PRACTICAL PLANNER® NEWSLETTER
MARTIN M. SHENKMAN, PC
PO Box 1130, Fort Lee, NJ 07024
Email: newsletter@shenkmanlaw.com

First-Class Mail
US Postage Paid
Hackensack, NJ
Permit No. 1121

RETURN SERVICE REQUESTED

More Info:

Telephone: Call with questions, comments or suggestions 201-845-8400.

Publications: Sign up for an e-version of this newsletter at www.laweasy.com. Periodic blogs are posted to www.shenkmanlaw.com.

For address corrections, or to be removed from this mailing list, email us at newsletter@shenkmanlaw.com or call 888-LAW-EASY.

Creative solutions that coordinate all your planning goals:
Estate • Tax • Business • Personal
Financial • Asset Protection

Planning Potpourri

■ Revocable Trusts: Revocable trusts have historically been used to avoid probate. While that might be useful it is hardly vital in most states. Instead, recast the traditional revocable trust into a robust later life planning tool. Make it the keystone of your cruise ship plan! ■ Identity theft has grown exponentially. It seems that almost weekly a major government agency or corporation announces that its database has been hacked and confidential information stolen. In many cases identity thieves use your Social Security Number to gain illicit access to your money. Using a revocable trust with a distinct tax identification number might make it more difficult for a criminal to pilfer your accounts. ■ Alzheimer's is a major fear of senior Boomers. Per WebMD the risk for Alzheimer's increases significantly from age 65 on, and increases until age 90+. Put in place the planning you need now so you can do it deliberately and "kick the tires" before the plan is needed. Use a revocable living trust as the centerpiece of that plan. ■ Name a trust protector in the trust so that there is someone independent of the trustee to provide checks and balances on the named trustee. ■ Perhaps have a CPA designated in your trust as a monitor role to keep books and records and monitor expenses. That can be a great check and balance on a trustee or anyone else, including you if you develop cognitive issues, misspending. ■ Require that an independent care manager meet with you where you reside (not in an office where the circumstances might be controlled) and issue a written evaluation report to the trustee, perhaps a child, and the trust protector. This can help identify a range of issues a lawyer, CPA or even your general physician might not see. ■ Think really carefully who can or should be named as a co-trustee (in case you might need assistance now) or a successor trustee (if you can defer that assistance to a future date). While there is tendency to name family or friends will they really do right? Do they realistically have the time to devote to managing your finances and your care? According to a recent Web MD study 28% of those who provide caregiving help say they spent more than 40 hours a week on such duties. They will certainly benefit from having another serve as trustee. Naming an institution can assure independence, professionalism and other services. This can free up family members to serve as protectors. PP

Law Easy

www.laweasy.com

VOLUME 10, ISSUE 1
Jan-Mar 2015

Shenkman

Practical Planner®

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

Estate Planning for Real Folk

Summary: Estate planning should never primarily be about getting a will, saving taxes, or avoiding probate. Really important parts of the process are often not squarely within the purview of any one discipline. Critical aspects of estate planning are often ancillary to the general estate planning steps and documents. This is why you can use Turbo Tax, Legalzoom and a Robo adviser, and miss the most important planning points. That's why the first robo adviser cautioned: "Danger Will Robinson!" IBM's Watson might change this, but not yet.

■ "Standard Plans" Can be Dangerous: Unless your last name is "Standard" a "Standard" plan can be dangerous. Case Study: A couple with one adult child living with Asperger syndrome went to a large well respected law firm for an estate plan. A will with a special needs trust (SNT) was created for their son. Standard planning for a family with a special needs child. But the family had an $18 million net worth. Their son was high functioning and didn't participate in state programs. So the SNT would protect about $20,000 a year in government funds but severely restrict the only heir from enjoying most of the family's wealth. The son was also married and had a daughter and the "plan" would prevent his daughter from benefiting from the funds while the son was alive.
■ Take a Cruise: Take a broad approach to planning for all of your estate, income and other tax, asset protection, personal protection, aging, and other issues. Don't focus on the usual culprits: "I want to save taxes." Have you ever met someone who said that they'd rather pay more taxes? What point is having a great will if your spending rate will assure you die broke? If charitable giving, religious concerns or other personal considerations are of great importance to you, how can your estate plan ignore these objectives? If you have a professional practice what happens to your clients or patients if you are incapacitated? Estate planning can never succeed if you only focus on death. Case Study: A man age 63 was selling his business and planning to retire. All he wanted was a will to protect his daughter should something happen to him. That depressing focus made planning torturous for him, and impeded any progress. The conversation was reframed. At age 63 odds are he might live for another 30 years. What planning should be done to assure that if he spent the next thirty years on a cruise ship his legal, tax, financial and other issues would all be minimized? With the process reframed as "Cruise Ship Planning" he more comfortably proceeded, with Carnival-like excitement, to tackle the wide range of topics that were really warranted.
■ Financial Planning Must Lead the Way: The core of most estate planning should be a budget and financial forecast. What does your estate look like today? What might it look like when you are age 50, 65, 85 and 95? What level of confidence will you have that you won't run out of money by say age 95 (unless health issues suggest using a different age). Is 95 old enough for your planning? This input is essential to identify financial issues early on. If your spending is off track at age 55, some minor adjustments might suffice. If you play Ostrich until age 70 you might have to alter your lifestyle to avoid eating cat food by age 85. Early adjustments are always better. You can't determine how much you can transfer to an irrevocable trust, or what type of trust to use, without forecasts. You might think that you need to minimize estate taxes, but in reality you may need to put your budget on a Marie Osmond – Nutrisystem diet! Sans forecasts you could end

(Continued on page 2)

Checklist: Modern Trust

Summary: Most old trusts are inflexible and insufficiently protective. This checklist highlights valuable characteristics of a modern well-plannned trust. If your trust doesn't measure up, don't despair, decant (merge) it into a new and improved trust.

√ Rocket Man Time: Here's a factoid for your next cocktail party. Sir Elton's line "And I think it's gonna be a long, long time" was a reference to the rule against perpetuities and perpetual trusts. Case Study: The folks set up a trust for their beautiful and bright daughter. She married a ne'er–do–well with long hair and no job prospects. The trust ended at age 25 when the folks thought their well-educated daughter would be more than capable of managing her finances. Over the next year or so those former trust monies were commingled with marital assets. At age 26 ½ Mr. Wonderful filed for divorce. Guess who got ½ the trust money? Trusts should last "a long, long time" just as Sir Elton, Esq. recommended. If your trust doesn't decant it into a long term trust. If your state doesn't permit very long term trusts when you set up new trusts do so in a state that does permit them.
√ Don't Be a Seamstress:

(Continued on page 3)

...Estate Planning for Real Folk

(Continued from page 1)
up on the wrong side of the financial scales. Too many people of wealth give far less than they safely could to children and charity for fear of running out of money. The proper answer is found in financial planning, not estate planning. Unless you're uber-wealthy and fear the tax Bern, that is just not the right approach. Estate planning should start by looking at longevity planning from a financial planning lens, not taxes from a legal lens.

■ Asset Protection Planning: While the phrase might conjure up images of surgeons and offshore trusts in tiny island nations it starts with basic steps that everyone, from a young family with modest wealth to a billion dollar entrepreneur all need to address. Do you have a personal umbrella or excess liability policy that is adequate and coordinated with your underlying insurance coverage? Do you conduct businesses in entity solution with proper formality? Case Study: A physician facing tremendous malpractice risks (a partner had just been sued for $50M and settled for something well in excess of her policy limits wiping out much of her net worth) owned several shopping centers as investments. The lawyer who set these up created single member LLCs with the doc as the sole member. If sued there is no charging order protection. Those plumb assets were low hanging fruit ripe for plaintiff's counsel to pick. A simple solution would be to have made the spouse a partial owner. A better solution would have been to set up the LLC in a state with favorable creditor protection laws and have interests in the LLC owned by irrevocable asset protection trusts set up in a state like Nevada that has favorable laws supporting these trusts. Don't gamble with asset protection planning. Case Study: A young couple had a 3-family home they rented using a lease they found online (must be good if it was online, right?). Hiring a real estate attorney to create a template of a state appropriate lease containing the right lingo may have been one of the most important steps to preserve their estate. The lease issue was not something a CPA doing a plan, or lawyer writing a will, would typically identify. But this illustrates how good planning is done: tailored to you, out of the box thinking to address your issues, collaborative, and not focusing only on a will.

■ Hug your Insurance Agent: Insurance planning is essential to every estate plan. Note the word "every." Insurance is lots more than life insurance. Review all property, casualty and liability insurance. Make certain you have a sufficient personal excess liability policy. Case Study: A couple worth $8M had a $1M liability policy when the wife was in a car accident and was sued for $10M. If the suit had settled at that amount they would have been wiped out. Fortunately, this one had a happy ending and the suit settled for under the policy amount. Disability insurance is vital for many plans. Case Study: A young couple had 3 kids and dad, the breadwinner, had good life insurance coverage but no disability insurance. No one had really focused them on the importance of this. If dad became disabled it would have been a financial disaster. Young couples with limited resources don't just need a cheap will. They need a plan appropriate to them. Many physicians still seem convinced that malpractice claims have to settle within policy limits. If you subscribe to this fantasy, please call the author who is selling unicorns at 50% off. Insurance has to be reviewed regularly. You can't ignore insurance as an "I bought it." Case Study: The folks had an ILIT buy a $4M survivorship policy and named eldest daughter as trustee. 15 years later she had still done nothing to review or follow up on the policy (nor had she issued Crummey notices in 15 years creating a tax time-bomb). After dad died the policy was finally looked at by a new insurance consultant and it was not a pretty sight. The policy was never structured as the permanent policy the family thought it was. It had a few years left to run and the cash value would evaporate. If mom didn't die in the next few years the entire investment would be lost. Big sis could face a costly suit from her sibs that she couldn't possibly win. Every type of insurance coverage must be reviewed periodically with the appropriate insurance expert. PP

For seminar announcements follow "martinshenkman on www.twitter.com and www.Linkedin.com/in/ martinshenkman

≈

For e-newsletter sign up at www.laweasy.com.

Disclaimer to Readers: Practical Planner® endeavors to provide reasonably accurate information, however, due to space limitations, and other factors, there is no assurance that every item can be relied upon. Facts and circumstances, including but not limited to differences in state law, may make the application of a general planning idea in Practical Planner, inappropriate in your circumstances. This newsletter does not provide estate planning, tax or other legal advice. If such services are required you should seek professional guidance. The Author/publisher do not have liability for any loss or damage resulting from information contained herein. The sending of, or your receipt of, this newsletter does not create or continue an attorney-client relationship.
Notice: This newsletter constitutes attorney advertising 22 NYCRR 1200.
Reviewer: *Andrew Wolfe, CPA, Esq.*
Publisher Information: Practical Planner (Reg. U.S. Pat. & Tm. Off) is published quarterly by Law Made Easy Press, LLC, P.O. Box 1130, Fort Lee, New Jersey 07024. For Information or subscriptions: email news letter@shenkmanlaw.com, or call 888-LAW-EASY.

...Checklist: Modern Trust

(Continued from page 1)
When can Junior get his paws on more beer money? Many trusts provide that distributions can be made to maintain the standard of living of the beneficiary. But that phrase is too easy to understand so lawyers instead provide that distributions can be made to maintain the beneficiary's "Health Education Maintenance and Support," or HEMS. Does a HEMS standard permit a creditor or ex-spouse to argue that they are part of that standard? Is it worth the risk? Don't always sew HEMS into your trusts. Instead name an independent trustee with a purely discretionary standard. Much harder for the ex- or a malpractice claimant to argue that they are entitled to something when the distributions are discretionary. Worse than HEMS is a trust that mandates (unless it has to) a regular distribution (e.g., distribute all income monthly). That cash flow stream is open season for predators. If your trust has a standard that might be risky, decant.

√ Pick a Good Jurisdiction: Most trusts are formed in the state where the settlor creating the trust lives. Why? A handful of states have distinguished themselves as havens for trusts: Alaska, Delaware, Nevada and South Dakota. Case Study: In a recent Massachusetts case Pfannenstiehl a large irrevocable family trust was pierced when the son got divorced. Had the trust been formed in say Nevada the result would likely have been different. ET may call home but you should call Alaska.

√ Use an Institution: Name an institutional trustee. Oh but they charge so much you say! But what might the cost be of Uncle Joe administering your trust incorrectly? Institutions have a range of procedures, policies and safeguards in place to protect against many issues. Family trustees (called "accommodation" trustees by one sage commentator since they just accommodate whatever is asked) rarely follow procedures or formalities creating myriads of trust potholes. That nonchalance often proves the Achilles heel in the event of an IRS audit or lawsuit. If you live in a state with less than optimal trust laws you'll need to name an institution in the trust friendly jurisdiction for your trust to avail itself of those laws. Your family is named Cleaver and everyone gets along and plays nicely in the trust sandbox. While you might be right, is it worth the risk? Case Study: When dad died several of the siblings went to war. Decades of pent up hostilities boiled over. The trust protector fired all sibling trustees leaving the trust in the calm hands of a trust company.

√ Gumby Trusts: What if the institution becomes inattentive? Include several mechanisms in the trust to replace the trustee. Traditional trusts often named an institution and the beneficiaries were wed to that institution forever. That needn't happen. Beneficiaries can be given a right to remove and replace the institutional trustee. Use a trust protector in your trust. This person can be empowered to change trustees, change the situs and governing law of the trust, correct scrivener errors and so much more. Expressly include the right in the trust for the trustee to decant into a new trust. That will make it easier for the trustee to modify administrative powers and other provisions that might best change over time. Give beneficiaries powers to appoint trust assets in their wills to facilitate modifying the plan for future events. PP

Recent Developments

■ The IRS retroactively restored a corporation's S corp status after a trust beneficiary inadvertently failed to file an S election consent. PLR 201604009.

■ On March 2, 2016, the Treasury Department released Proposed Regulation REG-127923-15 on the basis consistency requirements applicable to many estates. These regulations provide further insight on Form 8971 which has to be filed for estates filing federal estate tax returns, Forms 706, after July 31, 2015. This form reports to the beneficiary and the IRS the beneficiary's income tax basis in property acquired from a decedent. The executor must furnish to each beneficiary receiving property the required information on Schedule A of Form 8971. A common problem is that executors will not likely know by the form due date which beneficiary will get which assets. The proposed Regs require the executor to report on the Statement for each such beneficiary all of the property that the executor could use to satisfy that beneficiary's interest. Think of the issues that this can create when Junior sees his favorite painting on his Schedule then the executor opts to give it to his sister? Executors and advisers should consider adding a disclaimer to a cover letter accompanying the forms sent to beneficiaries: "The listing of assets on Form 8971 is a mere guesstimate based on current data as to which assets will be distributed and to whom. The personal representative has not made final determinations and the allocation may change, assets may be sold, and other changes may occur, and if so a supplemental filing will be made as required. There is no intent that a beneficiary indicated draw any conclusion that an asset listed will in fact be distributed to that beneficiary, except to the extent of any partial distribution heretofore. The indication of assets and their distribution is being made at this time to comply with the filing requirements of Form 8971 and not to confirm any legal decisions as to distributions by the personal representative. Therefore, no beneficiary should take any action based on the information disclosed in this filing." PP