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By G. Mason Ayres

This year marks the 30th year the Estate Planning Council of Naples, Inc. has had the privilege of publishing its annual Estate Planning Supplement in the Naples Daily News. As has been our goal since the first edition, the articles in the 30th Anniversary Edition provide you with an overview of various components of the estate planning process. They are intended to be both educational and enlightening, and we hope they allow you to identify some of your own estate planning needs.

The Estate Planning Council, Inc. is a not-for-profit organization whose purpose is to educate and foster cooperation and communication among attorneys, certified public accountants, trust officers, chartered life underwriters and financial planners providing estate planning services.

We encourage our members to continually enhance their skills, with the ultimate goal of providing you with an unsurpassed client experience and professional service. Each represented discipline brings complementary skills, experience and expertise to the estate and financial planning table. Together with you, our client, we strive to meet your needs and goals through the establishment of appropriate plans that make both tax and common sense.

We hope you enjoy reading this 30th Anniversary Edition of the Estate Planning Supplement and find it a helpful resource in your planning process.

G. Mason Ayres is a Certified Financial Planner™ with NCH Healthcare Foundation. He is President of the Estate Planning Council of Naples, Inc.

Trusts & Beneficiaries: Best Friends for Life

By Robert L. Lancaster, Esq. & Amy Owen

Who do you trust? Do you trust the federal government? How about the news media? Do you trust your children? What about their spouses? However you answer those questions, we are here to tell you that you can trust a trust.

A trust comes into existence when a Grantor authorizes a Trustee to manage assets for designated beneficiaries under the laws of a specific state. The "Florida Trust Code" governs trusts that are subject to Florida law. Notably, a Florida trust can continue for many generations - up to 360 years under Florida law (Ponce de Leon first came ashore on Florida's exotic beaches 502 years ago). A Grantor can establish a trust during life or at death. A lifetime trust is either revocable or irrevocable depending on the purpose of the trust. Alternatively, through a Will, a Grantor can provide for the establishment of a testamentary trust to take effect at the Grantor's death.

No matter what, trusts exist to benefit the beneficiaries. With all due respect to diamonds and dogs, a trust is a beneficiary's best friend. The direct benefits are obvious. A trust can provide for distributions of income, principal or both. These distributions can be for any reason or limited purposes. A common purpose is for a beneficiary's "health, education, maintenance or support," the so-called HEMS standard.

Trusts can benefit a single beneficiary or multiple beneficiaries, such as a Grantor's child and his or her descendants. A typical arrangement is for a Grantor's child to be the primary beneficiary of a trust. If the child's needs are satisfied, the Trustee can make down line distributions to younger generations to help with college expenses or any other needed assistance.

The indirect benefits of a trust may be even more important. First, a properly designed trust can operate outside the transfer tax system for multiple generations. Under Florida law's 360 year rule, a trust and its progeny may not be subject to the estate tax until humanity sets foot on the exotic shores of Jupiter! Second, a trust can offer stability against the unexpected, such as unexpected creditors. In a world where "For the People" has become a substitute for "We the People," it is imperative that hard earned wealth is not easily taken away. For this reason, trusts should provide spendthrift provisions so that a beneficiary's creditor cannot compel a trust distribution. However, a spendthrift provision will not prevent a creditor from partaking of a mandatory trust distribution. All too often, a trust agreement will direct the Trustee to distribute trust assets at stated ages, such as one-third at age 30, the next third at age 35, and the final third at age 40. This structure is more like a creditor ATM than a trust, as a creditor simply needs to wait for a mandatory distribution. Trust assets are better protected when a Trustee has discretion over trust distributions.

A prudent Trustee should be able to manage the trust assets with care and be loyal to the best interests of the beneficiaries. Florida law requires no less.

A Trustee can be a corporate Trustee or an individual, including a beneficiary of the trust. Of course, not all Trustees are created equal. An individual trustee may not have the skills to handle all aspects of trust administration. It is crucial to take time and be conscientious in Trustee selection.

Whatever the reason or circumstance, a trust is the gift that keeps on giving. Your beneficiaries will thank you!

The Co-Editors of this edition are Robert L. Lancaster, an attorney with the law firm of Cummings & Lockwood LLC, and Amy Schneider Owen, with PNC Wealth Management.

Roth IRA Conversions

By Christopher P. Bray

Roth IRAs have become increasingly popular because of the twofold benefit of tax-free compounding of investment income combined with tax-free distributions. While contributions to Roth IRAs are very limited based on a person's income, there is no such limit in the context of "converting" a regular IRA into a Roth IRA. Since many people "roll" an employer retirement savings account into a regular IRA upon leaving an employer, this tax code accommodation could result in the establishment of sizable Roth IRAs. Most people, however, haven't converted their regular IRA to a Roth IRA. Why not? Because the cost of conversion is current payment of income tax that would have otherwise been deferred without conversion.

Conventional planning wisdom tells us that it is better to pay tax tomorrow than today. However, conversion often has significant advantages for individuals (1) who have non-IRA funds to pay taxes related to conversion, (2) who won't need the funds to provide for living expenses in retirement, and (3) who will be subject to the federal estate tax. Under those circumstances, it may make good financial sense to pay taxes related to converting a regular IRA to a Roth IRA now.

First, unlike regular IRAs, distributions from Roth IRAs can be deferred until death. Distributions are required from a regular IRA to an individual upon reaching age 70 ½. The distribution is taxed when made and the funds leave the very valuable IRA environment where they were formerly growing tax-free. Conversely, no distributions are required from a Roth IRA while the owner is living. Why not keep the funds growing tax-free if they aren't needed to fund living expenses?

Second, if structured properly, the Roth IRA can continue building tax-free for the benefit of the owner's family after the Roth IRA owner dies. Although distributions are required from a Roth IRA after the owner's death, they can be stretched out over many years and the distributions are tax-free. A tax-free Roth IRA has the potential to be the most valuable asset a beneficiary can receive. Also consider that using non-IRA funds to pay the conversion taxes is essentially the same as making additional gifts to the Roth beneficiaries as it maximizes the value of the tax-free account and spends down the taxable assets.

Third, when the owner pays income taxes upon conversion of the regular IRA to a Roth IRA, the tax payment reduces the owner's taxable estate. This might not seem like the best way to reduce estate taxes, but with a regular IRA not only is the value of the IRA subject to estate tax, but the inheritors also get stuck with the income tax liability related to the IRA. This is not the case with a Roth IRA.

The decision to convert requires consideration of multiple variables and should not be undertaken lightly. Consider seeking help from a qualified planning professional.

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Annuity Maximization Plan - How to Leave More for Your Heirs

Many people have deferred annuities that they are unlikely to need during life but that they have not effectively coordinated with their estate plan. What they may not realize is that their deferred annuity may be subject to both estate and income taxes when it is eventually transferred at death. The Annuity Maximization Plan (AMP) could minimize exposure to these taxes.

At death, the full value of a deferred annuity is included in a person's gross estate and, if the estate is large enough, both federal and state estate taxes may be due. In addition, the amount that exceeds the basis (investment) in the annuity that beneficiaries receive is subject to income tax. The combination of these two taxes can diminish a significant part of the annuity's value, so beneficiaries end up inheriting considerably less than intended.

With the AMP, the current value of a deferred annuity is converted to a "pay-out" annuity. This is also known as a "single premium immediate annuity" or SPIA and it provides an income stream for a period of years or for life. The annuity payments are then used to purchase a permanent life insurance policy on the life of the annuity owner or other family member. At death, the SPIA terminates and the life insurance proceeds are paid to the named beneficiaries free of income tax and, if the insurance policy is owned correctly, estate tax.

Instead of converting the annuity to an SPIA, it may be possible to take withdrawals from the deferred annuity and use the funds to pay the life insurance premiums. It should be noted that the annuity contract may contain penalties for taking withdrawals in the early years, so it is important to review the contract before making withdrawals.

There are certain income tax issues to consider with the AMP. For example, withdrawals from a deferred annuity before the

By E. Michael Kilbourn

age of 59 ½ may be subject to a ten percent federal tax penalty. Also, a portion of annuity withdrawals or SPIA payments may be subject to income tax.

There are several possible tax benefits with proper implementation of the AMP. Beneficiaries of the AMP would receive life insurance proceeds free of all income tax, rather than taxable annuity payments. If the deferred annuity is converted to an SPIA to fund the insurance premiums, it is no longer part of the owner's taxable estate because the payments terminate at death. The life insurance policy could be owned by a child or an irrevocable life insurance trust (ILIT) so that the proceeds flow to beneficiaries free of estate tax. The payments from the deferred annuity or SPIA to cover the insurance premiums can be gifted to the child or the ILIT utilizing gift tax exclusions or exemptions to the extent possible.

If you own a deferred annuity that you are likely to leave to heirs at death and you know that a substantial portion of the value or your annuity may be lost to estate and/or income taxes, why not take advantage of the AMP? Substitute a taxable asset, the deferred annuity, for a non-taxable, guaranteed payment in the form of a life insurance policy. This strategy can shield the value of your deferred annuity from taxation and allow you to pass more to your beneficiaries.

E. Michael Kilbourn is a Certified Life Underwriter with Kilbourn Associates.

Domicile is a Matter of the Heart

The sunshine, soft ocean breezes and lower taxes makes Florida a popular place to live. Generally speaking Florida domicile brings with it tax advantages over domicile in other states with respect to income taxes, state estate taxes, and homestead.

A person may have several residences at the same time, but in theory may be domiciled in only one place at any given time. The term "domicile" means the place where the taxpayer has his or her true, fixed permanent home for legal purposes. Domicile is a matter of intent and requires a serious commitment that may entail a change in lifestyle and the ability to break ties with his or her old state.

Many auditors consider five primary factors when considering place of domicile: home, active business involvement, time, items near and dear, and family connections. Specifically, an auditor may consider the size of your home maintained in the old state versus the domicile state, and you should keep a record of any change of address forms. For a business, an auditor would determine your control and supervision and your role in the business, and consider a pattern of activity (or non-activity if it is merely a passive investment).

With respect to time, an important factor is the number of days spent in your old state versus the domiciled state. Your timing and duration of visits also play a role in determining intent. Items that are near and dear to you should be kept in your domiciled state. Receipts and documents showing the transport of these items could be important to keep. Also anything that has strong sentimental value including family picture albums should be kept in your domiciled residence. Other associations, such as banking and investment relationships, various registrations and church affiliations, should all be maintained in your domiciled state. Be careful! Even a seemingly small affiliation with your old state could wreak havoc.

Another benefit to establishing domicile in Florida is the Florida homestead exemption. This exemption can protect your home from creditors (with three exceptions), give you a credit against your homes assessment for tax purposes, and cap your property taxes to the lesser of 3% or the rate of inflation ("Save Our Homes"). Because of the "portability" provision, a homesteaded owner may now move up to $500,000 of the "Save Our Homes" benefit from one Florida home to the next. Florida homestead may also protect spouses for inheritance purposes with a life estate or a 50% interest in lieu of a life estate unless the spouse waives these rights in writing.

By Jill Ciccarelli Rapps & Kim Ciccarelli Kantor

Exemptions are only available on an individual's primary home. To qualify you must be domiciled in Florida as of January 1st of the year in which you apply for the exemption and file with the local county property appraisers office. If you moved into your residence in 2014 you have until March 1st to file for your 2015 homestead exemption, and have your assessed value capped for 2016.

If you are considering a change of domicile to Florida, it is important to discuss the advantages and disadvantages with your financial advisor, your CPA and your attorney.

Domicile should be looked at not only with a tax perspective but also with an estate perspective regarding rights of your spouse and children at your death. An advisor versed in the steps for new domicile can provide a more complete package of instructions and discuss planning opportunities to help you effectively implement your decision to domicile.

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Dynasty Trusts

By Joseph D. Zaks, Esq.

Dynasty trusts are long-term trusts created to benefit your descendants for many generations. In some states, a dynasty trust can last forever. A Florida dynasty trust can last for 360 years, presumably well over 10 generations. Long after you're gone, a dynasty trust can distribute income and principal exactly the way you direct, while protecting the trust assets from taxes and litigation.

A dynasty trust can be created through a lifetime gift or with a portion of your estate at death. Although there are no immediate tax savings when you create a dynasty trust, a gift to a dynasty trust would shelter any appreciation of the trust assets during your lifetime from the estate tax. In some limited situations, a dynasty trust could result in income tax savings, particularly if a beneficiary is subject to state income tax.

If a dynasty trust is funded using your exemption from the generation-skipping transfer tax (GST tax), tremendous tax savings could occur at the deaths of your descendants. Even after the trust's assets have been accumulating for years, they would remain free from federal gift and estate taxes for the life of the dynasty trust.

These tax savings can be enormous. Consider a simple example that assumes an estate tax of 40% applied to two generations. If you start with $1.00, that $1.00 would shrink to 60 cents in your estate before it ever got into your children's hands. Then, when your children eventually pass away, and your grandchildren see the benefits of your lifetime of hard work, that 60 cents would shrink to 36 cents! The same $1.00 in a dynasty trust could have achieved savings of 64%. Put another way, using a dynasty trust would be the difference between passing $3 million to your grandchildren rather than $1 million.

The dynasty trust, like any trust, has a trustee that controls it. The trustee can use trust income or principal for the benefit of the beneficiaries. When drafting a dynasty trust, you can determine just how narrow (or broad) the trustee's discretion is.

The dynasty trust can allow responsible beneficiaries to have nearly complete control of and have access to the trust assets. For beneficiaries who are not as financially responsible, independent (corporate) trustees can be appointed.

By limiting beneficiaries' access, utilizing "spendthrift clauses", and corporate trustees, you may also prevent creditors of a beneficiary from attacking trust assets for indebtedness, or prevent the divorcing spouse of a beneficiary from laying claim to trust assets.

You could use a dynasty trust as an irrevocable life insurance trust with the trustee holding insurance on your life. You could achieve great leveraging of the gift/estate and GST tax exemptions because the exemptions only need to apply to the insurance premiums, not the much larger face value of the policy.
When you pass away, trustee could swap proceeds of the policy with assets of your estate if needed to give liquidity to the estate. The estate assets would then pass according to the terms of the dynasty trust for the long term benefit of your family.

In conclusion, even if tax savings is not your goal, a dynasty trust can help keep your estate in your bloodline and shelter it from litigation for many generations and thus could be a huge benefit to your heirs.

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Trust Planning to Protect Inherited IRAs

By Alfred J. Stashis, Jr. Esq. & Denise B. Cazobon, Esq.

The retirement plan is often the most significant asset in an individual's estate. It is the nest egg that one works decades to build up in order to save for retirement and, hopefully, provide for the next generation. The most common approach to planning with retirement assets is to direct that any funds remaining in the account be distributed outright to the beneficiaries designated by the account owner. However, the United States Supreme Court's recent decision in the Clark v. Rameker case may cause you to consider using trusts as a planning alternative for your retirement plans.

In July 2014, the United States Supreme Court issued its opinion in the Clark case. The effect of this decision is that a retirement account that one inherits from another individual, such as a parent, can be used to satisfy creditor claims in bankruptcy.

In summary, the decedent in Clark established a traditional IRA and named her daughter as the sole beneficiary. Upon the decedent's death in 2001, her daughter inherited the IRA and elected to take monthly distributions. In October 2010, the daughter and her husband filed for bankruptcy. They identified the inherited IRA, then worth about $300,000, as an asset exempt from the bankruptcy estate, which is the pool of assets used to pay creditors. The bankruptcy trustee and unsecured creditors objected on the grounds that the assets in the inherited IRA were not "retirement funds" within the meaning of the Bankruptcy Code. The Bankruptcy Court agreed with the bankruptcy trustee, determining that the inherited IRA was not exempt and could be used to pay the daughter's creditors. The case ultimately made its way to the United States Supreme Court, which unanimously agreed that the inherited IRA was not exempt.

The Supreme Court's decision in Clark does not apply to those retirement accounts that one opens for oneself and contributes to in order to save for retirement. The decision also does not apply to those retirement accounts that a surviving spouse elects to "roll over" as the surviving spouse's account. In addition, all retirement accounts owned by a Florida resident, including both rollover and inherited retirement accounts, continue to be exempt from creditors under Florida law. However, not all states protect inherited retirement

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Blended Families: Does Your Estate Plan Work as Intended?

A common goal we all have for estate planning is to ensure that our loved ones are provided for upon our deaths. Accomplishing this goal becomes even more complicated when you or your spouse have children from a previous marriage. Is your spouse independently wealthy and you plan on leaving everything directly to your children? Do you intend to leave your assets all to your spouse and then your children? Before implementing your plan, it's important to understand Florida law and your spouse's rights.

First, your spouse has a right in your "homestead property" upon your death. If your Florida homestead is titled in your individual name or revocable trust and you have adult children, your spouse has the right to elect to receive a life estate in the homestead property (and live there for his or her lifetime), or may take title to one-half of the homestead outright, even if your estate planning documents provide otherwise. To leave your homestead in trust for your spouse or directly to your children, your spouse must waive these rights under an enforceable prenuptial or post-nuptial agreement.

Do you plan on leaving everything directly to your children? Not only does your spouse have rights in your homestead property, he or she has a right to take the "elective share" under Florida law, which is approximately 30% of your assets. Again, unless your spouse waives this right under an enforceable prenuptial or post-nuptial agreement, even if your estate planning documents provide otherwise, your spouse can take the elective share upon your death. Suppose you and your spouse have agreed that each of your respective children will share equally in your collective assets upon the death of the survivor. You both execute wills or trusts which give everything to each other on first death and state that your children shall receive one-half and your spouse's children receive one-half when the survivor dies. You die first and everything passes outright to your spouse. If you and your spouse do not have a legally enforceable agreement, your spouse may change his or her mind about the half for your children. Even if you have an enforceable agreement, your spouse may attempt to give the assets away during his or her lifetime.

So how do you ensure that both your spouse and your children are provided for upon your death? One option is to leave assets for your spouse in trust for his or her lifetime. Your spouse can benefit during his or her lifetime, but he or she will not have the ability to change the beneficiaries upon death. You can choose to name your spouse as trustee to manage the assets, or a third party, including a bank or trust company.

Finally, did you update your estate planning documents after you remarried? If not, your spouse is considered a "pretermitted spouse." If you have children from a previous marriage, your spouse is entitled to one-half of your estate. If you do not have children, your

By Kimberley A. Dillon, Esq.

spouse is the 100% beneficiary of your estate. If this outcome is not your intention, you should consider updating your plan.

Estate planning is tricky especially when planning for blended families. It's important to note that for a prenuptial or post-nuptial agreement or agreement to make a will with your spouse to be enforceable, or if you intend to create a trust for your spouse, there are various items to consider and requirements that must be followed. You should consult with your estate planning attorney to implement a plan that best meets the needs of your family.

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Save Your Home: An Intro to FL Homestead Law

By William M. Pearson, Esq. & Andrew M. Woods, Esq.

New Florida residents and first time Florida homeowners are sure to hear about Florida homestead at some point. While many are aware that Florida homestead status is beneficial, they may not know exactly why or how it works. Florida homestead law is confusing because there are actually three different primary homestead protections. This article will attempt to clear up the confusion by providing a brief overview of Florida homestead law, focusing primarily on the homestead exemption from property tax.

All three homestead protections originate from the Florida Constitution, but each provides different benefits. The first protects against the forced sale of the homestead property by creditors (other than a mortgage lender, property tax assessor, or mechanic's lien holder). The second protects a homeowner's family by restricting the homeowner's ability to transfer his or her homestead property. Specifically, it forbids a homeowner from conveying the homestead property during his or her lifetime without spousal consent, and from devising the property at death away from the spouse or minor children. Finally, the third homestead protection reduces a homeowner's property tax burden.

Establishing a primary residence in Florida qualifies a person for all three homestead protections. However, while the first two are automatic, a homeowner must apply for the homestead exemption from property tax in his or her county of residence by March 1 of the year following the year in which the property became his or her primary residence, even if the homeowner had an exemption on a previous home.

The initial homestead exemption from property taxes provides a $50,000 reduction in the assessed value of the homestead property. More important than the initial exemption is the "Save Our Homes" ("SOH") cap on the annual increase in the assessed value of the homestead property. The SOH cap equals 3% of the value of the home or the annual increase in the Consumer Price Index, whichever is less. This results in substantial tax savings over time, particularly in Collier County where home appreciation has been significant. As an added benefit, up to $500,000 of SOH exempt value is portable to another home if a homeowner moves.

To illustrate, assume a homeowner obtained the homestead property tax exemption on a home worth $550,000, reducing its assessed value to $500,000, and that the home had a value of $1,000,000 ten years later. SOH ensures the assessed value of the home could not exceed $653,000 for

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property tax purposes, based on a maximum annual increase of 3%. The homeowner, therefore, is able to avoid property tax on at least $350,000 of the home's value, which is fully portable to another property if he or she moves.

There are important limitations to be aware of with respect to the homestead exemption from property taxes. First, only one exemption is allowed per "family unit." Accordingly, spouses are generally limited to one homestead property tax exemption per couple. In addition, the exemption is generally not available for property that is rented, even for part of the year. Finally, homeowners who claim residency based tax benefits in another state are not entitled to the exemption.

Along with the sunshine, beaches, and beautiful weather, Florida homestead protection is one of the many benefits of living in Florida. If you are new to Florida or recently purchased a home, be sure to apply for the homestead exemption from property taxes by March 1, 2016, and consult with your attorney if you have any questions about homestead law.

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The Benefits and Dangers of Family Limited Partnerships

By Amy L. Dalen

Family Limited Partnerships (FLPs) and, more recently, Family Limited Liability Companies (FLLCs) have been a common estate planning tool used to transfer wealth at a lower cost, and to teach financial responsibility to the next generation. When set up and operated properly, they can provide significant benefits to an estate plan.

FLPs are often created when a parent (or both parents) transfers assets in exchange for a 1% General Partner (GP) interest and a 99% Limited Partner (LP) interest. The GP interest is able to maintain control over the entity and manage the assets, and the LP interest is able to share in the profits. An FLLC may be used in lieu of an FLP when the FLLC is more flexible or beneficial under state law. The tax savings are first seen when the parent(s) transfers (either by gift or sale) LP interests to the next generation and the interests are valued at discounted amounts due to lack of marketability and lack of control.

For example, in Year 1 Parent transfers $2 million in assets to FLP in exchange for a 1% GP interest and 99% LP interest. In Year 2 Parent gifts a 10% LP interest to Child and values the interest using discounts totaling 30%. By using an FLP to transfer the assets to Child, Parent is able to transfer assets worth $200,000 (10% of $2 million) at the discounted value of $140,000 ($200,000 discounted by 30%). In addition, Parent has now transferred income-producing assets to Child, who may be taxed in a lower income tax bracket than Parent.

This estate planning strategy, however, should be used with caution. Over the years the Internal Revenue Service (IRS) has had success in challenging the use of FLPs and FLLCs to transfer assets at discounted values. The IRS's arguments center on Parent's retention of the economic benefits of the assets transferred to the FLP or FLLC, and, when successful, result in the inclusion of the entire value of the FLP or FLLC in Parent's gross estate for estate tax purposes. In order to avoid, or at least mitigate, a challenge by the IRS, the following rules should be followed:

- Parent must not transfer all or a majority of Parent's assets to the FLP. The FLP cannot be the only asset remaining in Parent's estate, and should not be utilized as the only source of income that Parent has to live off of.
- Parent cannot continue to use the assets of the FLP as personal assets. In other words, Parent should not transfer Parent's personal residence to the FLP and continue to live in the personal residence.
- Parent must not commingle the FLP assets with personal assets. The FLP must be respected as a separate entity that operates independently of all other assets owned by Parent.
- The formalities of the FLP agreement must be followed and distributions made must be proportionate under the partnership agreement. Children involved in the FLP should not "do as Parent says" and/or only make distributions to Parent.
- The FLP agreement must not contain any testamentary characteristics. In other words, the FLP agreement should not take the place of Parent's will or trust.
- The FLP must have a valid business purpose, such as operating an active trade or business, or promoting a specific investment strategy.

When used properly, an FLP or FLLC is incredibly effective in transferring wealth and control of assets to the next generation. However, when the rules are not followed, the results can be costly.

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The Many Benefits of Generosity Gifting in 2015

By Lorna J. Scharlacken, Esq.

The physical and mental benefits of generosity have been well documented. In fact, recent studies established that generosity can reduce stress, decrease blood pressure and increase life span. As an estate planning attorney, I can't help but note that generosity can also save you money. And, with a potential federal estate tax rate at 40%, you might be feeling generous after reading this article.

In 2015, the federal estate tax exemption rose to $5.43 million—this is the amount that an individual can give away without paying a federal estate tax. The top federal estate tax rate remains steady at 40%. For estates subject to this top tax rate, it makes sense to consider estate planning strategies that can result in significant federal estate tax savings. The purpose of this article is to discuss the simplest of these strategies – gifting.

Gifting is the transfer of money or property during your lifetime. And, if your estate is subject to the top federal estate tax rate, you could save 40 cents for every dollar that you give away. Whether you are paying your grandchild's college tuition or simply giving your children the money to join you on your next cruise, gifting can reduce the size of your taxable estate and increase your life span.*

In terms of how much can be given away, there is an annual gift tax exemption of $14,000 ($28,000 for married couples), which means that an individual may gift up to $14,000 to any number of persons in a single year without paying a gift tax or reducing their lifetime gift exemption. Even better, if you make gifts on behalf of loved ones by paying qualified schools or medical facilities directly, the dollar amount of the gift is unlimited. Moreover, the lucky benefactor of your gift pays no gift or income tax. Finally, in addition to the annual gift exemption, an individual can gift up to $5.43 million over their lifetime without owing a single dollar in gift tax.

Now, before you grab your checkbook, a few words of caution. It is important not to give away more than you can afford. There are also some instances where inheriting property is better, for tax and other reasons, than receiving it as a gift. Accordingly, it's important to consult with an estate planning professional to discuss the details of your particular situation, and to consider additional strategies and tools that minimize estate taxes.

There are, of course, more complex gifting strategies available to reduce adverse tax consequences. One option to reduce the value of a gift is a grantor retained annuity trust (a "GRAT"). Additionally, you can capitalize on the value of your home while continuing to live in the property through use of a qualified personal residence trust (a "QPRT"), or you may wish to consider a family limited partnership (an "FLP") to manage and control family assets while transferring wealth to your family in a tax-efficient manner.

Ultimately, and perhaps most significantly, lifetime gifts give you the chance to experience the enjoyment and appreciation your gifts bring. You may also choose to honor loved ones by making a charitable gift in their name to your church, temple, alma mater or a favorite charity. And, while we are certainly able to quantify the tax benefits of a gift, it is simply impossible to quantify the true benefits of generosity. I leave you with this quote: "While it's good to be blessed, it's better to be a blessing." –author unknown.

* Extension of your life span is (unfortunately) not guaranteed.

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Asset Protection Planning: Using Statutory Exemptions as the First Level of Protection

By Tanya Cutrone

Asset protection planning is an important part of a comprehensive estate and financial plan. It addresses an individual's risks now and in the future. It involves statutory and common laws that deal with protecting assets from disruptions due to sickness, death, divorce, bankruptcy, civil money judgments and lawsuits. Appropriate asset protection planning requires time, consideration, and knowledge to effectively implement a plan.

When planning for risk, it is helpful to start with the easiest and least expensive measures. The first level of protection recognizes state and federal laws that protect certain types of assets. Federal laws include protecting assets such as qualified retirement plans, educational savings plans and life insurance policies from bankruptcy claims. State laws vary widely from state to state. For example, states like Pennsylvania do not have extensive laws for safeguarding assets from creditor claims.

States like Florida, however, have fairly generous exemptions when it comes to protecting assets from creditors, including the well-known homestead exemption. Additionally, Florida provides other unique protections such as an exemption for the wages of the head of a household (a debtor who financially supports someone due to a legal or moral support obligation, including a spouse, child or parent). The cash value of life insurance policies and annuities are protected from creditors' claims in Florida as well. Florida courts have liberally construed this exemption to include the broadest range of annuity contracts, including possibly private annuities between family members. Florida protects qualified retirement or profit sharing plans from the creditors of a beneficiary or participant of such plans. Florida law also exempts umbrella pension plans for state and local employees and, since 2011, rollover and inherited IRA accounts. Other exemptions include disability income, up to $1,000 of equity in an automobile, Florida prepaid college tuition plans and Florida's 529 College Saving Plans, professionally prescribed health aids, hurricane savings accounts, medical savings accounts and unemployment benefits.

Despite the protections afforded to Florida residents, some clients do not plan ahead, and even choose to take on additional risks when faced with creditor threats. One example of bad planning done too late involved a Florida defendant in a suit filed by the trustee of the Bernard Madoff bankruptcy. The suit aimed to recover over $2 million of investment income paid to Madoff's firm before it declared bankruptcy. The defendant followed the advice of legal counsel and entered into a post-nuptial agreement with his wife of six years that documented the irrevocable transfer of $6 million (the bulk of his wealth) to the wife. Three months after the transfer, his wife filed for divorce. The court upheld the post-nuptial agreement in the dissolution proceeding. The defendant now does not even have sufficient assets to pay for representation in the bankruptcy proceeding against him. The trustee of the Madoff

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Being Upfront about Offshore: Why You Must Properly Disclose Foreign Financial Investment Accounts

By Brad A. Galbraith, Esq., Mark R. Klym, Esq. & Michael G. Dana, Esq.

Over the last five years, the Internal Revenue Service (IRS) has focused much of its attention on finding and penalizing U.S. citizens who own foreign bank accounts that have not been properly disclosed to it and to the Treasury Department. Taxpayers and their advisors should be alert for these issues.

Generally, U.S. law requires that a taxpayer report his or her ownership in foreign financial investments, such as bank accounts, brokerage accounts, and privately-held foreign companies, to the Treasury and the IRS. Further, the taxpayer must also report the income associated with these foreign investments on their U.S. income tax return. Depending on the circumstances, the failure to report ownership in a foreign financial asset can result in a penalty equal to the greater of $100,000 or 50% of the total balance of the foreign financial account, per violation, plus penalties for underreporting income or failure to pay tax due. Moreover, willful failures to report foreign financial accounts are criminal offenses that could result in prison time.

Consider this example: John is an individual originally born in Country X but is now a tax resident of the U.S. Fifteen years ago, John's mother died, leaving real property located in Country X to John. John promptly sold the property for $100,000 and deposited the proceeds in an interest-bearing account in a bank located in Country X. John lost track of the account and failed to report its existence or report the income earned on the funds to the IRS.

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Why You Must Properly Disclose Foreign Financial Investment Accounts ...continued

What should John do?

The short answer is that John should report the account; that reporting, however, is a tricky matter. The IRS has two programs through which John could disclose the foreign account, assuming John qualifies for these programs. Generally, the choice as to which program is available will revolve around whether John's failure to report the account was willful or non-willful.

If the failure was willful, John should disclose the account through the IRS's Offshore Voluntary Disclosure Program. If John follows the correct procedure for this program, he should receive immunity from criminal prosecution and be subject to a penalty of 27.5% of the highest balance in the account during the previous six years. John will also be subject to taxes on the unreported income and penalties for underreporting his income. If the IRS accepts John's disclosure, no further audits will apply, and his account for the previous six years will be closed.

If John believes that the failure is not willful, he could consider the IRS's Streamlined Program. Assuming John qualifies for this program and follows applicable procedures, he will be subject to a penalty of 5% of the highest balance in the account during the previous three years. In addition, John will be subject to applicable penalties for underreporting income and failure to pay the tax due on such income. John will not receive immunity, however, and may be subject to audit in the future with respect to the tax years covered by the disclosure, which could result in a finding of willfulness by the IRS. John would then be subject to any and all penalties imposed by the law related to the undisclosed account.

Clearly, mandatory disclosure of foreign financial investments is not to be taken lightly. But by following the IRS and Treasury Department rules, you will avoid substantial taxes and penalties, the threat of prosecution – and a lot of sleepless nights.

Brad A. Galbraith is a Board Certified Wills, Trusts & Estates Lawyer and Mark R. Klym and Michael G. Dana are attorneys. All are with the firm of Hahn Loeser & Parks LLP.

Smart Retirement Planning

By Richard M. Smarg

What's your **retirement plan?** What are your retirement income needs? What portion is provided by Social Security? Have you accumulated enough additional assets? During your working years, how much should be invested? What about market cycles, inflation, taxes and long-term care expenses? Everyone has unique circumstances (age, income, assets, health, family needs).

Query: Now what about your Assets and Income?

Already Retired? Most retirees fear taxes, investment mistakes, inflation, outliving income, losing control and not leaving enough. Be realistic. Be flexible. Expect changes. Inventory your resources - especially guaranteed income for essential living expenses (housing, food, transportation, insurance). For discretionary budget items, allocate income sources (travel, dining-out, club membership, gifts, and second homes).

Research all Social Security retirement benefits and spousal elections. Claiming decisions are based on "Average Indexed Monthly Earnings" computations. The current $2,685 Maximum Monthly Benefit at "Full Retirement Age" (65-67) depends on your birth year. At 62 you can receive reduced benefits; or delay up to 70 with an additional 8% of your FRA benefit per year. Integrating benefits with other resources helps minimize tax, extend the life of your assets and maximize lifetime income.

To cover essential needs and accommodate discretionary expenses, determine your optimal combination of **Retirement Income Strategies:**

- Guaranteed Foundation (Social Security, Annuity Income, Pension).
- Variable Income (Dividends, Real Estate, Business).
- Systematic Withdrawal Plan (Asset Depletion).
- Ladders and Dedicated Assets (for "wish list").

Diversification: To minimize risks and avoid "putting all your eggs in one basket," diversify your strategies, assets and income sources. Further diversifying the tax treatment of your assets facilitates planning opportunities, helps cover unexpected contingencies and reduces exposure to future tax changes. For example, assume Jim withdrew $120,000 extra from his 401(k). He's left with $78,000 (assuming 35% bracket). Instead, if he took $40,000 each from his 401(k), stocks, and insurance policy, his net income might be $100,000 (35% bracket, 15% capital gains tax).

Accumulation stage: To accumulate enough for retirement - start early! There are before-tax plans and after-tax plans. after-tax plans. Funding vehicles include savings accounts, insurance products, bond and stock funds. Your greatest secret allies though are time and the miracle of compounding. The cost of delay is overwhelming.

Example: At 45 Peter begins contributing $1,500 monthly to his 401(k). At 7.5% hypothetical growth, by age 67 he would accumulate $1,000,000. Meanwhile Robin, at 25, through $141 bi-monthly payments and 7.5% growth, calculates she'd also accumulate $1,000,000. Lesson: Begin as young as possible.

2015 Contribution Limits for traditional IRA Individual Retirement Accounts are $5,500 ($6,500 at age 50 and older). Employer sponsored 401(k) Plans permit $18,000 Salary Deferrals with $6,000 extra "catch-ups" at 50 or older ($24,000 total). Defined Contribution plans allow $53,000. For older ages and favorable circumstances, significantly higher deductible contributions are possible through Cash Balance Plans or funding for today's $215,000 Annual Defined Benefit limitation.

Roth Plans are alternatives to traditional IRAs and 401(k)s - also growing tax-free. Contributions are after-tax, so you forgo upfront tax deductions. But distributions are tax-free. Depending on your current and projected tax bracket(s), future rates and the years until withdrawing income, the choice can be complex. Blending contributions establishes tax-diversification for future planning opportunities and helps hedge against increasing tax rates.

Accumulation-Designed Life Insurance further supplements retirement income. These plans feature many Roth characteristics (potential for tax-free growth, tax-free withdrawals and income tax-free death benefits) with quite accommodating high-limit funding ceilings.

Smart Retirement Master Plans produce current tax advantages, future income, and may employ assets to ultimately remain for your family or benefit philanthropic causes. Professional Advisors' expertise and technology can help explore, identify, compare and create customized strategies.

Richard M. Smarg is a Chartered Life Underwriter with Advisors Trust, a member firm of the M Financial Group.

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▼ Trust Planning to Protect Inherited IRAs...continued

accounts from an individual's creditors. Further, even if the intended beneficiary presently resides in Florida, there is always the possibility that the beneficiary may in the future move to a state that does not protect inherited retirement accounts from creditors in bankruptcy.

As a result of the Clark case, individuals with retirement accounts of significant value may wish to revisit their retirement plan and beneficiary designations to determine whether such accounts should be distributable outright to the intended beneficiaries or if it might be appropriate to name a trust as beneficiary for such accounts. Factors to consider include the value of the retirement plan, the ages of the account owner and the intended beneficiaries, the number of beneficiaries and the individual financial situation for each beneficiary. For example, if a beneficiary has a history of creditor problems, then it may be best to have that beneficiary's interest be held in trust for his or her benefit.

Such planning requires careful oversight. If done incorrectly, naming a trust as the designated beneficiary of a retirement account may result in significant negative income tax consequences. Therefore, you should consult your estate planning attorney to discuss whether naming a trust as beneficiary of your retirement account is appropriate for your family circumstances and have your attorney assist you both in drafting the trust and in completing your beneficiary designation forms.

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▼ Asset Protection...continued

bankruptcy is now pursuing the ex-spouse for what it has deemed a fraudulent transfer of the $6,000,000.

The moral of the story is to obtain professional advice and take conservative and thoughtful steps to plan for your estate. The plan should consider many factors and weigh the benefits (such as the simplicity of a statutory exemption) and drawbacks of each option. Asset protection planning should always be part of an overall financial and estate plan and considered well before any hint that assets may be at risk.

Tanya Cutrone is with PNC Wealth Management.