PRACTICAL PLANNER NEWSLETTER
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Creative solutions that coordinate all your planning goals:
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Planning Potpourri

Protect Your Domain: Like many entrepreneurs, you may have accumulated nearly a score of domain names. Your key businesses have domain names. The ideas you were batting around with Joe at the corner bar led you to reserve a couple of domain names, and so on. In many cases these domain names are scattered among a number of different providers with random renewal dates. There's danger in this disarray. The media recently reported how a company lost its domain name since it did not renew it. The provider could not reach the owner because its contact information wasn't current. KISS solution: consolidate all your domain names to one provider. We like www.godaddy.com, and not only for their Dobbi Gillis sounding name. For a modest fee you can have all your domain names expire on the same date. You can pay for those names for 10 years, so the renewal problem won't arise for that long. Calendar that renewal date. If your email or other contact information change, you only have one provider to notify.

Is your Broker Your Friend: Many wealth managers, brokers and other financial providers encourage customers to meet with their estate planning team (or to sign beneficiary designations for non-retirement accounts). Are they motivated by helping you or something else? The average brokerage account stays in place for 4 years. The average trust account stays with the same firm for 14 years. Might this have something to do with the bull market in financial firms hiring estate planners? Could you be getting more independent advice from your own estate planner? When your wealth manager and financial planner want to coordinate and meet with your independent advisers, rather than replacing them with their own, that might be a good sign that they're actually interested in service and performance, not just account retention.

Rolling GRATs: Short term grantor retained annuity trusts are a popular estate tax minimization tool that seeks to remove upside equity market volatility from your estate. Some wealth managers goose up this benefit by segregating different equity classes in different GRATs. However, if you're worried about malpractice, this technique will shift significant unprotected securities back to your estate each year. Possible solution: establish separate LLCs for different equity classes and fund partial interests in each to separate rolling GRATs so the leakage retains some measure of protection. PP

Practical legal stuff... in plain English

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PRACTICAL PLANNER

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Boomer Estate Planning

Boomer estate planning has some special twists. For the record, we're referring to the cohort born between 1946 and 1964. While that includes Boomer Esiason (born April 17, 1961) the former Jet's quarterback, we're not limiting our planning to him.

Boomer Vagabonds: Andy Griffith never would have left Mayberry. But Boomers are less tied to any geographic area then prior generations. That means that documents must be more flexible and contemplate relocating. Trusts should include a change in situs clause that enables the trust to be moved to a new state.

Home Sweet Boomer Home: For many Boomers a substantial portion of their wealth is their homes. Thus, estate planning techniques like qualified personal residence trusts (QPRTs), while attractive for the wealthiest Boomers, will be impractical for many as too much wealth would be put beyond their reach. Techniques like reverse mortgages are likely to grow as more Boomers seek to tap their home equity in retirement. When carrying costs become too high, sale and reinvestment in a smaller home, often in a lower cost area, will be a likely option. This is another reason that the need to address changing domiciles in planning is so important.

Redefine Retirement: Boomers are active much longer. This changes the nature of many plans and documents. 55 or 65 doesn't mean retirement, it means re-tooling. Estate plans and business legal documents need to address business succession, often in a different manner. Sale at an agreed retirement age often gives way to retained equity, but a reduced work load. Shareholder and operating agreements need to be renegotiated to address phased-in retirement. This needs to be addressed long before target retirement or the Boomer won't have much negotiating clout.

Retirement Plan Funding: Boomers should keep funding retirement plans as growing life expectancy increases the need for post retirement dollars. Boomers age 50+ can contribute an extra $1,000 to their IRAs, and an extra $5,000 to their 401(k)s. Boomers should max out on these contributions, and keep contributing to IRAs up until the year prior to the year in which they turn 70.5. This is especially important for those Boomers who ransacked retirement funds for home purchases and other uses.

Investment Allocations: Many retiring Boomers refocus their investments on "income." Caution is in order. It's cash flow and not "income" that retiring boomers require. Shifting too large a proportion of a boomer's portfolio to income oriented investments based on an underestimation of life expectancy could have a Boomer's portfolio loose its purchasing power in later years. Disastrous! What should the asset allocation model be for a Boomer age 65, with a spouse age 72, entering "retirement"? There is nearly a 50% chance that one of them will be alive 24 years from now! An asset allocation heavily weighted to bonds could assure that inflation will wipe them out before global warming.

Disability: Disability planning needs lots of attention. Nearly 20% of Americans have some type of disability. With Boomers working longer and living longer, disability planning doesn't stop at age 55 or 60. If Boomers will often work well

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Checklist: Serving as Trustee

Aunt Edna died and you just found out you were appointed trustee. Read on.

√_People Trust in Trusts_: A substantial portion of wills establish trusts. Many wills include multiple trusts: by pass (applicable exclusion) trusts to safeguard the amount the first spouse to die can pass without estate tax, marital (QTIP) trusts for the excess, trusts for children and other heirs who are minors are the norm. Trust established while the grantor is alive, to protect assets, save taxes, and for other reasons, could trigger the issue of your being appointed trustee. Increasingly trusts that last for a beneficiary's entire lifetime (not just to age 21 or 25) are used. Trusts protect against spendthrift heirs, divorce, lawsuits and so on. But a common denominator of all of these is a trustee.

√_What do you do:_ Being a trustee is harder than most people think. There's a tad more to it then just collecting trustee fees. There are scores of legal, tax, time and emotional pitfalls, especially if the others involved are family. You need to evaluate these carefully before you accept the position, and if you accept the position you have to discharge your duties with the

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…Boomer Estate Planning

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beyond what use to be retirement age, the need to replace lost income if disabled will also continue longer. At older ages disability buy-out insurance won't solve business succession issues that it may have covered decades earlier. Alternatives need to be identified.

***New Age Perspectives*: Perhaps the most significant impact on boomer estate planning is not new laws, but the very different boomer mindset and paradigm for planning. The "traditional" approaches don't always apply. Boomers are more spiritual, philosophical and "fuzzy". It is far more common to address religious, lifestyle and other issues in planning documents to really carry out the wishes of boomers. In the Age of Aquarius a trust for a child is far more likely now, then 10 years ago for the boomer's parents, to include details on how the child should be raised, values, etc. This could take the form of a detailed distribution provision that not only addresses requisite tax lingo, but describes the types of education, travel and other expenses the Boomer parents want for their progeny. Boomers are more likely to draft an ethical will, a statement of their wishes, beliefs and philosophies, to leave to their children along side their "legal" will.**

***Sandwich Stress*: Many Boomers are caught between providing for their children while still caring for their parents, the so-called sandwich generation. The key for Boomers in this position is planning and modeling. Have your advisers model your current estate and financial picture. Challenge the projections with "what-if" scenarios to see how things turn out and identify possible actions to take. Too often Boomers worry about estate taxes when the real issue is the opposite, will they have sufficient wealth to sustain all the demands being made on that wealth? Sometimes modest tweaks in when the Boomer retires (another year of work means more money saved to compound over the Boomer's future life expectancy, rather than a current reduction in resources), a slightly more aggressive investment allocation (less dependence on tax exempt bonds) may swing the financial pendulum into safe territory.**

***Non-Family Structure*: 28.6% of boomers age 45-59 are single (up from 18.8% in 1980). So planning using the typical married couple paradigm is not sufficient for many boomers. Living trusts should be used more as single Boomers seek a structure to protect them in the event of illness and disability as nearly 1/3rd won't have a spouse to rely on. While a larger number of Boomers are part of same-sex relationships than prior generations, federal law has not evolved. The 1996 Defense of Marriage Act mandates that only a marriage between the opposite sex is recognized. For federal tax purposes, regardless of state law, no benefits are afforded same-sex couples. The Social Security Administration is bound by the same law. For these Boomers additional planning is in order.**

Terms in red defined in the glossary at www.laweasy.com. For e-newsletter sign up at www.laweasy.com.

***Different Laws*: Boomers face more complexity then prior generations. A host of new laws affect boomer planning. HIPAA – Health Insurance Portability and Accountability Act has broad impact on any legal document addressing dissemination of medical information that affects powers of attorney, living wills, shareholders' agreements, trusts and more. Authorization needs to be included in these documents for physicians to disclose relevant medical information about Boomer patients. The Principal and Income Act has a dramatic impact on how trusts established by parents of Boomers should be administered, many of which were written to pay out income. For a Boomer entering retirement, income alone may not be enough, or too variable. It's likely that as Boomers age the trusts established for them will, with increasing frequency, elect to be treated as total return trusts (when state law permits). These trusts can pay out a fixed percentage of value, rather than payout income. The payout will grow as the trust assets grow. For Boomer trust beneficiaries, this will be an important method to provide greater and more secure cash flow.** PP

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…Checklist: Serving as Trustee.

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requisite care and formality.

√*Attorney*: Hire a lawyer to represent you as trustee and review the trust document from your perspective. Even if you were involved in the planning of the trust before it became effective, you should go through this exercise. This is a very different point of view as compared to the perspective taken by the grantor when planning the trust.

√*To Do List*: Compile a list of what you have to do and when with the lawyer. This will vary greatly based on the trust document, state law, and the circumstances affecting the particular trust (beneficiaries, assets, etc.). You need to weigh the moral obligation of carrying out the request and wishes of a friend or family member who appointed you, and the responsibilities and commitments necessary to carryout the role. Objectively determine whether you have the time, ability and desire to carry out these duties. If you're going to reject the appointment, do it before you begin to serve, and do it with the appropriate formalities.

√*CPA*: Hire a CPA to assist you with several important matters: tax planning (tax consequences of distributions, state tax filing positions, treatment of investment management fees), tax preparation (which returns are to be filed, what reporting positions should be taken, what returns and with what disclosures should be filed with which states), recordkeeping (what records should you maintain, which if any should the accountant assist with, what should be reported to the beneficiaries) and accountings (informal or formal records of the trusts activities). Have your CPA set up a checklist of tax and accounting issues.

√*Investments*: Understand the terms of trust, the needs and current circumstances of the beneficiaries. You, or investment professionals that you as trustee retain, must create an investment policy statement that documents how the trust objectives are met in light of current circumstances. This document should demonstrate compliance with the trust and applicable state law, in particular the prudent investor act of the state that governs the trust.

√*Unique Trust Purpose*: Carefully consider any unique aspects of the trust for which you are serving as trustee. If the trust is intended to hold only insurance, planning for insurance and meeting the unique requirements of an insurance trust will be vital. If the trust holds your home and qualifies as a QPRT (special trust to remove the value of a house from estate in a tax advantaged manner), then QPRT requirements must be met. If the trust owns S corporation stock, you have to address corporate governance, vote shares, and comply with S corporation requirements.

√*Distributions*: Project what is needed and/or required. Understand the trust document distribution provisions. You may have to poll beneficiaries to determine their needs.

Serving as a trustee can be rewarding, and fulfill the wishes of family, but the task should not be taken lightly. PP

Recent Developments

***Preserving Charitable Intent*: The famous Barnes Foundation has operated an incredible art museum in Merion, PA featuring scores of Cezannes, Matisses and Renoirs. Unfortunately, due to severe restrictions in the foundation's trust indenture, this venerable institution has been on the verge of bankruptcy. A plan was proposed to save the Barnes Foundation if the court would release it from the requirements to operate in Merion, and to invest its endowment solely in government securities. Two legal theories were invoked, the deviation doctrine and cy-press. The deviation doctrine permits a variation from the terms of a trust when circumstances, unforeseeable by the donor, are such that the intent of the trust would be defeated absent the deviation. If the court did not permit the Barnes Foundation to deviate from the restriction on exhibiting art holdings outside of Merion, PA the primary intent of the Barnes Foundation could be undermined. Cy-pres is a legal doctrine which provides that a legal document, such as the trust in the instant case, should be interpreted to carry out the intent of the parties as nearly as possible to the document, when exact compliance would be impossible. Some valuable lessons can be learned. Flexibility, caution, and clear written donor agreements should be used when planning charitable gifts. Restricting investments based on current conditions is never wise. Administrative and operating restrictions should similarly be flexible to address changes in charitable purpose. If the donation is to combat a particular disease, what if it is cured? What should the donation be used for then? If the charity violates the parameters of the gift should the agreement provide for a gift over to another charity? What mechanism can be provided to modify and interpret the terms of the gift in future years to keep it viable? To best structure a charitable gift, especially a long term gift, involve your estate planner, accountant and the target charity's planned giving professional.** PP