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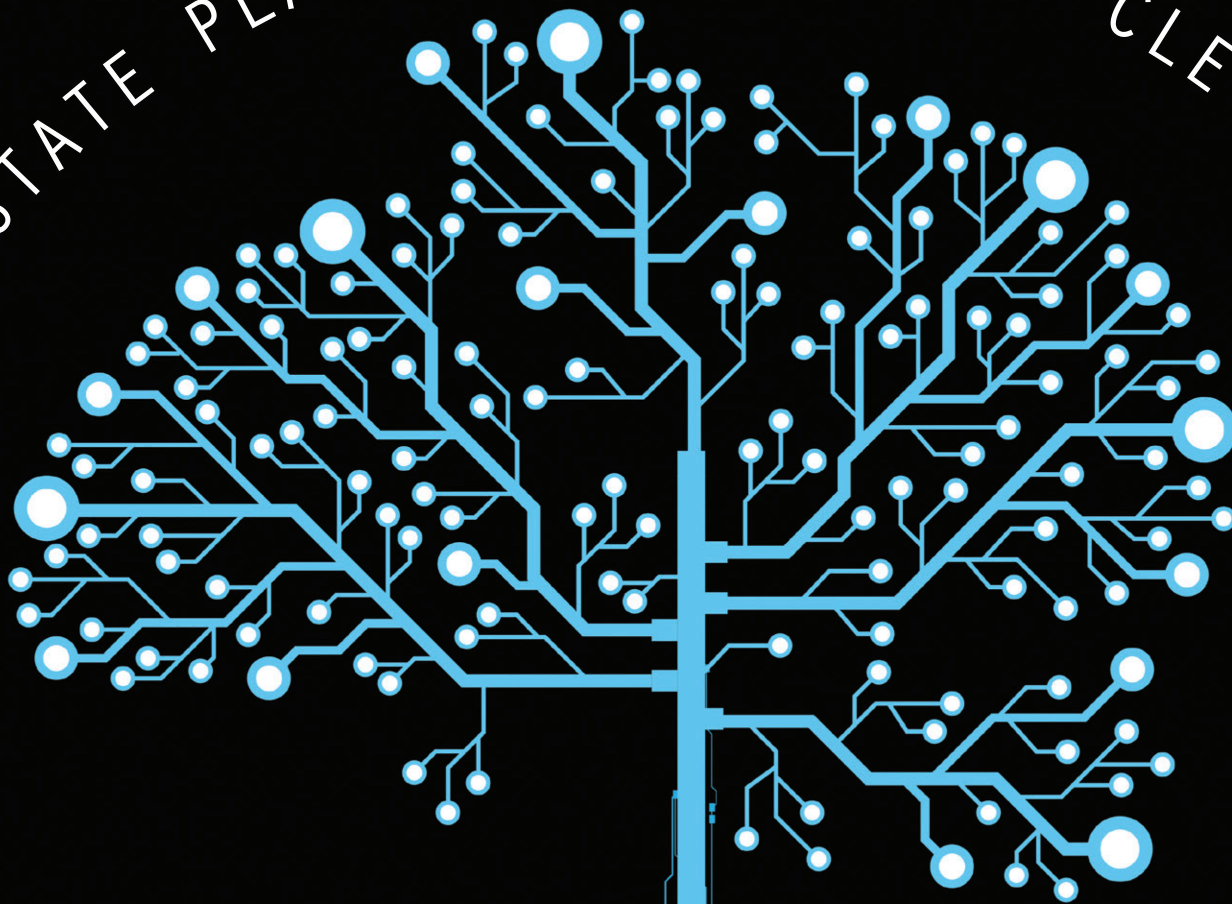

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PRESIDENT'S LETTER

Estate Planning Council offers multi-disciplinary expertise to guide you on path toward financial security

By Laura B. Kiick, CFP®, CRPC®

The Estate Planning Council of Cleveland is pleased to partner with Currents to present our third annual estate planning special section.

This special section is intended to provide the community with timely and valuable information that reflects our Council's collaborative approach to planning and generate further discussion with the readers' team of advisors. The articles and commentary on the pages that follow have been provided by many of the region's most knowledgeable professionals. Topics covered range from planning considerations related to personal finances and investments, insurance, business succession, tax, estate, and charitable planning.

While many of us consider how these topics apply to our current picture and future aspirations, many others may not or may not fully appreciate how much overlap occurs between them all. For example, decisions made around cash flow and liability management will directly impact the amount needed for life insurance. Titling of savings accounts will impact your estate plan. These are just a few connections the Estate Planning Council's professionals are equipped to help you make.

In addition to general guidance, there are articles featuring specialty areas of planning that may apply to your unique picture, including, but not limited to, tax considerations for establishing and maintaining trusts, business succession preparation and estate planning with investment properties.

If you are willing to do a few simple things to ensure you and your loved ones are taken care of regardless of what the future holds, please consider the following:

✓ Consult with your financial advisor to ensure you are on track to meet your goals. The stock and bond markets have and will likely continue to be volatile. Many people rely on their investment accounts for income and make few adjustments to their strategy as they age. If you do not have a financial advisor, please contact a CERTIFIED FINANCIAL PLANNER® in our member directory.

✓ Review and update beneficiary designations on all assets. This simple step will ease the burden of settling an estate but be sure to weigh potential tax implications as you do so. As an example, The SECURE Act became effective at the beginning of 2020 causing a dramatic shift in the way retirement assets—such as Individual Retirement Accounts (IRAs) and 401(k) plans—are distributed and taxed upon the death of the owner. As noted in our featured articles, legislation is still ongoing to clarify this law. It is wise to seek and rely upon the advice of experienced professionals who are familiar with tax law and have expertise in making prudent financial and investment recommendations to navigate these topics.

✓ Review your estate planning documents with an attorney who specializes in this area. If you do not have a will, health care and financial powers of attorney or these documents were created many years ago, please reach out to your attorney or an attorney who is a member of the Estate Planning Council to confirm they are still accurate.

✓ Review your life and long-term care strategy with your insurance advisor. Life insurance planning has two components; first determine how much life insurance you need to make sure your loved ones are taken care of and second, verify you have the best contract to meet short and long-term needs. Finally review options to protect your retirement nest egg from a health event that could require long-term care.

If the last few years have proven anything, it's that it is true that life happens while we are making other plans and uncertainty is always with us. Our experienced members look forward to helping you navigate your personal financial and estate planning goals in our ever-changing tax, economic, legislative and geopolitical environment.

Founded in the 1930s, the Estate Planning Council of Cleveland is a highly regarded association comprised of more than 400 professionals in the Greater Cleveland area, including attorneys, accountants, bankers, trust officers, financial planners, insurance agents, appraisers and representatives from charitable organizations. The National Association of Estate Planners & Councils has recognized Cleveland as a Council of Excellence for six years in a row beginning in 2016, and a 5-star council each year.

A Directory of members listed within this special section and also found our website (www.epccleveland.org) can help identify professionals to assist with your unique situation. We hope you find this to be a useful resource as you work with your advisors to plan a sound financial future.

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ESTATE PLANNING COUNCIL OF CLEVELAND DISTINGUISHED ESTATE PLANNER 2022

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Considerations for estate plans involving intellectual property

By Jaclyn M. Vary and Maureen T. Pavicic

Estate planning for individuals holding intellectual property (IP) rights can be a complicating factor. IP includes ideas, inventions, technologies, music, art, and literary works. While IP rights are often not considered traditional assets, they can add extraordinary value to an estate, and require proper analysis and estate planning.

Copyrights

Individuals with copyrights have the exclusive right to, among other things, (1) reproduce the copyrighted work; (2) prepare derivative works based on the copyrighted work; (3) distribute copies of the copyrighted work to the public by sale (or other transfer of ownership), rental, lease, or lending; (4) perform the copyrighted work publicly; and (5) display the copyrighted work publicly. Copyright automatically vests upon creation; however, registration with the U.S. Copyright Office is necessary to enforce the exclusive rights in litigation.

The 1976 Copyright Act (the "Act") changed the rules regarding termination of copyright and addressed the transfer of such rights before and after the copyright holder's death. The "termination right" was an equalizer under the Act, which is designed to enable creators to renegotiate the terms of the publishing deals they concluded before the true value of the work was known. Termination must occur either 35 years from the date of the transfer, or if the grant covers the right of publication, the earlier of 35 years after publication or 40 years after the execution of the transfer. Such right terminates if not exercised within the statutory period. The following rules apply to the transfer of termination rights:

If the creator dies after giving required notice but before the termination date, the copyright should revert to the creator's estate and pass by the creator's estate plan or through intestate succession if there is no estate plan in place.

If the creator dies before the end of the termination window, the creator cannot devise their termination rights, and instead, the rights pass to the statutory heirs, regardless of the estate plan in place. This forced heirship hierarchy may be contrary of the client's intentions under their estate plan.

From an estate planning perspective, it is important to specifically mention both the original work and the copyright in a creator's estate planning documents. Creators also should discuss with estate planning advisors how they wish to address the termination rights as the right of termination is an automatic right of inheritance that cannot be changed. Such rights apply to any transfer made during the creator's lifetime, including lifetime gifts, charitable donations, and transfers to trusts; however, the law includes a specific exception for transfers by a last will and testament as the statute states that any transfer, except testamentary transfers, may be terminated. It is important that copyright interests should be included in the last will and testament, even if the ultimate vehicle driving the estate plan is a revocable trust as the statute does not make any exceptions for "will substitutes."

An example of termination rights occurred when Michael Jackson died in 2009 owning the U.S. copyright to the Beatles catalogue. In 2017, Paul McCartney settled a lawsuit where he as the songwriter reclaimed the copyright from the music publisher 35 years after he had given those rights away.

Patents

A patent is a grant by the U.S. Patent and Trademark Office (USPTO) of certain exclusionary rights that can be enforced for a limited time. For example, a patent allows the patent owner to prevent others from making, using, or selling the invention. There are three main types of patents:

Utility patents are issued for new and useful products, processes or machines; they last for 20 years from filing and are subject to periodic maintenance fees.

Design patents are issued for new, original and ornamental designs; they last for 15 years from filing and are not subject to maintenance fees.

Plant patents are issued for new and distinct, invented, or discovered asexually reproduced plants; they last for 20 years from filing and are not subject to maintenance fees.

During their lifetime, the inventor may transfer whole or partial ownership of the patent through an assignment, which generally should be registered with the USPTO. If an inventor dies prior to filing a patent application or during the review process, the personal representative of the inventor's estate may act on behalf of the deceased inventor.

The estate plan of an inventor should include all unique patent numbers and detail who owns the patent and holds responsibility for maintaining it. As noted above, some patent owners are required to pay regular maintenance and renewal fees to prevent the patent from lapsing. Therefore, an estate plan that includes patent ownership should contain detailed instructions as to the proper response deadlines, payments due, and which address is on file with the USPTO.

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Planning for the family vacation home

By Michael Wear

A family vacation home offers an escape from the stresses of everyday life, and an opportunity for bonding. Parents return to their vacation homes year after year, creating memories with their children and grandchildren. If you are part of such a family, you know the importance of passing on this tradition. A carefully constructed plan, with assent from children, can help make a seamless transition, and potentially reduce estate taxes.

The plan should address: (1) intended development or preservation of the property; (2) ownership of the property now and in the future; (3) use of the property (by whom and how often); (4) management structure and succession; and (5) allocation of expenses for maintaining the property. Your team of legal, accounting, insurance, and financial advisors can assist in creating your plan and developing an effective implementation strategy.

In this environment of appreciating real estate values and rising interest rates, you may be able to use a Qualified Personal Residence Trust ("QPRT") to pass the vacation home to the next generation while reducing estate tax exposure. A QPRT is an irrevocable trust. The grantor transfers residential real property to the trust, retaining the right to reside in the home for a period of years. At the end of that time, the property will be held in trust for grantor's children or distributed outright to the beneficiaries. The value of the retained term of years is deducted from the total value of the property to determine the taxable gift to the children. If the grantor wishes to continue using the property after the term of years expires, she may lease the property from the trust. The rental payments are additional transfers of wealth to the next generation that are income to the trust, but not taxable gifts.

If estate taxes are not a concern, a limited liability company ("LLC") to hold the vacation home may suffice. An LLC can make it easier to divide the property among your children and grandchildren. It can also provide a management structure to ensure maintenance of the property, and to determine the schedule for using the property, especially in peak seasonal times.

The family vacation home can be an invaluable legacy. Contact your team to make a plan.

Michael L. Wear, AEP®, is a Trusts & Estates partner at Buckingham, Doolittle & Burroughs, LLC. Contact Mike at 330.258.6424 or mwear@bdblaw.com.

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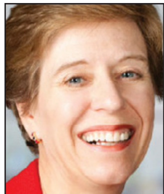
HW&CO

Trust or Beneficiary – who should pay the tax?



By Mary Eileen Vitale

If you have not done year-end tax planning for your trust in the past, this year is an excellent opportunity to jump in and do a year-end tax plan. Depending on a number of factors, it may be beneficial to have either the trust or the beneficiary pay the tax.

Trusts pay tax at the same rate as individuals. However, the highest rates kick in at $13,451 of income in 2022 versus much higher levels for individuals. Planning ahead can save taxes.

In Ohio, generally, capital gains are taxed within a trust unless the trust specifically provides otherwise. All other types of income are allocated between the trust and the beneficiary(ies) depending on trust requirements and distributions made.

Since capital gains are taxed at the trust level, with the stock market in a descending position this year, there is an opportunity to review any realized gains within the trust and sell investments in a loss position to offset those gains before year-end. Losses can also be carried to future years.

Projecting income for the remainder of the trust revenue can help determine if distributions should be made before year-end. If you miss that deadline you have until 65 days after the year's end to make distributions that count toward 2022. Knowing your income can alleviate all the income being left in the trust to be taxed at higher rates if the beneficiary is in a lower tax bracket.

Some income is always required to be distributed either by the trust document or tax rules, such as S-Corporation income in certain types of trusts. Understanding how your income will be taxed is important.

One consideration to keep in mind is that tax is not the only factor when trusts are involved. What is the overall purpose of the trust? Paying more tax today may be small in price to pay for the protection of the family assets involved.

Knowing and taking all relevant factors into account will help determine who should pay the tax. Understanding how income is taxed will assist in paying the lowest tax and meeting the overall goals of the trust planning. It's time to start planning.

Mary Eileen Vitale is a Principal in HW&Co.'s Tax Advisors Group and holds the appellation CERTIFIED FINANCIAL PLANNER™ Professional and ACCREDITED ESTATE PLANNER® designation. She advises high net-worth individuals and employee benefit plans. Mary Eileen also advises family-owned businesses and trusts. She is a frequent speaker on estate, financial planning, and other various tax topics.

CM WEALTH ADVISORS, LLC

Planning for the Milestones

By Aileen P. Werklund, CFP®

Your children are getting older and will be heading off to college in a few years. What do they need to plan for? How can you educate and protect them? With all the excitement surrounding adolescent milestones, such as high school graduation, choosing a college, moving away from home, or learning a trade, many important financial literacy lessons can fall through the cracks. By introducing key money concepts and maintaining open financial dialogue throughout the formative years, parents can provide crucial educational opportunities prior to these big milestones.

Regardless of an individual's level of wealth, learning about core financial concepts and adopting basic money-management skills at an early stage in life can profoundly impact an individual's future. During the high school years, parents can start this dialogue by having a meeting with their financial advisor and child, and discussing budgeting, time value of money, and the importance of good credit. Children often enjoy working with the advisors to create a small portfolio of stocks they are interested in, and watching it grow. This helps promote the importance of saving and long-term investing. During this stage, you can also set up bank accounts, work on balancing a monthly budget, and obtain a joint credit card to establish responsible credit habits early. Credit card companies prey on college-aged students, so introducing these lessons before kids graduate high school can be invaluable.

As high school students become more knowledgeable with financial basics, parents can better prepare them for the adjustment to college life. When students begin the college application process, it is important to always apply for financial aid despite trust funds or available assets. Many wealthy families do not take this step, and there are various scholarships based on interests, grades, extracurricular activities, and the student's major. The only way for students to qualify for these is by applying for financial aid. If scholarships and/or grants are received, this must be renewed each year, and parents and students should stay on top of this, as it may only be sent to the student.

The high school to college transition in any student's life naturally brings a multitude of risks with it. From cyber security and social media to lifestyle choices, navigating these risks responsibly starts with awareness during the adolescent years, and knowledge of the necessary tools to manage these risks. Liability claims are rising for college students due to hazing, increased alcohol intake, protests that end in violence, etc. It is paramount to have open communication with your kids about these activities, and to keep them covered under your personal umbrella policy. Even the best kids can be in the wrong place at the wrong time and can potentially be pulled into a lawsuit. Theft is also common on campus, so it is necessary to maintain coverage on your homeowner's insurance for kids' laptops and valuables while at school and obtain renter's insurance if they are in an apartment.

Additionally, there are several legal documents to be mindful of as children transition from adolescents to young adults. The college-specific forms that provide authorization to students' university records include the "Authorized Payer" and "FERPA Authorized Person" forms. "Authorized Payer" access gives a person access to pay bills on behalf of the student but does not permit access to their grades or course information. "FERPA Authorized Person" access indicates the student has signed a release to allow an individual(s) to view all their financials, academics, advising, report cards, and more. Once your child turns 18, Health Care Powers of Attorney (HCPOAs), Living Will, and HIPAA release documents should be executed. When a child turns 18, parents no longer have access to their medical information unless they complete a HIPAA release. Similarly, HCPOAs designate who will be authorized to make health decisions on behalf of the student if they are incompetent or unable to do so for themselves and Living Wills communicate their healthcare desires. This also creates the opportunity to have these conversations with your children. Financial Powers of Attorney can also prove extremely useful when children are away at college, as they provide parents with the authority to sign tax returns or handle any bank account issues from home. Lastly, if a student has a future inheritance, having a trust drafted to avoid a probate estate and ensure new accounts are opened in the trust name or titled as transfer-on-death (TOD) to the trust is crucial for the financial planning process.

Financial literacy starts with building a foundation for your kids throughout their childhood and adolescence and continuing to reinforce these lessons as they reach every milestone. These educational opportunities can help reshape financial futures and give young individuals a much better chance of developing into responsible money managers.

Aileen P. Werklund is a Cleveland native and graduated from Baldwin Wallace College with a BS in Business Administration. After college, Aileen attended Case Western Reserve University where she received her MBA in Finance and Management and earned her Certified Financial Planner™ (CFP®) licensure. As the Senior Director of Client Service, and Member of CM Wealth Advisors, LLC, Aileen combines her knowledge of estate planning and family financial education with her proficiencies in banking and credit products, household audits, insurance, and cash flow management. As a member of the Estate Planning Council of Cleveland and the Diamond Advisory Group at University Hospitals, Aileen is active in the Cleveland community. She also loves spending time with her husband and family, traveling, and any book by James Patterson.

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The Opportunity of 1031 Exchanges and Estate Planning

By Erika F. Apelis and Laura Wallerstein

A 1031 exchange allows a tax deferral on investment property. It is a sale and purchase of like kind property allowed under Section 1031 of the Internal Revenue Code. To simplify, the owner swaps one investment property for another according to specific rules and timelines. 1031 exchanges are used in investment real estate transactions because of the deferral of capital gains typically due. Without the use of a Section 1031 exchange the owner is taxed on any realized gain. This realized gain would trigger both state and federal taxes, and possibly a 3.8% net investment income tax.

A 1031 exchange is a way to maintain equity in real estate and defer considerable taxes. It provides the owner the opportunity to acquire a new, like kind property that may be a better fit or investment. The ability to maximize tax savings makes a 1031 exchange a great estate planning opportunity.

In a 1031 structured sale, a property owner, either individual or LLC, would sell their current property and use the profits to purchase a new investment property for that same individual or LLC. By using the profits to purchase a new, replacement property of a certain value, as Section 1031 requires, the owner can defer 100% of the capital gains and other taxes.

The next step is using this tax deferral to the property owner's benefit in their estate planning. If an owner holds investment real estate, including property that was part of a 1031 exchange, the owner's heirs receive a stepped-up basis. A basis step up is an increase of basis in the property as of the property owner's date of death. This allows the owner's heirs to sell this property at the same appraised date of death value without a gain and any capital gains tax due.

If an investment property owner were to sell a property outright prior to their death without exchanging, the owner would owe both state and federal taxes, including capital gains and potentially 3.8% net investment income tax. The combination of taxes would result in a loss to the owner's estate of approximately 25-40% of any gain. This would result in the owner's heirs receiving less value at the owner's death. By utilizing a 1031 exchange, the heirs receive more value with no taxes due.

Please note this is not legal advice and IRC Section 1031 is complex requiring a thorough analysis by professional advisors prior to attempting an exchange.

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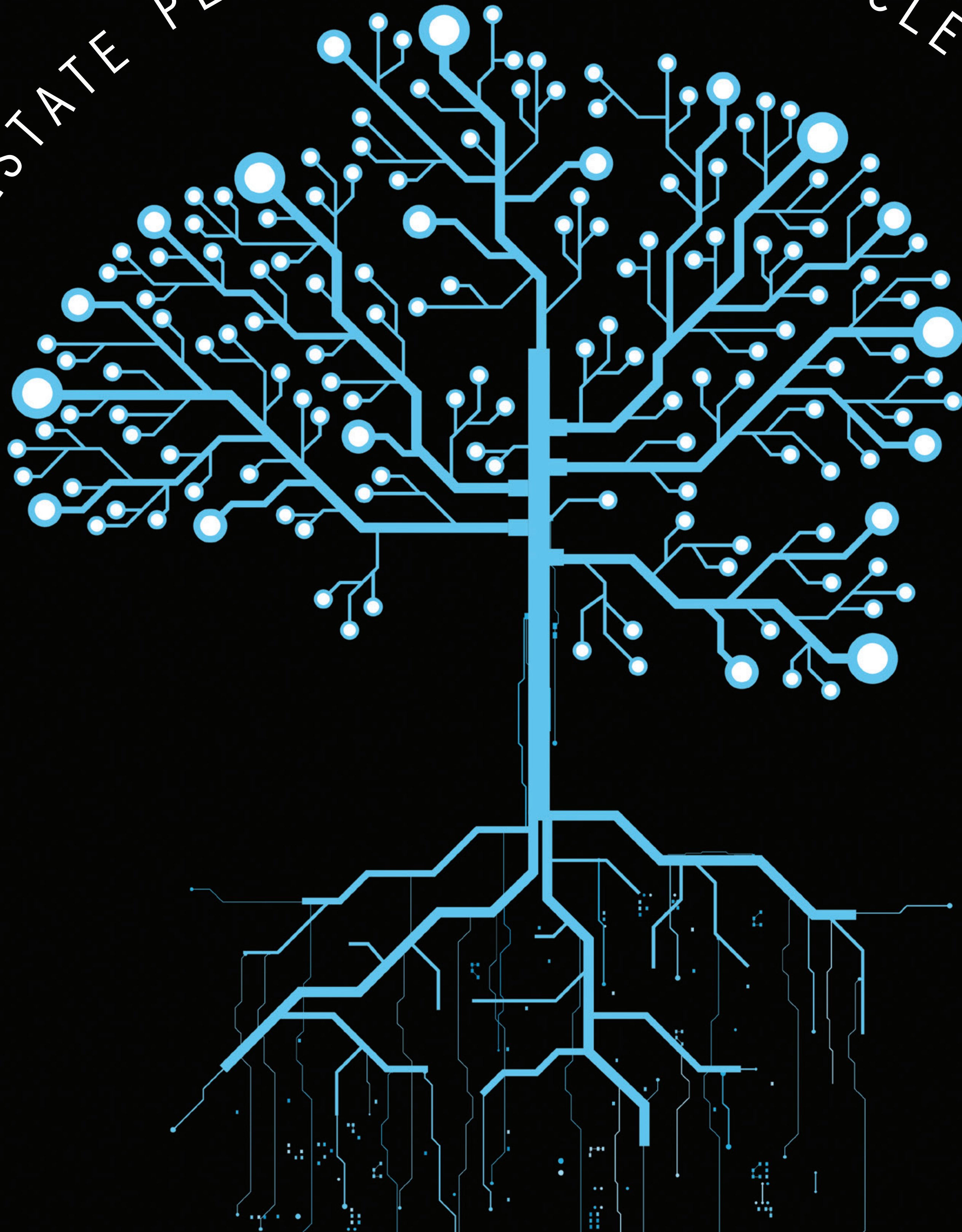

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Estates: From valuation to liquidation

By Dick Kiko

Many of us will one day inherit our family's estate and will have questions about where to turn for help getting it settled.

Your first step is to find a trusted estate planning professional to guide you through the often-confusing process of estate settlement.

The second step is to understand the value of the assets you have inherited.

Delivering Options

The auction process is often the chosen avenue used to liquidate the assets of an estate. Many auctioneers have decades of experience handling estate sales, and they can help estate planners and their clients with anything from valuations to liquidation.

The first step is for an auctioneer to meet with a client, evaluate the assets and provide an honest appraisal of the personal property and real estate. As experts on the front lines of today's sales environment, an auctioneer's appraisal reflects the true market value of the asset. Estate planners can then partner with auctioneers to provide a quick and positive resolution to convert these assets into cash.

Many Auctioneers are also licensed Realtors, which allows them to help with special asset categories, including residential real estate; commercial, retail, and industrial buildings; multi-family; restaurants; land; farms and farm equipment; firearms; classic cars; gold, silver, and fine antiques.

How It Works

There are a lot of moving pieces when trying to settle an estate. In many cases, clients want advice on how to maximize the return on their assets without spending a lot of time and money in the process.

When less time and more money are the ultimate goals, the auction option provides control of the timing and terms of the sale as well as maximizes the return on the assets.

Auctions use targeted, accelerated marketing and competitive bidding to efficiently and effectively convert special assets like real estate, vehicles, firearms, and other high-end items to cash.

From pre-sale to post-sale, professional Auctioneers provide an easy process that runs as smoothly as possible for clients at a difficult time in their lives.

Pre-Sale: Work with a qualified auction firm that has proven experience in the asset categories you or your clients need help evaluating. They should have a professional website plus advertising programs to reach as many qualified buyers as possible.

Sale Day: Real estate and other personal property is sold the first time because the auctioneer's appraisal is accurate.

Post-Sale: Trusted Auctioneers and Realtors often boast an in-house closing department that you can tap into, which means a short turnaround for estate clients.

From appraisal through final settlement, Auctioneers handle every detail to protect a client's best interests.

Dick Kiko is CEO of KIKO Realtors, Auctioneers & Advisors and a third-generation licensed auctioneer and real estate broker. Visit www.kikocompany.com to learn more.

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UNIVERSITY HOSPITALS

Private settlement agreement makes a big impact for University Hospitals in 2022

By Michael A. Wolff

In the world of philanthropy, certainty of charitable intent and certainty in receiving donated resources are coveted. These factors make the life of a gift officer much easier in reporting and planning the stewardship of the donor as the gift is received. Leaders at charitable organizations also desire a high level of certainty in their future charitable revenue to budget for improvements, hire necessary staff and plan for the future.

As we've seen since 2020, though, conditions may change drastically for an organization, an industry, or the entire world. It is therefore necessary to find tools to adjust for uncertainty. One such tool regarding estate trusts is Ohio's Private Settlement Agreement (PSA) as detailed in the Ohio Revised Code chapters 5801 to 5811. The PSA can be very handy when an irrevocable trust should be adjusted for changes that could not be foreseen by the drafters of the instrument. Some active trusts dating back many decades do not address changes in the modern economic, social or scientific landscapes.

The flexibility provided by trusts in the timing and amount of support for charities and the donor's family make trusts a preferred vehicle for distributions of assets. A PSA can make common sense adjustments that are equitable for all parties involved. The trust term may not be shortened, and the interests of the beneficiaries may not be harmed by the PSA. Court review of the document is in the discretion of the trustee based on the PSA's scope.

At University Hospitals, a court-approved PSA made a significant charitable impact in 2022. We reached out to the trustee of a long-term charitable remainder trust to ask about increasing the financial impact. Given that the remaining relative named in the trust donates the monthly distributions back to UH, we asked the trustee to increase the stated 1.5% annual distribution to 3%. This was agreed to by all parties, and the higher monthly distribution is still being donated back to UH. As a result, UH can utilize an extra $175,000 annually for the lifetime of the remaining relative to fund critical women's health research. The PSA proved to be the right tool to significantly increase the charitable impact for a generous family while allowing UH to make accelerated investments in our mission "To Heal. To Teach. To Discover."

Michael A. Wolff, J.D. is a lifelong northeast Ohio resident and has been serving local nonprofit organizations focused on health care, education and human services for over 25 years. Michael is now a Gift Planning Officer at University Hospitals.

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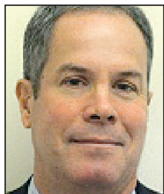
The Next Gen Trust: Not Your Grandfather's Trust Agreement



By Tim Malloy

A modern trust should not look or read like that trust your grandfather created: worn-out, graying pages; long on archaic language and confusing legalese. Times have changed, and they're still a-changin.'

Flexibility, control, and customization are the new touchstones in trust design. In the last 25 years, the explosion of the estate tax exclusion levels and the introduction of 'portability' (in 2011) have dramatically changed trust modelling for most married clients. The conventional "A-B" trust division is becoming antiquated, even for very wealthy couples. With the estate tax exclusion amounts swinging between "double" and "half," the increasing importance of income tax considerations like step-up in basis, and the uncertainty of asset growth over the uncertain life expectancy of a surviving spouse, clients need a trust solution that provides maximum flexibility in real time. For many, that solution lies in a single resulting trust over which post-mortem tax elections and disclaimers can parse out the income and transfer tax attributes of trust assets for the maximum benefit of all heirs.

For some married clients, marital trusts are still a clear option – even a necessity in some cases – and these trusts abide by specific requirements regarding a spouse's mandatory income and exclusive principal rights. However, for Family Trusts and Lineal Descendant's Trusts, the modern trust paradigm is changing with a heavy emphasis on discretionary distribution standards, and a "wait-and-see" approach. Of course, mandatory income provisions for a single beneficiary may not be optimum from either an income tax, estate tax or asset protection perspective. For even the UHNW clients with certain estate tax liabilities, it is nearly impossible to project whether their children will face similar transfer tax issues, or whether the customary use of GST tax exemption will be advantageous. Given the shifting tax landscape and varying personal circumstances, many second-generation beneficiaries may not have taxable estates in the future, yet their children could benefit greatly from a step-up in basis for appreciated assets. Broad, discretionary distribution powers vested in an independent trustee can provide the necessary flexibility for modern trusts.

Family control should not be sacrificed at this altar of flexibility, and a co-trustee arrangement between family members and an institutional trustee may strike the perfect balance. A beneficiary, serving as trustee over a trust share, can control baseline distributions for personal "health, maintenance, support and education." The corporate trustee's ability to make principal distributions that don't conform to ascertainable standards can enhance tax-efficiency in cases where basis step-up is preferred over estate exclusion. Arming an institutional trustee with the ability to confer a general power of appointment to a beneficiary can achieve a superior result, with trust protections continuing for additional generations.

Zoomer generation trusts have shed themselves of the one size fits all approach of yesteryear. Trust language is evolving from staid, archaic terminology in favor of more purposeful and customized prose. Trust provisions that are carefully crafted and which speak to values will better bridge a settlor's intentions with the changing circumstances of the future. As if by default, many old-school trusts contain provisions for systematic, age-based distributions of principal: e.g., "one-third at age 30, one-half at age 35, and the balance at age 40." Given the context of shifting social, legal and personal circumstances – not to mention the potential threat of creditors and soon-to-be-ex spouses – should any large distribution be so perfunctory? The NextGen trust looks at giving beneficiaries more control over, and access to trust property at these various ages, while requiring consideration of personal, legal and tax implications before any significant distributions are made.

Decanting and Directed Trust provisions are becoming staples of the modern trust genre. Even trust provisions drafted in 2022 could become outdated, and trust decanting allows an old trust to 'pour' into a new one with better administrative provisions, and also one which is located in a new jurisdiction to better avail itself of more favorable asset protection and trust income tax laws.

For families with unique assets like a closely held business – or even a keen interest in ESG investing – the Directed Trust offers the perfect balance between family control and fiduciary protection. Institutional trustees often balk at the potential liability associated with assets it does not typically manage, and families are loath to take full advantage of the inherent tax and asset protection features of trusts simply to retain investment control over the unique asset(s). With a Directed Trust, a specific person (often a family member) directs the corporate trustee with respect to investment decisions, and the corporate trustee follows those directions, with no responsibility to advise the trust director if it might have acted differently. The family has the comfort of knowing it has retained all decision-making authority with respect to these assets, while relying on the corporate trustee in providing professional-level administration, reporting and tax compliance.

Tim Malloy is Director of Estate Planning and Charitable Strategies with Key Private Bank in Cleveland. He is also a Tax Planning Lecturer (Financial Planning & Wealth Management program) in the Boler College of Business at John Carroll University. Tim can be reached at 440-788-4443 or timothy_malloy@keybank.com.

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GLENMEDE

How family enterprises can survive – and thrive

By Linda Olejko

What might cause a family business not to succeed past the first generation? External disruptions like societal changes and economic shifts matter, but more prevalent are internal forces, such as delaying or ignoring estate and succession planning, failing to promote financial literacy in the second and subsequent generations or lack of asset protection planning. Here are some best practices for family business owners that can be applied in any family of wealth to address this generational conundrum.

Family businesses are a dominant force in the economy: The Family Business Alliance reports that nearly 5.5 million businesses in the U.S. are family-owned, accounting for 50% of the U.S. workforce and nearly 50% of GDP. Yet only 30% of all family-owned businesses survive into the second generation, 12% into the third and just 3% into the fourth generation and beyond.

How, then, does a family business avoid the so-called shirtsleeves-to-shirtsleeves outcome? With

diligent adherence to a customized strategic plan consistently over time, many highly successful family businesses and wealthy families have done just that.

Following are some best practices for family business owners that can be applied in any family of wealth to develop good habits that connect them to their family's values, stewardship and philanthropy.

Make it a family affair

For family operations, business transition and continuity of operations are real concerns. The knowledge that your children are committed to your business can provide a sense of security surrounding your company's future. Creating and maintaining open lines of communication is essential. When business and family roles overlap (or collide), conflicts may arise that need to be addressed in a timely and constructive manner. Families should be prepared for personal concerns that carry over into the workplace and have mechanisms in place that facilitate impartial resolution. A family business that succeeds will leverage the expertise of outside advisors to ensure shareholder or operating agreements are in place and appropriate to the circumstances.

Share your story

We have found that successful family-owned businesses, those that survive multiple generations, have owners who share their stories — how the family wealth was created, who created it and what family members sacrificed to make the venture successful. It is important for family firm wealth holders to transfer not only their financial wealth but also their values to subsequent generations, including encouraging children to earn their own money and engage in philanthropy.

Start early

Families that operate successful businesses over the long term tend to be close-knit across generations and inclined to honor family traditions. Play an active role in educating the next generation. Your advisor should be able to introduce programs designed to facilitate responsible stewardship of assets by exposing younger family members to age-appropriate financial concepts early and often. To be effective, education must be a continuous process.

Business owners who are contemplating a transition in favor of a subsequent generation or a strategic buyer must understand who will continue to hold business interests and the rights and tax implications of that ownership. This understanding can factor largely into the choice of one technique over another. Will the transition be part gift, part sale? Will it take place immediately, or over time? Is it a stock sale or an asset sale? Titling of equity interests will determine who exercises control over business decisions and who bears the burden of tax or other liability resulting from a transition, and this structure should be analyzed and, if necessary, equity interests transferred appropriately well in advance of any transaction.

Conclusion

There are no guarantees that your family business will survive for multiple generations. As a business owner, you may have to decide who will operate the company after you retire, if something should happen to you or when you simply want to move on to something new. Ideally, you will plan for this transition before it is too late to implement many tax efficiencies.

Linda M. Olejko, CFP®, CEPA, is a Business Development Director in Glenmede's Ohio office, responsible for cultivating relationships with endowments, foundations, tax-exempt entities and high-net-worth families. Linda M. Olejko, CFP®, CEPA® | Managing Director of Business Development | Glenmede, Highland Centre | 3900 Park East Drive | Suite 100| Beachwood, Ohio 44122-4344, (T) 216-514-7876 | (M) 216-470-5083, www.glenmede.com| Linda.Olejko@glenmede.com

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Defining Your Legacy: How to Create and Implement a Charitable Plan

By Brenda Cummins and Ginger Mlakar

An effective charitable plan answers two key questions: "what?" and "how?"

First, it's important to identify "what" the impact of your future gifts will mean to your legacy and which organizations can best facilitate that impact.

Defining your desired impact and legacy may require some additional reflection:

What ideals and values do you live by?

What organizations have you supported in the past?

What change would you like to see in the world?

Consider sitting down with a professional advisor to talk through these questions. This can lead to some important decisions about where your estate dollars can make the most impact.

Answering the questions above will not only help direct your gifts but will clarify the story of your life and how philanthropy played an important role. If your parents or grandparents were philanthropic, perhaps they passed that down to you. Was there a specific event or incident that occurred that influenced your decisions to give back to your community? Everyone's story is different, but each story has a unique way of making a difference – both in the organizations that your estate plans will support and in the legacy that you pass down to your loved ones.

Once you've answered "what" legacy and impact you want to create, you can start thinking about "how." This is the time to engage your professional advisors, such as estate and trust attorneys, financial advisors and accountants as well as gift planning professionals. Again, there are several questions to consider:

- How much and through what vehicles do you want to give during your life?
- How do you want to leave gifts for family, friends, other individuals and your favorite charities?
- How do you want your heirs to be involved with your philanthropic gifts?
- What are tax-effective assets to pass to your loved ones and charities?
- Are you comfortable giving a lump sum directly to charities, or would you prefer some oversight and perhaps to establish a legacy in perpetuity?

With this information, your advisors can help you strategize on the more technical "how" questions:

- How much can I afford to give now?
- Which assets make the best charitable gifts (from both tax and simplicity standpoints)?
- Which charitable giving vehicles will best accomplish my goals?

While this may seem like an intimidating list of questions, a good team of advisors can help make your planning simple, effective – and even fun!

For more information about charitable giving strategies or help establishing your philanthropic legacy, please contact the Cleveland Foundation at 216.685.2006.

Ginger Mlakar serves as in-house legal counsel and manages the Foundation's legal affairs. Additionally, she oversees the teams that work with current donors, individuals, business owners, and their professional advisors to identify their charitable objectives and implement simple to complex strategies to accomplish their philanthropic goals. Brenda Cummins joined the foundation in 2015 and works with donors and organizations to help them plan and achieve their philanthropic objectives.

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ULMER & BERNE LLP

Donor advised funds: A charitable vehicle – for backseat drivers

By Abbie Pappas

Donor Advised Funds (DAFs) are an efficient, low-cost charitable giving alternative to more complicated structures such as private foundations and charitable trusts. DAFs have become tremendously popular due to their breadth of applicability – they are equally appropriate for donors giving modest amounts and donors giving millions of dollars.

A DAF is a separate fund that exists inside a sponsoring organization, which itself is either a public charity, or an entity established as public charity by a financial services company to administer DAFs. For example, right now, two of the most popular DAF sponsors are Fidelity Charitable and the Schwab Charitable Fund, charities established by their for-profit corporate counterparts as DAF sponsors. In the greater Cleveland area, large public charities such as the Cleveland Foundation and the Jewish Federation of Cleveland are also popular sponsors of DAFs, sometimes allowing DAFs to be opened with donations of as little as $100.

The Upside: Let the Sponsoring Organization Handle It!

DAFs are widely appealing due to the benefits provided by the sponsoring organizations. The sponsoring organizations manage the DAF's assets and relieve the donors of administrative and recordkeeping responsibilities. Large sponsoring organizations often allow donors to contribute a wide array of cash and non-cash assets to a DAF, and will assist donors in converting illiquid assets before granting them to small charitable beneficiaries. Logistically, sponsoring organizations often provide useful online portals, from which donors can make grant requests and access tax records.

Donor Beware… "Advised" Really Means "Advised"

Under the Internal Revenue Code, a DAF is a fund (1) which is separately identified by reference to contributions of a donor or donors; (2) which is owned and controlled by a sponsoring organization; and (3) with respect to which the donor is allowed to offer advice regarding distributions from, or investments in, the fund.

In other words, the donor may name the fund after herself or her family, and the donor may make suggestions regarding grants from the DAF, but the DAF is ultimately owned and controlled by the sponsoring organization. Practically speaking, a sponsoring organization is unlikely to reject reasonable donation requests from the donor. But when push comes to shove, the sponsoring organization has the last word. In a recent case, a federal court reminded donors who is ultimately in charge of the DAF, by refusing to find the sponsoring organization liable for negligence even though it had disposed of donated stock in a manner that was overwhelmingly contrary to the wishes of its donors.

Despite these risks, DAFs are an extremely appealing option for charitably-inclined clients due to their ease and accessibility. According to the National Philanthropic Trust, with over $34 billion given by DAFs to qualified charities in 2020, DAFs are the fastest-growing charitable vehicle available today.

Abbie Pappas is an experienced estate planning, estate administration, and taxation attorney who works closely with clients to develop and analyze estate plans appropriate to their needs and objectives. She has experience in both domestic and international tax and estate planning, and provides counsel on the use of wills and trusts, gift planning, lifetime and post-mortem tax planning, living wills, powers of attorney, and estate administration.

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The SECURE Act & Proposed RMD Regulations

By Heather Welsh

Perhaps the most significant provision of the Setting Every Community Up for Retirement Enhancement (SECURE) Act was the replacement of "stretch" treatment for inherited retirement assets passing to most non-spouse beneficiaries with a new 10-year rule requiring full distribution of the account balance by the end of the tenth year following the year of the account owner's passing. Most practitioners originally assumed that beneficiaries had full flexibility regarding amounts withdrawn from inherited retirement accounts during the newly imposed 10-year distribution window. This offered planning opportunities to vary amounts withdrawn based on beneficiaries' individual circumstances. For example, if a beneficiary planned to retire five years after inheriting the retirement assets, perhaps no distributions would be taken until after they stopped working. For Roth IRAs, beneficiaries might have taken nothing until the final year to maximize the time for tax-free growth inside of the account.

Proposed Internal Revenue Service regulations issued in February 2022 would significantly curtail that flexibility for beneficiaries of inherited retirement assets when the original account owner passed away on or after their Required Beginning Date, which increased from age 70.5 to age 72 under the SECURE Act. In those circumstances, most beneficiaries would need to take Required Minimum Distributions (RMDs) beginning by December 31 of the year following the year the account owner dies. The RMD would be based on the longer of the life expectancy of the decedent or the life expectancy of the beneficiary. Older beneficiaries would be required to fully distribute the inherited account by the year in which the beneficiary's life expectancy would be equal to or less than one, thus potentially further compressing the 10-year window. It is the age at death of the original account owner that would be considered when determining if RMDs are required. For successor beneficiaries of inherited retirement assets, this could create challenges in tracking down details for an account first inherited years ago prior to passage of the SECURE Act.

While we await final regulations, beneficiaries should be aware of the possibility of needing to take RMDs from inherited retirement assets for 2022 and beyond, as well as the potentially missed 2021 RMD for beneficiaries of 2020 decedents. One may choose to wait for further clarification and be ready to possibly take two years of distributions quickly or proactively take the distributions now, filing Form 5329 for 2021.

Heather Welsh, CFP®, AEP®, MSFS, is a Vice President at Sequoia Financial Group and the leader of their Wealth Planning Department. Heather can be reached at hwelsh@sequoia-financial.com or (330)255-2124.

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OWNERSHIP ADVISORS

Charitable legacy planning with life insurance

By Richard Tanner

Life insurance offers unique tax benefits and the ability to provide guarantees not found in traditional investments. Combined with traditional charitable planning techniques, life insurance can be a suitable tool to enhance charitable giving results. The purpose of this article is to explore the dangers, opportunities and strengths of using life insurance to enhance charitable giving.

Gift a current policy

For some families, old insurance policies represent an opportunity to give an asset they no longer need. For example, you may own a policy purchased years ago to protect family income but now you're "self-insured" many times over. The easiest method is to make a charity the beneficiary of your policy. If you want a current income tax deduction a policy may be gifted directly helping a favorite charity build their long-term endowment. However, for this to work your charity needs to be able to accept your policy so it's important to understand their gift acceptance policy. Since every policy is unique and must be maintained for many years, charities should evaluate gifts for sustainability and suitability before accepting. While this may feel uncomfortable, it makes sense when you consider some policies are guaranteed and paid up, while others may need additional payments and oversight. The good news is a robust policy audit may uncover significant opportunities to transform unnecessary and tax inefficient policies into gifts that magnify your family legacy.

Gift a new policy

If there isn't a current policy to gift, acquiring a new contract may be a consideration.

One advantage of this approach is control over the type of policy selected and access to newer and better pricing options. One disadvantage is medical underwriting since not everyone can qualify. Other limitations include financial underwriting parameters set by each insurance carrier. In most cases, the amount of death benefit allowed is tied to donor giving history, so the amount may be limited. For example, a $10,000 annual donor may only qualify for a multiple of 5 or 10 times that amount. However, if an estate pledge is in place, a personally owned insurance policy may be used to indemnify the estate obligation which may provide greater flexibility in making and insuring larger legacy gifts.

Combination Strategies

Capital gains by-pass trust (1) plus insurance

Families with significant capital gains may consider a charitable trust designed to eliminate capital gains tax in favor of charity. These trusts create current personal tax benefits and can provide retirement income if desired. Combined with a wealth replacement trust funded with life insurance, this approach creates a compelling charitable legacy upon death that doesn't erode the financial legacy left to your heirs. Unlike gifting a policy to charity, this approach has greater flexibility in financial underwriting since the acquired policy benefits your heirs as opposed to being gifted to charity.

Deferred Inheritance trust (2) plus insurance

Another idea is a charitable trust designed to provide income to charity for a fixed period, after which, the remainder goes estate tax-free to your heirs. The idea is to divert income to charity from an asset you no longer need and plan to transfer to your heirs. Benefits include income to your favorite charity now when they need it most and the ability to engage your heirs along the way. This becomes a "pre-inheritance experience" helping heirs become better stewards and fiduciaries. They will be interested because at the end of the trust term, the remainder goes directly to them. This type of trust can also include life insurance which can create tax benefits and safe leverage on dollars transferred to your heirs.

Zero tax plan plus insurance

A final and powerful approach many families are embracing today is the use of insurance to guarantee and protect financial legacies to their heirs. This approach provides greater control and certainty over your legacy decisions by shifting the risk to a well rated insurance company. Instead of trying to manage uncertain tax policy and market volatility, you control exactly how much and when your heirs receive their financial legacy. Once an inheritance is secured and insured, you can see how much of your remaining wealth is needed to preserve lifestyle with the balance now available for lifetime giving. A zero-tax strategy funded with life insurance gives you the confidence to accelerate your giving while living while keeping an eye on how your charities are managing your money. Charities love it because they need the resources today and donors love it because it allows them to make additional lifetime gifts to heirs on an as needed basis.

Disclaimers

1. Charitable Remainder Trust
2. Charitable Lead Annuity Trust

The opinions voiced in this material are for general information only and are not intended to provide specific advice or recommendations for any individual. The tax consequences of gifting insurance are complex so be sure to consult a tax expert and work with an experienced insurance advisor.

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As CEO and founder of Ownership Advisors, Richard brings over 30 years of experience in counseling successful families to navigate through difficult life transitions.

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