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Financial Advisor Current Events Update September/October 2015

I. Reflection of the Month ... 1
II. On the Lighter Side ... 1
III. IRS/Department of Treasury Attacking Most Effective Estate Planning Technique ... 2
IV. The Financial Mistake One-Third of Parents Make ... 3
V. Estate Planning for Social Media and the Electronic Age ... 5
VI. Divorce & the Elective Share: It's Not Over Until It's Over ... 7
VII. Closing Loophole? ... 8
VIII. Why You Should Review or Establish Your Estate Plan this Halloween ... 10
XI. What's So Bad About Probate? ... 13
XII. The Pocket Guide to Trusts and Estates 14
XIII.The Andersen Firm Areas of Practice ... 15

I. Reflection of the Month

"It is that unoccupied space which makes a room habitable, as it is our leisure hours which make life endurable." – Lin Yutanq

II. On the Lighter Side

It's an allusion to the [Wise Men of Gotham](https://en.wikipedia.org/wiki/Wise_Men_of_Gotham), an old (at least 16th C) English folk story as to the supposed stupidity of the inhabitants of the eponymous village. In brief, the tale revolves around a village that decided to avoid hosting a passing king by acting stupidly. Through carrying out nonsensical tasks - such as

attempting to drown an eel or building a wall around a cuckoo to stop it flying away - they convinced the king that they were a village of fools and thus best avoided.

In this sense the tale of Gotham was passed down with two meanings: a place full of idiots and fools *and* a shrewd display of cunning. It was the first that saw the label applied to the supposedly pompous and self-absorbed New Yorkers and the second that led them to adopt the nickname.

As a note though, it wasn't an Englishman that first attached it to New York but rather a Manhattanite, the famous Washington Irving. His journal *Salmagundi* first uses the term in 1807 to skewer his fellow citizens, mocking their airs. Other cities might boast ancient traditions (Trojan refugees seemingly having nothing better to do than found famous cities) but New York, claimed Irving, was the 'renowned and ancient city of Gotham', the city of fools.

(Irving had history, pun intended, in this form of mock-history. His *History of New York* similarly played fast-and-loose with the murkiness of the city's history, popularizing the term Knickerbocker in the process.)

In terms of sources, the story of the Wise Men is common enough and Irving's writings are available online. Most of the above however is derived from Burrows and Wallace's excellent and aptly named *Gotham*.

III. IRS/Department of Treasury Attacking Most Effective Estate Planning Technique

This is of urgent interest to you and all high net worth and ultra-high net worth clients.

The 500 pound gorilla for estate tax planning is the use of family limited liability companies and family limited partnerships combined with a sale to an intentionally defective grantor trust (also known as the grantor deemed owner trust). The effectiveness of this technique, if done properly, is incredible. In fact, it is so effective that the Administration, the U.S. Department of Treasury and the IRS have long placed it as one of the top estate planning techniques it wants to restrict or prohibit.

High net worth or ultra-high net worth clients with significant estate tax liability, need to be aware that the window is closing to take advantage of this technique.

This is such a dramatic and impending change to estate and estate tax planning that we will be available on short notice and weekends for conference calls to discuss this. Because time is of the essence, if you want to arrange a conference call with us, please call directly to Angela Christian or Melissa Campbell at 866.230.2206.

Details follow:

At the recent American Bar Association (ABA) Section of Taxation meeting, Cathy Hughes (Estate and Gift Tax Attorney-Advisor in the

Office of Tax Policy of the U.S. Treasury Department) indicated that proposed regulations under section 2704(b)(4)—a regulation project that has long been on the IRS priority guidance plan—could be released before the fall ABA Section of Taxation meeting (which is scheduled for September 17-19, 2015).

Hughes intimated that the regulations may be reminiscent of the Obama Administration's budget proposal, but it is not certain what the regulations will ultimately say. It does seem likely that the proposed regulations would limit the use of lack of control (i.e., minority) and lack of marketability discounts for interests in family-owned entities, especially when the entity does not itself operate an active business—for example, a typical family limited partnership.

Although regulations are generally effective when finalized, Hughs comments also indicated that, instead, these regulations could be made effective as of the date the proposed regulations are released. It is believed that there would be no "grandfathering" of pre-existing entities, but only grandfathering of previous transfers of interests in such entities.

If these regulations are adopted in the form we now anticipate, it would be a major blow in estate planning. Family limited partnerships and limited liability companies long have been used to help pass family-owned businesses to younger generations in a way that may reduce gift or estate taxes. They also have been used in recent years to pass down portfolios of publicly traded securities at a discount. For years, taxpayers have been claiming valuation discounts on family controlled entities, sometimes to reflect lack of control and sometimes to reflect lack of marketability. This, it appears is what the IRS is looking to end.

IV. The Financial Mistake One-Third of Parents Make

Portion of Article by: Jennifer O'Neill (Yahoo Parenting)

More than a third of parents with kids younger than 18 years old don't have life insurance — an oversight that money experts say put your family in "serious financial jeopardy."

What will happen to your kids if you die isn't an easy topic to confront. Perhaps that fear factor is one reason why a shocking number of parents are simply avoiding the issue altogether and haven't gotten any life insurance.

According to a new survey from Bankrate.com, 37 percent of parents with kids younger than 18 years old don't have any coverage providing for their loved ones if they die. And even the moms and dads who *have* life insurance often don't have enough to address their family's basic needs when they're gone, according to the June survey of 1,000 adults in the U.S. Thirty-two percent have no more than $100,000 in coverage, Bankrate reports, noting that such a payout doesn't go far if there's a mortgage to pay and college tuition to consider.

"Without life insurance, you're putting your spouse and your family in serious financial jeopardy," financial expert Rachel Cruze tells

Yahoo Parenting. "If something were to happen to you or your spouse, your family needs to be able to replace your income so they can pay the bills and put food on the table. There is so much pain and heartache that comes with the loss of a loved one," she adds, "the last thing you want your family to worry about in the event of a death is money." Cruze's father, money guru Dave Ramsey, agrees, adding that the bottom line is simple. "When you die without having a current will and estate plan," he tells Yahoo Parenting, "you leave a huge mess for your family."

With all the things that parents are already paying for, Ask the Money Coach founder Lynnette Khalfani-Cox gets why life insurance can be de-prioritized for financial reasons. "You have to settle your mortgage or rent, utility bills, car payment, and food, so the immediate economic needs staring you in the face take precedent over future events," she tells Yahoo Parenting. "But it's an ill advised move to be thinking *only* of the here and now."

And she should know. Khalfani-Cox recently lost her sister (mom to an 11-year-old daughter) when she died unexpectedly at just age 49. "Mercifully, she did a lot of the right things and had plenty of life insurance," says the *College Secrets* author. "It's going to be longer-term blessing for her daughter, but when I say that tomorrow isn't promised, believe me, I know. The last six months have not only been emotionally devastating for our family, they've really driven home the point that we need to have finances in order." Khalfani-Cox says she actually recently reviewed her own insurance and increased her coverage in the wake of their loss. "Parents can be 30 something and think, I'm not going to die until I'm in my 80s — but you still need to plan ahead."

The coverage people sign up for through work isn't enough, either, she says.

"Typical employer-based life insurance provides for one or two times your salary, which leaves most people woefully uninsured," says Khalfani-Cox.

"The general recommendation is to have 5 to 10 times your annual salary in coverage, so you'll need an outside policy to supplement the difference."

Cruze, co-author of *Smart Money Smart Kids* with Ramsey, recommends even more — about 10-12 times your annual income. "You want enough money to replace the deceased spouse's income and allow your family to live comfortably," she explains.

It's a lot to wrap your head around, for sure, which is why Khalfani-Cox suggests starting small when you begin to get your family's finances in order. "Make a small checklist, just three to five things, and put a deadline next to each," she says.

First, get a will drawn up if you haven't already. "Wills aren't just for rich people," she notes. "Anybody who has a child should have a basic will and testament. Don't think it's only about 'Where should I put my vast investment portfolio?' It's about who should take custody

and control of your minor children, who should have your wedding ring or book collection (heirloom) from grandma. It helps bring your family closure." Not to mention saves them from costly and time consuming probate court, where your family will have to go to settle distribution of your assets and child custody issues if you haven't designated your wishes in a will.

Next, secure sufficient life insurance for you and your spouse — even if one of you doesn't work outside of the home. "A stay-at-home parent who has zero income still needs life insurance," explains Khalfani-Cox. "If that person passed away, the other parent wouldn't be able to continue working uninterrupted without having to arrange for, and often pay, someone else to do all of the things that the late spouse took care of, including childcare, cooking, cleaning, transportation, and such."

As for the type of insurance, Ramsey recommends 15 - 20 year, level term life insurance, noting that "premiums generally increase as you get older, so buying sooner rather than later can save you money." He advises parents to stay away from whole life policies. "They're a rip off," he says. "They're too expensive and the rate of return is historically low."

Finally, even if the figures or the amount of time you're talking about seem mind bogglingly large, don't stress about what they will mean for your family month-to-month now. "This isn't one of those things that means that if you get it, you're not going to be able to send the kids to summer camp," says Khalfani-Cox, who estimates most policies will cost you around $50 a month. If $50 isn't something that fits into the budget, cut something to make it work, she advises.

"As parents, we teach our kids to look both ways before they cross the street," says Khalfani-Cox. "We prepare them for the unexpected because we want them to be safe healthy and happy. And if you truly value those things, one of the ways to guarantee their financial safety and emotional wellbeing in the future is to take steps now that will really benefit them when you're gone. Life insurance is a need, not a want."

COMMENTS: If you have clients who could use a complimentary estate plan review or an initial discussion of their estate planning needs please contact our office at **866.230.2206** to organize a time that works for you and your clients' schedules.

V. Estate Planning for Social Media and the Electronic Age

Article by William E. Andersen Jr. BBA, JD Candidate, Paralegal/Legal Intern
The Andersen Firm

When planning for any estate, things like money, property, and your children are all things that weigh heavily on a person's mind. These are probably the most important pieces, but there are some things in today's digital age that people need to think about that didn't exist in the past, like what to do with all of your online accounts and digital assets. These include accounts like your Facebook, Instagram, or Apple ID. It also

includes anything you may have stored on computers or hard drives that you may want people to have (or not have). With a bit of prior planning you can make sure all of your digital assets are handled in a way you would want them to be handled.

In today's world, we tend to live a good portion of our lives on the internet and on computers. We store important pieces of our lives on our computers, things that in the past we would keep physical copies of, like pictures. Getting your picture taken used to be an occasion; a family portrait, a vacation, or a holiday. You would take the film to get developed and get hard copies of your pictures to put in scrapbooks, frames, or boxes so future generations would have them. This is not the case today. With the advent of smartphones and professional quality camera lenses becoming standard in them, most people take pictures exclusively with their cell phones. In 2015, it is estimated that one trillion photos will be taken. Roughly 80% will be taken with a cell phone. While this number is incredibly high, the number of photos we turn in to physical copies has dropped dramatically. We don't keep our photos in scrapbooks, frames, or boxes anymore, we store them on our phones, computers, and the internet. When a person dies, these photos will be one of the most important things to their loved ones, a thing that if not properly planned for may be locked behind a password they just took to the grave with them.

Social media accounts are also something incredibly important to plan for in today's digital age. They can act as a record of your life for the years you used the account. You can go back and see the history of a person's life simply by looking through their account history. You can see the excitement of a child graduating college through status updates, pictures, and comments by friends wishing them the best. Records of weddings, birthdays, vacations, and many other special events can be relived by future generations in a way that has never before been possible.

Other digital assets such as online bank account and tax information, email accounts, or even Word documents and spreadsheets may also have passwords attached that will prevent access after you are gone. Your loved ones may need access to these for posterity, to retrieve important information, or deactivate them to prevent future identity theft. So the question is, what can be done to plan for all of these accounts and digital assets?

Many people joke with friends saying, "If I die before you, I need you to go to my computer and delete my internet history." While this is amusing, there is a piece of good advice here.

1. Think of a friend you trust; a person that knows how to use computers and will do exactly what you want them to do. It is recommended that you pick a friend instead of a family member, as there may be certain files or information that you do not want your family to see. Give this person the legal authority to access your accounts upon your death. This person will be your "successor."

2. Make a list of every user name and password you have, and write underneath exactly what you want to be done. It could be to give the password to a loved one, delete certain information or files, or to deactivate the account. Whatever you want to be done, write it here.
3. Store this list somewhere safe, but make sure the person you have named as successor knows where it is and can access it if they need to. If you choose to keep this document on a computer, password protect the document and give the password to your successor.

By following these steps, you can rest a little easier that your family will have the most extensive record of your life as possible to pass on to future generations, while also ensuring you get the final edit on what record contains.

COMMENTS: If you have clients who could use a complimentary estate plan review or an initial discussion of their estate planning needs please contact our office at **866.230.2206** to organize a time that works for you and your clients' schedules.

VI. Divorce & the Elective Share: It's Not Over Until It's Over

Article by William E. Andersen Jr. BBA, JD Candidate, Paralegal/Legal Intern
The Andersen Firm

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 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 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:

1) **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.

2) **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.

3) **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 abode and that such departure was both "unjustified and without the consent of the other spouse."

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

1) The purchase of insurance can reduce the size of one's "net estate" against which the right of election operates.

2) 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 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.

COMMENTS: If you have clients facing divorce, please contact our office at **866.230.2206** to organize a time that works for you and your clients to discuss establishing a trust or amending their current estate planning documents.

VII. Closing Loophole?

By: Stephen C. Hartnett, J.D., LL.M., Associate Director of Education, American Academy of Estate Planning Attorneys
Posted in Estate Planning, Legal Education

As most estate planning attorneys know, if the government is thinking of closing a loophole, it probably means it is an effective strategy. In this case, the Obama Administration is proposing to

close the so-called "backdoor Roth IRA" loophole.

A Roth IRA can be a particularly attractive device because, unlike a traditional IRA, neither the funds nor the growth thereon are taxed upon withdrawal. Also, there are no required minimum distributions during the lifetime of the contributor. After death, the distributions are based on the beneficiary's life expectancy as with traditional IRAs. In order to contribute to a Roth IRA, a taxpayer may not have modified adjusted gross income above a certain level. For a single taxpayer, the ability to contribute to a Roth IRA is phased out beginning at $116,000 until it is gone entirely at $131,000 ($183,000 and $193,000 if married filing a joint return). The limits on Roth IRAs have been in the law, adjusted for inflation, from the inception. However, since 2010 the income limits for *converting a traditional IRA to a Roth IRA* have been removed. Thus, a taxpayer who wants a Roth IRA but earns over the limit can now make a contribution to an IRA and then convert the IRA to a Roth IRA.

If your income is too high to make a Roth IRA contribution and you are covered by a retirement plan at work, you cannot make a deductible IRA contribution. But, you could still make a contribution to a non-deductible IRA and then convert the non-deductible traditional IRA to a Roth IRA. Normally, when you are converting a traditional IRA to a Roth IRA, you must pay tax on the balance of the IRA because you took a deduction when you made the original contribution. However, there is no such downside when you've made a contribution to a non-deductible IRA because you never got a deduction. Thus, this is a great way to get money into a Roth IRA for those earning too much to make the contribution directly to a Roth IRA.

This can be a powerful vehicle for savings and investing since it is never income taxed. Your clients may appreciate knowing about this loophole, especially since the time to take advantage of it may be running short.

Another Loophole?

For the past several years, the Obama Administration has proposed having GST exemption allocation expire after 90 years, rather than being permanent.

Congress put the estate tax in place almost a century ago and envisioned it as a tax on wealth at every generation. Savvy estate planning attorneys and their wealthy clients figured out a way to game the system: have the client leave their assets to their grandchildren rather than the children. This avoided tax at the child's level, cutting the tax hit in half over time. The Generation-Skipping Transfer ("GST") tax was put in place to plug this loophole (in part). However, practitioners have skillfully figured ways to expand that loophole. Rather than having the client leave the assets to the grandchild, the client leaves the money to a trust for the benefit of children, grandchildren, and more remote descendants. In this way, the assets are available for the child's use, but will not be taxed in the child's estate. In fact, if GST exemption is allocated at the outset, the assets are never again subject to estate and gift tax, as

long as they remain in the trust. This strategy has become even more powerful as many states have repealed or modified the Rule Against Perpetuities. Now, in many states, the assets may remain in the trust *forever*, thus eternally avoiding transfer tax. (A trust which continues generation after generation, in perpetuity, is known as a "dynasty" trust.)

This strategy is a very powerful one to build dynastic wealth, which is why the government is looking to shrink the loophole.

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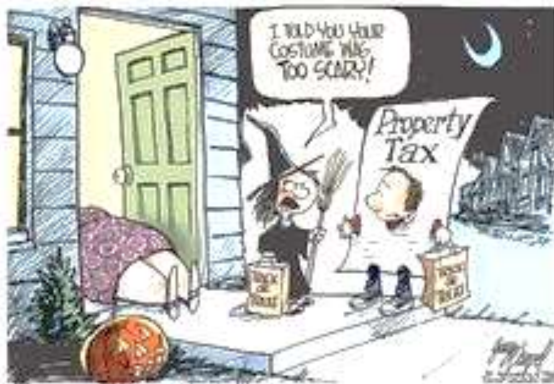
VIII. Why You Should Review or Establish Your Estate Plan this Halloween



Ding-dong! "Trick or Treat!" The sounds of Halloween are just around the corner, though your days of crazy costumes and candy corn may be well behind you. In some age-restricted communities, not a single, tiny, candy-seeking ghoul or goblin comes a-knockin'! But don't shut the door on this holiday, though. The celebrations for Dia de los Muertos—Day of the Dead—can be repurposed! Why not use this time as an annual reminder to review your estate plan? The end of the calendar year may still be about 60 days away, but we all know those days fly by quickly. If your estate plan references family members, you may need to update their names, addresses or marital status. Families often gather for Thanksgiving, Christmas or New Year's, but you won't know to ask, then, if you don't dare to look, now! What are the steps involved in brushing up these dusty, old documents? Place a call to The Andersen Firm, is the simplest approach. You'll get reassurance that your plan remains intact, or you'll get a to-do list that you can knock off before the festive winter holiday season kicks off.

While you're tracking down your planning documents, be sure to let one of your beneficiaries-or your executor-know where you keep them. Should this person go to a fireproof safe? Which bedroom? Where are the keys? Who else has or knows this information?

You don't have to reveal who gets how much, when. Rather, this process is more like sharing a treasure map. How would your loved ones locate the trust, the will, the health-care powers of attorney, the financial durable powers of attorney? Now is a good time to remind them, or give them some clues.

This article would be very short if it only covered review prompts on existing estate planning documents. Besides, more than a few of you are squirming in your seats like something creepy is crawling across your darkened doorstep.

Well, let's wave some garlic at those demons today, before Nov. 1 and Day of the Dead. Here are 10 reasons to complete your estate plan, now!

1. You can assign trustworthy people to be in charge of making good on your plans if you become disabled, or upon your death. So many people start down the road of planning their estate as a young family. Their intentions are clean and pure, just like their darling children. But they stop, unable to hurdle the obstacle of selecting a guardian for little Jennifer and Scott. So the plan is abandoned partway finished, invalid. Fast-forward two or three decades. Jennifer and Scott are now grown, educated, married and parents of your grandkids. The biggest hurdle somehow went the way of training wheels and braces. You can now identify a sensible adult who can serve as your agent for financial matters. This may or may not be a separate person from your agent for health-care decisions. Similarly, you have seen which of your children, or their spouses, would serve best as your trustee and successor trustees. This may or may not include considerations of geography, with families today spanning multiple ZIP Codes, time zones and sometimes nations. Finally, you won't have to mull as much, or at all, over who would be the right guardian or conservator of minor children or disabled dependents. You either don't have that situation in your family, or you have already got a strong sense of who is most likely, most willing, most able, to serve.

2. You can protect yourself if you become disabled. A complete plan contains documents that would go into effect during life, if you are unable to make your own choices. These documents include General Powers of Attorney, Healthcare Powers of Attorney, a Living Will, and a Revocable Living Trust. Laws vary state by state, of course; more vital, they change periodically. With something as important as selecting another person to make decisions on your behalf—decisions that may include lifesaving care—the best gift you can give your loved ones is your thoughtful attention to current documents.

3. You can leave assets to whomever you choose, whenever you choose, and can prevent challenges to your trust or will. No one likes to think about ugly inheritance squabbles. Ghastly! What about the simmering sadness that is unspoken, but equally destructive? Grief brings out deep emotions, and siblings who have not spent much time together in recent years may find themselves emotionally triggered by old behaviors from their family of origin. Add spouses to the mix and you have the potential to brew a cauldron of ill-will. While your beneficiaries may not like your choices, nor agree with them, at least they will know what your wishes for your assets are. The trustee is in place to distribute the assets as you saw fit; lean on that person!

4. You can transfer assets without incurring gift, estate and generation-skipping transfer tax liabilities.
Why is this important? Well, after a lifetime spent nurturing your kids into adulthood, you have probably seen times when one or the other child (or student, or young couple) needed or received additional financial and emotional support. Your estate plan can help you balance your estate. Additionally, it can address: •lifetime gifts •intrafamily loans •life insurance trusts •asset protection strategies and tools.

5. Your estate can stay out of court. Some states have more complicated, expensive or public processes in place for probating an estate. Staying out of court allows people to maintain privacy. It simplifies the transfer of assets. And it means you can depend on trustworthy people to do as you would have done. That last point is essential, and creates an active partnership in the planning process. It communicates your wishes. Even if you're sure they know your wishes, it relieves your surviving loved ones of second-guessing, potential guilt, or infighting as the estate is passed down.

6. You can coordinate assets that pass via beneficiary designation with the rest of your estate plan. A simple beneficiary audit is an extremely valuable (and usually simple!) step in working with a true wealth manager. Reviewing and, if necessary, updating, your beneficiary designations on Rollover IRAs, 401(k)s and other employer-based plans, Roth IRAs, all modes of life insurance (variable universal, universal, whole life, term life, group life) may uncover a deep disconnect between what you intend, and what will happen if you were to pass away today. The most common and headline-worthy misstep relates to marital status. Ex-wives and ex-husbands can and do inherit large sums of money annually; children and current spouses are disinherited. Siblings benefit from assets intended for your husband or wife. Just as often, the beneficiaries that are listed are no longer able to inherit because they predeceased you. The added benefit of updating your beneficiaries on these accounts is balancing your estate. Coordinating the tax-free, stepped-up basis, and tax-deferred assets is important. But this type of fine-tuning is out of reach for those who have ineligible beneficiaries listed on stale but binding beneficiary documents. Get to it: audit!

7. You can plan for business succession. Consider tools such as buy-sell agreements, shareholders' agreements, and golden handcuff plans, if applicable.

8. You can create or leave a legacy through lifetime or testamentary charitable giving. This point goes hand-in-hand with step six. Using beneficiary designations, especially on tax-deferred accounts and permanent life insurance policies, can be a powerful way to become a philanthropist.

9. You can change your estate plan as your needs change, because estate documents are living documents. This step goes hand-in-hand with step one. People's lives change, and not always for the better. Your documents will need to reflect your selection of trustworthy people. While not as flighty as fashion and other

costumes, a decade can make a difference in someone's relationship with you. You can make small changes to your revocable living trust through an amendment. In sum, the benefits of planning include adding flexibility and power to the decision maker you've selected to fulfill your wishes. This trustee can manage your estate according to the laws and circumstances in effect, to your best interests and your family's.

10. Last but not least, the shift from thinking about your incomplete estate plan (and trying not to think about your incomplete estate plan) to having peace of mind is substantial. What a relief to know your estate plan is in place. It's a tremendous gift to your survivors, who will be reassured knowing—not guessing—that they are doing what you wanted.

Remember the scariest and most expensive estate planning mistake is to NOT have an estate plan at all.

Source: New York Times's article, Where's That Advance Care Directive? published Oct. 17, 2013

COMMENTS: The Andersen Firm is available to assist clients, Financial Advisors and other financial professionals with their estate planning needs. Call Melissa Campbell, Dawn Horowitz or Angela Christian at 866.230.2206 to organize a time that works for your schedule.

XI. What's So Bad About Probate?

Article by William E. Andersen Jr. BBA, JD Candidate, Paralegal/Legal Intern
The Andersen Firm

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, accountings that need 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).

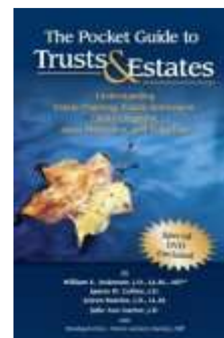
4. **Hassle for your family**

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

XII. 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 Christian at 866.230.2206. Books can be purchased on Amazon.com as well.

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XIII. 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 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 Christian** 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 AChristian@TheAndersenFirm.com.

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