Estate Planning Council of Greater Miami

5th Annual Estate Planning Symposium ♦ Thursday, February 9, 2017

University of Miami Watsco Center, 1245 Dauer Drive, Coral Gables, Florida

AGENDA

8:00 – 8:30am **Breakfast, Registration and Networking with Sponsors**

8:30 – 8:45am **Welcome and Introductions**

8:45 – 9:35am **TRANSFERRING FAMILY VALUES IN ESTATE PLANS**

JOAN K. CRAIN, CFP®, CTFA, TEP ♦ Senior Director, Global Family Wealth Strategist, BNY Mellon ♦ Ft. Lauderdale, FL

Much has been written about the importance of "family governance" to the successful intergenerational wealth transfer. However, there is still a dearth of practical techniques to address this idealistic concept. Moreover, since professional estate planning advisors tend to view this area as the purview of psychologists and family coaches, there is a disconnect between the implementation of "soft side" ideas and traditional estate planning based on legal contracts and tax minimization. This leads to various degrees of dysfunction and often undermines the best laid planning. This session will explore practical ways to integrate family dynamics with traditional estate planning structures and practices which will lead to better long term success in preserving and growing all aspects of a family's wealth.

9:35 – 9:45am **Break**

9:45 – 10:35am **INTEGRATING ASSET PROTECTION AND ESTATE PLANNING**

BARRY A. NELSON, ESQ. ♦ Shareholder, Nelson & Nelson, P.A. ♦ North Miami Beach, FL

This presentation will highlight how advisors should assist clients to integrate estate and asset protection planning. Are fully funded revocable trusts appropriate? The discussion will include use of inter vivos QTIP trusts to enhance asset protection planning and achieve income tax basis step ups with terminally ill clients and why Florida third party created trusts are not safe from garnishment in favor of former spouses.

10:35 – 10:55am **Break and Networking with Sponsors**

10:55 – 11:45am **TRUSTS AS IRA BENEFICIARIES: THE MORE THINGS CHANGE, THE MORE THEY STAY THE SAME**

KRISTEN M. LYNCH, ESQ. ♦ Partner, Lubell Rosen ♦ Fort Lauderdale, FL

IRAs have always been a bit of a challenge to work with in estate planning due to the income tax consequences. Although there have been very favorable rules in place for almost the last 15 years, there continue to be a number of common but costly avoidable mistakes made when naming a trust as the beneficiary of an IRA. The purpose of this presentation is to point out the obvious, the not-so-obvious, and the avoidable pitfalls associated with leaving IRAs in trust.

11:45am – 1:00pm **Luncheon and Networking with Sponsors**

1:00 – 2:40pm **RECENT DEVELOPMENTS IN FEDERAL ESTATE, GIFT, AND INCOME TAXATION**

PROF. SAMUEL A. DONALDSON, J.D., LL.M. (TAXATION) ♦ Georgia State University College of Law ♦ Atlanta, GA

This informative and entertaining session will cover the significant federal income, estate, and gift tax cases, rulings, regulations, and legislation from the past twelve months of interest to estate planning professionals. We will identify recent federal tax developments affecting attendees' practices; and apply recent developments in the federal tax field to matters affecting your clients.

2:40 – 3:00pm **Break and Networking with Sponsors**

3:00 – 3:50pm **IMPACT OF THE NEW DOL FIDUCIARY RULES ON WORKING WITH QUALIFIED RETIREMENT ASSETS**

AL KINGAN, JD, LLM, CLU, CHFC ♦ Asst. VP, Estate and Business Planning Dept., MassMutual Financial Group ♦ Phoenix, AZ

The new Department of Labor Fiduciary Rules will have a significant impact on the operations and compensation of financial advisors. The presentation will review the DOL justification for creating the rules, provide an overview of the rules, and the broad scope of the rules. The presentation will also review and define the regulatory exemptions that will allow advisors to continue to be able to be compensated when working with qualified dollars. This will include defining the "Best Interest Standard" and the "Best Interest Contract" or "BIC", the revised exemption standards under 84-24, and what eliminating conflicts of interest will actually entail. Finally, we'll look at how the industry is responding to these requirements and changes.

3:50 – 4:00pm **Break**

4:00 – 4:50pm **ESTATE, GIFT, GST AND INCOME TAX PLANNING ISSUES & COMPLIANCE REQUIREMENTS FOR ASSET PROTECTION TRUSTS**

JONATHAN GOPMAN, ESQ. ♦ Chair, Trusts, & Estates Practice, Akerman LLP ♦ Naples, FL

The creation, funding and annual administration of both domestic and foreign asset protection trusts often presents complex tax issues for practitioners to consider and may require the preparation and filing of one or more tax forms. This complexity also breeds opportunity when practitioners understand these rules and enables clients to achieve far broader planning objectives.

4:50 – 5:00pm **Conclusion**

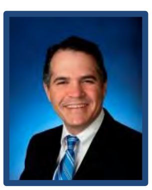
ABOUT OUR SPEAKERS

JOAN K. CRAIN, CFP®, CTFA, TEP

Joan Crain has over 25 years of experience working with large multi-generational families and their advisors to provide comprehensive wealth planning. She specializes in family governance, philanthropic planning and multinational tax and estate planning. Joan also helps families customize and implement transition plans for their family businesses, real estate, marketable securities and family philanthropy. Joan is frequently invited to speak to client and professional groups such as the American Bar Association, the American Institute of CPAs, the Hong Kong American Chamber of Commerce and numerous estate planning organizations throughout the United States, Canada, the Middle East and Asia. Her unique style is highly interactive, emphasizing real life examples and practical tools. Joan is a frequently quoted fiduciary and family governance expert and author of articles in business publications, including most recently *The Wall Street Journal*, the *New York Times*, *Trust & Estates* magazine and *Fortune.* In addition, she is past Chair of the Board of Directors of the Community Foundation of Broward and a member of the Executive Committee of the Florida Bankers Trust Division. Joan earned a master of business administration from Rollins College, a bachelor of education from Queens University and a bachelor of music from McGill University. She is a Certified Financial Planner® and has earned the designations of Certified Trust and Financial Advisor from the American Bankers Association and Trust & Estates Practitioner from the international Society for Trust & Estate Practitioners.

PROF. SAMUEL A. DONALDSON, J.D., LL.M. (TAXATION)

Sam Donaldson [J.D. University of Arizona; LL.M. (Taxation) University of Florida] is a Professor of Law at Georgia State University in Atlanta, Georgia. Prior to joining the Georgia State faculty in 2012, he was on the faculty at the University of Washington School of Law for 13 years. During his tenure at the University of Washington, he was a five-time recipient of the Philip A. Trautman Professor of the Year award from the School of Law's Student Bar Association. Professor Donaldson served for two years as Associate Dean for Academic Administration and for six years as the Director of the law school's Graduate Program in Taxation. He teaches a number of tax and estate planning courses, as well as courses in the areas of property, commercial law and professional responsibility. Professor Donaldson is an Academic Fellow of the American College of Trust and Estate Counsel (ACTEC) and a member of the Bar in Washington, Oregon, and Arizona. Among his scholarly works, he is a co-author of the popular West casebook, *Federal Income Tax: A Contemporary Approach*, and a co-author of the *Price on Contemporary Estate Planning* treatise published by Wolters Kluwer. Professor Donaldson has served as the Harry R. Horrow Visiting Professor of International Law at Northwestern University and a Visiting Assistant Professor at the University of Florida Levin College of Law. An amateur crossword constructor, his puzzles have been published in *The New York Times*, *The Los Angeles Times*, *The Washington Post, The Wall Street Journal*, and other outlets. A perennial contender for *People Magazine*'s "Sexiest Man Alive" honor, Professor Donaldson was recently notified by email of his selection to receive substantial sums of money from high-level Nigerian business officials in exchange for his bank account information.



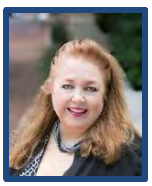
JONATHAN GOPMAN, ESQ.

Jonathan Gopman is a partner in Akerman's Naples office and also spends substantial time in the Fort Lauderdale office. Jonathan's practice focuses on sophisticated wealth accumulation and preservation planning strategies for entrepreneurs. He assists entrepreneurs with their personal and business planning needs at all phases of the wealth accumulation and preservation cycle. In his practice Jonathan takes a four part approach to wealth preservation planning by assisting individuals in implementing sophisticated estate planning, tax deferral, tax-favored investment and asset protection structures. Jonathan's personal practice emphasizes international wealth preservation planning. Jonathan has substantial experience in assisting high net worth families with international and domestic estate planning, implementing foreign trust structures, business planning and general tax planning. Jonathan is an adjunct professor in taxation at Ave Maria Law School in Naples, Florida. Jonathan is a commentator on asset protection planning matters for Leimberg Information Services, Inc. ("LISI"), a member of the legal advisory board of Commonwealth Trust Company in Wilmington, Delaware, and a member of the Society of Trust and Estate Practitioners ("STEP"). He is AV rated by Martindale Hubbell. Jonathan is a member of the Board of Trustees of the Lee Memorial Health System Foundation. Jonathan is also a member of the University of Miami Citizens Board having previously served on its executive committee and is a past chairman of the Naples Chapter of the Citizens Board. Jonathan serves on the professional advisory committee of The Humane Society of Naples and on the Collier Advisory Council for the Children's Hospital of Southwest Florida. Jonathan is also on the Naples Advisory Board of the Cystic Fibrosis Foundation – Tampa Chapter. Jonathan is the co-author of the revised version of the *BNA Tax Management Portfolio on Estate Tax Payments and Liabilities*. Jonathan has been interviewed for, and quoted in, numerous articles in well-known publications such as the *New York Times, Bloomberg Magazine, Forbes Magazine, Wealth Manager Magazine* and *Elite Traveler*. In 2009, 2010, 2011 and 2012 Jonathan was selected for inclusion in *The Best Lawyers in America®* in the specialty of trusts and estates, he was selected as a *Florida Super Lawyer* for 2010, 2011 and 2012 and he was included in the *Florida Trend Legal*

Elite for 2010 and 2011. In the December 2005 and 2007 issues of *Worth Magazine* Jonathan was recognized as one of the top one hundred estate planning attorneys in the country. Jonathan is considered one of the leading experts in the world on asset protection planning. Jonathan also serves on the professional advisory boards of TitleAuction LLC, a Florida limited liability company, Peninsula Lifestyle Capital, PLLC, a Florida limited liability company, and Insightion, LLC, a South Carolina limited liability company, all privately held companies in various lines of business. Jonathan is the originator of the idea for the statutory tenancy by the entireties trust (commonly referred to as a "STET," a termed he coined) that is set forth in § 3574(f) of Title 12 of Chapter 35 of the Delaware Statutes. This statute was enacted into law in Delaware in July of 2010 and became effective on August 1, 2010. Jonathan's articles, commentaries and presentations have also served as the impetus for changes to the trust laws of several states. In 2011 and 2012, Jonathan assisted the government of Nevis in revising its trust laws (including the Nevis Rule Against Perpetuities) set forth in the Nevis International Exempt Trust Ordinance by rewriting almost the entire Ordinance. He was the only attorney in the United States selected by the government of Nevis to work and consult on this project.

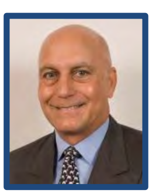
AL KINGAN, JD, LLM, CLU, CHFC

Al Kingan has been with MassMutual for over 23 years. Before joining MassMutual, Al spent almost seven years in the Tax Department of Coopers & Lybrand (now PriceWaterhouseCoopers) in Springfield, Massachusetts. During his time at C&L, Al obtained an LL.M from Boston University, and passed the Massachusetts CPA exam. Al is admitted to practice law in Massachusetts and Pennsylvania. Prior to relocating to Phoenix, Arizona in early 2014, Al was the Immediate Past President of the Hampden County Massachusetts Estate Planning Council and a Member of the Western Massachusetts Society of Financial Service Professionals. A native of Western Pennsylvania, Al received his undergraduate degree from Waynesburg College in 1983 and graduated from the University of Pittsburgh School of Law in 1986. Al is a frequent author in the MassMutual *Advanced Underwriter* and other company publications; he has written for industry publications by the American Association of Life Underwriters, and *Estate Planning* magazine and the *Journal of the Society of Financial Service Professionals*.



KRISTEN M. LYNCH, ESQ.

Kristen M. Lynch is a Partner at the law firm of Lubell Rosen, where she works with clients regarding probate matters, guardianship, and estate and retirement planning. Ms. Lynch is an Accredited Estate Planner® as designated by the National Association of Estate Planners & Councils, and has been named among "Women Leaders in the Law" and "Top Rated Lawyers" by Martindale-Hubbell®. Since 2008, she has been AV® Preeminent™ Peer Review Rated by Martindale-Hubbell. Ms. Lynch began her career in the trust banking industry, where she served more than 15 years as a vice president and trust officer with SunTrust Bank. During that time, she was the divisional manager of IRA Services within the Trust Department for the South Florida region. Ms. Lynch previously worked at several South Florida law firms in the capacity of partner, shareholder and attorney. She has represented clients in regard to probates, guardianships, estate planning, asset protection, philanthropic planning and charitable giving, and retirement planning. She has attained and held the designations of Certified Trust & Financial Advisor and Certified IRA Services Provider during her career as well. She sits on several planned giving committees and boards within the University of Miami and Nova Southeastern University communities. She is also actively involved in the local chapter for the American Lung Association. Ms. Lynch is a frequent lecturer for professional organizations and Continuing Legal Education events, and has been published multiple times in *The Florida Bar Journal*, *Journal of Retirement Planning, Leimberg Financial Services* and *Trusts & Estates* magazine. She lives in Boca Raton with her rescue dog Hairy Houdini, and enjoys music and giving back to others and the community whenever possible.



BARRY A. NELSON, ESQ.

Barry A. Nelson, a Florida Bar Board Certified Tax and Wills and Trusts and Estates Attorney, is a shareholder in the law firm of Nelson & Nelson, P.A. in North Miami Beach, Florida. He practices in the areas of tax, estate planning and administration, asset protection, fiduciary litigation, partnerships and business law. He provides counsel to high net worth individuals and families focusing on income, estate and gift tax planning and assists business owners to most effectively pass their ownership interests from one generation to the next. He frequently serves as a consultant for other attorneys and certified public accountants on complex tax and asset protection issues. As the father of a child with autism, Mr. Nelson combines his legal skills with compassion and understanding in the preparation of Special Needs Trusts for children with disabilities. Mr. Nelson is a Fellow of the American College of Trust and Estate Counsel and served as Chairman of its Asset Protection Committee from 2009 to 2012. He has been a Martindale-Hubbell AV Preeminent® Rated Lawyer for over 25 years. He has been listed in *Best Lawyers in America®* since 1995 and was named their 2015 Miami Trusts and Estates "Lawyer of the Year." Since 2010, he has been listed as one of less than 10 lawyers receiving their highest rating of "Band 1" in the Florida Estate Planning category of *Chambers USA: America's Leading Lawyers for Business* and he is listed as "Band 1" in their inaugural edition of *Chambers High Net Worth Guide* in 2016. As the Founding Chairman of the Asset Preservation Committee of the Real Property, Probate and Trust Law Section of the Florida Bar from 2004-2007 he introduced and coordinated a project to write a treatise authored by committee members entitled *Asset Protection in Florida* (Florida Bar CLE 2008, 2nd Edition 2011). Mr. Nelson wrote Chapter 5 entitled "Homestead: Creditor Issues."

Family Governance and Wealth Planning

BNY MELLON
WEALTH MANAGEMENT

Many financially successful, high net worth individuals engage an advisor to help answer important questions around protecting and transferring their wealth to their children and future generations. They often have questions such as: "How much is enough?", "When is the right time to tell our children about our wealth?" and "How do I prevent our wealth from disappearing by our grandchildren's generation?" Although investment management and estate planning solutions are certainly pivotal to answering these questions, family governance strategies can be equally important in preparing the family for the money, not just the money for the family.

Wealth Trends Today

Why is this topic particularly relevant today? On the positive side, people are living longer, adding many years between the building of a family's wealth and its passing to the next generation. Children may in fact be parents, and even grandparents, before they inherit, giving families plenty of time to discuss with children and grandchildren how family wealth should be handled well into the future. On the negative side, with an estimated 45% to 50% of first marriages ending in divorce[1], family structures have become increasingly complicated, with parents often having children from different marriages and sons- and daughters-in-law joining and leaving the family picture.

Despite the unprecedented market turmoil of the past year, the amount of money passed to the next generation continues to increase annually, and is estimated to reach $41 trillion over the next 40 years[2]. That means a lot of very wealthy people are now — or soon will be — struggling to find a way to create a family legacy that will survive multiple generations.

[1] *Source: Linda A. Jacobsen and Mark Mather, "U.S. Economic and Social Trends Since 2000," Population Bulletin 65, no. 1 (2010).*
[2] *According to studies by Paul Schervish, director of the Center on Wealth and Philanthropy at Boston College.*

Three Wealth Planning Questions

In thinking about preparing their children for the money, many wealthy parents ask, “How much is enough?” While assigning a dollar answer to that question may be impossible, families who define their wealth and make decisions about it differently can improve the chances that, whatever the dollar amount, their financial legacy will be preserved.

The second question is, “When do we tell our children what they might be receiving, and how and when they’ll be receiving it?” Parents worry that if they tell children too early, they risk creating a sense of expectation and entitlement that could discourage their children from pursuing fulfilling careers. On the other hand, waiting too long may mean missing an opportunity to help prepare the children for the money they’re going to receive. A specific age may not be the answer, but rather a financial maturity — regardless of age — the children demonstrate to their parents.

The third question wealthy parents want answered is, “How do we break the paradigm of shirt sleeves to shirt sleeves in three generations?” What’s remarkable about this paradigm is its universality: families starting from meager beginnings that are able to earn substantial wealth can end up with meager futures in a relatively short time. In the United States, very often wealthy individuals focus their attention on the estate tax, as if it were the only wealth transfer problem. But countries with no estate tax have similar wealth preservation issues. In fact, although estate planning is important, many other qualitative techniques can help to enhance a traditional wealth transfer plan.

These questions are both important and closely linked. But to address them holistically, we encourage families to establish a process for family decision making — also known as family governance — through a number of suggested exercises and ongoing discussions.

How Much is Enough?

Defining Wealth Differently

In his seminal book, Family Wealth, James E. Hughes, Jr., an estate planning attorney for high net worth families, found that most of the families he worked with were spending a great deal of time preparing the money for the family, but almost no time preparing the family for the money. Hughes searched worldwide in his effort to identify families who were effectively preparing the next generation for their family’s wealth. Of all the families he met, only about ten percent were adequately preparing the heirs. Of these families, he discovered two key differences between them and the other families he had met. First they defined their wealth differently; they viewed it not solely in financial terms. Secondly, they made decisions related to their wealth differently.

Wealthy families who successfully passed their assets on for many generations tended to have a broad definition of their wealth, taking into account both financial and non-financial factors. Distinguishing and valuing each family member’s unique contributions is an important step in looking beyond the pure financial aspect of family wealth.

Four Types of Capital

According to Hughes, by applying a broader definition of wealth, families who work toward preparing the next generation for the money tend to foster four types of capital, which, combined, define their wealth.

The first type is human capital, which Hughes defined as what makes the individuals in a family unique. A family may set aside a half day of their vacation to have a family meeting, spending the first hour talking about the human capital in the family and how it has grown since last year. Because money is not the topic, spouses can be brought into that discussion as soon as they marry into the family.

The second type of capital is intellectual capital, which is not where you went to school, but whether your family has a process of transferring life experiences from one generation to the next. The stories from these life experiences may relate to the family's heritage, traditions, or faith.

The third type is social capital, defined as how a family demonstrates what it stands for in terms of responsibility, values and purpose. Philanthropy can be a very powerful tool in developing a family's social capital.

Financial capital may be the easiest to define, but the most challenging to discuss

The last type of capital is financial, which may be the easiest to define, but the most challenging to discuss. In many cases, the family's financial capital is only discussed between the parents and their advisors, as they work together to create an effective investment management strategy and estate plan. Since the children often are excluded from these conversations, they may miss the opportunity to understand or participate in critical decisions about the family's financial wealth.

When these discussions are initiated effectively, families will discover that certain values are shared by all family members. But there can be surprises too. It can be enlightening, especially for parents who may assume they understand the values their children hold dear. These initial discussions begin to introduce the concepts of family governance.

Family Mission Statements

One way families can help identify and appreciate the broader definition of capital is through a family mission statement, a valuable tool for both defining the full range of a family's wealth and collaborating on how it will be used in the near term and in the future. Writing such a statement should be an inclusive process that begins with each family member creating a personal mission statement. Working together, the family then layers their individual statements to identify overlaps and recognize the uniqueness of each family member. Many family mission statements include a historical family biography which helps children understand how family values contributed to the creation of the wealth, how it is invested, and how it has been used to promote the family's philanthropic goals. Most family mission statements will also examine the relationship between financial capital and individual initiative, addressing how family members can enjoy the benefits of wealth while leading productive lives.

When Should We Talk to Our Children About Money?

The second question for which wealthy parents want an answer is, "When do we tell our children what they might be receiving, and when and how they're going to receive it?"

But some similar questions may serve families better, for instance: "What capabilities would we like our children to have before we discuss family wealth with them?" "What confidence would we like them to be demonstrating?"

Decision Making and Communication Styles

Another characteristic of families who more effectively prepare the family for the money is the way they make decisions about their wealth. Many families practice vertical, or hierarchical, decision making with one or two people making the bulk of the decisions, often behind closed doors. Sadly, in such families the first major decision that children make together regarding wealth may be around settling their parents' estate. At that point, not only are the children older and possibly have grown apart, but some or all of them may be married, with spouses further complicating the situation.

As an alternative approach, families can practice horizontal decision making by including children early on in some basic financial decisions. For example, parents can encourage their children to work together to invest the funds for an upcoming family vacation. Older children with knowledge of investment fundamentals can work with younger siblings to make decisions with a tangible outcome.

It is important to note that the success of these family discussions can be affected by the individuals' communication styles. One way to learn about these communication styles is to have a family wealth expert administer one of several communication skills tests, which help each family member determine his or her style of communication and how to use it as a strength rather than an impediment.

Children and Philanthropy

Initiating a meaningful discussion about philanthropy is another significant way to get children making decisions together. Parents might give each child an amount to donate to charity, with the children making a small match of their own savings. Or siblings may be asked to discuss and agree together on the organization receiving the donation from a donor advised fund. Additionally, many organizations welcome children's participation in volunteer activities, another way to unite family members as they work together toward a common goal. As long as the parents aren't dictating the whole plan, philanthropy is almost always an overwhelmingly positive experience. Community foundations can be a great resource for this type of giving, often organizing events where families can bring their children to meet and learn from each other about philanthropy. In many cases, the powerful benefits a family achieves by building these connections can rival even the best estate plan.

As long as the parents aren't dictating the whole plan, philanthropy is almost always an overwhelmingly positive experience.

Trusts as Family Endowments

Establishing trust structures that distribute money to children at age 30, 35, or 40 is common among high net worth families. The idea, theoretically, is that by the time the children reach these ages, they will have gained financial maturity. Unfortunately, these trusts may instead create an attitude of entitlement in the next generation. Although they are designed to protect money long term, in some cases, they have the opposite effect.

Parents and grandparents can choose instead to create a trust that distributes funds during their lifetimes and treat this trust more like a family endowment. Together the family can create an application that asks how the money is to be used as an investment in the children's human, intellectual, social or financial capital. The children need to view that money as an investment in themselves, not a distribution to them. As children start to demonstrate financial maturity with regard to this trust, parents or grandparents can be assured that the children are ready to hear more about the family's financial situation and to begin taking a larger role in family wealth decisions.

How Do We Prevent the Shirtsleeves to Shirtsleeves Phenomenon?

"Shirtsleeves to shirtsleeves in three generations" is a paradigm recognized throughout the world. The first generation creates the wealth, the second can either build on that financial success or, more likely, begin to whittle it away, and by the third generation, in many cases, the wealth is gone.

Preparing the money for the kids and the kids for the money are two sides of the same wealth preservation coin. Solid investment and wealth planning advice and execution are, of course, key to preserving, growing and transferring wealth. But the suggestions discussed above — defining wealth differently, writing a family mission statement, using horizontal decision making, incorporating philanthropy and fostering financial maturity — are ways to involve children early on in family wealth decisions, ultimately preparing them to preserve both the family's values and its wealth for many generations to come. Family governance creates a foundation for families to begin to discuss these and other important questions that in turn effect wealth planning.

Keys to Family Governance

- Define wealth differently
- Collaborate on writing a family mission statement
- Practice horizontal decision making
- Incorporate philanthropy
- Foster financial maturity

Conclusion

Many families divide considerations about their financial wealth into two categories: investment and wealth planning, and preparing their family for the money that they will some day inherit. Mental barriers are built between the two and, rather than working together, each is less effective than it could be. Instead, communication, family values, and philanthropy should be continuously linked to a family's wealth planning, a process that can help to foster family continuity, harmony and increased multigenerational wealth.

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Family Philanthropy

DONOR ADVISED FUNDS AS PART OF A SUCCESSFUL WEALTH AND ESTATE PLAN

BNY MELLON
WEALTH MANAGEMENT

Family philanthropy offers opportunities for family members of all ages to experience the joy of giving. It is also one of the best methods to help family members learn to work together, which is a key component in helping families create a legacy that will survive multiple generations. Family philanthropy is not just about giving money away; it is about giving money away as a family. A Donor Advised Fund can be a great way to begin a family philanthropy program and give younger members an active role in giving.

Benefits of Family Philanthropy

The benefits of family philanthropy are extraordinary. It can help to solidify family values, as family members work together, communicate with each other and learn to trust one another. By making gifting decisions communally, younger family members can develop a variety of skills, including communication, negotiation, shared decision making, leadership, accountability, investing, and financial literacy. These are all values that are necessary to prepare the younger generation to manage and expand the family's future wealth. Most importantly, through this process, children also can come to understand and appreciate their responsibility to help others.

Using a Donor Advised Fund to Create a Family Philanthropy Program

It is not necessary for a family to have a private foundation in order to establish a family philanthropy program. In fact, donor advised funds often can serve as an excellent resource for parents or grandparents to begin a program for younger members of their family.

Since donor advised funds typically offer user-friendly online platforms without the expense and administrative burdens of a private foundation, they are often the ideal charitable vehicle to help the younger generation become a part of a philanthropy program. Moreover, it is not necessary to fund a donor advised fund with a substantial amount of money. Studies have shown that individuals receive many of the same personal benefits from charitable giving regardless of the amount of money that they actually give.[1]

Before engaging in family philanthropy with the creation of a donor advised fund, it is helpful to have a family meeting, which would include a meaningful discussion about philanthropy. Ideally, the entire family participates proactively in this discussion. Research has shown that: (i) conversations between parents and children about charity have a greater positive impact on children than parents simply serving as a role model with their own philanthropic activity; and (ii) talking about charity is equally effective regardless of a parent's income level or a child's gender, race and age.[2] With the additional help of a neutral professional facilitator, this family meeting also could benefit from the inclusion of effective communication exercises as well as the use of tools to help family members discover their common values and vision.

To maintain a good family philanthropy program over time, the program should contain the following four components:

1	Philanthropic projects should be chosen based on shared family values.
2	Family members should proactively participate in shared decision making.
3	Results should be reviewed and success should be measured and evaluated.
4	The family should continually learn from experience in order to improve in the future.

Children can become part of a family philanthropy program at as young as five years old, and children can begin to play a deeper role with respect to the actual administration and investments of a program before they are teenagers. The family members could set standards for performance to accompany each grant, and selected charities that attain those standards might be allocated more funds in future years. Each child could be capable of proposing and advocating a grant request, which could include site visits to the proposed grantee or even interviews. A family philanthropy program could even require each participant to make some type of personal investment in any organization that would be receiving funds, such as actively volunteering with the organization or making a small personal gift along with the donation.

Conclusion

Ultimately, the unique benefit of family philanthropy is that it helps younger family members learn both "independence" (i.e., how to be self-sufficient and self-supporting) and "interdependence" (i.e., how to be emotionally, economically, ecologically and morally responsible to other family members). A donor advised fund can be a valuable charitable vehicle for today's philanthropic family, given an easy to use online platform, the option to give anonymously and a relatively easy start-up process. With such an overwhelmingly positive impact, family philanthropy should be a top consideration for every family, as it prepares the younger members to handle money, begin a journey toward healthy governance and look to create a successful family legacy that will last for generations.

Based on articles by Justin T. Miller, J.D., LL.M., TEP, CFP®, National Wealth Strategist at BNY Mellon and adjunct professor at Golden Gate University School of Law. Edited and reprinted with permission from WealthManagement.com

Case Study

Amy and Bob have three children, ages 10, 12 and 17.[3] Since they need to prepare their children to inherit their large family fortune down the road, family philanthropy through a donor advised fund presents an ideal way to familiarize the children with making decisions about money and giving.

Accordingly, Amy and Bob provide $1,000 annually to each of their children to give away on their own (to help the children develop better independence). They also set aside $5,000 annually for their children to give away together through a donor advised fund (to help the children develop better interdependence). Amy and Bob serve only as mentors to the children for the fund. They allow their children to explore their own passions for their individual gifts, without judgment. For the collective gift from all the children, Amy and Bob help facilitate the discussion, especially given the different age ranges of their children and different communication styles.

In the first year, after visiting and volunteering at multiple charitable organizations, the 10- and 12-year-old each made a grant of $1,000 to an animal shelter and the 17-year-old made a $1,000 grant to a micro-lending organization. As a collective gift, the three children discussed the family's values and vision with their parents and ultimately decided to give the entire $5,000 to a cancer research organization (which was related to the fact that their grandfather, who created the family fortune, died in his early 50s from cancer).

What made the gift especially meaningful to the family was that the children decided to make the $5,000 gift in the name of their deceased grandfather. Amy and Rob felt that it was much better for the children to learn to work together and manage a relatively small sum of money for charity at a young age, than to be unprepared to inherit millions of dollars when they are older.

[1]Dunn, E.W., Aknin, L.B., & Norton, M.I., "Spending Money on Others Promotes Happiness," Science (2008).
[2]"Women Give 2013: New Research on Charitable Giving by Girls and Boys," Lily School of Philanthropy, Indiana University, Women's Philanthropy Institute (2013).
[3]The names, characters, businesses, places, and events discussed in the hypothetical examples in this paper are fictitious. Any resemblance to actual persons, living or dead, or actual events is purely coincidental.

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Flexible Family Trusts

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Placing money in trust for future generations, rather than giving it to children and grandchildren outright in lump sums, presents many benefits. Beyond tax savings and protection from creditors and future ex-spouses, establishing trusts with a corporate trustee assures professional, centralized investment management. In addition, parents are increasingly finding trusts attractive from another perspective—as a means for encouraging trust beneficiaries to contribute to society in a meaningful way, while precluding a lavish lifestyle they haven't earned. As Warren Buffet so aptly put it, "I want my children to have enough money so that they feel they can do anything. But not so much that they can do nothing."

What is a Flexible Family Trust?

Historically, parents addressed their fear of "affluenza" either through constructing very restrictive trust provisions or by giving much of their wealth to charity. However, there is an alternative—a trust designed to provide protections and create opportunities for future generations without supporting an unearned lifestyle.

The flexible family trust document lays out criteria for trustees to use when distributing funds to beneficiaries. The trustees look to these guidelines when exercising their discretion, but the trust also provides for flexibility. The intent is neither to restrict wealth so it is almost untouchable, nor to be so liberal with distributions that the funds quickly dissipate.

Drafting such a trust begins by deciding which values and behaviors to encourage in heirs. Rather than the proverbial "tax tail wagging the dog," the estate plan is driven by parents' hopes and expectations for their children, grandchildren and beyond. This process may entail significant in-depth conversations between parents, their advisors and, ideally, their children, as it often involves exploring topics which have not previously been discussed. It is critical that the terms and even the actual language in the trust document reflect the parents' and family's unique circumstances. These trusts cannot be boilerplate.

Sample Provisions

Typically, flexible family trusts provide access to trust funds for the following general purposes:

- **Emergencies.** This category usually includes distributing money for medical needs (including long-term care and disability), and temporarily assisting a beneficiary who has fallen on hard times with basic necessities such as food, clothing and shelter. Emergencies are clearly a top priority. Some parents include very specific examples of what they consider "emergencies". Although such standards are helpful as insight into the parents' mindsets, trustees should not be restricted to circumstances listed in the trust document.
- **Incentives.** Incentives encourage responsible behavior and form the core of many flexible family trusts. They may include rewards for completing milestones in education (sometimes at certain grade point averages), financial assistance to a parent who stays at home with young children, or matching the income earned at a job (the so-called "W-2 incentive"!). They can also include assisting a child who chooses a profession that is beneficial to society, but not highly remunerative, such as

social or missionary work. In drafting incentives, it is important to remember that carrots work better than sticks. Experienced trust officers will attest to the advantages of focusing on positive incentives.

A note of caution: while the natural tendency is for the parents to craft trust language that promotes their own values, our experience with multi-generational trusts has shown that the best results are achieved when they recognize values that are common to the family members. Arriving at these shared values is more time consuming than just addressing the parents' goals, and may best be achieved through a family meeting, possibly with a professional facilitator.

- **A "Family Bank".** In functioning as a "Family Bank," a trust enables future generations to embark on worthy endeavors. Trust funds may provide assistance in purchasing a first home or starting a business. The actual mechanics vary with the circumstances and can be as creative as the parties involved. For instance, in some cases trust funds are loaned to family members, while in others money may be distributed outright, possibly to match a child's own investment. Recently, entrepreneurs have suggested venture capital treatment for distributions made to create or expand a business, with the trust receiving an equity position in return.

  Distributions from the Family Bank are usually made by a small committee or advisory panel. This often consists of a mixture of family and outside advisors. Members may rotate and, depending on the size of the panel, it may include at least one younger family member.

Structuring the Trust

Because they are designed specifically for a particular family's circumstances, these trusts can be drafted in many different formats and may vary widely in their provisions. Flexibility and a focus on family needs are core concepts which can be incorporated into most trusts. For instance, a generation-skipping dynasty trust may be the ideal structure for a flexible family trust that parents want to continue for many generations. Flexible provisions can also be written into insurance trusts, credit shelter trusts and even marital trusts, provided certain tax requirements are not violated. For tax reasons, family trusts are usually irrevocable; however, this is not a prerequisite for a flexible family trust.

The following are examples of provisions which may be appropriate in various circumstances:

- A pot trust for young children may accumulate income until the children become adults, at which point it functions as an investment fund, or family bank.
- If children are older and seem likely to be self-sufficient, the parents might want the trust to be there for them only as a safety net. The trust can provide that the children receive income for life, and possibly principal distributions for emergencies such as medical needs, then continue for grandchildren and even beyond.
- If there is concern that access to the trust funds may empower a beneficiary in a negative way, or that assets in the beneficiary's hands may be at risk due to a divorce or litigation, the trust may include clauses which permit a trustee to withhold distributions temporarily or even permanently.
- If parents want to distribute significant amounts outright to children or grandchildren but are concerned that receiving a lump sum in one year would be too much for future heirs, the trust can provide for staged distributions to be given out at different ages. The choice of ages and percentages depends on the family situation. Although some parents, and many advisors, choose three equal distributions beginning in the children's mid-30s, others feel it best to make the first tranche as small as 10%, or delay it until later in life as a retirement supplement.

After determining which incentives to incorporate into a trust, the next decision is often which beneficiaries should be entitled to receive those incentives. While the beneficiaries of a safety net are often broadened to include an heir's spouse, the incentives and the opportunity to participate in the Family Bank are generally restricted to family members in the bloodline. The issue of whether to include spouses as trust beneficiaries or not can be a challenge for families.

Flexibility is Critical

As evidenced from the title of this article, flexibility is paramount. The trust must be able to accommodate future changes in individual circumstances, family situations and society in general. To assure some flexibility and to reduce the chance that family members will attempt to force their views on the trustees, virtually all safety nets, incentives, loans and investments are left to the unfettered discretion of the trustees. It is impossible to foresee situations and potential issues ahead, so the trust provides trustees with a general background of values and possibly some examples to illustrate the mindset of the parents. In addition to broad discretion for the trustees, various techniques such as allowing children to allocate remaining funds among their own descendants and charities are helpful in providing for changing times.

Choice of Trustees

The choice of trustees is closely linked to the issue of flexibility. This may be the single most important decision in the successful operation of a flexible trust. It may be useful to have co-trustees, consisting of family members, outside advisors and/or close family friends. However, there is a practical limit to how many co-trustees should be named.

Modern trust law, as adopted in an increasing number of states, allows bifurcation of trust duties. Individual trustees may have sole responsibility for certain assets (such as a closely held business or real estate), while the corporate trustee handles other aspects of trust administration. Or family members may make the distribution decisions while an investment advisor they have worked with for years handles some or all of the investments. This allows the different co-trustees to focus on their respective areas of expertise. In some cases, a corporate trustee may serve as a tie breaker if the individual trustees cannot agree.

The degree of trustee discretion advocated for these flexible family trusts is a departure from what many trustees are accustomed to. Historically, trustees generally considered it their responsibility to protect and preserve trust assets. Increasingly, however, parents realize that a better mantra for the trustees is "protect and preserve the family." Consequently, not only do trustees need more discretionary authority than has traditionally been the case, but the degree of judgment is more critical. In some cases, trustees may serve as coaches for beneficiaries, training them in financial stewardship and responsibility.

In keeping with the need for flexibility, the trust document should specify a procedure to remove a trustee. Often beneficiaries, or a majority of beneficiaries, are granted the power to replace a trustee. Additionally, the trust may grant this authority to an advisor or Trust Protector.

Well Worth the Effort

Clearly, it takes much more time and often soul searching to develop a customized family trust than it does to print out a standard form document. The process itself is often lengthy and sometimes onerous, and some families aren't able to complete it. The rewards, also, are not always tangible during the parents' lifetime, as the benefits of these trusts over more traditional trusts are typically evident in the third and subsequent generations. However, we have found that parents who involve their descendants and collaborate with their advisors to draft flexible trusts enjoy the satisfaction of knowing that they have provided for future generations in a manner that is more likely to preserve the family's values as well as the family money.

About the Author

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As a senior director and national wealth strategist, Joan works closely with wealthy families and their advisors to provide comprehensive wealth planning. She specializes in family governance, philanthropic planning and tax and estate planning. With over 25 years of experience working with large multi-generational families, she is frequently invited to speak to client and professional groups such as the American Bar Association, the American Institute of CPAs and numerous estate planning councils throughout the United States. Her unique style is highly interactive, emphasizing real life examples and practical tools.

Joan is a frequently quoted fiduciary and family governance expert and author of articles in business publications, including most recently The Wall Street Journal, the New York Times, Trust & Estates magazine and Fortune. In addition, she serves on the Board of Directors of the Community Foundation of Broward and the Executive Committee of the Florida Bankers Trust Division.

Joan earned a master of business administration from Rollins College, a bachelor of education from Queens University and a bachelor of music from McGill University. She is a Certified Financial Planner® and has earned the designations of Certified Trust and Financial Advisor and Certified IRA Specialist from the American Bankers Association.

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Transferring Values in Estate Plans

Transferring or gifting wealth is a very personal decision that may reflect an individual's values, family history, reasoning and intentions. Families often wrestle with decisions such as: How to ensure that descendants understand the family values and remember how the wealth was created? How to encourage children to lead productive and fulfulling lives? Or, how much wealth is enough? The answers to these questions are unique. To balance the goal of minimizing taxes with transitioning the wealth in a way that is best for the family members, clear communication and careful documentation are critical. Standard 'boilerplate' language may be ambiguous and result in an improper and damaging interpretation of the trust creator's wishes.

Providing clear direction has become increasingly important in recent years as changes to estate tax laws allow for increasingly higher amounts to be passed on to future generations. In addition, the longer-lasting nature of trusts may mean that provisions in the trust impact subsequent beneficiaries not even known at the time the trust is created.

PROVIDING CLEAR DIRECTION FOR FUTURE GENERATIONS

There are two ways in which individuals or families can minimize taxes while ensuring their intentions are clear and understood by the trustees and future generations of beneficiaries: Statements of Intent and Letters of Wishes.

Both documents provide a trust creator with the opportunity to present their unique and specific insight, ideas and thought process behind the reason he or she created the trust. While most trusts today typically employ some variation of directing distributions based on "health, support, maintenance and education" or "best interests," the information contained in a Statement of Intent or Letter of Wishes helps provide direction and answer such questions as: Why did a trust creator establish a trust and what values did they intend to share? What is the main purpose of the trust? Do distributions for "education" include a year-long Mandarin language course for an adult descendant planning a trip to China? Should a down payment on a vacation home be included in a "support" distribution?

Express Purpose:
One Family's Approach

"The primary purpose of this trust is to promote the trust creators' values, and pass those values to their descendants.

The trust creators have strong values concerning health, education and entrepreneurship. They believe that beneficiaries should receive the highest quality health care and medical practitioners, the best education from the finest schools to which they can be admitted and other types of educational opportunities to enrich their lives.

Once college and graduate school is completed, demonstrating entrepreneurial values at work is important. It is not enough to have a job—the trust creators believe that beneficiaries should strive for excellence in whatever job, career or profession the beneficiaries undertake."

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Both Statements of Intent and Letters of Wishes can help answer these types of questions and improve the chances that a trust creator's fundamental goals will be realized throughout the life of the trust. They can also lessen the potential for future controversy regarding the interpretation and administration of the trust.

Topics Typically Covered in Statements of Intent and Letters of Wishes:

- Maintenance and support
- Financial independence and productivity
- Principal preservation and spending rate
- Entrepreneurship or other business-oriented values
- Education
- Family unity
- Personal legacy

It is important to realize that these two documents differ in many ways. A Statement of Intent is typically more general in nature and states the reason the trust creator created the trust and is included within the trust document. It can also be included to establish a material purpose for the trust, such as providing tuition assistance, making loans to beneficiaries or helping with health care costs. Alternatively, a Letter of Wishes is less formal than a Statement of Intent and is separate from the trust document. It can be written or amended at any time and typically provides more detailed insight into the trust creator's intent and aspirations for how the trust should be administered. Additional differences are highlighted in the table below:

Making Family History Relevant

"I would not be in this position if it were not for my parents who worked hard, saved and invested in the family business. They are an important part of your family tree and I would like you to remember that they lived their lives in a modest way, contributed regularly to charity, helped family members in need and led by example. I would like you to remember and live with the legacy of their stories. My mother was born…"

STATEMENTS OF INTENT	LETTERS OF WISHES
Part of trust document	Separate from trust document
Drafted concurrently with trust document	May be drafted at any time
Irrevocable once trust becomes irrevocable	May be amended at any time
Used as a personal declaration of purpose	Used as a personal letter from trust creator to trustee
Typically a mission statement about the intended general purpose of trust	Typically more detailed with directions as to how trust should be administered
Legal implications in many jurisdictions	Non-binding in many jurisdictions
Usually shorter in length	Unlimited in length
More formal language used	More informal language used
Typically accessible by beneficiaries	Trustee may be able to keep confidential from beneficiaries in some jurisdictions

CREATING A STATEMENT OF INTENT OR LETTER OF WISHES

Write an Initial Draft

Prior to drafting any estate planning document, it is important to identify the goals and intentions one has for completing a plan. This typically includes deciding which assets or how much wealth to be included in the plan, the list of potential fiduciaries and who will benefit from the plan and how. Many trust creators find that writing down their thoughts and ideas about what a trust should accomplish before consulting with an attorney is a great way to lay out the framework for the trust. These notes can then easily be turned into a Statement of Intent or a Letter of Wishes. It is not important for the trust creator to decide whether the document should be a Letter of Wishes or a Statement of Intent while completing a draft of his or her thoughts. The main objective is to get the trust creator's ideas on paper.

Expressing a Belief System

"It is important that you, as our children and grandchildren, are happy and feel good about what you are doing with your lives. You should pursue positive and worthy passions, and the trustees should help make those passions possible."

Supporting Personal Values or Interests

"The trust creators desire that beneficiaries learn to play musical instruments, participate in theater, create art and be exposed to the world's finest music, theater and art. History is left by the arts through writings, music, visual arts, theater and dance. The beneficiaries should participate in these artistic endeavors as an inspiration to their lives and the lives of others. The trustee should consider making distributions to the beneficiaries to fulfill these objectives."

When drafting one's wishes, the following questions are useful in getting started:

- What is your vision for your children's (and future grandchildren's) lives? Why?
- What are your three biggest concerns for the future?
- How did you create your wealth and what was the biggest challenge?
- How did you overcome that challenge and what lessons did it teach you?
- What role does financial security play in your happiness? Why?
- What family traditions and values did your parents or grandparents pass on to you? Do you want to pass these and/or others to your children and grandchildren?

Consult with Advisors and Trustees

Once a trust creator has had the chance to reflect and put his or her thoughts on paper, the document should be reviewed by the drafting attorney who can advise on whether the writing should be included within the trust document itself as a Statement of Intent or whether it would be preferable to have a Letter of Wishes, separate from the trust, that can be revised and updated as needed. In addition, the attorney can ensure that neither document would inadvertently create a conflict with the trust creator's existing legal documents.

It also is advisable to share the document, whether in draft or final form, with trustees and even trusted family members or friends. This way, the trust creator can benefit from different perspectives, ensure a clear understanding of stated intentions, and potentially identify any information gaps or statements that might be subject to misinterpretation or be impractical to implement.

HOW WE CAN HELP

With each individual's values and wishes as our guide, BNY Mellon Wealth Management can draw upon over 200 years of wealth guidance and expertise to help create a complete wealth transfer plan. Whether clients rely on us as a trustee or a wealth advisor, they have the peace of mind of knowing that we have addressed challenges similar to theirs on behalf of other clients. While decisions such as those involving Statements of Intent and Letters of Wishes rest in the hands of each trust creator, we are able to offer centuries of experience to help guide each individual and family in determining the best options when shaping a plan for tomorrow. In the end, our guidance can support the continuation of the family's heritage, values and aspirations for generations to come.

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1/2016 M-298

AN INTEGRATED ASSET PROTECTION & ESTATE PLANNING SOLUTION

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PRESENTED TO:
Estate Planning Council of Miami Annual Symposium
February 9, 2017
Coral Gables, FL

estatetaxlawyers.com

We all live in dangerous waters. Why not combine **asset protection** and **estate planning?**

OVERVIEW OF AVAILABLE TECHNIQUES

Inter Vivos QTIP Trusts

Shift assets in trust to spouse with less assets. Provide remainder of QTIP on death to children.

Trustee controls trust assets and invests for spouse.

INTER VIVOS QTIP TRUSTS

- Revisions to Florida Statutes § 736.0505 Creditors Claims Against Settlor

IT IS HEREBY PROPOSED THAT SECTION 736.0505, FLORIDA STATUTES, BE AMENDED TO READ AS FOLLOWS:

736.0505 Creditors' claims against settlor...

(3) Subject to the provisions of s. 726.105, for purposes of this section, the assets in

(a) a trust described in section 2523(e) of the Internal Revenue Code of 1986, or a trust for which the election described in section 2523(f) of the Internal Revenue Code of 1986 has been made; and

(b) another trust, to the extent that the assets in the other trust are attributable to a trust described in (a),

shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor.

INTER VIVOS QTIP TRUSTS

- States with Inter Vivos QTIP Trust Legislation (as of Sept. 2016)

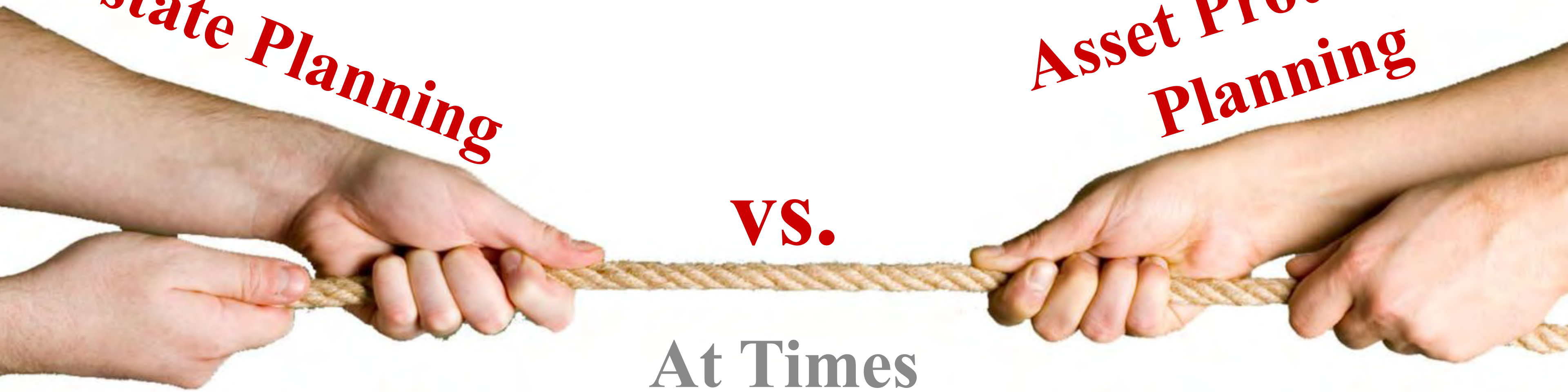
State	Statute
Arizona	Ariz. Rev. Stat. § 14-10505(E)
Delaware	Del. Code Ann. Tit. 12 § 3536(c)(1)
Florida	Fla. Stat. § 736.0505(3)
Kentucky	Ky. Rev. Stat. Ann. § 386B.5-020(8)(a)
Maryland	Md. Est. & Tr. Code Ann. § 14.5-1003(a)(1)-(2)
Michigan	Mich. Comp. Laws § 700.7506(4)
New Hampshire	NH Chapter 564-B:5-505(a)(2)(C)-(D)
North Carolina	N.C. Gen Stat. § 36C-5-505(c)
Oregon	Or. Rev. Stat. § 130.315(4)
South Carolina	S.C. Code Ann. § 62-7-505(b)(2)
Tennessee	Tenn. Code Ann § 35-15-505(d)
Texas	Tex. Prop. Code § 112.035(g)
Virginia	Va. Code Ann. § 64.2-747(B)(2)
Wyoming	Wyo. Stat. Ann. § 4-10-506(e)

INTER VIVOS QTIP TRUSTS

- An important planning consideration for both husband and wife when each has sufficient assets to utilize their respective exemptions from the estate tax.

Estate Planning

Asset Protection Planning



vs.

At Times

Plans Contradict Each Other

INTER VIVOS QTIP TRUSTS

- One common example of planning that may be favorable for estate tax savings and probate avoidance but that may needlessly subject family wealth to creditor's claims, is the division of assets so each spouse owns, and has testamentary control over, approximately one-half of their combined wealth.

INTER VIVOS QTIP TRUSTS

- If a spouse owns his or her share of the family's wealth in his or her own name, the assets comprising the share are not creditor-protected.

INTER VIVOS QTIP TRUSTS

- Under the Uniform Trust Code, holding significant assets in a revocable trust does not enhance the situation because assets in a revocable trust are not protected from claims of the settlor's creditors.
- Fla. Stat.§ 736.0505(1)(a)

INTER VIVOS QTIP TRUSTS

- An alternative that is effective both for estate tax and asset protection planning is an Inter Vivos QTIP Trust.

TENANCY BY THE ENTIRETIES PLAN

DEBBIE & DENNIS	Debbie	Dennis	T by E
Upon Debbie's Death House – Protected Homestead			$ 2.82 M
Brokerage			$10.9 M
TOTAL			$13.72 M
Debbie's Gross Estate Assuming She Dies First			$6.86 M
MARITAL DEDUCTION			$6.86 M
Debbie's Taxable Estate			$0
Debbie's Tax			$0

Assuming Dennis' death in 2016

INTER VIVOS QTIP TRUSTS

TENANCY BY THE ENTIRETIES PLAN

DEBBIE & DENNIS	Debbie	Dennis	T by E
UPON DENNIS' DEATH			
Dennis' Gross Estate			$13.72 M
Less Applicable Exclusion Amount (assuming portability)			($10.9 M)
Dennis' Taxable Estate			$2.82 M
Dennis' Tax			$1.128 M
Assets subject to creditors while both married and living			$0
Assets subject to creditors upon death of 1st spouse or divorce			$10.9 M
Assets benefitting from step up in basis upon death of surviving spouse			$10.9 M + homestead

Assuming Debbie's death in 2016

INTER VIVOS QTIP TRUSTS

CPA'S TAX SAVINGS PLAN

DEBBIE & DENNIS	Debbie's Revocable Trust	Dennis' Revocable Trust	T by E
Upon Debbie's Death House – Protected Homestead			$2.82M
Brokerage	$5.45 M	$5.45 M	
TOTAL	$5.45 M	$5.45 M	$2.82 M
Debbie's Gross Estate Assuming She Dies First	$6.86 M		
Debbie's Share of Homestead to Dennis Outright	($1.41 M)		
MARITAL DEDUCTION	$1.41 M		
Debbie's Taxable Estate	$5.45 M		
Less Applicable Exclusion Amount	($5.45 M)		
Debbie's Tax	$0		

CPA'S TAX SAVINGS PLAN

DEBBIE & DENNIS	Debbie's Revocable Trust	Dennis' Revocable Trust	T by E
UPON DENNIS' DEATH			
Dennis' Gross Estate	$8.27 M		
Less Applicable Exclusion Amount	($5.45 M)		
Dennis' Taxable Estate	$2.82 M		
Dennis' Tax	$1.128 M		
Savings Compared to Tenancy by the Entireties	$0		

Homestead $2.82 M
Brokerage Assets $5.45 M

CONTINUED

INTER VIVOS QTIP

DEBBIE & DENNIS	Debbie's QTIP	Dennis' QTIP	T by E
Upon Debbie's Death House – Protected Homestead			$2.82 M
Brokerage	$5.45 M	$5.45 M	
TOTAL	$5.45 M	$5.45 M	$2.82 M
Debbie's Gross Estate Assuming She Dies First	$6.86 M		
Debbie's Share of Homestead to Dennis' Marital Deduction	($1.41 M)		
MARITAL DEDUCTION	$ 1.41 M		
Debbie's Taxable Estate	$ 5.45 M		
Less Applicable Exclusion Amount	($5.45 M)		
Debbie's Tax	$0		

INTER VIVOS QTIP

DEBBIE & DENNIS	Debbie's QTIP	Dennis' QTIP	T by E
UPON DENNIS' DEATH			
Homestead	$2.82 M		
QTIP Trust from Debbie	$5.45 M		
Dennis' Gross Estate	$8.27 M		
Less Applicable Exclusion Amount	($5.45 M)		
Dennis' Taxable Estate	$2.82 M		
Dennis' Tax	$1.128 M		

CONTINUED

CPA'S TAX SAVINGS PLAN

Assets subject to creditors	
while both married and living	$10.9 M
death of 1st spouse or divorce, assuming assets pass into spendthrift trust for surviving spouse upon death of 1st spouse	$5.45 M

Basis step up	
death of surviving spouse, no GPA	$5.45 M + homestead
death of surviving spouse, GPA	$10.9 M + homestead

INTER VIVOS QTIP

Assets subject to creditors	
while both married and living	$0
death of first spouse or divorce	$0 M

Basis step up	
death of surviving spouse, no GPA	$5.45 M + homestead
death of surviving spouse, GPA	$10.9 M + homestead

COMPARISON OF BENEFITS OF INTER VIVOS QTIP

	Tenancy by the Entirety Plan	Tax Plan	QTIP Plan
Technique	T by E	Tax Savings Plan	Funded Inter Vivos QTIP
Protected While Both Living	$10.9 M	$0	$10.9 M
Protected Upon Death of 1st Spouse	$0	$5.45 M	$10.9 M
Tax Paid Upon Death of Spouse (assuming portability)	$1.128 M	$1.128 M	$1.128 M
Basis step up, no GPA 1st, upon death of surviving spouse	$5.45 M	$5.45 M	$5.45 M
Basis step up, GPA, upon death of surviving spouse	$10.9 M*	$10.9 M**	$10.9 M**

INTER VIVOS QTIP TRUSTS

COMPARISON OF BENEFITS OF INTER VIVOS QTIP

	Tenancy by the Entirety Plan	Tax Plan	QTIP Plan
Technique	T by E	Tax Savings Plan	Funded Inter Vivos QTIP
Basis step up, GPA, upon death of surviving spouse	$10.9 M*	$10.9 M**	$10.9 M**

*Full step up of all assets included in estate of surviving spouse.

**Full step up of Code Section 2044 assets but no step up of appreciation of assets in credit shelter trust upon death of first spouse.

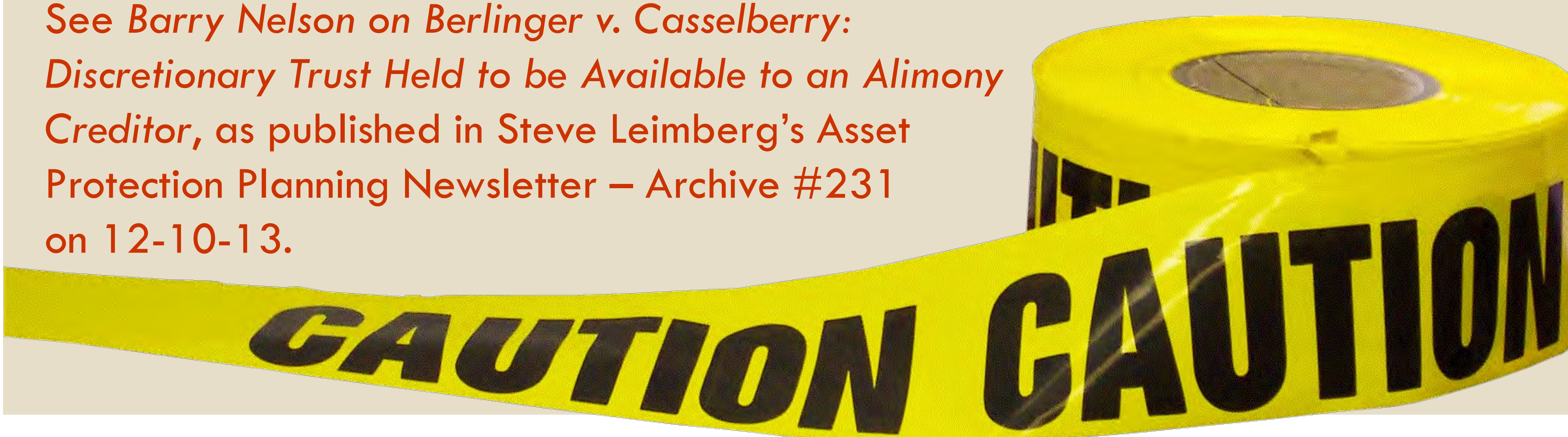
INTER VIVOS QTIP TRUSTS

- Inter Vivos QTIP Trusts and Divorce: Income Tax Consequences
  - Donor of inter vivos QTIP trust typically understands that under the grantor trust rules provided in Code Sections **672(e)** and 677(a), he or she will be taxed on all trust income.

INTER VIVOS QTIP TRUSTS

- Inter Vivos QTIP Trusts and Divorce: Income Tax Consequences
  - Donor may be surprised that grantor trust status may continue with respect to undistributed capital gains post-divorce during the remaining lifetime of the donee spouse.

See *Barry Nelson on Berlinger v. Casselberry: Discretionary Trust Held to be Available to an Alimony Creditor*, as published in Steve Leimberg's Asset Protection Planning Newsletter – Archive #231 on 12-10-13.



INTER VIVOS QTIP TRUSTS

- S Corporation Traps
  - Be aware of the loss of S Corp status upon divorce or legal separation.
  - Consider electing small business trust.

Steve Leimberg's Estate Planning Email Newsletter - Archive Message #2244

Date: 15-Sep-14
From: Steve Leimberg's Estate Planning Newsletter
Subject: Barry Nelson & Richard Franklin: Inter Vivos QTIP Trusts Could Have Unanticipated Income Tax Results to Donor Post-Divorce

"Testamentary QTIPs are perhaps the most common form of marital deduction trust. The rules for structuring a QTIP trust upon the settlor's death are generally known and accepted, but the creation of inter vivos QTIP trusts are less common, even though such trusts offer superb estate planning opportunities. While the core principles of testamentary and inter vivos QTIP trusts are exactly the same, inter vivos QTIP trusts require additional considerations that are not as well known to those who may not be using inter vivos QTIP trusts on a regular basis.

Numerous articles and presentations have extolled the many benefits of inter vivos QTIP trusts including asset protection, creation of estate tax discounts and 'Supercharging[sm].' However, estate planners and their clients may not focus on the fact that the donor of an inter vivos QTIP trust may have continuing obligations to pay income taxes on trust capital gains post-divorce, notwithstanding that the donor may have no right to trust distributions or access to trust assets to pay such taxes."

Barry A. Nelson and **Richard Franklin** provide **LISI** members with commentary that reviews the potential income tax consequences to the donor of an inter vivos QTIP trust. The authors would like to acknowledge the review of their commentary by **Carlyn S. McCaffrey** and **Bruce Stone**. Their comments were integral to the issues discussed and are integrated herein. The assistance of **Michael A. Sneeringer, Esq.** is also acknowledged and appreciated.

Barry A. Nelson, a Florida Bar Board Certified Tax and Wills, Trusts and Estates Attorney, is a shareholder in the North Miami Beach law firm of **Nelson & Nelson, P.A.** He practices in the areas of tax, estate planning, asset protection planning, probate, partnerships and business law. He provides counsel to high net worth individuals and families focusing on income, estate and gift tax planning and assists business owners to most effectively pass their ownership interests from one generation to the next. He assists physicians, other professionals and business owners in tax, estate and asset protection planning. As the father of a child with autism, Mr.

ALIMONY CLAIMS

- Protection of trust funds from alimony claims
- Protective Drafting
  - SEE SUPPLEMENT "Divorce Considerations in Trust Drafting" presented by Bruce Stone at the 2017 Heckerling Estate Planning Institute

See Exhibit 11
Page 84

ALIMONY CLAIMS

- Proposed Amendment to Florida Statute §736.0504 to Revise *Bacardi* and *Berlinger* for Claims of Spouse, July 14, 2016
- Never submitted to the Executive Committee.

See Exhibit 11
Page 84

ALIMONY CLAIMS

- To amend Section 736.0504 to read as follows…

(2) (b) Attach, garnish or otherwise reach the interest, if any, which the beneficiary might have as a result of the trustee's authority to make discretionary distributions to or for the benefit of the beneficiary.

See Exhibit 11
Page 84

ALIMONY CLAIMS

- To amend Section 736.0504 to read as follows…

(3) If the trust contains a spendthrift provision, a creditor of the beneficiary, other than a beneficiary's child as provided in s. 736.0503(2)(a) or a creditor described in s. 736.0503(2)(b) or (c), may not attach, garnish or otherwise reach in any manner the interest to which a beneficiary becomes entitled as a result of the trustee exercising its discretion to make discretionary distributions to or for the benefit of the beneficiary.

A claim by Florida or U.S. if law so provides.

A creditor who provided service for a beneficiary's interest in trust.

ALIMONY CLAIMS

See Exhibit 11
Page 84

- To amend Section 736.0504 to read as follows…

(4) Whether or not a trust contains a spendthrift provision, if there is an unsatisfied judgment or court order against a beneficiary, the trustee may, without liability to any of such beneficiary's creditors, make discretionary distributions to or for the benefit of the other beneficiaries of the trust to the maximum extent permitted by the trust instrument.

See Exhibit 11
Page 84

ALIMONY CLAIMS

- To amend Section 736.0504 to read as follows…

(5) If the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard, a creditor may not reach, garnish or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee.

See Exhibit 12
Page 85

ALIMONY CLAIMS

- Proposed White Paper for Exhibit 11

DRAFT

RPPTL WHITE PAPER

PROVIDING CLARIFICATION TO TRUSTEES OF THIRD PARTY TRUSTS IN MAKING DISTRIBUTIONS TO BENEFICIARIES

I. SUMMARY

The proposed legislation seeks to provide guidance for trustees serving under Florida sitused trusts who have authority to make distributions of income and principal to beneficiaries at the trustees' discretion, whether or not the discretion is expressed in the form of a standard of distribution. More specifically, this proposal addresses duties and liabilities of the trustee when there is a spouse, a former spouse or a child who has a court order for maintenance and support against one of the beneficiaries of the trust. For

See Exhibit 13
Page 95

ALIMONY CLAIMS

- Comprehensive Revision to §736.0504
  - Based Upon Nevada and South Dakota Statutes That Died in Committee
- Proposed statute
  - by Barry A. Nelson and Michael Sneeringer, November 25, 2016
- Not completed
  - as it became clear committee was not going to proceed with a comprehensive fix

THANK YOU!

presented by
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