

## PRACTICAL PLANNER NEWSLETTER

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## PLANNING POTPOURRI

**Roth Conversion Errata.** Nov 09 Practical Planner typo. The text incorrectly read: "be reported 1/2 in 2000 and 1/2 in 2012" should have been "½ in 2011 and ½ in 2012".

**Password Encryption.** Organizing and protecting passwords, and assuring they are identifiable in the event of disability or death, is an important disability and estate planning step. Consider KeePass <http://keepass.info>. Thanks Lynn Lander.

**Name a Guardian.** If you're disabled your power of attorney and health proxy will protect you. But what if a court has to appoint a guardian? Make your wishes known now in a guardian designation. For example CT law, § 45a-645, permits you to name your own conservator for future incapacity. You have to be age 18 and of sound mind. You can designate the persons whom you desire to be appointed as conser-

vator of your person, your estate, or both, if you are later found to be incapable of managing your affairs or incapable of caring for yourself. The designation should be signed and witnessed with the same formality as a will.

**Tenants in Common (TIC) Accounts.** Instead of setting up separate husband/wife brokerage accounts to divide assets to fund a bypass trust you can simplify by having one account titled as TIC. While this can meet the estate tax objectives one Social Security number is on the account. So if that spouse's Social Security number is caught in an identity theft mess you may not have access to the account while the issue is resolved. TICs might be simpler, but not better.

**Estate Tax.** Since it ain't going away (?), take action. Structure irrevocable trusts as grantor trusts. With estate tax likely to be permanent and income tax rates also likely to rise this is a

great play since the grantor, say mom, can pay tax on trust income growing outside her estate. Reconsider permanent insurance. Whole life policies have outperformed some portfolios over the last decade, the income tax benefits will increase as tax rates rise, and if owned by a trust its a great estate planning play since repeal of the estate tax is unlikely. Use split dollar arrangements to fund insurance premiums if you need to use annual exclusion gifts to help kids hurt by recession. Family Limited Partnerships (FLPs) can still help even without discounts. FLPs provide control and asset protection. Lawsuits won't disappear. FLPs may help shift income to



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# PRACTICAL PLANNER

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## MAXIMIZE LEGAL FEES AND INCREASE FAMILY STRIFE

**Summary:** At a panel discussion for the NYS Foundation for Accounting Education conference all five panelists, led by the famed Sid Kess, and including Daniel Daniels, Esq. of Wiggin and Dana, LLP, James F. Kelly, Esq., of Davidson, Dawson & Clark, LLP, and Steven Siegel, Esq. of the Siegel Group, all complained that few clients heed their advice on planning. Ignoring the advice of your advisers is the best way to maximize professional fees, and assure the most family strife. So if that's what you want to do .... Fine! "We talk to clients until we're blue and they rarely listen," lamented Steven Siegel, Esq.

**Use Outdated Bypass Trust:** Don't update your will. The old formula could trigger state estate tax on the death of the first spouse. More than a score of states have an estate tax exemption lower than the federal amount (now \$3.5M) so that using the federal exemption amount will trigger state death tax. An old will could now distribute far more than intended, perhaps your entire estate, to kids from a prior marriage instead of providing for your spouse. When your old will was done the federal exemption might have been \$1M, the increase to the current \$3.5M could disrupt your entire plan.

**Ignore Spousal Right of Election:** State laws provide a right to a surviving spouse to demand a minimum portion of a deceased spouse's estate, regardless of the will providing for less. Ignore your lawyer's advice to obtain a formal waiver from your spouse and you'll leave the door open for your spouse to undermine your entire dispositive scheme. The family business you wanted to go to your daughter whose been running it? Your fourth husband might walk off with a piece instead.

**Qualified Personal Residence Trust (QPRT):** QPRT is a special trust used to leverage a gift of your home to your children. You can live in the home during the QPRT term. When the trust ends don't: deed the home to the kids or lease the home for a fair market rent. That requires legal fees. Be penny wise and pound foolish and make the IRS' job easier to prove you retained a life estate in the home so that they can tax it in your estate.

**Skip Annual Gifts:** You can make annual tax free gifts of \$13,000/per donee/per year and also pay tuition or medical expenses directly without gift tax consequences. That

is too simple. Instead, wait until health issues make tax planning urgent and difficult.

**Don't Consider Tax Allocation:** Don't worry about which beneficiary pays estate tax. With a marginal state and federal estate tax cost of more than 50%, tax may be the biggest factor in determining who nets what. Rely instead on whatever boilerplate happens to be in your will. Even better, print a cheap will off the internet that doesn't address this issue. Be like Alfred E. Neuman ... "What, me worry?" Just tell your heirs not to get

mad at your estate planner. **Leave Charity A Percentage Bequest:** Leave a percentage of your estate to a charity, not a fixed dollar amount. You'll get the state attorney general (AG) involved. You'll pit the charity against your heirs. The more your assets are valued the more the charity gets. Your heirs will want to value estate assets as low as permissible to minimize estate tax. The ensuing disputes will assure greater costs and angst.

**Don't Review Regularly:** Don't meet with your planner

*(Continued on page 2)*

## CHECKLIST: DISABILITY INSUR. 2

**Summary:** Last month's checklist addressed disability income, business overhead and disability buyout insurance. This month provides more tips.

✓ **Authorizations.** Don't provide an open ended authorization to obtain whatever information the insurer wants. Some authorizations are unreasonably broad. Endeavor to reasonably limit authorizations to what is appropriate and necessary. Revoke existing authorizations if they are too broad or are being abused. Ask for copies of all documents obtained on your matter from the insurer. If they won't confirm what documents they

have, inquire why in writing. Remind them that your confidential info shouldn't be re-disclosed if feasible.

✓ **Physician Calls.** Your physician will get a "peer to peer" call. They might be really busy and not focused if the call comes during the middle of their office hours. Quick answers may just be wrong. If your physician states something incorrectly it could undermine your entire case enabling the insurance company to deny your claim. Restrict your physician to only releasing selected data and not speaking on the phone.

✓ **Symptom Worksheet.** Pre-

*(Continued on page 3)*

## ...MAXIMIZE LEGAL FEES AND INCREASE FAMILY STRIFE

(Continued from page 1)

**annually. Why keep your plan current and catch loose ends? Better to wait until your health or competency deteriorates to the point where planning is impossible. But you'll save the cost of all those annual updates!**

**Divorced – Don't Change Plan Beneficiaries:** The divorce agreement covers it all. Right? Wrong, so leave your ex as the beneficiary of your profit sharing plan. Focus on your new paramour not protecting your desired heirs.

**Ignore Citizenship:** Gifts to a non-citizen spouse are limited, and there is no estate tax marital deduction without a special trust called a Qualified Domestic Trust (QDOT), but hey, save money and have the attorney who did your house closing draft your will.

**Simple Will:** Why complicate matters, get a 3 page will. Don't worry that it

won't address most issues and will result in a complex and costly probate process. Get a simple will now, not a simple result later when it really counts! But why worry? You won't be around to deal with it!

**No will:** The only thing better than an overly simple will to maximize costs and problems is no will at all. Kids from a prior marriage not your current spouse may walk with monies you wanted available for your spouse. The court will distribute your assets as state law provides, which is unlikely what you want. A court might appoint Attila the Hun as guardian of your beautiful kid. But think of the legal fees you'll save!

**Disclaimer Plan:** Don't worry whether your plan is practical, just make sure it's simple and cheap. Given all the uncertainty concerning the estate tax, just bequeath your surviving spouse your entire estate and give her the right to disclaim any of the inheritance into a tax advantaged bypass trust. Practitioners only see 5-20% of surviving spouses ever actually disclaim. It sounds good, but it usually doesn't work. In the end, it may only assure less control, more tax, and more problems.

**Advisers Shouldn't Meet:** Too expensive to have all those folks billing hourly at the same table. You're right. It's better that your plan not be coordinated. Why should your accountant review harvesting gains and losses before year end with your wealth manager, or your attorney assure that the corporate kit for the family S corporation is consistent with what your CPA reflects on the 1120-S K-1s and what your will says. Save money. Don't coordinate.

**Bank Teller Does your Planning:** You've changed wealth managers and banks in light of lousy performance (supposedly 70% of investors have done this in the past year) but

in the move all the accounts that were carefully titled by your estate planner to conform with your plan morph into joint ownership circumventing your will and undermining all your planning. That's OK, rely on the clerk at the new bank to make these determinations.

**Reporters: For info on disability issues call:**

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**Neglect Your Blended Family:** Even if your family tree is as complex as a Banyan tree don't worry about the implications to your estate plan. Don't have a will detailing all persons to be included and excluded and clarifying family relationships. And certainly don't use a revocable trust to minimize potential problems that your complex family structure causes. Be sure to use boilerplate beneficiary designations that don't address the range of people involved.

**Name Uncle Harry as Executor:** Don't name an institution or someone with the real qualifications to be fiduciary. Pick your poker buddy or someone who doesn't get along with your heirs. That will assure more fireworks. Name your son-in-law without addressing what happens in the event of divorce.

**KISS The Guardian and Trustee:** Keep it Simple Stupid. Why name multiple fiduciaries so that you have check and balances. Name the same person to wear multiple hats. This is great to increase the likelihood of mismanagement, theft or worse. If the guardian is the trustee who can sue who if there is a problem? **PP**

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*Review:* Andrew Wolfe, CPA, JH Cohn LLP, Roseland, NJ.

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## ...CHECKLIST: DISABILITY INSURANCE—2

(Continued from page 1)

pare a symptoms work sheet, and provide it to your physician at each visit. Your physician may not have adequate time during a routine office exam to record this level of detail and the insurance carriers may need detail to make determinations. A quick comment in your chart like "stable" might be so general and vague that it is simply inaccurate. But it could undermine your claim. **✓ Remember Home Mortgage Securitization?** So you bought a policy from an insurance company with a household name. You pay premiums for years relying on the reputation of the company in case you need 'em. Years later when you file a claim that well known company sold your policy (they may call it "reinsured") to a Chinese company who hired a private US company to administer it. When the name brand insurer has no skin in your policy, will it really be administered in the manner you anticipated when you purchased it? Even your agent may have no clue what has transpired. Hasn't the fundamental nature of the agreement made when you purchased the policy been violated? Some type of disclosure standard, at minimum, should be considered to address this.

**✓ Monitoring or Pressuring.** If you have a progressive chronic illness what purpose is served by a disability company continually requesting reports from your neurologist? Chronic progressive illnesses don't improve. While one can understand the desire for periodic updates at a reasonable interval, does a substantial increase in requests for data occurring at the same time you have a dispute with the insurer, or are negotiating a buyout, suggest something inappropriate? Reasonable regulation of this process should do nothing to harm insurers protecting their legitimate interests, but it might well give the disabled some protection. **✓ How to Buy Disability Coverage.** If you're in the market for buying disa-

bility coverage, do it right. Most folks focus on premium costs. You're not buying hamburger! The critical step is to pick the right agent. Find an agent that really knows the products, the disability marketplace, how carriers handle claims, and who will stick with you if you have issues later. That's the smart way to shop. **✓ Few Options.** What does it mean when a nationally known insurance consultant doesn't want to bother filing a claim with the state insurance commission for obviously incorrect actions by a disability insurance carrier because he knows nothing will be done? When industry leaders are jaded something more is called for. **✓ Join the Task Force.** The Insurance and Financial Planning Committee of the RPTE Section of the

American Bar Association is organizing a task force to explore disability insurance issues, with an emphasis on developing goals and a framework for legislation. One perceived issue is the lack of transparency in industry operations, and the need for consumer oriented regulation. A white paper may be presented for NCCUSL to initiate the process of drafting a uniform law. Contact David S. Neufeld, Esq. 609-919-0919, [David@DavidNeufeldLaw.com](mailto:David@DavidNeufeldLaw.com) **✓ Reporters.** Reporters seeking more info contact: Jennifer Jaff, Esq., Advocacy for Patients with Chronic Illness, Inc., (860) 674-1370, patient\_advocate@sbcglobal.net Bonny G. Rafel, Esq. Livingston, New Jersey (973) 716-0888 bra-

## RECENT DEVELOPMENTS

**Tax Losses.** Businesses May Take Advantage Of Expanded Loss Carryback Option Under New IRS Procedure IR-2009-105 and Rev. Proc. 2009-52. You can elect under IRC Sec. 172(b)(1)(H) to carry back a net operating loss (NOL) for 3, 4 or 5 years, or a loss from operations for 4 or 5 years, against income in those years. An NOL or loss from operations carried back five years may offset no more than 50 percent of a taxpayer's taxable income in that fifth preceding year. This limitation does not apply to the fourth or third preceding year.

**Estate Tax.** H.R. 4154 would make permanent the current estate tax rate of 45% and the non-inflation indexed exemption of \$3.5 million. This means \$7 million for couples with proper planning (so you still need to hug your estate planner!). If nothing is done the rate would fall to zero in 2010 and revert back to 55% in 2011. Compared to the \$1M 55% system that existed not so many years ago, this will cost the federal fisc \$234 billion! Bottom line, stop ignoring the estate tax and plan your estate. See the lead article for more reasons why!

**2010 Standard Mileage Rates:** In 1/1/2010 the standard auto mileage rate will be 50 cents/mile for business, 16.5 for medical or moving, and 14 for charity work. News Release IR-2009-111 and Rev. Proc. 2009-54, 2009-51 IRB.

**S Corporation:** Tough rules govern who can be an S corporation shareholder. Regular IRAs can't. Rev. Rul 92-73. Don't get cute, Roth IRAs can't either! **Taproot Administrative Services, Inc. v. Comr., 133 T.C. No. 9 (2009).**

**Grantor Trusts With a Twist:** Structure a trust so the beneficiary, not the person setting up the trust, is treated as the grantor for income tax purposes. PLR