ESTATE PLANNING

October 2021

EMERALD COAST

ESTATE PLANNING HAS NEVER BEEN MORE SIMPLE

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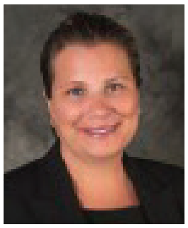

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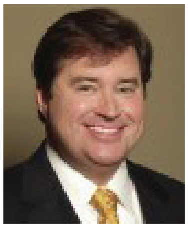

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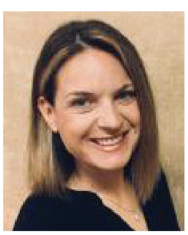

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WELCOME

As the President of the Estate Planning Council of the Emerald Coast for 2021, I am very pleased to present this fourth edition of this Estate Planning Magazine. It has become an annual tradition that we look forward to each year and we are thrilled share some knowledge and resources that can be helpful to you now and in the future.

The members of the council and I realize that estate planning can be an overwhelming and, at times, emotional process. Our hope is that this publication can serve as a resource for you and your loved ones whenever the time is right for you. On the following pages, we provide some useful tools that we believe can help you make the right decisions for your own, unique circumstances. No two families or individuals have the same needs or concerns when it comes to estate planning, so we encourage you to use this guide to help get yourself prepared and take the appropriate steps in securing your financial future and that of your family with the help of a trusted advisor.

I'd also like to make you aware of an educational event that we have coming up on October 20, 2021 beginning at 8:15 a.m.. Our annual Estate Planning Day is a free event at Northwest Florida State College that makes estate planning professionals available to share information and answer questions. We hope to see you there. More information is available on page 19.

In this guide you will also find our member directory, a list of attorneys, financial advisors and planners, bankers, CPAs and other professionals that we hope you will reach out to with your questions and needs that will inevitably come. Like you, we call this community home, and like you, we want to make sure that we are putting ourselves and our families in the most secure financial position to continue to enjoy this beautiful area for years to come. Please reach out to any of us whenever we can be of help to you.

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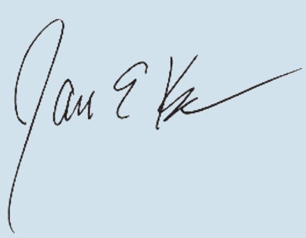
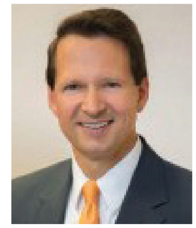
President, Estate Planning Council of the Emerald Coast





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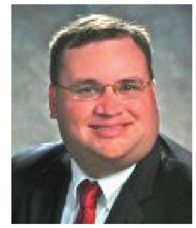

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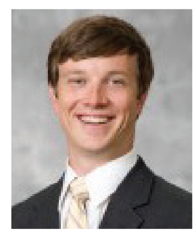

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ESTATE PLANNING TOOLS FOR FAMILIES WITH DEVELOPMENTALLY DIFFERENT CHILDREN

Because unique abilities deserve unique planning…

BY AMELIA H. BEARD | MANAGING ATTORNEY | MOORHEAD LAW GROUP | SANTA ROSA BEACH

Planning for incapacity and death can be difficult for anyone. For those who find themselves responsible for a person with developmental differences, particularly a young person, this planning can be daunting. Is our plan comprehensive enough? Have we protected our loved one enough? What happens when we are gone? What if those we trusted fail us?

Special needs planning is on the rise as our population experiences increased incidents of disability diagnoses amongst our youth. Whether this is due to increased testing, changes in criteria for diagnoses, or other factors, the trend remains that many families must consider special needs planning for some of their loved ones.

Our unique loved ones deserve a unique plan. One that considers all circumstances and provides the least restrictive means while still preserving and protecting the person and property. But in almost all cases, there are three tools that will be considered: a Durable Power of Attorney; Guardianships; and Special Needs Trusts. With some exceptions, these tools are not exclusive of one another. In fact, in many instances clients may contemporaneously employ all three.

DURABLE POWER OF ATTORNEY

What is it? A legal instrument in which a person ("Principal") appoints another ("Agent") to act on behalf of the principal in any number of matters, depending on the specific powers granted in the document.

When is a power of attorney necessary? Any 18-year-old with capacity to understand its implications may give power of attorney. Those that meet this criterion and have developmental differences or heightened risk of incapacity should have one in place.

Can a power of attorney avoid the need for guardianship proceedings? Yes, it is possible in certain circumstances to avoid the need for legal guardianship proceedings where a proper power of attorney is in effect and contains all necessary grant of powers.

GUARDIANSHIP

What is it? A legal proceeding in which a court appoints a Guardian to oversee and control aspects of another's ("Principal") affairs.

When is a Guardianship necessary? When a person is unable to take care of some or all their affairs and a less restrictive approach is not available.

Does the guardianship suspend or terminate a previously executed power of attorney? Some powers are automatically suspended for certain principals, but typically not the power to make healthcare decisions. An agent is entitled to receive notice of the guardianship proceeding and should seek legal advice before further acting as agent.

Once guardianship or incapacity proceedings have begun, may a person execute a power of attorney? The answer to this question depends on several factors, but in most cases the answer will be no. This highlights the importance of ensuring our loved ones have executed a proper power of attorney before it is too late.

SPECIAL NEEDS TRUST

As part of your own estate plan that addresses all matters concerning your loved one's continued care and decision making, consideration should be given to a special needs trust.

What is it? A trust that serves as the recipient of an inheritance (as opposed to devising the gift directly to the individual) and pays for life-enhancing services typically not covered by public assistance, while preserving the beneficiary's eligibility for vital government benefits.

Planning for a special needs beneficiary requires a team of professionals with particular skill and knowledge to develop the best plan for each family. For more information and a practical checklist for Special Needs Planning visit www.moorheadlaw.com.

THE FUTURE IS OURS TO SEE

Imagine your greatest goals within reach. Together, we can create a strategy to help make fulfilling those dreams a reality—one that can guide you forward on the path to success.

Let's work together. Contact me today to schedule a consultation.

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The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.

REVIEW YOUR IRA, 401(K) BENEFICIARIES

BY SHELLEY ALBARADO

IT WOULDN'T BE SURPRISING IF YOU HAVEN'T THOUGHT MUCH ABOUT THE BENEFICIARY DESIGNATION – AFTER ALL, IT WAS JUST SOMETHING YOU ONCE SIGNED, POSSIBLY A LONG TIME AGO.

IS IT REALLY THAT BIG A DEAL?

If you've had an IRA and a 401(k) for many years, you may occasionally ask yourself some questions: "Am I contributing enough?" "Am I still funding these accounts with the right mix of investments for my goals and risk tolerance?" But here's one inquiry you might be overlooking: "Have I used the correct beneficiary designations?" And the answer you get is important.

It wouldn't be surprising if you haven't thought much about the beneficiary designation – after all, it was just something you once signed, possibly a long time ago. Is it really that big a deal?

It could be. For one thing, what if your family circumstances have changed since you named a beneficiary? If you've remarried, you may not want your former spouse to receive your IRA and 401(k) assets or the proceeds of your life insurance policy, for which you also named a beneficiary.

However, upon remarrying, many people do review their estate plans, including their wills, living trusts, durable powers of attorney and health care directives. If you've revised these documents, do you have to worry about the old beneficiary designations? You might be surprised to learn that these previous designations can supersede what's in your updated will and other documents. The end result could be an "accidental" inheritance in which your retirement accounts and insurance proceeds could end up going to someone who is no longer in your life.

Furthermore, your retirement plans and insurance policy may not just require a single beneficiary – you may also be asked to name a contingent beneficiary, to whom assets will pass if the primary beneficiary has already died. As you can imagine, the situation could become quite muddled if stepchildren are involved in a remarriage.

To avoid these potential problems, make sure to review the beneficiary designations on all of your accounts at some point – and especially after a significant change in your family situation. If you see something that is outdated or incorrect, contact your retirement account administrator – or your insurance representative, in the case of life insurance – to request a change-of-beneficiary form.

And if you really want to be on the safe side, you may want to enlist a legal professional to help you with this review to make sure the beneficiary designations reflect your current family situation and are consistent with what's in your estate plans.

In fact, if you're already working with an experienced estate planning attorney – and you should – you might also pick up some other suggestions for dealing with beneficiaries. Just to name one, it's generally not a good idea to name minor children as beneficiaries. Because children can't control the assets until they become adults, a court would likely have to name a guardian – one that you might not have wanted. Instead, you could either name your own custodian to manage the assets designated to the minor or establish a trust for the benefit of the minor, which can distribute the money in several disbursements over a period of years – which is often a good move, since young adults aren't always the best at managing large lump sums.

If you're like many people, you have a strong desire to leave something behind. But you'll want to do it in the right way. So, pay close attention to your beneficiary designations – when you first create them and throughout your life.

How Military Families Avoid the “No-Plan Estate Plan"

BRIAN P. O’NEILL, CFP®

Estate planning is crucial. Veterans and retirees have unique considerations to manage.

Everyone Has an Estate Plan…

As an instructor pilot, I taught students that had “the No-Plan Game Plan.” The student didn’t have a plan to kill the target or survive the threats. Hope was the tactic, but hope is a poor substitute for planning and preparation.

The No-Plan Estate Plan means dying without estate documents in place, called dying intestate, and it’s not how we’d like our family to remember us. The No-Plan Estate Plan creates heartache, expense, delay, and friction for our survivors.

Free is the Best (Starter) Price

Most military legal offices provide free estate documents to military retirees including:

1. **Will:** Directs disposition and titling of assets, guardianship of dependents, and even pets. A Will streamlines, but doesn’t prevent the probate process.
2. **Healthcare Power of Attorney:** Expresses your wishes for a trusted agent to make healthcare decisions while you’re incapacitated.
3. **Living Will / Advanced Directive:** Expresses your end-of-life decisions.
4. **Power of Attorney:** Gives your trusted agent the ability to act on your behalf when you cannot, e.g., coma or dementia.

These documents are the four basic pillars of an estate plan, and when free, there’s no good excuse for delay.

If Free isn’t an Option

You may need to, or choose to get your estate documents “on the market.” If you’re considering a Revocable Living Trust, the base legal office can’t provide one. Keep the following in mind as you shop:

A Holographic Will is a hand-written will. State law will determine how courts will interpret a holographic will, but it’s likely better than dying intestate.

Online legal document companies provide DIY solutions and some include a consult with an attorney—"DIY-plus.” You’ll still need to get documents notarized and witnessed, but you’ll receive professionally designed documents.

A local estate attorney costs the most, but has many advantages. An experienced attorney should know the nuances of your state’s laws and can help navigate more complex issues like Trusts.

A Trust has many advantages over a stand-alone Will as a Trust avoids the probate process entirely which saves time, money, and potential publicity.

Another reason to use an attorney is “the last mile” problem. Starting a Trust is important, titling assets to the Trust, the last mile, is crucial. Most attorneys will offer this as part of their services, but it’s difficult for an online company to support the last mile.

When Do You Want to Pay?

Frugality can be the difference between building wealth and just getting by for some families. There are times to consider more than the sticker price.

Five percent is a low-end rule of thumb for probate’s drag on an estate, so even a modest $100K estate could cost $5K through probate.

A holographic will is free, but if it delays probate, then it could cost thousands to remedy.

A DIY or DIY-plus Will costs a few hundred dollars, but doesn’t prevent probate costs, delays, or public access.

A Revocable Living Trust and supporting documents may cost a few thousand dollars. This is a bargain compared probate for even modest estates! The initial cost of a Trust might pay for itself in the actual administration of your estate.

It’s worth considering how probate costs compete with legacy goals for your heirs. Afterall, the cost of probate is coming directly out of their inheritance.

Summary

Military retirees can often get free basic documents. Veteran families may have to pay, but the costs are worthwhile.

You’ve spent a lifetime building your wealth and serving your country. Now it’s time to serve your family with at least basic estate documents and contact your local base legal office today.

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FOUR REASONS YOU MAY WANT TO CONVERT TO A ROTH IRA

PROVIDED BY CHRIS POATE

Market volatility this year may have prompted you to review your investment plans, including your retirement goals. As you look at them, you may want to consider converting from a traditional IRA to a Roth IRA.

Roth IRAs possess characteristics that make them generally attractive planning tools; for example, they are not subject to required minimum distribution (RMD) rules during the life of the original account owner, which means you can use them as an estate planning tool for passing money to your heirs. A combination of tax law changes and market conditions might make Roth IRAs even more attractive now, especially to investors who are in a position to pay taxes due upon conversion with non-retirement plan assets.

Here are four reasons why now might be a good time to convert:

1. If market volatility has depressed your portfolio's value, you may owe less in taxes. When you convert to a Roth IRA, you will owe taxes on any tax-deductible contributions you made to the traditional IRA as well as any tax-deferred earnings that may have built up in the account over the years. A lower account value would typically result in a lower tax bill.
2. If you expect your portfolio's value to recover in the future, converting now could shield future earnings from taxation. After conversion, any assets in the Roth IRA could potentially grow on a tax-advantaged basis and qualified distributions would be tax-free.*
3. If you expect future tax rates will be higher when you begin to take distributions, converting and paying a lower tax now might make economic sense. Moreover, qualified distributions would be tax-free.*
4. Your nonspouse designated beneficiaries can let an Inherited Roth IRA continue to potentially grow, taking no distributions until year 10 when they fully distribute the account with no tax consequences. After the passage of the SECURE Act in late 2019, nonspouse designated beneficiaries generally must distribute an Inherited IRA by the end of the 10th calendar year beginning the year after the IRA owner dies.

If your employer's qualified retirement plan (QRP), such as a 401(k) or 403(b), offers a Roth designated account option, you also may want to consider making contributions to this account. Designated Roth account assets can be rolled over only to a Roth IRA or another employer's designated Roth account, if that plan accepts the rollover.

It's important to remember that you can no longer recharacterize or undo a Roth IRA conversion. This is an important decision, so contact your financial advisor to discuss if a Roth IRA conversion is right for you.

**Qualified Roth IRA distributions are not included in gross income. Roth IRA distributions are generally considered "qualified" provided a Roth IRA has been open for more than five years and the owner has reached age 59½ or meets other requirements. Withdrawals may be subject to an IRS 10% additional tax for early or pre-59½ distributions.*

Roth IRA conversions are not suitable for all individuals. Wells Fargo Advisors is not a tax or legal advisor. Please consult your financial, tax, and legal advisors before taking any action that may have tax or legal consequences and to determine whether a Roth conversion is suitable for your specific situation.

Please keep in mind that rolling over your qualified employer sponsored retirement plan (QRP) assets to an IRA is just one option. Each option has advantages and disadvantages, and the one that is best depends on your individual circumstances. You should consider features such as investment options, fees and expenses, and services offered. Investing and maintaining assets in an IRA will generally involve higher costs than those associated with a QRP. We recommend you consult with your plan administrator before making any decisions regarding your retirement assets.

PROTECTING ASSETS *with nursing-home planning*

BY: STEVEN E. QUINNELL, ATTORNEY

BOARD-CERTIFIED IN ELDER LAW BY THE FLORIDA BAR

OFFICES IN GULF BREEZE, PENSACOLA, AND CRESTVIEW

Here are some typical cases in my practice: A daughter tells me her mother is heading for a nursing home, and has heard horror stories about her mother losing her life savings. Or, a wife tells me her husband of 60 years is in a nursing home, and she is worried about having enough savings and income to live on.

We usually can come up with a reasonable solution, especially for the wife in the example above.

Here are the ABC's of nursing-home Medicaid:

1. Most residents of nursing homes got there from a hospital stay under Medicare. Assuming it was at least a 3-night hospital stay, then Medicare will pay for the first 20 days at a nursing home for rehab and therapy.
2. Everyone thinks Medicare covers 100 days, but actually it's 100% for 20 days, and then a small percentage for the next 100 days, called "co-pay days."
3. Everyone also thinks their supplemental insurance (e.g. United Health Care through AARP, or BlueCross) will pay the difference, but 99% of the time that's wrong. The only reliable secondary insurance is Tricare.
4. So, after the first 20 days, the client is required to pay approx..70% of the nursing-home charges, and then after the co-pay days are completed it will be 100% private-pay, approx.. $9,000 - $10,000/month.
5. The only available governmental coverage: Nursing-home Medicaid, a welfare program with financial requirements similar to food stamps (whereas Medicare is based on paying into the system during the client's work, and it is not welfare.)
6. We must apply for Medicaid, which requires showing the client's assets and incomes down to the last penny, with copies of documents to prove all the facts.
7. Then, the countable assets have to be below a certain amount.

EXAMPLE – SINGLE CLIENT: Ms. A has the following:

a. Homestead, $15,000 home equity loan
b. Checking account $17,000, joint with her daughter
c. Savings account/CDs: $50,000, joint with her daughter
d. Term life insurance, $25,000 death benefit
e. Car, paid for
f. Social Security and Civil Service, total $3,000/mo

The homestead/principal residence does not count as an "asset" here. However, the other assets push Ms. A over the $2,000 limit. What can she do to get rid of the necessary money to qualify for nursing-home Medicaid?

a. Prepaid irrevocable funeral contract
b. Prepay utilities
c. Pay off all debts, such as credit cards or home mortgage
d. Attorney's fees
e. Home repairs/improvements
f. Payment to family under a lump-sum personal services contract, based on her age and life expectancy.
g. Medicaid Income Trust for the monthly income
h. Note: The homestead is exempt, including after Ms. A's death; however, keeping it maintained might be a challenge.

EXAMPLE – MARRIED CLIENT: Mr. & Mrs. B have the following, with Mr. B in a nursing home:

a. SAME SET OF FACTS, except add: Mrs. B has Social Security of $800/mo.
b. Because the parties are married, Mr. B still hashisa $2,000 limit of countable assets, but Mrs. B as the "community spouse" can now have an additional $128,640 asset allowance.
c. So in the facts above, there is no need to spend-down any money.
d. One important issue: However, the monthly income for Mr. B will have to be paid over to the nursing home, with only a modest spousal allowance for Mrs. B, so she will have less income for her support each month.

Prepare for a Successful Wealth Transfer

You've worked hard to be able to pass a financial legacy to your children. Unfortunately, research shows that one generation's wealth can be heavily diminished within the next generation and completely gone by the third. These steps can help you plan for a successful wealth transfer.

1. Have an Estate Plan

In addition to your current financial plan for building and preserving wealth, make sure you develop an estate plan to help distribute your legacy. Here are some things to consider:

- What are the potential tax implications for your heirs?
- Do you need to establish a trust for an heir with money management challenges, i.e., a special needs child?
- Should the trust include incentives that authorize distributions when the beneficiary achieves milestones such as graduating college?

Parents need to spell out their specific wishes in their will and not leave those decisions to someone unprepared to handle the responsibility of an inheritance.

2. Establish the Foundation

Start preparing your heirs for good financial management while they are still young. Basic skills include saving smarts, budgeting, credit card use and investing.

3. Talk Early and Often

Lack of communication is one of the primary reasons wealth doesn't transfer successfully to the next generation, so it should be a cornerstone of your estate planning. Give your heirs an overview of how you plan to distribute your assets. By discussing your intentions in advance, you give your loved ones time to ask questions and come to terms with your decisions.

It's important to share your family's story — how your wealth was built, the accomplishments and missteps made along the way, how your values relate to your finances, and your investing philosophy.

Share your expectations for how your heirs will manage their inheritance and, conversely, how not to use their inheritance. Ask your heirs how they want to use the money and have an open dialogue on the subject.

4. Introduce Heirs to Your Advisors

As your heirs reach young adulthood, introduce them to your financial team, including your financial, estate, accounting and tax advisors. Building these relationships early serves multiple purposes:

- Helps heirs develop relationships with your advisors so they will know who to turn to for guidance once they receive their inheritance.
- Lets your advisors get to know your heirs on a personal level to help them develop their own financial plan for before and after inheritance.
- Gives heirs insight into how you manage wealth and investments.
- Develops "buy in" to your money management strategies.

Establishing a solid financial foundation for your heirs and maintaining an ongoing dialogue about your legacy can help give you peace of mind — and prepare your heirs to successfully inherit the wealth you've worked so hard to build.

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ESTATE PLANNING 101

By: Jane Kerrigan

People often use the phrase "estate planning," but what does it mean? Put simply, estate planning is the process of thinking ahead and making arrangements for your assets after your death. A well-crafted estate plan will also address your assets and needs in the event you become incapacitated and are unable to make health and financial decisions for yourself.

Suze Orman claims that the biggest financial mistake individuals can make is the failure to have these four estate planning documents: (1) a Will: (2) a Revocable Living Trust; (3) an Advanced Directive; and (4) a Durable Power of Attorney.[1] So, what are those documents, and are they necessary?

The Will

One common misconception is that if you have a will, your family will not have to probate your estate. In fact, a will is a set of instructions for how you would like the administration of your probate estate to be handled. A will must be admitted to probate by the court in order for it to be enforced. Probate is the process of presenting your will to the court for it to be validated and carried out. The probate process involves various legal steps before your assets are ultimately distributed to your beneficiaries. The will provides for the distribution of your assets that did not already pass to your beneficiaries by operation of law or through a trust. It further directs who is responsible for gathering your assets, paying your debts, and distributing your assets pursuant to the instructions you left. If you have minor children, your will should also direct how you want to provide for them and who you want to care for them in the event of your death. A well thought out, properly drafted will is vital to the smooth transition of assets after death.

A Revocable Living Trust

While I disagree with Ms. Orman's belief that everyone needs a revocable living trust, a living trust can be a very useful estate planning tool for many people. Like a will, a living trust is a legal document that contains your instructions for what you would like to happen to your assets when you die. However, unlike a will, a living trust can avoid probate and helps to avoid a court controlling your assets in the event you become incapacitated.

The following are benefits to having a living trust in your estate plan: (1) if properly funded, it avoids probate; (2) it provides for someone to step in and manage your assets in the event of incapacity; (3) it is harder for disinherited individuals to challenge; (4) it provides more privacy as it is not filed in public records; (5) it can avoid out-of-state probates if you own property in multiple states; and (6) typically reduced legal fees and court costs for the administration.

Of course, like most things, there are potential disadvantages as well: (1) it is more time consuming to properly set up and fund; (2) it can be more complicated to maintain as your assets change throughout your life; (3) it can be more costly to set up; (4) it does not eliminate all post death costs; and (5) it may not eliminate the need to probate a will.

A revocable living trust does not protect your assets from your creditors, and, like a will, it can be changed or amended at any time.

Advanced Directive/Living Will

The living will is a document that allows you to instruct what kind of medical treatment you would like to receive if you ever face a terminal or irreversible medical condition. It is often thought of as your instructions to doctors of when to "pull the plug." Typically, it will allow all treatments needed to keep individuals as comfortable as possible so that they may pass peacefully. Without a living will, this decision will fall to your health care surrogate, which can be very difficult for your loved ones.

Durable Power of Attorney

A medical power of attorney is called a Designation of Health Care Surrogate and it allows you to name a person to be your health care advocate and make medical decisions for you in accordance with your wishes. Without this document, Florida statutes will dictate who makes these decisions for you.

A durable power of attorney for finances in Florida become effective upon signing. It allows you to appoint a person or persons to assist with your finances and other non-medical related decisions during your life. It will remain in effect until you revoke it or pass away. If you become incapacitated without a power of attorney, your family will most likely have to open a guardianship overseen by the court to assist with your finances and make sure your needs are met. Executing a durable power of attorney is a relatively simple and very cost-efficient way to avoid what can otherwise be a burdensome and costly guardianship proceeding.

Conclusion

Overall, I agree with Ms. Orman's sentiment that every adult, regardless of age or wealth, should have at least the standard estate planning documents in place. Speaking with a professional who is knowledgeable and able to help you craft a plan that meets your unique needs is a great investment of your time and resources.

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[1] https://www.cnbc.com/2021/04/14/suze-orman-says-you-need-these-legal-financial-and-healthcare-documents.html

Jane Kerrigan, J.D., LLM is an Attorney with Hand Arendall Harrison Sale, LLC

GIVE ASSETS TO YOUR FAMILY, NOT THE IRS

BY MARK DUTRAM, CPWA®, CFP®, AEP®

There is great appeal in passing on assets with sentimental value or that have been in the family for generations. There may even be a desire to gift those assets to particular family members that would appreciate them, and doing so prior to your demise. Currently we enjoy what is called a step-up in basis on capital gain assets when they pass by way of inheritance. I say currently, because there is talk from the current administration to remove this considerable estate advantage. Perhaps a little explanation to illustrate the ramifications of this benefit:

THERE ARE SIGNIFICANT CONSEQUENCES TO YOUR LEGACY DECISIONS. MAKE SURE YOU ARE AWARE OF THE CURRENT AND POTENTIAL FUTURE TAX LAWS SO THAT YOU MAKE WISE DECISIONS.

Capital gains are taxes that you pay when you sell an asset that has gone up in value. You are taxed on the difference between what you bought the asset for (called "basis") and what you sold it for. Capital gains taxes apply only to capital assets, which include things like stocks, bonds, jewelry, coin collections, and real estate.

When you are gifted a capital gain asset, you need to know the basis for that asset, because that will become your basis. If you decide to later sell, you will pay long term capital gains for gains above the gifted basis. (Currently, the federal long-term capital gains rate is 15% for most people; 20% for high earners.)

Alternatively, when you inherit an asset, generally your basis will be equal to its date of death value. The basis is ***"stepped-up"***, to reflect its value at the date of death. A step-up in basis is a significant tax advantage because it reduces the capital gains taxes due upon sale of an inherited asset.

Married couples living in equitable distribution states, which is the majority to which Florida would be included, get a step-up in basis to the extent of the decedent's ownership (e.g., basis of one-half of property held in joint tenancy or tenancy-by-the-entirety step ups on the death of one spouse with other spouse surviving). In the 10 community property states, couples that own community property will enjoy a step-up in basis on the whole value of the property.

Not all assets will receive a step-up in basis however. First, IRAs and 401(k)'s, which may own capital assets, will not get a step-up in basis. These are IRD (Income in Respect of Decedent) assets. (IRD) refers to untaxed income that a decedent had earned or had a right to receive during their lifetime. IRD is taxed to the individual beneficiary or entity that inherits this income. Additionally, assets that are held in Bypass or Credit Shelter Trusts after the death of a first spouse, will pass to the beneficiaries without a step-up in basis. All such assets did receive a step-up in basis after the first spouse's death, but, because they are held in an irrevocable trust after that death, will not receive a second step-up at the second spouse's death.

There are significant consequences to your legacy decisions. Make sure you are aware of the current and potential future tax laws so that you make wise decisions, and your intentions are fulfilled in the most tax efficient manner.

$500,000 TAX FREE?

GET REAL...GET REAL ESTATE

by Kenneth R. Fountain, Esq. | fountain@fountainlaw.com

Make America Florida! There is no denying that Florida is growing and real estate prices are climbing with each new resident. What is your home worth now? Is it time to sell? Florida Real Estate should be a part of your Wealth and Estate Planning!

Time to Sell! Did you know that you and your spouse can *exclude from taxable gain up to $500,000* from the sale of your residential real estate? If you owned a property and used it as a residence for 24 months at any time during the 5 year period preceding the sale of the home then you may qualify to pocket the appreciation tax-free! You do not have to reinvest the $500,000 in another residence to exclude the gain.

Time to Buy! Asset protection should be a key part of your Estate and Investment Plan. *Florida Homestead Law* provides broad protections of the primary residence against the claims of creditors regardless of value. The Florida Constitution provides these protections during your lifetime and also in favor of surviving spouses and minor children. Florida law also provides benefits limiting the amount that your homestead property taxes can increase each year. However, these benefits come with restrictions on how the homestead can be conveyed during your lifetime and devised when survived by a spouse or minor children.

Tax Benefits of Real Estate Investments. Real Estate investments can help you build Family Wealth by providing cash flow from rents and appreciation in market value. Real Estate Investments can also provide tax benefits through *Tax Deductions* that offset otherwise taxable income. Depreciation deductions allow you to reduce your taxes over the lifetime of the property. *Cost Segregation Deductions* allow you to accelerate deductions for fixtures, appliances and even cabinetry in use in your investment property. The Costs of Ownership Deductions permit you to offset taxable income with the costs of maintenance, management and repair expenses for your investment real estate. You can even defer all Capital Gains Taxes by reinvesting in like-kind property through a *1031 Exchange*.

Avoid Probate and Protect Your Family Wealth! Your Estate Planning and Real Estate Attorney can advise you on several options to protect your Family Real Estate portfolio. The *Enhanced Life Estate* or *Lady Bird Deed* enables the owner to retain title over the use of the property while naming the beneficiary who will take title upon the death of the owner. A *Revocable Living Trust* can effectively avoid the need for Probate and include plans for the event of disability during the owner's lifetime. Business and Investment Property can be held in *Limited Liability Companies* to limit exposure to liability from creditors and from operating risks of property ownership. The *Florida Land Trust* combines all of the potential benefits of using a Trust, LLC, FLP, and even for Homestead property.

Before you buy or sell any real property make certain that you have consulted with a Board Certified Real Estate Attorney !

FOUNTAIN BRIDGFORD
ATTORNEYS AT LAW PLLC

FountainLaw.com

Kenneth R. Fountain is a Board Certified Real Estate Law Expert and Estate Planning Attorney founding the law firm now known as Fountain & Bridgford, PLLC in 1996. Mr. Fountain is also an active Realtor Associate since 2008.

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Choosing Wisely - Long Term Care Planning For Veterans And Their Families[1]

BY LORI WEEMS EVERS

Over 53% of the homes in the Florida panhandle have at least one veteran or active duty member of the military as a resident. When a veteran is disabled, it is critical to thoroughly investigate and research whether the veteran meets the y criteria for Veteran Administration ("VA") Compensation disability benefits, VA Pension and Medicaid.

VA v. Medicaid

Medicaid is usually better suited for paying for skilled nursing facilities and nursing home case and Department of Veteran Affairs Pension Compensation is better for paying for home, community based care and assisted living facilities. VA Pension and Compensation is paid in lump sum directly to the veteran and can then be used to contribute toward an assisted living needs or community caregivers including relative caregivers. Medicaid, on the other hand, is paid directly to a Medicaid Managed Care company or a Medicaid provider contracted directly through Medicaid. Medicaid's asset restrictions are far lower than VA's -- $2000.00 asset limit for Medicaid v. $130,773.00 asset limit for VA. The income restrictions are the same for VA and Medicaid, but the options for eligibility and special needs supplementation are quite different.

This does not mean, however, that an individual should plan for one program to the exclusion of another. A veteran can be eligible for VA benefits and Medicaid benefits, but certain benefits can preempt others – particularly where asset and income limitations are present. All available benefits and resources should be explored when determining how to plan for home care, assisted living, community based care, community caregivers and nursing home care potential needs. And one household may include multiple people in need of long term care assistance who are covered by multiple programs or one program to the exclusion of another.

Combat Disabled & Service-Connected Disabled Veterans – No Asset & Income Restrictions And Significantly More Options

Unlike Medicaid and VA Pension, VA Compensation benefits are available to veterans who have a disability that is combat or service connected without regard to assets and income. A veteran whose has a combat or service connected disability is eligible for housebound and aid and attendance benefit payments in addition to their VA disability compensation benefits and without regard to their income and asset levels. No means testing is necessary to qualify for these additionally subsidies.

Service connected disabled veterans are also eligible for many other diverse financial benefits, access to free prescription drugs, base privileges, tax exemptions, grants from VA for vehicle and home conversions, access to supplemental medical benefits for the veteran, dependents and caregivers. Unlike VA pension, disability compensation-based benefits are available without regard to whether the veteran service was during a time of war.

A Delicate Balance

Household income determines means-based entitlements, and eligibility and the adjustments to household income differ significantly among the programs. Therefore, consultation with a long term care planning professional accredited in VA planning and Medicaid benefits planning is important. Asset protection and long term planning must begin early and frequently revisited and in conjunction other estate planning and asset protection strategies – especially planning involving trusts, long term care insurance, wealth transfers, annuity purchases, disabilities and special needs, business succession, structured settlements or life insurance product purchases.

[1] Lori Weems Evers is an elder and family law attorney whose practice focuses on Elder, Veterans & Special Needs Law. She is the principal attorney at Evers Elder Law Center, 114 Palmetto St., Ste. 8, Destin, Florida 32541. Lori may be reached at 850-353-2232, by email to lori@everselderlaw.com or via her website at www.everselderlaw.com where she offers complimentary initial consultations in person and via Zoom.

Estate Planning Day

presented by the Estate Planning Council of the Emerald Coast

SPONSORED BY
HANCOCK WHITNEY

Wednesday, October 20, 2021

FREE ADMISSION, NO RSVP REQUIRED

Room 132/133 Student Services Northwest Florida State College
100 E College Blvd., Niceville, FL 32578

SCHEDULE OF EVENTS

8:15 AM
Opening remarks/Sponsor statements

8:30 - 9:20 AM
Estate Planning Essentials

9:20 - 10:10 AM
Proposed Legislative Changes that may Affect Your Estate Plan

10:10 - 10:20 AM
Break

10:25 – 11:15 AM
Protecting Assets in Long-Term Care Planning

11:15 AM - 12:05 PM
Retirement Plan Considerations, including the Secure Act and Roth Conversions

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**Denotes past president.*

ESTATE PLANNING COUNCIL OF THE EMERALD COAST

The Estate Planning Council of the Emerald Coast has been recognized as a 5 Star Council by the National Association of Estate Planners & Councils as part of the Leonard H. Neiman and Walter Lee Davis,Jr. Council of Excellence Award program. This honor recognizes estate planning councils that have demonstrated a high level of achievement in areas critical to a successful membership experience. The Council of Excellence Award is named for two individuals who truly sought to strengthen the bond between NAEPC and its affiliated councils during their terms on the board. Walter Lee Davis, Jr. served as president of the association in 2008 and was instrumental in forming the Council Relations Committee, a group of volunteer members who are charged with being a liaison between affiliates and the national association. Leonard H. Neiman served the association as a board member for over fifteen years and worked tirelessly to gather information about estate planning councils from around the country. The Estate Planning Council of the Emerald Coast, Inc. (EPCEC) is the professional “organization of choice” for multi-disciplinary estate planning professionals from across Florida’s Emerald Coast. Members include accomplished Estate and Elder Law Attorneys, CPA’s, Financial Advisors, Insurance Consultants and Trust Officers. The EPCEC is an affiliated council of the National Association of Estate Planners & Councils. Through a series of formal meetings and relaxed socials, we strive to remain at the forefront of developments in the field and embrace the “team approach” to estate planning. We know clients benefit greatly when their advisors collaborate.

BENEFITS OF MEMEBERSHIP

- Outstanding networking with members of multiple disciplines at every meeting
- A Variety of Speakers, Topics, and Educational Opportunities
- Attendance at our bi-monthly Dinner Meetings, and upscale Annual Meeting Dinner included
- Attendance Fee to EPC of Gulf Coast Annual Conference in Mobile, AL in September included
- Opportunity to advertise and submit an article for the October Estate Planning Supplement in NWFL Daily News
- Your name and contact information in the EPCEC directory in NWFL Daily News Supplement
- Your name and contact information in a EPCEC advertisement to be placed in the NWFL Daily News
- Your name and company name on our online directory at www.emeraldcoastestate.org
- Opportunity to participate in EPCEC Estate Planning Awareness Day activities
- Access to a wide array of NAEPC Resources like:
  - Annual NAEPC Advanced Estate Planning Strategies Conference
  - High-Performance Teaming and Professional Collaboration, the LINK Online Course in Collaboration
  - Robert G. Alexander Webinar Series
  - ACTEC Family Estate Planning Guide
  - Wolters Kluwer Tax & Accounting – CCH Publications

For more information: emeraldcoastestate.org/ or
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THE ESTATE TAX STRIKES BACK

BY DEANNA L. MULDOWNEY, CPA, AEP AND JAMES D. WRIGHT, CPA, J.D., LL.M.

The Estate Tax has always been a controversial topic. Arguments have been made there should be no estate tax because the money has already been taxed throughout the life of the taxpayer, and the estate tax is double taxation. The other argument is the estate tax is necessary because the accumulated wealth has not been properly taxed. Proponents further argue that wealthy taxpayers should pay taxes on wealth accumulation because living in the U.S. provided them the opportunities to accumulate wealth and without the estate tax, the wealth gap between wealthy taxpayers and non-wealthy taxpayers continues to grow.

Throughout history, the estate tax has affected fewer and fewer taxpayers. There has always been an estate tax exemption and as long as the value of the taxpayer's assets, at the date of his or her death, was less than the exemption amount, the estate tax would not apply. In recent history, the estate tax exemption has been as low as $600,000 and is currently $11,700,000. An estate tax exemption of $11,700,000, which is adjusted for inflation, results in a very small percentage of taxpayers being subject to the estate tax. However, could this change?

Changes to the estate tax are currently being discussed as a way to help pay for the spending bills that are currently being debated in Congress. There are proposals to reduce the estate tax exemption from the current $11,700,000 to either $3,500,000 or $5,500,000. There are also proposals to increase the estate tax rate from its current rate of 40% to 50% for estates worth $100 million and to 70% for estates worth over $100 billion.

WHILE THE REDUCTION IN THE ESTATE TAX EXEMPTION MAY NOT AFFECT THE MAJORITY OF TAXPAYERS, A REPEAL OF THE "STEP-UP IN BASIS" COULD AFFECT MANY TAXPAYERS, REGARDLESS OF HIS OR HER WEALTH.

A reduction in the estate tax exemption would certainly subject more taxpayers to the estate tax, but the majority of taxpayers would continue to not be impacted by the estate tax. However, there is one proposal that is being debated that could affect many taxpayers.

As part of the estate tax regime, there is a concept referred to as "Step-Up in Basis". The determination of whether a taxpayer's estate is subject to the estate tax is based on the fair market value of the taxpayer's assets at his or her death. As a result, the beneficiaries of the taxpayer's estate receive a "step-up in basis" to the fair market value of the assets at the date of death when the property is inherited. For example, assume Johnny bought a house for $50,000 and when Johnny died, the house was worth $100,000. When Susie inherits the house from Johnny's estate, Susie's cost basis in the house is $100,000, the value at Johnny's date of death. If Susie then sells the house for $120,000, she will have to pay taxes on a gain of $20,000.

As part of the estate tax proposals, one proposal is to repeal the "Step-Up in Basis". Using the example above, if the "Step-Up in Basis" is repealed, Susie's cost basis in the house would be $50,000, the same as Johnny's when he purchased the house, and if she sold the house for $120,000, she would pay taxes on a gain of $70,000 instead of $20,000. As one can see, this could affect every taxpayer who inherited property and then sold it.

While the reduction in the estate tax exemption may not affect the majority of taxpayers, a repeal of the "Step-Up in Basis" could affect many taxpayers, regardless of his or her wealth. As previously mentioned, these are proposals currently being debated and no one knows if this will become law, but it is possible the Estate Tax could strike back and affect many taxpayers

Deanna L. Muldowney, CPA, AEP and James D. Wright, CPA, J.D., LL.M. are Tax Partners with Carr, Riggs & Ingram, LLC.