

# Financial Advisor Current Events Update



<u>Topic</u>	<u>Pg.</u>
<u>Reflection of the Month</u>	1
<u>On the Lighter Side</u>	1
<u>IRS Announces Estate &amp; Gift Tax Exclusions for 2016</u>	2
<u>What Is So Bad About Probate?</u>	3
<u>Divorce and the Elective Share</u>	5
<u>Estate Planning is About a Lot More Than Estate Taxes</u>	7
<u>The Pocket Guide to Trusts &amp; Estates</u>	10
<u>The Andersen Firm - Areas of Practice</u>	10

[www.TheAndersenFirm.com](http://www.TheAndersenFirm.com) | 866.230.2206

New York Office  
110 E. 37th Street  
New York, NY 10016

South Florida Office  
500 East Broward Boulevard  
Suite 1600  
Fort Lauderdale, FL 33394

West Florida Office  
7273 Bee Ridge Road  
Sarasota, FL 34241

Tennessee Office  
862 Med Tech Parkway  
Suite 200  
Johnson City, TN 37604

## Reflection of the Month

There once was an old mule. One day the mule accidentally fell into the farmer's well. The farmer has evaluated the situation and thought to himself, that neither the well nor the old mule was worth the efforts to save them. Thus he decided to haul dirt to bury the old mule in the well.

So the farmer called his neighbours and together they started to shovel dirt into the well. The old mule was terrified and hysterical in the beginning. But soon one hopeful idea came to his mind – every time when a shovel of dirt landed on his back, he would shake it off and step up!

He repeated these words to himself again and again: "Shake it off and step up". This way he could struggle the panic and encourage himself. After some time, the mule had stepped over the well's wall. Although terribly tired, he was the winner, he saved his own life. He decided to face his adversity positively and not to give up, and thus he won.

What seemed to bury him, actually saved him, owing to his confidence and restless efforts.



**ON THE  
LIGHTER  
SIDE**

**Don't ever depend on a rabbit's foot for good luck.**

**It obviously didn't help the rabbit.**

# IRS Announces Estate & Gift Tax Exclusions for 2016

THE IRS HAS RELEASED THE ANNUAL INFLATION ADJUSTMENTS AND TAX RATE SCHEDULES THAT WILL APPLY IN 2016. INCLUDED ARE THE NEW GIFT AND ESTATE TAX EXCLUSION AMOUNTS FOR 2016. THE NEW INFLATION ADJUSTED NUMBERS ARE AVAILABLE IN [REVENUE PROCEDURE 2015-53](#). THEY APPLY GENERALLY TO TRANSACTIONS OR EVENTS OCCURRING IN CALENDAR YEAR 2016

## ESTATE & GIFT TAX EXCLUSIONS 2016

- \$5.45 million – Federal Estate Tax Basic Exclusion Amount
- \$5.45 million – Lifetime Gift Tax Exclusion
- \$14,000 – Annual Gift Tax Exclusion

## 2016 STANDARD DEDUCTION AMOUNTS

\$6,300 - Standard deduction for single taxpayers

\$12,600 - Standard deduction for married couples

\$9,300 - Standard deduction for heads of households

\$1,250 - Additional standard deduction for the aged or blind. (This additional standard deduction amount is increased to \$1,550 if the individual is also unmarried and not a surviving spouse.)

The new estate and lifetime gift tax exclusion amounts are an increase of \$20,000 from 2015. Because a husband and wife each get their own exemption, a married couple can give away \$10,900,000 million tax-free in 2016 (provided they have not previously used up any of their exclusions.)

The top tax rate on amounts above the exemption limit is 40%. The high exemption amounts have pretty much done away with estate tax as an estate planning consideration for most people.

### Income Tax Brackets for 2016

The top federal income tax rate of 39.6 percent will affect singles whose income exceeds \$415,050 and married couples filing jointly with incomes over \$466,950 in 2016. The other marginal rates are described in the [Revenue Procedure](#).

### Long-Term Care Insurance Deduction Limits for 2016

The IRS also released the long term care insurance premium deduction limitations for 2016:

Attained Age	Premium Limit
40 or less	\$390
More than 40 but not more than 50	\$730
More than 50 but not more than 60	\$1,460
More than 60 but not more than 70	\$3,900
More than 70	\$4,870





# What Is So Bad About Probate?

When asked what the benefit of a revocable living trust is over a will, the first answer most estate planning attorneys give will probably be something like, "It avoids probate, which is time consuming, expensive, public, and a hassle for your family." But what does this mean? What makes probate so terrible?

## 1. Time Consuming

Probate ties up property for months at best, but in most instances takes between one and three years. This is not because of contests or problems arising, most of the time there is no conflict at all. Remember, probate is a court proceeding. The issue is with the large amount of paperwork the attorney has to file, different deadlines that need to be met, accounting that needs to be done, and other procedural technicalities required by the court.

## 2. Expensive

In many states, attorney fees and personal representative fees can take up to 6% of an estate's value. While the costs of probate vary by state, probate can be very expensive. The court may use money from the estate to assign lawyers to guard minor heirs' interests or to conduct other parts of the process. These are all expenses that are easily avoidable by using a trust instead of a will.

## 3. Public

Probate is a state court proceeding, which makes all of the information about the

deceased person's assets, liabilities, beneficiaries, and Personal Representatives a public record. This means that anyone can go to the court house and ask to see the entire probate file for any estate and no one at the clerk's office will care or ask why. In some states entire probate files are available for viewing online. Anyone who cares to look up the correct public record can discover that you now have your great aunt's gold coins, or like famed baseball star Ted Williams, that you had your head cryogenically frozen. This sort of publicity often makes people targets for burglars or scammers (or in Ted's case, the butt (or head) of unwelcome jokes).



## 4. Hassle for your Family

Remember the first two items discussed. It can take as long as three years to settle a probate, and can be fairly expensive. During

## What Is So Bad About Probate? (Continued)

this time, your family may be footing the bill for your expenses. It will be months or years before your family has access to the property and assets you left them. They will be paying your funeral expenses, attorney's fees, etc. out of their own pocket until the probate process can allow payment.



Another potential hassle is the probate judge getting in the way. During probate, court approval is often required for many things including continuing or selling the deceased person's business, repairing or selling real estate, or abandoning worthless assets (think timeshares with high annual maintenance fees). Avoiding probate avoids interference in family and financial matters by a probate judge.

These are all issues that can be remedied by using a revocable living trust instead of a will. If a trust is used there will be no probate. Your family will have access to your funds immediately, there will be no probate-related costs for your family to pay, and all the planning you did will stay private

forever. There is only one downside to using a revocable living trust and avoiding probate; the legal fees are substantially lower, and we know everyone loves paying lawyer's legal fees.



# DIVORCE & THE ELECTIVE SHARE

## IT'S NOT OVER 'TIL ITS OVER

It is a common belief that we can dispose of our property in any way we see fit upon our death, and it is our right to do so. For the most part this is true, but without an agreement by both parties, your spouse has the right to

personal property AND a percentage of the net estate which is on a sliding scale depending how long the couple was married, ranging from 10% to 40%.

**Florida:** Flat 30% of the elective estate.

It should be noted that not creating a Will is not a workaround to the elective share. If you die without a Will, your future ex-spouse will

inherit 100% of your estate.

There are only a few ways to get out of paying the elective share to your spouse without a FINAL DECREE of divorce. Being in the midst of a divorce is not enough:

### **Prenuptial Agreement:**

If you and your spouse agree prior to marriage to waive your right to the elective share and incorporate the waiver into your prenuptial

agreement. It is important to note that the waiving spouse is fully aware of what the elective share is, and what the ramifications of waiving it are.

### **Postnuptial Agreement:**

After you are married, you can still waive your right to the elective share, but it should be noted that if there is a contest, the court will look much more closely at the agreement for signs of fraud, duress, or misunderstanding of what they are waiving. If a couple decides to use a postnuptial agreement to waive, it is vitally important that each spouse has independent counsel. The court looks at waivers within a postnuptial agreement with a jaundiced eye, so it is very important that you protect yourself by following form to the letter.

### **Abandonment:**

If the surviving spouse abandoned the deceased spouse, and such abandonment continued until the time of death. The party asserting abandonment bears the burden of establishing that the surviving spouse departed from the marital

some or all of your estate. If you die with only a Will in place, your spouse is entitled to what is known as "the elective share." The elective share differs slightly from state to state, but they are all similar, and the rules governing them are the same. Here are 3 examples:

**New York:** \$50,000 or 1/3 of the net estate, whichever is greater.

**Tennessee:** \$50,000 of





# ...CONTINUED

abode and that such departure was both “unjustified and without the consent of the other spouse.”

the document.

So what if you find yourself in the midst of a divorce and none of these exceptions apply to you? While you will most likely not be able to completely disinherit your soon to be ex-spouse, there

election. The laws of the state will operate to nullify any bequests to spouse once the divorce is final, unless the document specifically provides otherwise.



## Final decree of divorce:

Any final decree of divorce will work. Whether from the state or outside of the state, whether the divorce is recognized by the state or not.

**Note:** The only way you can lose the elective share prior to the finalization of the divorce is if everything was done and all that was remaining for finalization was the judge’s signature on

are still estate planning techniques that can help during the process.

The purchase of insurance can reduce the size of one’s “net estate” against which the right of election operates. It is a good idea to change testamentary documents to provide for NO MORE than the elective share unless a separation agreement has been executed in which the spouses waive the right of

# ESTATE PLANNING IS ABOUT A LOT MORE THAN ESTATE TAXES

Planning for and Protecting the Family's Future

There is a common misconception that estate planning is only useful to reduce or avoid estate taxes and probate. People hear about the federal exemption of \$5.45 million per person, or double that amount for married couples, and if they have less than this they think they don't need to do estate planning. They do not take into account the states with their own estate taxes, inheritance taxes, and in some cases, both. But taxes are only a small piece of estate planning. What about the family? This line of thinking can have disastrous consequences for the family after loved ones are gone. Interestingly, the CNBC Millionaire Survey found 38% of those with investable assets of \$1 million or more have not used a financial expert to establish an estate plan.



As of 2015, 15 states and Washington DC have their own estate tax, 6 states have an inheritance tax, and 2 states have both (New Jersey and Maryland). For estate taxes, the exempt amount for some states is ludicrously low, as is the case in New Jersey with anything over \$675,000 taxed between 11% and 16%.

If the state only has an inheritance tax, the estate will still be taxed, the difference being that the beneficiaries are the ones paying it when they receive their inheritance. This tax is levied against estates of any size, with the exempt amounts being between zero (no exemption) in Maryland, and \$40,000 in Nebraska (it is only this high if you are passing to an immediate relative, otherwise it is \$10,000). The beneficiaries could be paying between 15% and 18% for any amount they receive over the exemption.

It can get worse than this when planning for most retirement plans. Retirement plans are one of the most heavily taxed assets in existence. It is becoming popular to leave these plans to grandchildren with the intent to defer taxes for as long as possible, but if not done properly, part or all of a retirement plan can be subject to as many as **six** different taxes (federal and state income, estate, and generation skipping taxes). By the time the beneficiary receives the proceeds of the retirement plan, it is not unusual to see that taxes have depleted the assets by as much as **70% - 85%**. However, this doesn't have to happen. With proper estate planning techniques, by the time the grandchildren receive the proceeds, that same retirement plan could have doubled, tripled, or more in value instead.

While taxes may be an important consideration when doing estate planning, there are other, equally important issues that proper estate planning can address that have



nothing to do with taxes at all. Avoiding probate is one of the best reasons to have estate planning done. Probate is expensive, time consuming, and public. When you die with only a Will in place, it will be months (or in many cases years) before the family has access to the property and assets left to them in the will. They will be paying the funeral expenses, attorney's fees, etc. out of their own pocket until the probate judge allows otherwise. This is not because of contests or court proceedings; in the vast majority of cases these are not necessary. It is purely legal process and governmental bureaucracy that your family will be waiting to clear. For this, the family can pay as much as 5% of the estate's value. The icing on this not-so-tasty cake is that once the estate is settled, all of the information about a person's assets, liabilities, beneficiaries, and Personal Representatives are public record and freely available to anyone who wants them. But aside from probate and taxes, proper estate planning can also help take care of people while they are still alive. With better medical care and longer life expectancies now than ever before, planning for yourself in the event you are not capable of making your own decisions has become incredibly important. With proper estate planning a person is able to make decisions about the care they will receive should they become unable to make those decisions for themselves, instead of the family arguing about "what they would want;" or even worse, a court making those decisions for them. Families will often want to keep their loved one's alive via a feeding tube even

after they are in a terminal, irreversible, persistent vegetative state. It's hard to make the decision to let someone you love die. With proper estate planning, people can make that decision for themselves, taking the weight of that decision off of their family's shoulders all together.

If there are minor children, what will happen



to them should a person and their spouse both pass away unexpectedly? This is an important consideration that most every parent wants control over. Who will the children live with? How will they be taken care of financially? What if the person they always thought would take care of the kids if they weren't able to is unable to fill this massively important role? Without proper estate planning the courts will make these decisions, and the results can often be catastrophic. If a person has no financial planning whatsoever in place, the court will appoint a custodian or conservator to manage the money until the child is 18 years old, at which point they will receive everything outright with no restrictions on

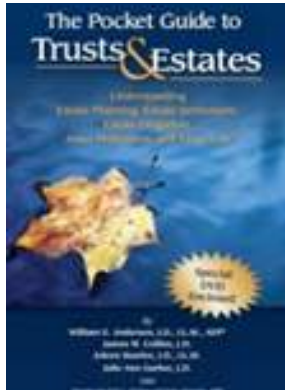
how they spend it. This can have far reaching ramifications on the child's life. On average, it takes 17 months for people to spend their entire inheritance. For 18 year olds, this time frame is far shorter. However, this actually may not be the worst part of children receiving a large sum of money outright at 18. 18 is a crucial time in the development of children. This is the time when they learn to work for what they have, budget their money, and become motivated to make their own way in the world.

Receiving a large amount of money at 18 can

Estate planning is more than just saving a buck; it can save families pain, heartache, and unnecessary struggle after their loved ones are gone. It allows people to rest easy that they are taking care of their loved ones after they are gone, just as well as they did when they were alive, while saving a significant amount of money in legal fees and probate costs at the same time.



ruin this. They have enough money that they don't feel a need to work. Learning about saving and budgeting their finances is not important to them. The sad ending to this is when the money runs out. The child has been living a life they couldn't actually afford and now it all crashes down around them. They may have no marketable skills, no financial knowledge, and are unable to live life as an adult. They will have to start over with none of the support their parents wanted to give them, and will have to learn these lessons the hard way.



## The Pocket Guide to Trusts and Estates

Bill Andersen, Joleen Searles and Jim Collins with Erin Turner and Jerry Saresky have released their collaborative book ***The Pocket Guide to Trusts & Estates: Understanding Estate Planning, Estate Settlement, Estate Litigation, Asset Protection and Elder Law***. If you would like a complimentary copy, call Angela Hooper at 866.230.2206. Books can be purchased on Amazon.com as well.

## The Andersen Firm Areas of Practice

### Estate Planning

- At The Andersen Firm we have planned for a vast array of estates ranging in size from a few hundred thousand dollars to a hundred million dollars and up, all the while realizing each specific case is different and requires specialized attention.

### Estate Settlement

- The process of settling an estate can be difficult and emotionally painful for the family and loved ones of the deceased. It is our goal at The Andersen Firm to ensure that the process be handled with compassion, expedience, professionalism, and expertise, while protecting the rights of all parties involved. If the circumstances surrounding a client's estate require probate, our attorneys offer extensive experience in handling the processes and legalities involved.

### Estate Litigation

- Our lawyers are not only skilled at handling cases involving estate and trust disputes, they draw on a thorough knowledge base of the specific procedures surrounding these issues. The Andersen Firm can efficiently take each case through to completion realizing that full blown litigation often can be avoided if we work diligently to come to resolution.

- Attorneys at The Andersen Firm represent beneficiaries, trustees and personal representatives in various jurisdictions dealing with estate litigation and probate litigation matters. A Will contest challenges the admission of a Will to probate or seeks to revoke the probate of a Will that is already pending before the probate court. A similar type of estate litigation can take place contesting the terms of a trust. The most common causes of action in both Will contests and estate litigation can be found at [www.TheAndersenFirm.com](http://www.TheAndersenFirm.com) or call us at 866.230.2206.

### Asset Protection

- For some, putting an Asset Protection Plan in place is advisable in order to attempt to remove the economic incentive to be sued and also to try and increase the ability to force an early settlement in the event a suit is filed.



**COMMENTS:** If you have questions about The Andersen Firm's practice areas, need assistance with continuing education, client seminars, or have a question or suggestion about our website, **Angela Hooper** is our **Director of Professional Alliances**

and is available to assist you. Angela welcomes your calls and may be reached at 866.230.2206 or by email at [AHooper@TheAndersenFirm.com](mailto:AHooper@TheAndersenFirm.com).