer Lynch Ridgely

Tip 4: Manage Your Capital Gains

Defer, defer, defer is the word! Consider an installment sale to spread the realized capital gain over the purchase period. Taxes are paid only on the portion of gain received in any one year. Alternatively, roll your ENTIRE capital gain into another property using a section 1031 exchange. By "trading" one property for another, any gain is deferred until the new property is sold.

Tip 5: Take Advantage of Gifting Opportunities for Appreciated Assets

Are you charitably minded? Consider gifting appreciated property rather than cash. You then benefit from the deduction of the current market value of the asset and never realize the gain. Alternatively, gift appreciated property to family members who are in lower tax brackets. Or, establish a Charitable Remainder Trust (CRT) to secure a current deduction of the contribution while retaining the investment income for a term certain or the remainder of your life. The corpus reverts to the charity upon your passing or at the end of the term.

Tip 6: Take the Losses

Remember to harvest your losses! Review your portfolio with your investment advisor before year end to cull out those securities showing a loss. If the long term prospects remain viable, your advisor may still buy them back after 30 days to secure the deduction. Are you holding worthless securities? Any capital asset that becomes worthless during the year is treated as if you sold the security on the last day of the tax year. And, that loss can offset your other gains!

Tip 7: Take Advantage of Tax-Deferred Accounts

Maximize your pre-tax contributions! Contributions to 401(k)s or other tax-deferred retirement plans reduce your taxable income and could place you in a lower tax bracket thus avoiding the healthcare bill surcharge. Similarly, contributions to a health savings account reduce taxable income and grow tax-deferred. Funds can be withdrawn tax-free for qualified medical expenses.

Tip 8: Make Charitable Gifts from Your IRA

Are you over 70 ½ years of age? If so, you are eligible to distribute up to $100,000 to a charity from your IRA. These charitable distributions replace your Required Minimum Distributions dollar-for-dollar thus reducing your taxable income.

Tip 9: Gift Income-Producing Assets

Are your personal needs met? Consider gifting income-producing property to other family members whose income is below the thresholds.

Tip 10: Take Advantage of the Annual Exclusions for Gifts

$14,000 is the magic number now! For 2013 and assumed for 2014, the first $14,000 ($28,000 if married and gift splitting is elected) of gifts to any person or entity is not included in the total amount of taxable gifts made during the year.

Tax Tip 11: Consider Your Portfolio Account Types

Where should you place your equities and other growth assets? The answer is: in your tax-deferred accounts! Alternatively, keep the more tax-efficient investments in taxable accounts. Are you in need of income? Consider investing in non-AMT municipal bonds and/or dividend income stocks subject to qualified dividend treatment in your taxable accounts.

Any tax law change can create confusion and uncertainty. My hope is these tips will serve to clarify many of the new changes and identify the opportunities available to you. Certainly, everyone's tax situation is different, so judge each tip in light of your own unique circumstances. And, as always, please consult the advice of your tax preparer to confirm their suitability. ■

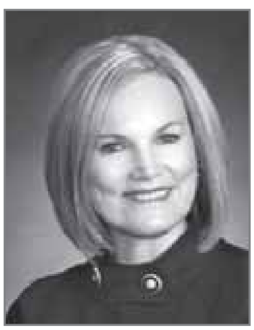
Jennifer Lynch Ridgely is the Principal in Charge of Daszkal Bolton Family Office. Jennifer brings over fifteen years of tax, accounting, investment reporting, and management experience serving high net worth individuals, families, and their closely held entities. Her focus has been tax, compliance issues, estate and trust planning, asset/portfolio/investment reporting, cash management, and succession planning needs.

Family Wealth – Overcoming the Legacy Gap

Communicate effectively for a harmonious transfer of wealth

By Suzanne Holmes
PNC Wealth Management

Over the next several decades, our country is expected to experience the largest transfer of wealth in history. Indeed, the nationally noted projection that a wealth transfer of at least $41 trillion will take place in the United States by the year 2052 remains valid.* However, the way in which that money changes hands from one generation to the next could throw a monkey wrench into family harmony if not carefully orchestrated through effective communication.


Suzanne Holmes

Those of us in the financial services industry frequently experience the ill effects of the "best laid plans." Good intentions for transferring wealth can go heartbreakingly awry when these plans are made without considering the impact on family members. Often, a lack of effective family communication can be blamed for turning a well-intentioned estate plan into sheer disaster.

Passing on Values as Well as Valuables

We all have the technical tools and knowledge to provide guidance: attorneys draft brilliant trust documents, CPAs excel at finding the most tax-efficient ways of helping to protect the assets to be passed down through the generations, and financial professionals understand their clients' financial goals and construct portfolios that potentially should provide income and growth during their lives. Many of these professionals also have the skills and knowledge to help protect, preserve and implement estate plans. We learned, however, that this complementary technical knowledge, while essential to good planning, is enhanced by the vital assistance provided by a trusted advisor who can serve our clients' best interests.

The bottom line is that an effective trust document, tax strategy, and gift plan, without taking into consideration the story of a client's life, goals, dreams and aspirations, may cause unnecessary turmoil within the family.

In "Boomer Legacy Yearnings" (from the book *The Power Years* by Dr. Ken Dychtwald) we learned that a survey of 2,267 boomers and their elders, undertaken by Dr. Dychtwald and the Allianz group, showed that "values are not valuables." Those surveyed were uncomfortable discussing inheritance out of context with their lives. What they most wanted was to share family stories, traditions and history, values and hopes.

We have found that there is a "legacy gap" when families talk about inheritance. That is, the conversations that occur within a family regarding wealth planning are often not meaningful or productive as they tend to exclude those important aspects of

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Suzanne Holmes serves the needs and best interests of clients. Her 35-year career has been devoted to providing investment management and trust services. Suzanne received a B.A. and M.A. at the University of Delaware. She is a Certified Financial Planner™ and Chartered Advisor in Philanthropy®. Her community activities are many.

Art Collector or Art Investor?

(Uncle Sam Gives Investors the Better Deal)

By Rebecca G. Doane and Randell C. Doane
Doane & Doane

In recent years, many segments of the art and collectibles markets have seen spectacular growth. Ensuing profits have caused many collectors to consider whether they can be classified as "investors" in order to receive more favorable tax treatment. The distinction between collector and investor determines whether you can postpone paying the capital gains tax on sales, and also whether you will be allowed more favorable deductions for the expenses of maintaining your collection. Whether you are classified as an art collector or an art investor can have a significant impact on the ultimate value of your collection.

Most collectors have mixed objectives when buying art or collectibles. Some are primarily motivated by the pleasure and enjoyment they receive from owning the pieces they acquire, and may have only a vague notion of someday making a profit. Others may derive satisfaction from owning their pieces, but are primarily motivated by the hope of growing the value of their collection, and may view art as just one segment of a diversified investment portfolio. An experienced lawyer or accountant can help you assess where you lie on the collector/investor continuum, and may be able to suggest strategies to move you from the collector to the investor classification.

Many enthusiasts hope to increase the value of their collections through the sale of pieces that have peaked in value and the reinvestment of sale proceeds in undervalued pieces they believe will appreciate. Unfortunately, high income collectors will pay nearly one-third of the sales profit in capital gains tax, leaving only two-thirds to purchase new art. Postponing that tax can have a dramatic effect on the ultimate value of your collection. One study showed that investors who utilize like-kind exchanges, instead of paying the capital gains tax after every sale, would accumulate nearly three times the value over a 30-year investing career. The average investor may not see that dramatic of a difference, but deferring gains taxes with like-kind exchanges will make a huge difference for most investors.

Rebecca G. Doane & Randell C. Doane

The mechanics of utilizing a like-kind exchange are not difficult. Suppose you want to dispose of your Picasso and you want to acquire a Monet which you believe has greater appreciation potential. If you sell the Picasso and use the proceeds to purchase the Monet, you will need to send nearly one-third of the capital gain to the IRS. On the other hand, if an art broker is willing to serve as your "qualified intermediary" (which many are willing to do), you will enter into a like-kind exchange agreement with the broker who will dispose of the Picasso and use the sales proceeds to purchase the Monet on your behalf. If the "replacement" art is more expensive than the "relinquished" art, you will need to add cash to the deal. If the relinquished piece has the greater value, you will receive the difference in cash, but a portion of the capital gains tax will be owed.

There can be considerable cost in acquiring and maintaining a collection, including cleaning, framing, air conditioning and humidity control, security equipment, insurance, and travel and other buying expenses. To the extent those expenses can be deducted, the resulting tax savings will contribute to the amount of additional investment that can be made in the collection. If your annual expenses equaled 5% of the value of your collection, and if you were in the highest tax bracket, the tax savings could provide an additional 2% investment in the value of your collection each year. Over a 30-year art collecting career, you would have nearly twice the value of art.

In order to qualify for the tax deferral, and the most favorable expense deduction rules, you must be classified as an investor. IRS regulations list nine factors to consider. No single factor is determinative, but the more you can answer yes to the following questions the closer you will move to the investor category. Do you maintain detailed records of your purchases and sales? Do you regularly, or at least occasionally, dispose of pieces? Do you have at least a portion of your collection in storage and not displayed in your home? Do you believe that works of art are a hedge against inflation? Do you consult with experts and read pertinent publications to develop expertise? The ultimate question is your primary motive in purchasing art or collectibles, and if that motive is to make a profit, you should qualify as an investor.

With increasing art values and the current challenges in the securities markets more collectors are beginning to expand their collections with the purpose of making a profit. Those collectors should be able to qualify as investors and receive more favorable tax treatment. Resulting tax savings can be used to further expand their collections. ■

A principal of Doane & Doane, P.A., Rebecca G. Doane is Florida Bar board certified in wills, trusts and estates. She holds the highest rating ("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.

FAMILY WEALTH

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the family's values noted above.

As financial professionals, it is rewarding to help families overcome the discomfort they may face when making these life changing decisions about wealth transfer. The Dychtwald study concluded that the ideal "legacy advisor" must have the top qualities both generations look for: honesty, trustworthiness, compassion, ability to listen and to be a strong communicator with each generation.

Open Conversation is Key

It has been our experience that the most successful plans are those that are put in place as the result of families having open, thorough conversations with all of their advisors – attorneys, accountants and financial advisors. Meeting together, if practical, to evaluate the possible impact of your decisions is an important first step.

At that meeting we encourage family members to share their goals and aspirations. Otherwise, the chances for disappointment and family strife rise exponentially. Speaking frankly and openly with your children, grandchildren, and those who may benefit eventually from your planning is essential to achieving your goals. We sometimes call this the "Thanksgiving Table Conversation." However, the holidays are probably not the best time to address these important and sensitive matters if you want to avoid mashed potatoes and gravy flying through the air.

Well-trained attorneys, CPAs and financial advisors can help you frame conversations, guide you in discussing your goals and, if needed, refer specialists who work with you to achieve your goals while maintaining family harmony. You may be surprised to know what the next generation is thinking. It is important to learn if there are divergent expectations which, in some cases, must be overcome in order to maintain family harmony. Your trusted advisors can help you achieve your vision by guiding those important family discussions as you plan for the future – together. ■

**Source: http://www.bc.edu/research/cwp/features/wealth.html*

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STAYING OUT

From Page 16

- Legal structure
- Residency and domicile

Given that a suitable allocation and characterization of these types of payments is innately subjective and fact specific, maintaining appropriate records and supporting documentation is imperative. Accordingly, with respect to any endorsement contracts, careful effort should be made to support the tax reporting position(s) taken regarding the allocation and character of these payments.

We concede that the tax law intricacies and treaty provisions that may apply in the various places a professional athlete spends any time may not be their primary focus. However, developing a well-informed strategy that thoughtfully aligns the personal characteristics of the athlete, where he or she works and plays, and the various sources of earnings, should help bring a bigger share of the purse back to the clubhouse. ■

CURRENT THREATS

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modest housing recovery, it could take until around 2020 for house prices to reach their pre-housing-bubble peak. This means the decline in wealth is essentially permanent for many people nearing retirement. One way a retirement portfolio can be protected from an unexpected decline in wealth is by setting proper expectations. For individuals still far away from retirement, we believe these concerns should be factored into retirement planning.

AN APPROPRIATE ASSET ALLOCATION IS VITAL TO SUCCESS

Being too conservative with an asset allocation exposes an investor to the risk of a negative real return over the medium- to long-term. Conversely, there also is a risk of being too aggressive, putting at risk capital that may need to be drawn upon in the nearer term.

When one factors in the many risks retirees face, it becomes clear how important a solid long-term asset allocation approach is when positioning portfolios for near-term and long-term market and economic scenarios. Selecting an appropriate long-term strategic asset allocation that matches an investor's goals, risk tolerance, and investment holding period is vital to managing funds set aside for retirement. ■

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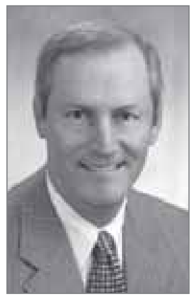
Florida Family Trust Company Legislation

By Stephen G. Vogelsang
Gunster's Private Wealth Services

Wealthy families have formed family offices for decades to attend to a variety of family needs including coordinating investment management, income tax planning, gift and estate tax planning, management of household staff, insurance planning and bill paying. Family offices are typically run by family members, trusted executives who worked in family business ventures or by a family accountant or lawyer. Family offices serving the needs of a single family aren't usually economically advisable until a family's investable wealth exceeds $100 million.

Individuals who run the family office are frequently asked to serve as trustees of family trusts. Many families may also reach out to traditional public trust companies to serve as co-trustees with family office personnel – particularly in the case of trusts designed to last for multiple generations. Sophisticated family office executives are becoming more reluctant to serve as trustees of family trusts, however, because of fiduciary liability concerns. If family trust investments underperform, trustees may be sued. If beneficiary distribution requests are denied or if tax planning is inefficient, trustees may be sued. The fiduciary litigation environment is convincing trusted family advisors to decline service as trustees of family trusts. Unfortunately, traditional trust companies are not always a viable alternative


Stephen G. Vogelsang

to individual trustees. Many families own nontraditional assets which aren't appealing to trust companies. Extremely wealthy families frequently own large blocks of stock in public companies which trust companies may seek to diversify against family wishes, or a family may own valuable real estate assets or interests in operating family businesses which they would like to manage through family trusts. In addition, wealthy families often engage in sophisticated estate planning which may have resulted in family assets being held through closely-held entities such as family controlled partnerships or limited liability companies. Public trust companies have bona fide fiduciary liability concerns which would make them think twice before serving as the trustee of any trust which holds large, undiversified blocks of stock, illiquid interests in real estate, interests in closely-held businesses or other non-traditional assets.

In order to respond to the void created by these fiduciary liability concerns, Florida is considering legislation that would allow for the formation of so-called "family trust companies" or "FTCs." FTCs are trust companies which limit their services to family members, spouses and former spouses of family members, business entities owned or controlled by family members, trusts funded by or for the benefit of family members, certain charitable entities controlled by family members and a limited number of current or former FTC employees. FTCs are strictly prohibited from offering their services to the general public and are therefore subject to significantly less regulatory oversight than public trust companies. The FTC legislation is also specifically designed to allow the FTC to maintain investments in the sort of illiquid or non-traditional assets frequently owned by high net worth

Please see FAMILY TRUST, Page 31

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A Nurse's View
of Estate Planning

The number of people living to 100 or greater has more than tripled in the past 20 years. That means if you retire at 65, you may have 30 years or more to live on an income comprised only of savings and social security.


Yvonne Sue Stutzke

By Yvonne Sue Stutzke, RN
Nightingale Private Care

As a Registered Nurse, I have been caring for people in their homes for almost 15 years. When I relive the wonderful memories of standing beside those in my care as they aged safe and secure in their homes, the image of a couple in their 90s, packing their suitcases, still deeply saddens me. They were told that their "money had run out," and they needed to move into a care facility. The wife told me they had worked hard and saved all of their life, and she couldn't understand what was happening. What neither of them had planned for was living well into their 90s suffering the ravages of Alzheimer's, osteoporosis, and diabetes. For nearly 10 years, they had paid for help so they could remain at home. They still had more years ahead. Their plan for long-term needs simply hadn't taken into account all of the possibilities we all face today as we age. I still think of them often and try to

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NEW YORK STATE

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of Appeal and is currently awaiting action on the case by the Court of Appeals. A determination from the Court of Appeals will hopefully provide more clarity on the permanent place of abode requirement of the statutory residency rules.

In New York State Department of Taxation and Finance Advisory Opinion No. TSB-A-12(4)I (Aug. 28, 2012), the Department addressed whether a petitioner's interest in a private, member-owned residential club in New York City qualified as "maintaining a permanent place of abode" for purposes of determining New York State residency for New York income tax purposes. The Department concluded that the petitioner was not "maintaining a permanent place of abode" in New York solely by reason of his interest in the club.

The Department examined several factors and circumstances that have previously been held by the courts to be relevant in determining whether a person has established a "permanent place of abode" in New York. Such factors include, but are not limited to:

(i) Free and continuous access to the dwelling;
(ii) Contribution to household expenses;
(iii) Provision of furnishings or personal effects; and
(iv) Regular use of the dwelling as convenient access to and from place of employment.

In reaching its conclusion, the Department cited several Tax Appeals Tribunal decisions regarding the permanent place of abode requirement. In the Evans case (also cited by the Tribunal in Gaied), the Appellate Division affirmed the Tribunal's determination that the taxpayer's use of a room in a rectory constituted maintenance of a permanent place of abode because the taxpayer contributed to the household expenses, kept personal belongings and received guests there, had exclusive use of his room and unlimited access to other rooms on the property, and used the residence as a convenient access to his full-time job.

The Tribunal's conclusion in Gaied that when a property right exists "it is neither necessary nor appropriate to look beyond the physical aspects of the dwelling place to inquire into the taxpayer's subjective use of the premises" appears to be inconsistent with the Department's position in TSB-A-12(4)I and prior Tribunal decisions that held that the taxpayer's use of the premises is indeed relevant in determining whether a permanent place of abode has been established.

All residency cases are fact-specific, so it is imperative that taxpayers keep a detailed account of their travel records and contacts with the state. ■

AVIATION

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hangar. In addition, the initial acquisition of an aircraft is a detailed, laborious and an involved regulatory process that cannot be cut short.

Purchasing an aircraft requires the following aviation experts: legal, appraiser, CPA, broker and financier. When selecting an aircraft it is critical to have the aircraft and its flight and maintenance logs fully reviewed, inspected and appraised by an experienced professional. Once the aircraft is delivered, ownership and operation proceed in the structure determined during the acquisition analysis.

FAR Part 91 (noncommercial) aircraft usage is categorized in one of three ways for every single passenger of every flight leg and documented accordingly: 1) business flight, 2) personal non-entertainment flight, or 3) personal entertainment flight. Keep in mind, each category has an impact upon the deductibility of private air travel and requires strict log and corroborating documentation.

Private aviation has tremendous benefits to travelers and businesses alike. Comprehensive, thorough and detailed analysis and ongoing attention to compliance detail are necessary to maximize aviation benefits to the private aircraft consumer. Your overall decision process often requires a consulting team, your strategic copilot with expertise in the aviation industry to help you navigate the challenges and turbulent winds of federal, state and local regulatory matters. ■

NEW PARADIGM

From Page 22

ing 10% -40% income annually . Another great perk is that investors participating as a general partner can also write down their income taxes by the amount invested (AMT may apply).

ANNUITIES

Annuities have always been a staple for the income investor but have recently undergone some transformations. Annuities have always guaranteed income for life, which is quite helpful for those who plan on living into their 80s and 90s. Newer Equity Indexed Annuities (EIAs) allow investors to participate in some of the stock market upsides while offering downside protection. The real strength of the asset is with the living benefit rider that guarantees a larger income check each year one delays income, much like Social Security. Some newer EIAs also provide a long-term care benefit feature and a death benefit feature. Variable annuities also offer income and death benefit guarantees and have more room for upside growth but have higher fees to consider. Fixed rate annuities are currently outperforming CD rates at around 3.5% for a five-year annuity.

With several income alternatives in place, bondholders and income seekers should consider the new paradigm of retirement income planning. ■

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LONG TERM CARE

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other facility. For example, some ALFs are associated with or somehow connected to an assisted living community and/or hospital. This is important in the event a patient can no longer live in an ALF environment and must transfer to a facility that provides a more comprehensive level of care.

Individual preferences should be considered in determining the proper placement for anyone requiring long term care. For instance, facility aesthetics, proximity to one's family and friends, familiarity with the surroundings, and the personalities of other residents and staff are all very important considerations.

It is important that the senior's specific needs are contemplated in determining a proper placement. Preparing a list of questions to ask of residents and staff will assist in making the right choice. Also, the senior and the senior's loved ones should make their own list of necessary services to be provided and specific preferences desired. Financial, medical, social and spiritual needs must be considered as well as the senior's personal preferences.

CONCLUSION

Determining the appropriate level and type of care is one of many challenges facing seniors and their loved ones. Other challenges include: how to pay for the care, what long term care insurance to buy, knowing what rights the senior has, understanding what Medicare will and will not cover, and making sure that the appropriate legal documents are in place to carry out the senior's wishes. Families can overcome these challenges through proper legal planning and by taking a comprehensive look at each situation to determine the best course of action for the senior. ■

COMMUNICATING

From Page 11

relationship between wealth, spending, saving, and giving. An added bonus: your children are more likely to become effective stewards of your family's wealth. ■

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PHILANTHROPY

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In Palm Beach County, a group of thoughtful and well-credentialed professionals have gathered recently to form an organization called Advisors for Philanthropic Impact (API). The mission of API is to inspire and assist donors in creating and implementing their philanthropic legacy through education and collaboration among a network of multi-disciplinary professional advisors. The group includes attorneys, accountants, wealth advisors, insurance and non-profit professionals all collaborating together. API is focused on creating a charitably minded community here in Palm Beach County. One of the lead initiatives of the group is to bring a curriculum about philanthropy to our local schools and other professionals. API believes that the concept of charity should be taught in our community both at home and at schools. The curriculum includes understanding the role of the charitable sector in our economy, evaluating a charity's mission and the programs it administers, reviewing corporate governance, and analyzing financial statements to see if an organization is efficient with its funds. API believes that its members have unique skills to bring this initiative forward for the long-term betterment of our community.

Our kids will probably always keep us up at night, but perhaps sleep will arrive a little easier if we have the comfort of knowing that we are raising charitably minded children with a moral compass who express gratitude about their place in the world. Philanthropy can help us accomplish this important goal. ■

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Both Adi and Michael are members of Advisors for Philanthropic Impact, Inc.

THE ART

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and Trust Law Section last year established a subcommittee to look into this issue. Chaired by Larry Miller, Esq., of Boca Raton, the Committee is exploring various proposals that would expand the legal rights of ART children.

But no matter what the "default" provisions of the laws provide, now or in the future, you have the opportunity to override those provisions by clearly expressing your desires in your Will, Trust or other documents. The topic of ART should be on the checklist of items you discuss with your estate planning team during the early stages of the planning process. ■

FAMILY TRUST

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families. If the proposed Florida legislation is enacted, FTCs will provide a platform for families to consolidate family office services and fiduciary services under a single integrated umbrella. FTCs will allow families to draw upon the expertise of family advisors to serve in expanded fiduciary roles while receiving the liability protection afforded by the "corporate shield" of an FTC. Florida FTC legislation would also enable Florida to compete for high-paying family office jobs currently serviced in jurisdictions that offer already statutory FTCs. Many non-Florida FTCs would relocate to Florida if the Florida Legislature enacts this important legislation.

FTCs aren't for all families. The formation of FTCs requires sophisticated planning to navigate income tax considerations, gift and estate tax issues as well as securities law issues and state regulatory minefields. FTCs are relatively costly to form and maintain. FTCs will be required to maintain a physical office in Florida, maintain minimum equity of $250,000 for FTCs that serve a single family and $350,000 for FTCs that serve two families. In addition, Florida FTCs will be required to purchase fidelity bonds and errors and omissions insurance policies to protect against the acts of its officers, directors, managers and employees. FTCs are required to submit formal applications at a cost of up to $10,000 and disclose detailed background information about FTC officers, directors and other management personnel. Finally, FTCs are required to submit annual certifications evidencing compliance with various operational requirements and must submit to periodic examinations by Florida's Office of Financial Regulation.

Notwithstanding the myriad issues which must be attended to in connection with the formation and maintenance of an FTC, these vehicles will address a growing number of important concerns for ultra-wealthy families and provide an opportunity for Florida to attract significant numbers of high-paying jobs. The proposed Florida FTC legislation is a win-win for the State of Florida and its residents. ■

A NURSE'S VIEW

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share with others that come my way a nurse's view of good estate planning.

When I started working in home health, it was rare to take care of someone in their home over the age of 100. I now care for many wonderful people with whom we have celebrated their 100th birthdays. The reality is that the number of people living to 100 years of age or greater has more than tripled in the past 20 years. That means if you retire at 65, you may have 30 years or more to live on an income comprised only of savings and social security.

Many of us understand that we will be living longer and have planned for that. But few of us dare to think of ourselves as aged and debilitated and needing help. We see only an older version of our independent selves. In nursing terms, that is called denial, and it can cause our plans for aging gracefully to fall far short of our goal. Caring for ourselves now must include a plan to care for ourselves in the future.

Just like the couple I mentioned above, even though we are living longer, certain chronic problems with aging persist, such as arthritis, diabetes, osteoporosis, and senile dementia or Alzheimer's. These problems result in an inability to care for ourselves throughout our now-extended life. Long-term care refers to the care we need to plan on for these daily self-care needs that could exist for many years. If we need help, it usually takes place in one of three places – a nursing home, an assisted living facility, or private-duty health care in your own home. The cost of this potential need is one which is often overlooked in estate planning because we all hope to remain independent for the remainder of our lives. True independence comes from planning for the probability of these needs and being prepared for them.

What are the potential costs of long term care?

1. For constant medical care in a nursing facility, the average cost for a private room is $6,965 per month, or $83,580 per year.

2. The U.S. Department of Health and Human Services estimates the average cost for a one-room unit in an assisted living facility at $39,516 per year. Rates might be slightly higher in this area. In assisted living, you live in your room and receive help with meals and housekeeping. Personal care for bathing, dressing, and help with medications could be additional.

3. If you would like to remain at home, the average cost per hour for a home health aide (per the U.S. Department of Health and Human Services) is $21 per hour. In this area, you will find the rates slightly less, usually ranging from $18 - $20 per hour. If you needed a home health aide for 8 hours per day, 7 days per week, at an average of $19 per hour, the cost would be $51,072 per year. Live-in assistance could be less expensive.

What are our options? Plan, plan, plan. Talk to your estate planner about the costs for long-term care and include them in cash flow projections. Factor in how much assistance family members may or may not provide. Do your research regarding specialty long-term health care insurance that does cover long-term care at home or in a facility. Most importantly, ask many questions. Remember to check on whether the policy has an inflation rider. A benefit of $150 per day sounds adequate today, but how far will $150 go 10 years from now? Definitely compare ratings of insurance companies. In closing, from a nursing point of view, take care of your health now. That might be the best insurance possible. ■

Yvonne Sue Stutzke RN is the owner/administrator of a successful private duty home health agency and care management company. She has over ten years of ownership experience in private duty nursing. She chose the name "Nightingale" as a constant reminder of the highest standard of nursing set by the founder of modern nursing, Florence Nightingale. Her agency serves Palm Beach County north to Indian River County.