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Real Life Planning (Cont'd.)

► **Home Safety**: The driver for our move was physical safety, but the fruits are sweeter. An apartment means no lawn, no snow shoveling, etc. So whether you are concerned about aging, or you're a Boomer looking to a retirement of cruises, these changes may benefit you as well.

■ **Automation**: Home automation can empower those facing the challenges of aging or disability. Almost every system in your home: lighting, temperature, security, shades, and more can be programmed to meet health challenges. For those with any physical limitation these systems can be controlled from an iPad. Crestron Electronics, Inc. has created the leading products in this field. Dan Feldstein, VP of Crestron, explained that whatever physical challenge you face an interface can be created to facilitate your controlling these systems. For seniors facing cognitive challenges, a "Night" button to push to turn off lights can also automatically adjust temperature, set the alarm, and cut power to the stove, just in case they forgot something. Many home automation features can be tailored to address physical challenges that you might face now, or in the future as you age. Work with a creative electronics integrator (we used JD Audio and Video Design Inc.) to tailor these capabilities to your challenges. While most of us face similar age-challenges, we can't foresee specific future health challenges. Prewire so your system can adapt to your changing needs.

■ **Accessibility**: Info on home accessibility focuses on wheelchair access. While important, it is not enough because only about 7% of those with disabilities use any type of walking aid. Fatigue is a common debilitating symptom for those with MS, PD, COPD, and other diseases. Although so common, it receives scant attention. Design changes (shower bench, bench in a dressing area, a stool at kitchen work-counter) can help address fatigue. Tripping is a hazard for those facing chronic disease or aging. Gait is one of the most affected motor characteristics of those with PD. A sill is often placed between rooms with different floor surfaces to address varying floor heights. Our contractor, Tony Cervieri, varied the thickness of plywood subfloors to avoid height transition from tile, to wood to carpeted surfaces. Non-skid tiles and low pile commercial carpeting, all help. Sometimes simple steps can make an incredible difference. By 2050, ~20 million Americans will be age 85+ and many should consider these steps. PP

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PRACTICAL PLANNER®

Martin M. Shenkman, CPA, MBA, PFS, AEP, JD

Real Life Planning, Not Just Estate Planning

Summary: This issue of the practical planner is months late. The reasons are personal. But hopefully sharing them will provide you with some valuable planning ideas. I've written much about the human aspects of estate planning. But as with many things, actually dealing with them is quite different than merely writing about them.

■ **Worse than a Dentist**: A well-known author/client of mine recently exclaimed after we discussed later life planning that "Visiting you is worse than going to the dentist!" Ouch! But as she recognized, this topic is essential for everyone to address as they age, as well as anyone with a health challenge. Not fun, but the Ostrich approach of sticking your head in the sand will increase the likelihood of your becoming an elder financial abuse statistic or worse. If this incredibly astute women finds this stuff tough to address, everyone must. Perhaps my efforts not to be a barefoot shoemaker might help you tackle these issues.

■ **Yogi Berra**: "It's like deja-vu, all over again." The August 2006 issue of the Practical Planner included an article "Chronic Illness: Special Planning Required." My wife, Patti, had been diagnosed with multiple sclerosis (MS) a month earlier. That article was my first shot at grappling with how that diagnosis affected our planning, and more broadly how living with chronic disease impacts the 130 million Americans facing that challenge. A common challenge of those living with MS is balance. This past February Patti lost her balance and fell down a flight of stairs in our home. We had to tackle a decision many struggle with as they age. Do we stay in our home? If we stay what steps should be taken? Do we move to a home without stairs? For us the decision was made, not easily, but quickly, to move to a condo with no stairs. This article is like deja-vu, all over again.

■ **Where the 2006 Article Lead**: In 2006 I was shocked at the dearth of resources available to professionals advising clients with chronic disease. Since that first article in this newsletter I have written four books (including ones for the Michael J. Fox Foundation, National MS Society, and the COPD Foundation) and about sixty articles, and counting, on chronic illness planning. Patti and I set up a charity (chill, we don't fundraise) whose mission it is to help professional advisers guide clients facing chronic disease. We travel the country for about two months a year in our Airstream RV and lecture to professional, consumer and charitable groups.

■ **Hair Replacement Estate Planning**: Planning our move, downsizing, etc. are all part of the broader scope of "later life planning." Estate planning historically focused on wills and minimizing estate taxes. These are important, but fall far short of addressing important issues. People now live 30 years longer than they did 100 years ago. Estate planning could have a narrower focus when the number of years post retirement was expected to be limited. Today's retirees may live decades past retirement age, with many remaining quite active. The incidence of chronic disease increases with age. The estate planning "conversation" has to be broader to remain relevant. What steps might help make those later decades more secure so you can enjoy them as much as possible? These entail not only traditional estate planning steps, but as we have discovered, home design decisions, and more. So I'm going to steal an idea from Sy Sperling's famous Hair Club For Men commercials - "I'm not only the Hair Club president, I'm also a client." The planning steps below are steps I've

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Checklist: $ Out of Trust

Summary: So you set up tiers of LLCs, SLATs, DAPTs and other acronyms in 2012. Sounded cool, and if the exemption had plummeted in 2013, it would have saved bundles of estate tax. The plan was so successful that you now want to tap the structure for beer money. How can you get money out without torpedoing the plan? Assume for this discussion that you formed a family limited liability company ("LLC") that holds a large portion of your investment portfolio. You and your spouse each own 20% of the LLC and two irrevocable spousal lifetime access trusts ("SLATs") you created each own 25%, and a grantor retained annuity trust ("GRAT") owns 10%. What are some options?

√ **Turn off Grantor Trust Status**: Most of these trusts were set up as "grantor" trusts which means the income earned by the trusts shows up on your income tax return. It's the gift that keeps on giving. That characteristic alone could result in your consuming cash personally while growing the value of the trusts. That is all fine from the perspective of estate planning, but it can get a bit tricky for you in terms of cash management to pay income taxes, etc. So a long term solution may be to turn off gran-

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...Real Life Planning, Not Just Estate Planning

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taken, not just recommended.

▶ Downsizing: With aging and health challenges we felt "less is more." Less space means less to care for, less time demands, etc. Thoughtful downsizing can also eliminate family fights and protect you from financial abuse.

■ Small Is Beautiful: Downsizing meant getting rid of stuff. What I realized is that many clients defer this decision until it is thrust upon them, often at an age or state of health when they can no longer handle this task themselves, thus leaving the burden to children. In many probate situations, a personal organizer company is hired to deal with a decedent's property. Children, often living at a distance, pressured by their own career and family responsibilities, simply find the task overwhelming. Sadly, in many cases I've seen over the decades, heirs pluck obvious valuables from a deceased parent's home, and then a home clean-out company trashes everything else. Valuables and sentimental objects end up in the trash. Whatever family did not want from our downsizing was packed and taken to a local thrift shop. The manager of the thrift shop told me a small part of his personal story. He had been homeless for many years. He explained that being able to find clothing and other items at local thrift shops was what helped him get back on his feet. He credited, in his words, the local thrift shops with saving his life. When a clean-out company is hired to trash the contents of a decedent's home, the less fortunate often lose out as well.

■ Scanning: Patti and I began the process of going paperless many years ago. At first blush the task is insurmountable. We began simply by scanning current items. Once we grew comfortable with the process, we began culling through boxes of old tax/legal documents that seem to be common to most attics. We identified all federal income tax returns, tax basis documents, key legal documents, etc. These were scanned and everything else was shredded. We tackled a few boxes at a time and when they were completed, retrieved the next couple of boxes. With small baby steps the process was not overwhelming, and over years of time only two small boxes of original legal documents remain. Originals of the following were kept: estate planning documents, birth certificates, insurance policies, etc. Having all key documents scanned makes them easy to find, saves incredible space, and more. They are all backed up regularly to the cloud and as part of a mirror back up to a portable hard drive. Last summer, on a month long trip, our forwarded mail included a love note (i.e., audit) from the IRS. We were able to quickly locate the documents on our laptop necessary to resolve the issue, printed them on our portable printer, and sent a certified letter to the IRS from the Post Office in Mitchell, South Dakota. If you don't recognize that city, then you've likely never seen the famous Corn Palace! Scanning not only saves space, but lots of time. Think of the burden you'll save your heirs from having to sort through tons of old financial and tax files. Consider the reduction of the risk of your being subject to identity theft if all those confidential physical documents are destroyed and only remain on an encrypted password protected laptop.

> *This issue of the newsletter is dated March-June 2014 and the next issue will be July-August*

■ Shoot it and Lose it: Gail and Ron, our idols of downsizing, downsized to a small NYC apartment to better enjoy the offerings of NYC. More retiring Boomers will follow their path. One of their tricks, shoot it and lose it. So, we shot pictures of large framed diplomas and professional awards and tossed the physical ones. Big space savings and a growing sense of "lightness."

■ Digitizing: We had the requisite number of boxes of old 35mm slides and videos of toddlers waving. It took up a lot of space so, with the help of our friends at Digiphoto, we digitized it all and saved it to our laptops backed up to the cloud on Sugarsync. Those priceless home videos degrade over time. The sooner you digitize the better shape they'll be in. You can easily share it with all of your kids. I've witnessed more than a few family fights over the years over who gets the photo albums. Now you don't have to split the baby, just digitally clone it.

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Review: Andrew Wolfe, CPA, Esq.

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...Checklist: Getting Cash Out of Trust Structures

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tor trust status. This could be done on just one SLAT (not the GRAT during the annuity term) to preserve flexibility for the other SLAT. You might even divide a trust into parts and terminate grantor trust status for only one part. However, if you're elderly or ill it may be a mistake because you would lose the ability to swap assets back into your name to get a basis step up on death.

√ LLC Distribution: If you make a distribution of cash from the LLC, the cash would have to be distributed pro-rata to all the members. Thus, if the LLC distributes $100,000 you and your spouse would get $20,000, each or $40,000. This might help, but be inefficient if your direct ownership of the LLC is low relative to cash needs since most of the cash would go to the trusts. There should be no negative tax implication since income from the LLC would flow through pro-rata to owners anyhow.

√ Salary: If you provide services to your family LLC you could draw a reasonable salary for management or other efforts. That would create taxable income subject to self-employment tax. While the compensation would be deducted by the LLC as a guaranteed payment to you, you'd be reporting the same amount as compensation income. If you can't corroborate that the LLC paid arm's length compensation for real services, the IRS might argue that the purported "compensation" is really a retained interest in the income of the LLC so that the gifts you thought you made to the trusts are all pulled back into your estate.

√ Purchase: The family LLC can use cash to buy, at fair market value, stocks, or other assets, you own in your personal names. While that might sound simple it is a tax problem. The LLC, in contrast to the trusts, is not treated similar to a grantor trust so that the sale would trigger capital gains costs. Not a winner.

√ GRAT Distributions: GRATs must pay you a mandatory annuity to qualify for the favorable tax treatment intended. But some GRATs include provisions permitting additional distributions above the mandated annuity to you. That might provide you desired cash, but it would be counter-productive from an estate planning perspective defeating the GRATs objective of leveraging growth out of your estate. Definitely not a winner.

√ Borrow: You probably can borrow money from the LLC or any of the trusts. This can be relatively simple and should leave asset protection and estate planning in place. Just be careful that a sufficient interest rate is charged, a written loan document signed, and that the terms of the loan adhered to (e.g., regular payments). The transaction should be recorded as a loan on your books and those of the LLC. Verify that any requirements in the operating agreement governing the LLC are complied with. Avoid creating a pattern of loans and correlating the borrowing with major life events, like a child's wedding.

√ Redeem: You could have the LLC redeem a portion of your interests for cash, but have your CPA run the tax numbers first [Thanks Paul]. PP

Recent Developments

■ Trusts Aren't Always Passive: Trusts can sometimes qualify for real estate professional exception to passive activity loss ("PAL") rules The Tax Court has determined that a trust that owned real estate properties and engaged in other real estate activities qualified for the Code Sec. 469(c)(7) exception for real estate professionals and thus wasn't subject to the PAL limitations. In so concluding, the Court found that services performed on behalf of a trust may be considered personal services performed by the trust. Frank Aragona Trust, (2014) 142 TC No. 9

■ Mississippi Joins the DAPT List: Effective July 1, 2014, Mississippi became the 15th state to permit the creation of self-settled domestic asset protection trusts ("DAPTs"). This seems to confirm a trend of more states permitting self-settled trusts. Naysayers of this planning technique should take note, but those with DAPTs, or considering them, should still be cautious in light of the number of cases that have challenged the technique. Title 91, Chapter 9, Article 15, Miss. Code Ann. §§91-9-701–91-9-723.

■ Trust Expenses: The IRS published final regulations governing which costs incurred by trusts and estates can be fully deductible without having to be reduced by 2% of adjusted gross income. IRC Sec. 67(e). A cost will be subject to the 2% reduction if it is included in the definition of "miscellaneous itemized deductions" under IRC Sec. 67(b), is incurred by an estate or non-grantor trust, and it is "commonly or customarily" incurred by an individual holding the same property. Costs incurred by an estate or trust which would not have been incurred if the property were not held in in the estate or trust are fully deductible without the 2% haircut. The big number in all this is investment fees. The Regs provide that investment advisory fees are subject to the 2% floor, unless they are an incremental cost beyond the amount "normally charged" to an individual. PP