Estate Planning

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A Message from the President

Protect your wealth: Build the right team

'If you fail to plan, you are planning to fail.' – Benjamin Franklin

Cara Lamborn

Those with a clear estate tax obligation upon their death have a simple choice to make while there are still living: 1) Do they want their estate to write the tax check directly to the IRS and lose up to 40% of their descendant's assets upon death or 2) Do they want to assemble an educated and experienced team of advisors to help implement a well thought-out Estate Plan to protect those assets while fulfilling their estate tax obligation? Fifty percent of American adults do not have a will or estate plan, making it the most ignored, and probably the most important, aspect of financial planning. Estate Planning is essential to retain control of your assets, maintain privacy and to leave more of your legacy to those you love. And, it provides current, and after death, litigation protection. The future is uncertain and unpredictable, as has been well demonstrated by this election season. Our personal future also cannot be predicted with complete certainty. Comprehensive estate planning is vital to put in place before life's unknowns become an issue that stands in the way of cost-effective planning. There are many options in putting an estate plan together, some are extremely complex, but the right team of advisors — experts in their disciplines — can help you make informed decisions and guide you through the complex landscape of estate planning.

The Palm Beach County Estate Planning Council is a nonprofit organization with over 150 members. We are a multi-disciplined organization that supports the team concept of estate planning by working jointly with other local professional organizations to provide education and information to our members on pertinent and timely topics related to estate planning. The members of the Council, listed in this supplement, are among the leading professionals, top in their fields, in the estate planning industry and are available to share their experience and expertise to help you create your estate and financial plan.

Planning strategies are continually changing due to legislation and tax law implementations. The Council's goal continues to be to provide the community with a dependable resource that offers current and relevant information on estate planning techniques by professionals in the legal, tax, insurance, philanthropic and financial disciplines.

The Palm Beach County Estate Planning Council is pleased to bring you the 18th annual edition of The Estate Planning Supplement with insightful articles from attorneys, trust officers, accountants, wealth advisors, charitable giving experts, insurance professionals, financial planners and care providers. I am confident that you will find these articles to be interesting and informative. Please feel free to contact any council member should you have any questions regarding the information provided or to learn more about ways you can optimize your personal estate plan. Contact information can be found at the end of the Supplement. I also urge you to visit our website at www.pbcepc.org for additional information.

On behalf of the members of the Palm Beach Estate Planning Council, I sincerely hope that you will put our collective knowledge and experience to work to help protect your wealth and plan for your legacy.

Best Regards.

Cara Lamborn, President

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

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

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A 'preferred' yield for trusts?

Balancing the beneficiaries' needs

By Suzanne S. Weston
Chilton Trust

Suzanne S. Weston

Some Preferred securities offer preferential tax treatment and may save beneficiaries some money when their tax bill arrives. Like common stocks, certain Preferred securities are taxed at a qualified dividend rate, which may be between 15% - 20%.

Stuck choosing between riskier stocks or safer bonds which provide little income in today's market environment? Have you considered an allocation to Preferred securities for your trust portfolio?

Trustees are like financial physicians in a way. They follow the rule of first do no harm. No harm to the principal, that is. The issue: How does one maintain and grow assets for the remainder beneficiary while at the same time provide a sufficient income stream to the income beneficiary?

Traditionally, a 3% to 5% distribution of income to the current beneficiary while preserving the trust for the remainder beneficiary was not particularly hard to do with a 70/30 stock-bond mix. In today's low interest rate market, neither investment grade bonds nor common stocks are offering an average 3% to 5% yield which many income beneficiaries were used to receiving. As of the third quarter of 2016, the average yield for single A-rated, 10-year corporate bonds is 2.75% and the S&P 500 is about 2.15% (Source: Bloomberg). This leaves trustees searching for a way to find more income.

Generally, dividend stocks offer income and more growth potential, but at a higher risk than bonds. Investment grade bonds are generally considered safer, but have limited growth potential. If trustees attempt to chase yield with riskier investments, they may be harming the remainder beneficiaries.

So choosing how trust assets are invested to meet the needs of both the income and remainder beneficiaries can seem like a never-ending balancing act.

Hence, the idea of considering a hybrid investment such as Preferred securities, which generally provide higher yields than investment grade bonds and have less volatility than common stocks. In August, the average yield on Preferred securities was 4.08% (Source: BofA Merrill Lynch).

Preferred securities carry more risk than most bonds but less risk than common stocks. In general, higher yields are associated with lower quality issuers. In order for Preferred securities to provide higher yields, they tend to have lower credit ratings than bonds from the same issuer. However, this does not necessarily mean that all Preferred securities suffer from poor credit quality. Trustees can find investment grade rated Preferred securities, which have better credit quality than "high yield" bonds. Additionally, many Preferred securities are issued by financial companies and banks, which are highly regulated.

Like bonds, many Preferred securities offer steady and reliable income through fixed distributions. These distributions can be deferred, but the Preferred shareholder will receive a dividend before a common stockholder whose dividend is not guaranteed. During bankruptcy, a Preferred shareholder is often in line for payment after the bondholder but before the common stockholder.

Some Preferred securities offer preferential tax treatment and may save some money when the tax bill arrives. Like common stocks, certain Preferred securities are taxed at a qualified dividend rate, which may be between 15% - 20%. Often, this is lower than the ordinary income tax rate on bonds.

Even with Preferred securities in the mix of investments, there is still a chance that the trustee may not be able to meet the demands of both the income and remainder beneficiaries.

Fortunately, trustees have another tool which has been blessed by the Florida statutes. The Florida Principal and Income Act is an aide for trustees to balance the needs of the income and remainder beneficiaries. It provides trustees direction to invest the trust for total return and blurs the lines as to what is considered income and principal. Florida law provides trustees with two options. They can elect the unitrust conversion which is an annual payout set between 3% and 5%. Or, they can exercise the power to adjust and allocate funds between income and principal.

The above is a glance at some of the characteristics of Preferred securities. They come in many forms with different levels of opportunity and risk, residing somewhere between stocks and bonds.

Due to the various types of Preferred securities available, it is important to discuss with an advisor whether an allocation to Preferred securities is appropriate for your trust.

Suzanne S. Weston is Senior Vice President and Head of Fiduciary Services. Ms. Weston received her B.A. from Hollins College and her J.D from the University of South Carolina School of Law. She is admitted to the South Carolina Bar. Chilton Trust, a private, independent Trust Company, advises and provides wealth management services including fiduciary service and investment solutions to high net worth individuals, families and foundations.

ChiltonTrustCompany.com

The story of the $24 million Chinese vase

By Judith Dowling
Skinner

Is there a treasure in your attic, storage, or maybe in the garage under that pile of old magazines and newspapers? This is a story about finding such a treasure, its history and how its value in the marketplace made someone a richer person and makes us wonder what treasures may lie in our hidden corners.

The appeal of finding a hidden treasure is universal. Today, the internet brings these discoveries around the world in the click of a mouse. Stories of paintings found in trash bins, rare ceramics found in potting sheds or at yard sales, and abandoned treasures found in museum storage areas come to light often. Millions of people watch the *Antiques Roadshow* every week with the hope that they too may have a treasure. Watching *Roadshow* one evening, a couple were astonished to see a rare Chinese horn wine cup valued at over $200,000. It resembled the chipped one sitting on the kitchen window sill that they found at a yard sale. Taking it to an expert, they were delighted to learn their cup was authentic and very valuable despite the chips.


Judith Dowling

Hidden treasures are often discovered when experts in a field are called in to examine an object that may be valuable. As head of the Asian department at Skinner auction, I was asked to examine a collection of Chinese objects in a small museum. Among the many objects was a large, ceramic vase which was in a dark corner of storage, covered in dust and with a broken neck. It was thought to be a reproduction of a famous Qianlong dynasty (1644-1912) imperial vase in the Palace Museum collection with the moniker, "mother of all ceramics." Known for his love of ceramics, it's believed that Emperor Qianlong ordered the superintendent of the Jengdezhen kilns to create a vase that illustrated all the ceramic techniques in one vase, a ceramic sampler so to speak.

Was this vase a reproduction of the "mother of all ceramics"? Covered in dust with its broken neck it didn't look great. Looking at it, I didn't have a "blink moment" that Malcolm Gladwell writes about in his book, but there was something special about it. Since the museum decided to deaccession it along with other objects, it was shipped to my office and waited for my attention.

Nearly three feet tall, it had a commanding presence in my office. It seemed it was beckoning me to take a closer look. With water and a soft cloth, I sat on the floor and began wiping the dirt and grime off. What I saw was astonishing! The exquisite enameling of the painted scenes on the various cartouche, the fine gilding of the borders and the expert transition of one ceramic technique to another were masterful. I found it hard to believe this was a reproduction.

Needing to find out if this could be one of the imperial vases ordered by the Emperor, I began my research. I called the museum and discovered that there were documents that were valuable in guiding my research. Starting on the internet, I googled Qianlong Imperial Vase along with information from the documents and there it was, the vase with its broken neck.

Further research revealed that the Ton-ying Company placed the vase in a Sotheby's auction in 1964 and it sold for $700. The history of the Ton-ying Company shed more light on the possibility that the vase was the real thing. The company was founded by a wealthy Chinese family who bought and sold art during the revolution and with the funds supported the army of Chang Kai Chek. This fact placed the vase closer to the imperial household collection and its authenticity.

I placed images and descriptions of the vase on Chinese websites. Within days, the discovery in Boston of a possible pair to the "mother of all ceramics" went viral in China. There were calls from Beijing, Hong Kong, and Shanghai requesting appointments and further information. The excitement mounted.

Continuing my research into the authenticity of the vase, I was confident that the vase was from the same firing of the one ordered by Emperor Qianlong and decided to exhibit it in New York City during Asia week and schedule it for auction in Boston that week. My confidence was bolstered by the excitement surrounding the discovery of the vase. Twenty-three vetted potential buyers signed up to bid. The vase sold to a Chinese buyer for $24 million and still holds the record for the most paid for any Chinese work of art in the West.

Following the sale, I received images of several reproductions of the "mother of all ceramics" from owners who hoped they had the real thing. Is there another one out there? Perhaps. But, I know someone has a hidden treasure waiting to be discovered.

Judith Dowling joined Skinner in 2011 after more than twenty years as the owner and principal of the Judith Dowling Asian Art Gallery on Charles Street in Boston's Beacon Hill. Judith is renowned as an expert in Asian art and is in much demand for evaluation and appraisal services. She has served as a consultant and appraiser to institutions that include the Harvard Art Museums, the Museum of Fine Arts Boston, the Berkeley Museum of Art, the Bowdoin College Museum of Art and others. In addition, she has been called upon regularly to appraise major collections of privately held Chinese, Japanese, and Korean art. She has lived in Japan and has traveled extensively in China. Judith holds a Master of Arts degree in East Asian Studies from Harvard University.

Future of valuation discounts under Internal Revenue code section 2704

Matthew N. Turko
Haile Shaw & Pfaffenberger

The Internal Revenue Service published its much anticipated Proposed Regulations on IRC Section 2704 on August 4, 2016. These Proposed Regulations may be final before the end of 2016 and effective in early 2017 before or shortly after this article is published. The Proposed Regulations are broad and substantially change the landscape for valuation discount planning.

Estate planners utilize valuation discounts in conjunction with estate planning techniques in an effort to depress the value of interests in entities for transfer tax purposes. For example, a client wishes to make a gift of an interest in an LLC that owns underlying assets valued at $10 million to an irrevocable trust for the benefit of the client's family. Based on various restrictions included in the LLC operating agreement, the client obtained an appraisal of the LLC interest that allows a 20% discount for lack of marketability of the LLC interest. Coupled with a 20% discount and a $5 million gift tax exemption available, the client is able to gift up to a 60% interest in the LLC appraised at $5 million without incurring any gift tax. The gift receives an immediate $1 million boost in the irrevocable trust's pro rata share of the LLC's underlying asset value — i.e., 60% of $10 million.

The Proposed Regulations eliminate valuation discounts in the context of family-controlled entities. The Proposed Regulations clarify that Section 2704 covers not only corporations and partnerships but also limited liability companies and any other entity or arrangement that is a business entity. Furthermore, the Proposed Regulations clarify the definition of control of an LLC or any other entity — not a corporation or partnership — constitutes owning 50% of the equity in such entity or owning any equity interest with the ability to cause the liquidation of the entity.

Importantly, the Proposed Regulations

Please see DISCOUNTS, Page A22

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Matthew N. Turko

The usefulness of rolling GRATs in making tax-free gifts

By Michael L. Kohner, Stephanie Murray and Jacob Caplan
Andersen Tax

The Grantor Retained Annuity Trust (GRAT), an effective strategy for transferring wealth while incurring little or no gift or estate tax, can be made even more compelling by instituting a Rolling GRAT strategy. Rolling GRATs reduce the potentially devastating effect that one year of poor investment returns can impact upon a traditional GRAT, while offering the grantor more flexibility.

To understand the benefits of the Rolling GRAT strategy, one must first understand the basics of using a traditional GRAT as a means of transferring a portion of an estate in a tax efficient manner. A GRAT is a family wealth transfer planning technique where a grantor transfers assets to an irrevocable trust in exchange for an annuity for a specified term, with the remaining trust assets passing to their heirs tax free at the end of the term. A traditional GRAT pays an annuity at least annually for a period of 10 years. The grantor pays the income tax on income generated by the trust. Assets which generate higher returns are considered ideal for use in a GRAT. All the appreciation in excess of the IRS Section 7520 interest hurtle rate will be shifted to the remainder beneficiaries without any transfer tax cost. The interest hurtle rate for October was 1.6%. If the assets' total return does not exceed the 7520 rate, the grantor of the trust is left in the exact same place as if the GRAT had never been created since the grantor receives the entirety of

Michael L. Kohner

Stephanie Murray

the trust back in form of the annuity payments. The one major risk of a GRAT is if the grantor dies prior to the expiration of its term, then all or a portion of the trust assets will still be includible in the grantor's taxable estate.

Rolling GRATs increase the chances of this strategy succeeding by shortening the life of the GRAT and potentially allowing assets to be swapped out. A Rolling GRAT strategy uses a series of short-term GRATs (typically 2 or 3 years) with higher annuity payouts to achieve the same effect as the traditional GRAT strategy. Each successive short-term GRAT can be funded with the proceeds from the annuity payments of the previous GRAT. Rolling GRATs greatly reduce the mortality risk since the term is shorter and can be suitable if the grantor is advanced in age or in poor health. Additionally, even if the grantor were to outlive the term of a traditional GRAT, more assets are likely to be removed from an estate by using a series of short-term GRATs over the same period. Rolling GRATS also offer more flexibility since the grantor can always decline to set up a successive GRAT.

A GRAT is considered to be unsuccessful if the return of its assets fails to surpass the hurtle rate. Although a traditional GRAT structure can allow the trust to lock in a low 7520 rate (which is only determined at the creation of the trust), the Rolling GRAT can help mitigate the effect of one or more poor investment return years wiping out all of the positive returns of a traditional GRAT. Multiple short term GRATs increase the chances of at least one succeeding. Rolling GRATs can break a 10-year period with negative total returns into 5 smaller periods in which some periods are successful even if some are not. Despite the fact that a low hurtle rate cannot be initially locked in by a Rolling GRAT, short-term GRATs are still shown to typically outperform traditional GRATs in terms of total amount transferred free of tax.

The power of substitution allows a grantor to re-allocate assets in the trust if the first year was to produce a negative return. If a two-year Rolling GRAT were to perform poorly in the first year, publicly traded stocks could be substituted for lower risk investments, such as bonds, that can help ensure a positive return in the second year, increasing the GRAT's chance of success. The same stocks substituted out and now lower in value can be used to fund a new Rolling GRAT, essentially restarting the total return rate. The Rolling GRAT's shorter life makes it easier to predict which assets should be substituted out and results in a higher rate of success.

The minimum length of time for which a GRAT can be structured under current legislation is 2 years; however, the Treasury Department has proposed in recent years to lengthen the minimum life of a GRAT to 10 years and eliminate GRATs that transfer entirely tax free (zeroed out GRATs). Since this proposed legislation has yet to be enacted, taxpayers interested in effectively transferring wealth free of gift or estate taxes and while interest rates are historically low should act quickly to take advantage of the benefits provided by Rolling GRATs.

Michael L. Kohner - Managing Director, Stephanie Murray - Director, and Jacob Caplan – Senior Associate are with the professional services firm Andersen Tax, providing tax and estate planning services to high net worth individuals, families, and their closely held businesses.

Scrimping on savings

It could change your retirement from gold- to tin-plated years

By Suzanne Holmes
TD Wealth

Suzanne Holmes

The question of whether South Floridians, especially the nearly 327,000 Palm Beach County residents aged 65 or older (according to the U.S. Census Bureau), are ready for retirement or can stretch savings for their "golden years," is an increasingly urgent one — a task for which many are not prepared.

The extreme ups and downs in the stock market over the past decade have made building a retirement nest egg a challenge. The threefold rise in equity prices over the 1990s (and nearly six-fold when accounting for dividends) was certainly not repeated in the years that followed. The S&P 500 produced an average annual gain of only 4.1 percent over the 2000-2015 period, offering a modest premium over the 2.2 percent average growth rate of inflation. Longer-term bond returns outstripped inflation by roughly 3.6 percentage points, but even this was shy of the near 5 percentage point premium realized during the nineties. The combination of more moderate returns within both asset classes created an atmosphere of wealth preservation instead of accumulation for many.

As a result, near-retiree (those aged 55 to 65 years of age) account balances and asset holdings show a retirement savings gap. With time running short, these near-retirees need to emphasize savings, work more years than planned or lower their expectations on future living standards. Using a 5 percent rate of return assumption on a balanced portfolio, the median income earner near retirement requires an additional $142,000 in savings in order to retire at 66 years old with an annuity equal to 70 percent of their pre-retirement income. The 70 percent is an often quoted threshold for income during retirement that should generally permit a person to continue the lifestyle they have become accustomed to during their working years. But, it is certainly not a high watermark with some retirees preferring a higher income (of around 80 percent of their pre-retirement earnings) to be more comfortable. This higher threshold is more appropriate for those with ambitious retirement plans, such as frequent travel, or for those who

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

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Planning for special real estate

Vacation — second — homes and family compounds

By Rani Newman Mathura, Esq.
Cummings & Lockwood LLC

Got Real Estate? These days many of us own more real estate than just our primary home. The other real estate may be a second — or vacation — home or a family compound used by you and your descendants. Each type of property brings its own pleasures and burdens of ownership but requires separate considerations with respect to transferring the property to the next generation.

With respect to transferring the real estate to the next generation, the first question to ask, but which is often overlooked, "does the next generation even want it?" While our clients have great affinity for these homes, their children may not have the same feeling about the residences, or the use of the property may not fit into their lifestyles so using the property is out of the question. However, if the answer is yes, the next generation does want it, the question then turns to whether to transfer the property during lifetime or at death.

Rani Newman Mathura

As one might imagine, there are pros and cons to both transferring the real estate during lifetime and holding it until death. If the real estate is retained until death, there will be a step-up in basis to the fair market value as of the date of death. The Will or Revocable Trust will govern the disposition of the property. The real estate will be subject to estate taxes if the owner's estate is large enough for federal purposes as well as in the state where the real estate lies if that state has a state estate tax (barring any provision in state law that would negate this) even if the owner is domiciled in a state with no estate tax. It is sometimes possible to form an entity to hold the real estate to avoid this outcome but states have realized this and started issuing regulations, advisories and statutes stating the entities may be disregarded. In any event, be sure that there are enough liquid assets — life insurance — to provide for the payment of any debts, taxes and administration expenses at death so that the real estate does not have to be mortgaged or sold.

Transfers of real estate during life have the benefit of removing all growth after the transfer from the grantor's estate. In addition, there are techniques that can be used to reduce the value of the real estate given in turn reducing the amount of the gift. Of course, the easiest way to make a gift is outright.

A more complicated transaction, but offering more "bang for the buck," is the transfer of a residence — there are further considerations with Homestead — into a Qualified Personal Residence Trust, QPRT. Rental property does not qualify for a QPRT. This is an irrevocable trust where the grantor retains the right to live in the residence for a term of years. There are two tax benefits to this technique:

- The gift tax value is fixed at the value of the residence upon the transfer to the trust even though the actual gift over to the ultimate beneficiaries is postponed until years later.
- The value of the gift is discounted to reflect the grantor's retained use of the residence for the term of years.

At the end of the term, the residence passes outright or to a trust for the benefit of the descendants. If the grantor wants to continue to use the property, the grantor must enter into a rental agreement to do so. The technique fails if the grantor does not out-live the term of years.

The use of entities such as LLCs may be useful when planning for vacation homes and family compounds so that although the interests in such properties may be divided among many owners, there is only one manager who is in charge and making the necessary decisions. It is important that the initial transfer also include funding with money to cover expenses during the owner's lifetime. Furthermore, provisions for capital calls can be put in place, as can restrictions on property passing outside the bloodline and the like. The use of entities may solve practical problems, however, recent proposed Treasury Regulations regarding Section 2704 will make it difficult to achieve discounts on the gift to your descendants. You may instead consider gifting a tenant in common interest.

It is important when dealing with real estate, especially real estate which may have sentimental memories attached, to have a frank discussion with family members before finalizing your estate plan. Whether property is given away during lifetime or at death, the risks and rewards should always equal the goal of family harmony.

Rani Newman Mathura is the Managing Principal of Cummings & Lockwood LLC's Palm Beach Gardens' office. Ms. Mathura's trusts and estate's practice assists clients with estate and charitable planning, probate administration and litigation, and residential real estate.

Timing key to family discussions

By Rob Ford
U.S. Bank

When is the right time to include your family in estate planning discussions? The answer is: "it depends." Every family situation is different and because of that there is no silver bullet or absolutely right or wrong answer to the question. But how can you plan to make sure you are not "too late"? Like so much in life, it all comes down to open, transparent communications.

Over the years I have found some families to be very open with their communication about their family legacy, business interests, and even their trust account balances. I have seen just as many families fiercely guard their financial situation and estate plans to the grave. Who is right? Who is wrong? It depends.

Reasons for not including the family in estate planning are often given that they didn't want their children or grandchildren to expect something. They didn't want their children to not work to create their own wealth or find their own path. Others cite issues surrounding substance abuse, troubled marriages or untrustworthy outside influences.

These are all valid concerns and should be addressed, but typically it can make a lot of sense to involve your family in your estate plan before putting pen to paper. Calling a family meeting over a holiday weekend when everyone is together, or hiring a professional facilitator to host a family meeting, can make a lot of sense in helping to avoid many unwelcome surprises or misunderstandings down the road.

Taking time to discuss your plan and understanding what your children and/or grandchildren hold most dear to them can help you craft a better plan. Open lines of communication can also provide the family with notice that you have thought through all of your decisions carefully and they can hear this directly from you. Often times it is not necessary to go through specific dollar figures on who will get what, but it is very helpful to be specific in some cases, especially when it comes to tangible personal property - the family heirlooms.

Some family heirlooms have a significant monetary value while others may have significant emotional or sentimental value. Most parents want to split things evenly amongst their children and they view this in the context of a dollar figure, but many times the monetary value of something is less important than

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Rob Ford

Charitable remainder annuity trusts get a lifeline from the IRS

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

Three years ago we suggested a renewed interest in charitable remainder trusts (CRTs). The effective tax rate on long-term capital gains for wealthy individuals had just increased from 15% to 23.8% (a jump of more than 50%), making CRTs an attractive option again for individuals selling low basis assets.

Now, Revenue Procedure 2016-42 issued by the IRS effective on August 8, 2016 has made one type of CRT accessible to many more individuals, but with a catch.

A 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. 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 must continue for a defined period of time or the recipient's lifetime.

When the CRT terminates, the remaining assets pass to designated charities (hence the name charitable remainder trust). The creator of the trust receives an income tax deduction in the year the trust is created equal to the present value of charities' interests.

A CRT is not subject to income tax; instead, the recipient of the annual payments is taxed on the amount received to the extent of the CRT's taxable income.

What was the problem?

Our prior article focused on the benefits of CRUTs for the simple reason that it has been nearly impossible to establish qualifying lifetime CRATs for all but the oldest individuals.

Mark R. Parthemer

Leonard J. Adler

The reason is low interest rates. The IRS publishes an interest rate every month pursuant to section 7520 of the Internal Revenue Code, based on market interest rates. It is used to calculate the present value of the charitable remainder interest. The rate has exceeded 2.2% only twice in the last 5 years. It has been less than 5% since December, 2007.

Two technical requirements for CRATs are relevant. First, tax law requires that the present value of the charitable remainder interest at the time the trust is created be at least 10% of the beginning value. Second, the probability that the trust assets will be exhausted (and thus the charity receive nothing) must be no greater than 5%.

The combination of low 7520 rates and requirement that a CRAT pay a minimum annuity of 5% creates a previously insurmountable problem. For example, the assumption that the trust is earning less than half the amount it is required to distribute makes it probable that the principal of the trust will be exhausted unless the trust has a relatively short term (i.e., the beneficiary is elderly).

The IRS response

The new Revenue Procedure allows an option to include a "qualified contingency" addressing the exhaustion test problem. The contingency would automatically terminate the CRAT immediately before payment of an annuity if, after paying the annuity, the trust value discounted back to the creation of the trust using the section 7520 rate in effect when the trust was created, would fall below 10% of the initial trust value.

An example is helpful. A $1,000,000 CRAT is created at a time when the 7520 rate is 3%. It will pay an individual $50,000 at the end of every year for life, and then distribute to charity. The trust includes the qualified contingency.

Assuming that the CRAT pays the annuity regularly, but on December 30 of year 18 the trust has a value of $210,000. If the year 18 annuity is paid, it will reduce the trust value to $160,000. Discounting that amount back to year one (18 years) at a 3% annual rate results in a value of $93,984. That is less than $100,000 (10% of the initial $1 million funding), so the trust will terminate and distribute to charity before the year 18 annuity is paid.

Good news, but . . .

The Revenue Procedure enables a CRAT to be created under circumstances that wouldn't otherwise be possible. But if a donor wants certainty that the annuity stream will continue for life or the designated term of years, that goal may be frustrated by the possibility that the trust will terminate early. It is favorable that the discounted value is calculated using the section 7520 rate on the date the trust was created, which is likely to be a low rate making it easier to avoid the contingency; however, a significant drop in asset values still could cause a termination of the beneficiary's annuity (even if the trust value subsequently recovers). While the probability of early termination may be remote, the mere possibility might make this IRS-offered "solution" unacceptable to many clients.

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Snowbird? Or the real deal?

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

Michael P. Stafford

So you recently moved from New York to Florida? Abundant sunshine, no income tax, no estate tax — wonderful!

One problem: New York State tax authorities may not think you really moved! And they're assessing heavy income taxes, interest and penalties for the years you thought you had changed your domicile to Florida.

New York domiciliaries pay State income taxes on all income earned. Florida domiciliaries pay New York income taxes only on income derived from "New York sources," like rent received from a building you own in New York State. In an audit, taxpayers have the burden of showing by "clear and convincing evidence" that they had the intention of moving to Florida permanently, not simply that they went through the motions of "getting here." You can have several "residences," but only one "domicile" — the place you always call "home" and the place you always "intend" to return.

"Intent" is a very subjective test, but auditors in New York (and to a lesser extent other states with income taxes and estate taxes) use written audit guidelines to help them determine taxpayer intent.

Sometimes, though, auditors don't even have to reach the issue of taxpayer intent. New York has a "statutory residency" provision (Tax Law Section 605(b)) that says, regardless of your "intent," that you're a New York State resident for tax purposes if you "maintain a permanent place of abode" in New York, "AND (emphasis added) spend more than one hundred eighty three days" a year there.

If you "flunk" the 605(b) test, you lose the audit. But even if you "pass" the 605(b) test, you can still lose the audit, based on the auditor's evaluation of where you "intend" your domicile to be.

In trying to arrive at a taxpayer's intent, the guidelines direct auditors to examine five "primary" factors:

1. The Home. While the guidelines stress that "retention of a residence in New York is not, by itself, sufficient evidence to create a change in domicile," auditors are told to look carefully at the size, the value and the nature of use of each residence, in addition to analyzing what types of "employees" (domestic help, groundkeepers, chauffeurs, etc.) are utilized at each location. If you claim to be "selling" your home in New York, you will undoubtedly be asked to produce proof that you have really moved out, as well as contracts with real estate brokers and the like. There's no distinction between owning and renting. The same rule applies: Did you intend to leave it?

2. Business Involvement. Numerous non-resident audits are aimed at entrepreneurs who claim to have "sold" their business in New York (to their children or other insiders?) retired and moved

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Mike Stafford, a long-time member of The Florida Bar, currently serves as out-of-state representative on the Executive Council of The Florida Bar's Real Property, Probate and Trust Law Section. He previously served as Chair of The Florida Bar Long Range Planning Committee, a member of The Florida Bar Board of Governors, a member of the Board of Directors of The Florida Bar Foundation, and two terms as a member of The Florida Bar Probate Rules Committee.

Planning for artwork

By Melvin Warshaw, J.D., L.L.M.
Financial Architects Partners

Does your family want your artwork? Do family members care enough that they want to own the artwork after you are gone and do not want it sold?

During Life

Selling artwork during life can be expensive. For collectors and investors artwork is a capital asset, and if held more than a year any gain on sale will be long-term capital gain. Art is also a collectible. The top federal income tax rate on gain from the sale of art is 31.8%. After transaction fees and commissions, an investor or collector may net only 65% of the sale price. Tax data as of 2015.

It may be possible to gift the artwork to family members. A key advantage is that any post-gift appreciation in value of the artwork is removed from the collector's estate. Art is an illiquid asset without cash flow, some of the traditional estate freeze techniques may not work well. The recipient of the gift of art will receive the donor's cost basis in the art.

It may also be possible to donate artwork to a charity and receive a federal income tax deduction. There are a number of rules that impact the size of the deduction, depending on the nature of the artwork in the donor's hands (type of property), the type of charitable organization receiving the artwork and the mission of the charity.

Melvin Warshaw

At Death

Unless thoughtful planning is undertaken during the collector's life, the heirs may have no choice but to sell the artwork after the death of the collector (or surviving spouse). While a sale at death strategy is common, too often it is due to a combination of the collector being unwilling to part with the artwork while alive or not engaging in thoughtful planning with advisors and family on how to preserve the artwork or its value for the family.

A significant advantage to selling artwork at the collector's death is that the collector's cost basis will be stepped up to its fair market value at death. As a result, the top 31.8% tax rate is not relevant except for post-death appreciation prior to sale. In orchestrating such sale, however, the collector was the person who knew the most about the collection but is no longer around to supervise the sale.

If the collector's estate is above $5.5M it will be necessary for the collection to be appraised and filed with the estate tax return. If the artwork is sold at death, the value is included in the collector's estate and is subject to estate tax at a 40% rate (plus any states estate taxes). There may be a liquidity shortfall in maintaining the collection during estate administration or in satisfying cash bequests or distributions to some heirs.

It may also be possible to donate the artwork to charity at death. Waiting until death eliminates the possibility of the collector claiming a charitable income tax deduction. A gift of artwork to charity at death, however, deprives the heirs of value of the artwork.

The Role of Life Insurance

A relatively simple solution to the liquidity issues raised by a collector owning artwork is the purchase of trust-owned life insurance on the life of the collector (or collector and spouse). Use of a trust allows the life insurance death benefit to escape estate tax. Guarantees and benefits provided by life insurance products are subject to the claims-paying ability of the issuing insurance company. Regardless of how it is owned, a life insurance policy death benefit is not subject to income tax.

A second major benefit is that life insurance death benefit provides liquidity when the collector needs it most, at death. The death benefit can be used indirectly to pay the estates taxes on the value of the artwork. Some of the life insurance death benefit can also be used to establish a cash sinking fund to cover the cost of the heirs maintaining the artwork. Even if the artwork is earmarked for a museum at the death of the collector, the life insurance can provide a meaningful substitute inheritance for heirs. The life insurance can also be used to equalize inheritances among heirs, enabling a child needing cash to receive some of the life insurance death benefit while a child interested in preserving the art collection could receive a bequest of the art.

Every art collector needs a liquidity plan to pass on their artwork to family or charity. Life insurance can play a vital role by ensuring that the collector's long-term goals for there are fulfilled. A nice feature of life insurance is that premium costs can be spread over life, or perhaps initially minimized with significant charges later in life. The death benefit may be two to three times the overall premium costs. No other asset provides such leverage, favored tax characteristics and satisfies liquidity needs of the art collector.

Kestra Investment Services, LLC does not provide legal or tax advice. Any decisions whether to implement these ideas should be made by the client in consultation with professional financial, tax and legal counsel.

Mel Warshaw is the General Counsel of Financial Architects Partners. His primary responsibility is to deepen the company's relationship with advisors including trusts and estates lawyers, CPAs, family offices, corporate trustees and trust companies involved in complex life insurance programs undertaken for super affluent individuals and families.

Sugar and spice, a recipe for family harmony

By Lisa A. Schneider
Gunster

The least productive and most emotionally charged time for your family to address your estate plan is immediately after your passing. Although a funeral will probably be the first time in years your family is physically together for one common purpose, it can be a time of high emotion, charged with family dynamics, and sprinkled with regrets and misunderstandings.

To minimize or eliminate such a situation, envision a planned, organized and structured family meeting taking place while you are healthy and in control of your finances in a neutral and inviting setting among your adult children, attorney, accountant, financial advisor, and other trusted non-family advisors. The agenda would include a review of your estate plan and specifically distributions for your children's benefit. The discussion may include financial estimates to address unjustified or misguided expectations. For example, providing an estimated inheritance may assist older children in planning for their own retirement and facilitating their own estate plans. Full financial disclosure and discussion regarding the benefits of prenuptial agreements may also help younger children prepare for their own marriage. Explaining the purposes of trusts, which include asset protection and estate tax savings, will make it easier for children to accept the management of their assets by others and limitations imposed upon trust distributions.

In addition, a child who is otherwise expecting an outright inheritance will feel a greater sense of responsibility to provide for his or her spouse if he or she understands that his or her spouse may not have access to the child's inheritance. In order to avoid resentment of any kind, it is also advisable to seek some input from adult children regarding the fiduciaries who will administer these trusts upon his or her parents' passing. The need for and benefit of having an independent trustee should be addressed. Involvement by adult children in identifying potential fiduciaries will greatly reduce the stress and anxiety often experienced by a beneficiary who anticipates an adversarial relationship with the trustee of his or her trust. Although it may be possible to find a qualified fiduciary, very often there is no individual who is perceived to be qualified or acceptable to your children. Therefore, introductions to a professional trustee may be in order.

Lisa A. Schneider

This fear of one's children choosing your "old age home" can be addressed by discussing your plans in the event of incapacity or upon the inevitable process of aging. Your discussion should include identifying decision-makers in the event of your incapacity and the roles each of your children will or will not play in making financial and medical decisions. Your counsel should explain the operation of powers of attorney for both health care and finances, the operation of revocable trusts in the event of incapacity, and the access to both medical and financial information by those not in a decision-making role. You should also make known your preferences for long-term care and your tolerance for cost. You should make it clear to your children that you are spending your money and not your "children's inheritance."

A family meeting is also the time to address the disposition of tangible assets. However, it is not the time to make selections. Sentimental assets often form the basis for the most heated familial disputes and sometimes even litigation. Family heirlooms, even of minimum value, can cause the greatest angst among family members and may serve to factionalize families. These emotional "hot buttons" are often the most ignored aspects of estate planning because they are the most difficult to address. Typically there is more symbolic meaning attributed to such items by children than by the parents themselves. This is your opportunity to explain that you will do your best to honor their requests and if all requests cannot be honored, that you will use a fair process to allocate these sentimental items.

Although the family meeting should be held on neutral ground, sensitivities to family dynamics should not be ignored. Generally, family conflicts and disharmony should be acknowledged. You should take the opportunity to ask your children to put conflict aside and work together to implement your wishes in the event of incapacity or your passing. Share the importance of family harmony and provide your children with the tools and support to understand and abide by your estate plan.

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Split-dollar arrangements

Tax efficient leverage techniques to fund grantor trusts.

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

For more than a dozen years, attorneys for high net worth clients have used IRS-approved split-dollar ("Split-$") arrangements to transfer billions of dollars to their clients' Grantor Trusts. This article describes the two types of Private Split-$ arrangements permitted by the 2003 IRS regulations and provides three Case Study examples to illustrate the benefit of using a Split-$ plan to fund a Grantor Trust.

R. Marshall Jones

Adam D. Sendzischew

Background. In 1985, the IRS published Revenue Ruling 85-15. It allows the Grantor of an irrevocable Grantor Trust (the "Trust") to treat the Trust's estate tax-free assets as if they are owned by the Grantor for income tax purposes. This ruling eliminates any income tax on the Grantor's private loans and sales to the Trust because the Grantor is deemed to have loaned or sold the asset to himself/herself. Some Split-$ plans are treated as non-taxable Grantor Loans.

Split-$ Plans. In a Private Split-$ Plan, the Grantor and the Trust enter into an agreement to split the costs and benefits of a permanent life insurance policy. This allows the Grantor to provide funds to pay the premium while the Trust receives most of the tax-free death benefit. In 2003, the IRS issued final regulations for the use of two types of Split-$ arrangements: Loan plans and Economic Benefit plans.

Private Split-$ Loan Plans. When the insurance policy will have increasing cash values, the Grantor loans money to the Trust. The Trust uses the loan to purchase a Trust-Owned Life Insurance ("TOLI") policy. The loan interest rate will be the IRS long-term Applicable Federal Rate ("AFR") at the time of the loan. Loan interest may be paid each year or accrued until the loan matures. The loan can be nonrecourse and the repayment of the loan can be deferred until the death of the insured.

Private Economic Benefit Spit-$ Plans. When the insurance policy will insure two people (e.g., spouses) and the cash values will be nominal, the Grantor advances premiums interest-free by using an Economic Benefit ("EB") arrangement. The Trust pays the EB portion of the premium. The EB amount is determined by using the IRS Table 2001 one-year term insurance rates. Because these are Survivorship ("2nd to die") policies, the EB amount will be dramatically less than the loan interest alternative as long as both insureds are alive.

CASE STUDIES.

Example #1. The Grantor made a $3,000,000 Split-$ Loan to fund $56,000,000 of TOLI policies by insuring the Grantor's children in an estate tax-free multi-generational Grantor Trust. There are no gift taxes, no loan interest payments and no income tax. Loan interest accrues at 2.64%. Cash values grow income tax-free for the benefit of the children. The death benefit will be paid income tax-free for the benefit of the grandchildren.

Example #2. The Grantor used an EB Split-$ plan to help their Trust purchase $50,000,000 of Survivorship Life Insurance diversified with three carriers. In Year 1, the Trust paid the EB amount of $1,508 dollars. Over 15 years, the Grantor will advance $6,062,269 without interest and the trust will pay total EB amounts of $133,991.

Example #3. The Grantor acquired $50,000,000 of permanent TOLI coverage by combining a 9-Year AFR Grantor Loan with an EB Split-$ plan. The Trust's income tax-free 1.43% loan interest payments to the Grantor are

Please see SPLIT-$,
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Jones Lowry is an independent life insurance planning firm specializing in the analysis, design, implementation, funding and administration of life insurance portfolios for ultra-affluent families.

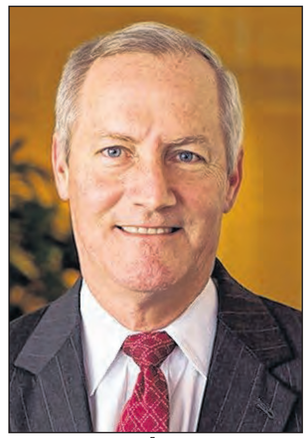
Florida Legislature passes 'Glitch Bill'

It substantially improves Florida Family Trust Company Act

By Stephen G. Vogelsang
Gunster

On March 10, 2016, Governor Rick Scott signed into law Senate Bill 80 (the "Glitch Bill") which substantially revises Florida's Family Trust Company Act (the "Act"). In 2014, Governor Scott signed the Act into law establishing for the first time in Florida a statutory framework for organizing, operating and regulating Family Trust Companies ("FTCs") in Florida. An FTC is a company which can provide services similar to traditional public trust companies such as serving as trustee of trusts, providing investment advice and providing general administrative services for a single family or for two families rather than the general public.

The Glitch Bill addressed two primary shortcomings in the Act identified by families considering the formation of an FTC. First, the Glitch Bill amended provisions of the Act which would have resulted in perceived overregulation of "unlicensed" FTCs. The Act allows families the option of organizing their FTC as either an "unlicensed" FTC or a "licensed" FTC. Unlicensed FTCs were intended to allow families to form an FTC without having to endure burdensome and intrusive oversight from Florida's Office of Financial Responsibility ("OFR"). Unfortunately, the Act required OFR to engage in mandatory audits of unlicensed FTCs every eighteen (18) months despite the objections of the Act's draftsmen. The overwhelming majority of families interested in forming an FTC would likely form as an unlicensed FTC. A number of those families indicated that they were unlikely to form in Florida if unlicensed FTCs were subject to burdensome oversight from OFR. While government oversight of public companies is reasonable to ensure the safety and soundness of the institution for the good of the general public which might have accounts with the trust company or own stock in the company, the public interest isn't served by regulating an FTC which by definition cannot be owned by the general public or offer its services to the general public. The Glitch Bill substantially eased the regulatory burden on unlicensed FTCs by eliminating mandatory OFR audits and providing instead for permissive audits for the sole purpose of ensuring compliance with the Act's prohibition against advertising or providing services to the general public. With this single change, it is expected that Florida will become a destination jurisdiction for families considering the formation of an FTC.



Stephen G. Vogelsang

The second primary change to the Act was the introduction of a more rigorous scheme of OFR oversight for "licensed" FTCs. As the name implies, a "licensed" FTC must undergo a far more substantial investigative process before becoming licensed to provide fiduciary services in Florida. Families typically choose the licensed FTC option for one of two reasons. A family might prefer a licensed FTC because they want the peace of mind that comes with an unrelated third party scrutinizing the operations of their FTC. Other families prefer the licensed FTC option because they need substantial state regulation to ensure exemption from burdensome oversight by the SEC under the Investment Advisors Act of 1940 (the "1940 Act"). The Act required OFR oversight but arguably not sufficient oversight to ensure that a licensed FTC would be exempt from regulation under 1940 Act. The Glitch Bill put more teeth into the OFR regulatory framework for licensed FTCs in order to allow licensed FTCs to qualify for the so-called "bank exemption" from the 1940 Act. Although it is expected that very few families will choose to form their Florida FTCs as licensed FTCs, it is important that the Act provide those families with the assurance that a licensed FTC will allow them to achieve their intended goals.

FTCs are not for everybody. FTCs are somewhat expensive to form and cumbersome to operate. Families with investable assets in excess of $100 million may consider FTCs to work in conjunction with an existing family office or might consider replacing their family office structure with an FTC. FTCs can be an attractive option for families for a number of reasons but are most frequently considered an alternative to public trust companies or will serve in conjunction with a public trust company for families that have substantial holdings in "difficult" assets which public trust companies may not want to manage. Difficult assets might include, for example, interests in family businesses, significant real estate holdings, concentrated positions in public companies, or interests in "family limited partnerships" and similar estate planning vehicles. Other families will form FTCs to provide a corporate liability "shield" to valued long time family advisors who may otherwise decline requests to serve in fiduciary capacities because of the inherent liability risk associated with such service. Florida now has very attractive Family Trust Company legislation which addresses the needs of families considering the formation of these very specialized family governance structures.

Stephen G. Vogelsang is a Shareholder in the Firm's Private Wealth Services Department. Mr. Vogelsang practices in the areas of Estate Planning and Administration, Trust Planning and Administration, and Gift and Estate Tax controversies with the Internal Revenue Service. Mr. Vogelsang has been certified by the Florida Bar Board of Certification as a Specialist in Tax Law.

Don't want to give up control of your assets? Have you considered a BDIT?

By Christopher Taarick
RSM US

People are often reluctant to consider many advanced estate planning techniques because they are not ready to relinquish control of their assets. A Beneficiary Defective Inheritor's Trust (BDIT) is a powerful, effective, and often under-utilized estate planning strategy for providing estate planning benefits and protection from creditors while still allowing an individual to maintain control over the assets.

A BDIT is an irrevocable trust created and funded by a third party – typically, a parent or grandparent – that treats the primary beneficiary as the owner of the trust for income tax purposes.

BDIT Basics

A BDIT is an irrevocable trust created and funded by a third party — typically, a parent or grandparent — that treats the primary beneficiary — a child or grandchild — as the owner of the trust for income tax purposes while keeping the assets held in the trust outside of the third party's and primary beneficiary's estates for estate tax purposes and credit protection purposes. In order for the primary beneficiary to be deemed the owner for income tax purposes, the trust must provide the primary beneficiary with a withdrawal power over any gifts to the trust. Additionally, the primary beneficiary is named the trustee of the trust, which allows him to manage the trust assets and exercise certain rights over the trust.

How does a BDIT work?

By way of example, the classic BDIT strategy works like this: Larry is the sole owner of Larry's Auto, LLC with a fair market value of $5 million. Larry wishes to share his business with his four sons on a tax-advantaged basis by transferring interests in Larry's Auto LLC to trusts for their benefit, but Larry is not ready to give up control of the business. Larry's father, Steve, sets up a BDIT for each of Larry's sons, each with Larry as the primary beneficiary and trustee with one of his four sons as a contingent beneficiary. Steve "seeds" each trust with $5,000 cash but retains no powers or control over the trust that would cause the trust to be taxed to him. This "seed" money helps to ensure the trusts will have the economic substance necessary to avoid challenge by the Internal Revenue Service. Each trust is carefully structured so as to not cause the assets to be included in the estate of either Larry or Steve. Additionally, each trust provides Larry with a lapsing withdrawal power over the entire amount contributed by Steve. These temporary withdrawal powers make the trusts "beneficiary defective" and ensure that Larry is treated as the owner of each trust for income tax purposes.

After each trust has been established and funded with the seed money, Larry enters into an installment sale agreement with each of the BDITs in which each trust agrees to purchase a 25% interest in Larry's Auto, LLC in exchange for a note bearing a market rate of interest. The purchase price for each LLC interest is $875,000, which reflects a 30% valuation discount for lack of control and lack of marketability.

As a result transaction, Larry has locked in the value of the business at its transferred value plus the interest required by the note. Any appreciation in the value of the business in excess of that rate will occur outside of Larry's estate, instead accruing to the benefit of the trust. As the owner of each trust for income tax purposes, Larry will pay tax on each trust's income, so the assets transferred to the trusts grow tax-free for the benefit of Larry, his four sons, and future generations. However, unlike other strategies, this strategy allows Larry to retain control and the use of each trust's assets.

Summary of BDIT Benefits

A properly structured BDIT will allow you:

1. The right to manage the trust assets.
2. The right to use and enjoy the trust assets.
3. The right to receive income.
4. The right to withdrawal trust principal limited to an ascertainable standard, such as "health, education, maintenance, or support."
5. The right to be treated as the owner for income tax purposes, which allows you to pay the trust's income taxes and enables the trust to grow tax-free.
6. The right to sell assets to the trust without adverse tax consequences.

Conclusion

For those individuals interested in advanced estate planning strategies but are not willing to give up control of assets, a BDIT may be the answer. In effect, the trust enables an individual to 1) put a protective wrapper around his assets, 2) continue to manage and use the assets transferred to the trust, and 3) obtain transfer tax and creditor protection benefits.

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New digital assets law

Opt in or risk becoming 'lost in (cyber) space'

By Sasha A. Klein
Sabadell Bank & Trust

The digital world is growing rapidly. In 2016, there are 3.5 billion users of the internet, up 700% since 2000. It's not unusual for your life to be mostly paperless, kept virtually in your email, social media, and other types of digital accounts. These accounts have significant value, be it monetary or sentimental.

Unlike tangible assets, digital ones are governed by a labyrinth and sometimes contradictory terms-of-service agreements (those pesky click-through agreements almost no one reads when registering for a website). Such agreements and applicable state and federal laws can restrict your ability to provide your loved ones access to your digital assets after death or disability. These agreements can limit a fiduciary's ability to manage your digital assets, as well as retrieve critical digital data such as email, on-line financial accounts, online shopping accounts and digital photo albums, to name a few. Accessing information about your digital assets when you cannot is very important, not only to obtain information from that specific account, but also because the information in that account may lead to valuable information about other accounts or assets.

The Solution

On March 10, 2016, Florida adopted the Florida Fiduciary Access to Digital Assets Act (the "Act") creating a new chapter 740 in the Florida Statutes. The Act provides the "rules of the road" for the management and disposition of digital assets upon death or disability by vesting fiduciaries with the legal authority to access and manage such assets. Now you have the ability to plan around your digital assets by specifying whether they should be preserved, distributed to heirs or deleted. Prior to the Act, there was little to no direction for dealing with the access to, or succession of, digital assets. The law applies to four types of fiduciaries — (1) personal representatives of decedents' estates, (2) guardians of the property of minors or incapacitated persons, (3) agents who are acting under a power of attorney and (4) trustees — and became effective July 1, 2016.


Sasha A. Klein

This new law, however, requires you to Opt In.

Take Control: 3 Ways You Can Opt In

The Act breaks through roadblocks to fiduciary access, but only if triggered. Negotiations around the Act resulted in an "opt in" approach. Access under the Act does not fully occur by default, but must be triggered "on." This means that your fiduciary will not have access to your digital assets unless you opt in to allow for such access. So how do you "opt in"?

The Act takes a three step priority approach for you to provide your fiduciary access:

(1) **First Priority:** Your direction through an online tool. An online tool basically allows you to name a 3rd party to have access to your account after death or disability. Only two custodians offer an online tool today — Facebook (Legacy Contact) and Google (Inactive Account Manager).

(2) **Second priority:** Your direction in your estate plan, i.e., will, trust, power of attorney;

(3) **Third priority:** The custodian's Terms-of-Service Agreement ("TOSA"). In this case, you did not "opt in" and your fiduciary may or may not be able to gain access.

Three Types of Digital Assets:

You can break digital assets into 3 types: Catalogue, Content and Other Digital Assets.

(1) Catalogue is the information that identifies each person with which you have electronically communicated, the time and date of the communication, and the electronic address of the person (think of what is outside of an envelope).

(2) Content is the body of an electronic communication (think of what is inside an envelope).

(3) Other digital assets would include all of those digital assets other than the content and catalogue of private electronic communication, e.g., digital music, digital photo albums, digital videos, domain names, blogs, gaming websites, virtual currency, etc.

Your Estate Plan

The reason for the distinction among types of digital assets is privacy and the sensitivity to the disclosure of your private electronic communications. Your email may be like a tape-recorder of your life. So if you are going to give access to all of your digital assets, don't forget your fiduciary may then gain full access to the body of every email you ever wrote. So in your estate planning documents, grant your consent accordingly.

Now that you know how to "Opt In," reach out to your estate planning attorney and make sure to: (1) give your fiduciary the access you desire and (2) ensure your estate plan is consistent with your wishes as they relate to your digital assets. Don't let those treasured digital photos become lost in cyberspace.

Sabadell Bank & Trust, is the private wealth division of Sabadell United Bank. The bank is recognized as the trusted financial advisor for high-net-worth individuals, their families, and their businesses at its five regional offices throughout Florida.

Two decades of keeping up with change

By Joseph C. Pauldine
Cypress Trust Company

When Cypress Trust Company received its trust charter in 1996, little did its founders realize what the next twenty years was going to bring in terms of administration and estate planning. Looking back on the key developments, we've seen some pretty considerable changes take place. Business practices, policy and regulation, the economy — they've all played a significant part in shaping how individuals at any level of wealth plan for their future and legacies.

"A million dollars isn't what it used to be." This somewhat light-hearted idiom carries a few different sentiments. People approaching retirement levels in the 1990's felt much more comfortable with the prospects of a million dollars being enough to last the rest of their lives. The average life expectancy for today's "near-retirees" is about eight to ten years longer than the generation before them. So even without inflationary factors, the need to accumulate and preserve wealth has increased. No surprise, the average retirement age has moved upward by about five years in the same time period.

We have also seen business practices change when it comes to defining "wealth," particularly in the form of rising account minimums. Several trust companies have set the bar at $3 million, $5 million or in some cases $10 million. Even families with a well-crafted estate plan could face challenges with finding a trust company willing and able to provide local, personal service if the assets are below these levels. The founders of Cypress Trust Company saw the growing need to service these families, even twenty years ago.

There have been a number of changes in the regulatory environment area as well. The highest estate tax brackets went from 55% above $3 million in 1996, to a repeal in 2010, and now to 40% above $5.45 million. The Terri Schiavo case brought increased awareness to the importance of advanced health directives beyond the right-to-die cases that preceded it. The Defense of Marriage Act was enacted as federal law in 1996 and then ruled unconstitutional in 2013, thus paving the way for recognition of same-sex marriage throughout the United States in 2015. These are but three examples of some of the more highly publicized regulatory changes in the past two decades that have reshaped the planning environment.

There is one area in particular, however, that hasn't garnered the same level of awareness. Directed Trusts have grown in popularity in recent years, fueled in part by grantors' desires to split trustee responsibilities and duties among different entities, especially in irrevocable trusts. For example, with a Directed Trust, a grantor may appoint one entity to perform administrative functions while assigning the duties of investment management to another.

Recent amendments to Florida statutes have furthered this approach by beginning to define the level of oversight required of the trustee. Prior to the new amendment, using the above example of a grantor appointing separate entities for administration and investment management, there was concern as to the responsibility of ultimate oversight. A number of trust companies, including Cypress Trust Company, have developed service offerings in support of Directed Trusts. In these cases, families have the ability to maintain, perhaps, a long-standing investment relationship while a corporate trustee handles the administration.

Economic changes have played more than just a passing role in the past twenty years – the technology and housing bubbles being two of the more noteworthy events. The struggle to find income has been particularly difficult with interest rates at near zero levels for the last seven years, making the challenge to replace

Joseph C. Pauldine

income in retirement that much more difficult. Investors have opened up to options beyond traditional fixed income instruments, such as U.S. high-yield debt or Foreign Debt, as well as taking additional risk and/or extending duration. Working with individual clients to customize an investment strategy is one of the founding principles of Cypress Trust Company."

We are very proud to be celebrating twenty years of providing local, personal service in our communities and look forward to navigating both expected and unexpected change in the years to come.

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

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

How important is adequate personal excess liability insurance coverage?

By Mark Montgomery
Celedinas Insurance Group

In today's litigious society, multimillion dollar judgments have become increasingly common, and obtaining the proper amount of liability protection is essential to wealth preservation. Legal proceedings, defense costs, settlements and judgments for uncovered personal liability exposures can be devastating. The liability limits on homeowners, automobile, watercraft and other personal insurance policies may not be enough to cover real-life jury awards.

When a judgment from a lawsuit exceeds the coverage limit on your underlying policies, a personal excess liability policy can protect both your current and future assets. Individuals and families with substantial wealth are often a greater target for such lawsuits and may often have significant gaps in their overall insurance portfolio.

Excess liability coverage can range from $1 million to more than $100 million and may even "drop down" to cover exposures not covered by the underlying policy. An example would be coverage for defamation of character, libel, slander and false arrest—perils that may be excluded from some homeowner's policies. Umbrellas offer protection for individuals who potentially face lawsuits or other legal liability claims, and cover legal costs and court fees, lost wages and interest accrued on unpaid judgments.

Other personal liability options include uninsured/underinsured motorist (UM) coverage, employment practices liability and nonprofit directors & officers liability. UM can provide compensation for medical expenses, lost wages and pain and suffering for insured citizens who have been injured by another vehicle operator who did not carry adequate bodily injury liability coverage. Employment practices liability insurance (EPLI) can protect the insured from legal action, from a domestic employee who sues for wrongful termination, sexual harassment, false imprisonment or invasion of privacy. Directors and officers (D&O) coverage can provide additional limits on top of the limits carried by the nonprofit organization for the board member. These coverages may be purchased by endorsement and often provide legal defense costs in addition to the policy limits.

Many high net worth individuals and families are unaware of their lack of appropriate coverage because they are insured by an agent or broker who doesn't specialize in providing insurance contracts and services for the unique needs of the affluent clientele. This may be because their insurance advisors do not have access to—or simply do not know about—this type of protection. It is imperative to identify and understand potential personal asset exposures beyond traditional insurance programs. Your insurance advisor should have direct access to all of the carriers that specialize in protecting affluent families and individuals. He or she should be able to offer you a detailed evaluation of your existing coverage and policies, with specific emphasis on adequacy of limits and potential gaps in your protection. Your advisor should also regularly review your insurance portfolio and make recommendations, as your liability coverage needs may change over time.

Mark Montgomery advises successful families about their complex personal risk, and designs and manages risk management programs to mitigate and protect against loss. Mark has 25 years of insurance expertise, 15 of which have been specifically focused on the property and liability risk management needs of affluent families in Palm Beach.


Mark Montgomery

Many high net worth individuals and families are unaware of their lack of appropriate coverage because they are insured by an agent or broker who doesn't specialize in providing insurance contracts and services for the unique needs of the affluent clientele.

DISCOUNTS

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close a loophole in Section 2704(b). Under Section 2704(b), "applicable restrictions" are disregarded for valuation purposes. Applicable restrictions are any restriction limiting the ability of an entity to liquidate and either the restriction lapses after the transfer or the transferor or any member of the transferor's family — i.e., spouse, ancestor, lineal descendant, sibling or spouse of any of aforementioned — has the right after a transfer to remove such restriction.

However, Section 2704(b) carved out an exception to applicable restrictions for restrictions that are no more restrictive than state law. As a result, many states modified their entity legislation after Section 2704(b) was enacted to provide for default rules that mirrored various restrictions commonly included in partnership and operating agreements.

This allowed such restrictions to be no more restrictive than state law and allowed discount planning to continue despite Section 2704(b).

The Proposed Regulations address this exception to provide that only mandatory restrictions imposed by state law will be considered no more restrictive than state law. Therefore, the default rules provided in state entity statutes will no longer insulate various restrictions — e.g., unanimous consent to liquidate a limited partnership — from being considered applicable restrictions and these restrictions will no longer be considered for valuation purposes.

Additionally, the Proposed Regulations create a new class of disregarded restrictions if such restrictions either lapse after a transfer or can be removed by the transferor or his or her family. Disregarded restrictions include the following:

- limits on the ability of the holder of the interest to liquidate it,
- limits on the liquidation proceeds to an amount that is less than minimum value — that is, the pro rata share of the assets of the entity,
- deferring the payment of liquidation proceeds for more than 6 months and
- payment of liquidation proceeds in any manner other than in cash or other property, other than certain notes. These restrictions are disregarded for valuation purposes.

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▪ payment of liquidation proceeds in any manner other than in cash or other property, other than certain notes. These restrictions are disregarded for valuation purposes.

Even if a non-family member has the power to remove a disregarded restriction, such restriction will still be disregarded for valuation purposes unless the non-family member's interest has been held for more than 3 years, constitutes at least 10% of the value of all equity, and at least 20% of the equity is owned by non-family members.

If the Proposed Regulations are finalized, valuation discount planning will be over for family-controlled entities.

It would be in a client's best interests to complete transactions relying on valuation discounts before the Proposed Regulations are finalized to potentially "lock in" discounts.

However, estate planning techniques that are the fundamental basis of the valuation discount planning — such as installment sales, gifting and GRATs — will still remain viable and continue to offer clients an opportunity to remove assets from their estate and allow the future appreciation from such assets to accrue free of federal estate, gift and GST taxes despite the absence of the boost of valuation discounts.

Domestic asset protection trusts

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

We are frequently asked to suggest techniques to protect a client's wealth in the face of our increasingly litigious society. Physicians, real estate developers, directors and officers of public companies, lawyers, accountants, and those with significant wealth are some individuals who fear the risk of potential lawsuits. There are several possible strategies to place wealth beyond the reach of lawsuit creditors and ex-spouses, and Florida is one of the more favorable states for planning of that type. The domestic asset protection trust (DAPT) is a new technique that has gained in popularity over the last few years.

Under conventional British-American law, trusts were not helpful in protecting one's own assets. Under those traditional rules, if you established a trust for your own benefit and funded the trust with your own assets, then those assets would still be reachable by your lawsuit creditors. However, about fifteen years ago some states began to revise their trust laws to permit the establishment of a special type of trust that could be exempt from attachment by future creditors. Alaska was the first such state, followed by Delaware, Nevada and recently by several others. There are now fifteen DAPT states, and similar legislation is being considered in a few others.

Florida is not a DAPT state, and trusts established under Florida law and funded with one's own assets remain reachable by creditors. However, Florida residents, and the residents of other non-DAPT states, are permitted to utilize the law of a DAPT state to achieve a significant level of asset protection. For a Florida resident to create a DAPT, the trust document must be drafted in conformity with the laws of the DAPT state. It is also necessary to have a trustee or co-trustee located in the DAPT state. Although an individual resident of the DAPT state can serve as trustee, we typically utilize a bank or trust company which is located in the DAPT state.

Rebecca G. and Randell C. Doane

The specific rules vary among the fifteen DAPT states and each must be analyzed to determine the most appropriate state for a particular client's situation and goals. Nevada, Delaware and Alaska are the most commonly used states, but others are occasionally more useful.

For many years, individuals seeking strong protection from the reach of creditors have established trusts in foreign countries. The Cook Islands is the most popular foreign jurisdiction, but Nevis, Belize, the Cayman Islands, the Channel Islands and other countries are also sometimes used. An offshore trust offers the strongest and most reliable protection from asset seizure. However, foreign situs trusts are expensive to establish and maintain, and there are intricate annual IRS reporting requirements with onerous penalties if the rules are not meticulously followed. In addition, some individuals feel insecure with a foreign trust company being involved with their financial affairs.

DAPTs have arisen to fill a middle ground—a technique that can offer a large measure of protection, but without the cost and worry of an offshore trust.

The effectiveness of a DAPT is an issue of debate among asset protection attorneys. Because the concept is new, there are only a few reported court cases where a DAPT was challenged by a creditor. Those cases presented unusual facts and provide no definitive answer on the strength of the protection afforded in a typical case. Many lawyers feel confident that a DAPT will provide a high level of protection, but others present a number of theories which might be used to defeat a DAPT. Because of that uncertainty, most experienced asset protection lawyers don't rely entirely on the DAPT, but combine it with a second level of protection, so if a creditor does succeed in penetrating the trust he will be confronted with a second hurdle before the assets could be reached.

Because there is no one strategy that will guarantee absolute protection in all circumstances, most well-conceived asset protection plans utilize a number of different techniques. To avoid putting "all your eggs in one basket," most plans involve a variety of approaches. Domestic asset protection trusts are an increasingly popular tool which can significantly reduce exposure to creditors, lawsuits, ex-spouses and other potential predators.

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.

FIDUCIARIES BEWARE!

Unfortunately, there is a small percentage of service providers that may not provide sound advice.

By Matthew N. Thibaut & Jason S. Haselkorn
Ciklin Lubitz & O'Connell

Investors in general must be tired of "the noise" about trying to navigate the turbulent financial markets, particularly in this low interest rate environment, against a backdrop of the "get-nothing done" political system, presidential politics hangover and the indecisiveness of the Fed on interest rates. Yes, we live in interesting but uncertain times: despite market volatility in 2016, the equity market indices have been hovering at or near all-time highs for much of the year, and interest rates have remained at or near historic lows. Unlike some developed economies such as Germany, Switzerland, Sweden, Denmark and Japan, who have adopted negative interest rate monetary policies — i.e. the investor actually pays the issuer to borrow the investor's capital — the Fed thus far refuses to employ such a tactic. Change is inevitable. Can you comfortably predict what the future holds as far as your financial security and well-being or that of your clients?

These are important issues for investors to discuss, and they often look to their fiduciaries: estate planning lawyers, tax advisors and investment professionals to discuss these important topics as they look ahead to 2017 and beyond. Headlines in 2016 devoted much time and attention to the Department of Labor's initiative to ensure that financial advisors are fiduciaries (the "DOL fiduciary rule"). Many investors already assumed that

Jason S. Haselkorn

Matthew N. Thibaut

their financial advisors were fiduciaries and had their best interests in mind at all times. Unfortunately, that is not the case and some financial industry titans have lodged legal challenges to the DOL's ruling, principally arguing that compliance with the DOL fiduciary rule would either be price prohibitive or prevent investors from receiving adequate investment advice — how ironic.

A fiduciary is a person in a position of "trust" that puts the interests of others ahead of their own. In some cases, fiduciaries themselves rightfully rely on financial advisors and the financial institutions that employ them. Take for example fiduciary relationships such as:

- Personal Representative to an Estate;
- Trustee of a Trust;
- Guardian of a Ward;
- Member of a Pension Committee or Board overseeing Pension Funds;
- Board Member advising an Endowment or Foundation; and
- 401(k) Plan Administrator

Individuals serving in the above capacities are often called upon to make investment decisions — either individually or in collaboration with others — in their fiduciary capacity. With respect to investment management and advice, the law permits a fiduciary to rely on outside experts, i.e. the financial advisors and their firms. Financial Advisors and financial services firms often have expertise and act in your — or your client's — best interest, but that is not always the case. Unfortunately, there is a small percentage of service providers, just as there is in any other profession, that may not provide sound advice, or who at one time or another offered negligent advice or recommendations.

A fiduciary who relied upon such advice or recommendations may be faced with a dilemma. What action, if any, should you take? There are practical and ethical issues to consider; perhaps the individual or firm that was relied upon has been a good source of business referrals in the past? Legally this should not be factor for a fiduciary, but that does ignore some practical realities that may need to be carefully navigated. A fiduciary may suspect or learn of negligence or impropriety by a financial advisor or his/her employer, but what should happen next? Is there a duty to investigate further? Is there a duty to inform the client? As is often the answer in professional circumstances, "it depends."

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RESIDENCY

From Page A13

to Florida. If you are in this position, auditors will look carefully at your continuing "active participation" and/or any "substantial investment in, or management of" that business; and your "active role in day-to-day decisions." Remaining "in constant communication" with new management, customers or vendors can weigh against a taxpayer asserting a change of domicile. Auditors will ask for phone and e-mail records, correspondence and other evidence of your involvement with the New York business in trying to determine your intent.

3. Time. You have "passed" the 605(b) test, but auditors are still told to look at a "quantitative analysis of time spent in New York in relationship to….." other locations. You would be a target of this factor if, for example, you spent about 5-6 months in Florida for many years and then, without changing much else, you went to 7 months in the year you claimed a "change" in domicile.

4. Items Near and Dear. Sometimes referred to as the "teddy bear rule." If you move to Florida but left behind your "sentimental" possessions (family heirlooms, works of art, books, antiques, family photo albums, etc.) which "enhance and add quality to the individual's lifestyle," the auditors will ask for bills of lading, insurance policies and other records to show where the items are actually located during the audit years.

5. Family Connections. If, like one taxpayer admitted in a losing case, you express a "commitment" to spend "as much time as possible" in New York with children and grandchildren, this factor could tip the balance in a non-resident audit, even though auditors are cautioned to be aware of the "intrusive nature" of the factor and to avoid the analysis unless it's absolutely necessary for their determination.

The audit guidelines suggest an examination of "other" factors in the unlikely event a determination of domicile cannot be made on the primary factors. These include the address you use to receive financial records and other important information, physical location of safe deposit boxes, location of vehicle registrations, voting status, listing of domicile in legal documents, etc.

The guidelines recite two "non-factors" NOT to be considered: Where you make charitable contributions and where you volunteer your time to charitable organizations. But if you move to Florida, you would be smart to change some of your giving and volunteering routine to demonstrate your intent to establish new roots.

At the commencement of a non-resident audit, you will receive a friendly letter from the NYS taxing authorities and a questionnaire with 10 seemingly straightforward questions. It would be wise to consult with your CPA, lawyer or other professional advisor before filing it out and sending it back.

SPLIT-$

From Page A16

funding her interest-free EB advances. The Trust will repay both the Grantor Loan and the EB advances in plan years 9 and 20, respectively.

Exit Strategies.

Beware of any Split-$ plan that does not include an effective exit strategy as part of the overall plan. With Split-$ Loans, there are many ways to terminate the plan either during the Grantor's life or when the death benefit is paid. With Split-$ Economic Benefit advances, most plans will terminate upon the death of the first insured in one of three ways: The Trust will repay the interest-free advances with funds from other trust investments; the advances will be repaid with a note that bears interest at the required AFR; or the interest-free note will be transferred to the Trust to terminate the repayment obligation.

Bottom Line: Properly structured Split-$ plans continue to be a viable and important planning strategy for wealthy families.

Properly structured Split-$ plans continue to be a viable and important planning strategy for wealthy families.

FIDUCIARIES

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The most prudent and practical course is to at least begin by obtaining an outside informal opinion on the matter. Sometimes the added perspective can put you at ease that what you are looking at is little more than a market-related decline in the value of securities or investments. In other cases, the same review can pro-actively assist you in properly documenting your records for your own protection.

A fiduciary responsible for clients who maintain trusts, pension plans, profit sharing plans, charitable or private foundations, etc. should leave the guesswork out of it. The news seems to frequently report on regulatory issues that may raise concerns causing you to question or potentially re-evaluate the professional relationships that are being maintained. For example, did any of the following events get your attention:

- Wells Fargo's $185 million regulatory fine and termination of 5,300 employees was reported in September 2016,
- JPMorgan's fine of over $300 million to SEC and CFTC was reported in December 2015;
- Sharp drop in value of energy sector oil and gas securities 2014-2016.

You should not have to guess whether or not these events could negatively impact your clients or their assets, or if these matters could directly or indirectly result in any potential liability for you or your firm down the road — be proactive!

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

SAVINGS

From Page A9

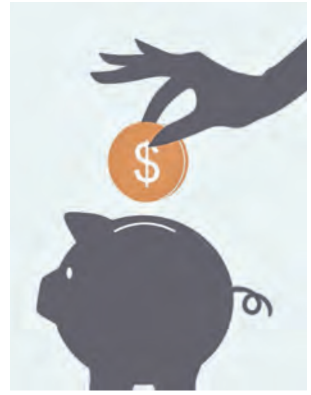
plan to set aside a financial cushion in the event of illness or other family considerations, such as inheritance and estate planning.

How do Americans save for retirement?

Retirement income often comes from multiple sources, including employer-sponsored pensions, employer-sponsored 401(k) or similar plans, Individual Retirement Accounts (IRAs) and social security. Roughly 96% of the population aged 62 to 84 will receive social security benefits, according to the Social Security Administration. This year the maximum monthly social security benefit, disbursed to someone who earned the maximum-taxable earnings during his or her lifetime is $2,639 per month. But, most Americans will receive significantly less with the average social security benefit for retired workers about half the maximum amount, or $1,341. Social security is an important pillar of retirement planning, but it should be viewed more as a supplement and not a sole investment for retirement. Social security was never intended to replace 70 percent of pre-retirement income for those earning the median wage, but is nonetheless a good base on which to layer other retirement income.

South Floridians uncertain of their retirement security need to take a holistic view of their portfolios and balance these against their ideal retirement plans – whether it is moving beachside, taking trips around the world, or leaving a legacy for children and grandchildren.

The final component of retirement savings is made up of asset holdings that can be monetized in retirement. These include life insurance policies, rental property, business ownership, stocks, bonds and mutual funds. In fact, according to analysis by TD Economics, only 24 to 39 percent of net assets



among 55 to 65 year-old workers are held in retirement accounts on average. This suggests that typical net asset holdings totaled $110,316 for workers in this age bracket — more than triple the $33,121 held in retirement accounts by this group on average.

Retirement Outlook

Although the individual situation varies, research suggests that a majority of near-retiree workers may not have enough savings to maintain their standard of living into their golden years. Some of those lacking adequate savings may choose to delay retirement to build up their investments, while others may decide to moderate their consumption into the future. South Floridians uncertain of their retirement security need to take a holistic view of their portfolios and balance these against their ideal retirement plans — whether it is moving beachside, taking trips around the world, or leaving a legacy for children and grandchildren. While balancing these may be more challenging for today's retirees, the prospects of achieving these can improve with a few changes and realistic plans for life in the sunset years.

FAMILY

From Page 11

the emotional value someone puts towards it. How do you divide these items? What is fair? What is equitable? How will you know that Susan really wants to inherit the antique chest she remembers fondly from childhood, and John would really like to have that collection of paintings given to you by your grandmother?

These conversation starters can give you a head start:

(1) Your mother and I are not ready to part with these things yet, but when the time comes is there anything in the house you would really like to have? Do you have questions about any of the things we have acquired over the years?

(2) Did you know this antique desk has been passed down by three generations of the family? Do either of you have an interest or a place for this in your own home?

(3) You know, over the years I have collected a number of nice pieces of jewelry. How would you recommend it be split amongst you and your siblings? If someone has a favorite piece I would really like to avoid a misunderstanding down the road.

Conversation starter: Your mother and I are not ready to part with these things yet, but when the time comes is there anything in the house you would really like to have? Do you have questions about any of the things we have acquired over the years?

Those are just some examples of things to talk about with your family. Seize the right opportunity to have these conversations before it is too late. You are never going to be able to anticipate or predict every argument, misunderstanding or perceived slight after you are gone, but if you talk to your kids and grandkids before you make a final decision, you can likely avoid unnecessary and costly litigation which can easily divide the family once you are no longer around to keep the peace.

Your attorney, accountant, trustee and most importantly your family will all thank you for going the extra step.

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U.S. Bank and its representatives do not provide tax or legal advice. Your tax and financial situation is unique. You should consult your tax and/or legal advisor for advice and information concerning your particular situation.

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