

By **Martin M. Shenkman**

Boomers and Beatles

Planning for “When I’m 64”

*“When I get older losing my hair,
... Will you still need me, will you still feed me
When I’m sixty-four?”*

—*The Beatles*

Retiring baby boomers, as they age, will change the face of estate planning just as they’ve changed the face of so many other characteristics of society. An estimated 5 million baby boomers are retiring every year.¹ This trend should provide many estate planners with a growing stream of potential clients. But, who are these boomers, and how will planning for them be different? While the recent changes in the tax laws will affect planning for boomers, that’s only a part of the picture.

Baby boomers are those born during the demographic Post-World War II years between 1946 and 1964. The number of boomers is estimated at 75 million.² Those over age 65 comprised 12.4 percent of the population in 2000. Those over 65 will grow to 19 percent of the population by 2030. The growth rate of the older population is projected to slow after 2030 when the last of the baby boomers attains age 65.³

Retiring in the Age of Aquarius

Planning for boomers as a whole will likely have important nuances that differ from planning for prior generations. As boomers continue to move into and through retirement, the need for retirement planning (for example, budgets and financial projections) will likely increase as the dominant focus of these estate-planning clients. Assuring adequate cash flow for decades of post-

retirement years will be far more important than bypass trusts and insurance trusts to reduce estate taxes. With one caveat, this shift in focus will change the dynamic of the planning process and increase the relative importance of CPAs and wealth managers, as compared to attorneys, as members of the estate-planning team. The caveat is that there are, as will be discussed, other services that attorneys can and should offer to remain critical to the process.

Retirement for boomers will be unlike what retirement has been for recent prior generations. The recession has taken a significant economic toll on investments and home values. As a result of the recession and other factors, boomers will likely retire at ages later than prior generations. Retirement won’t mean stopping work and collecting the proverbial gold watch, however. Instead, 82 percent of boomers may work for pay after their retirement age.⁴ Fifty-two percent of the earliest boomers are fully retired, up from 19 percent in 2007 and 45 percent in 2011.⁵ Twenty-one percent are working full-time. They plan to retire on average at age 71.2, up from 66.3 in 2007 and 68.6 in 2011.⁶ Thirty percent now expect to retire later than they’d planned.⁷ This style of retirement is different from the guidance that planners have traditionally provided. Financial plans will have to estimate the inflow of work income. Tax planning will likely have to address more home-based businesses.

In my opinion, work statistics aren’t the only change boomers will bring to retirement. Boomers typically tend to be optimistic and proactive. Introducing financial realities into the planning discussion may be more important, and more challenging, than for prior generations. Many boomers want to continue to make an impact in the world and remain relevant. Making a difference for some may come in the form of increased, but more important, different, charitable giving.

Increased mobility will complicate planning.



Martin M. Shenkman is an attorney in Paramus, N.J.

Consideration of residency and domicile will become a more common and earlier part of the planning conversation.

What Boomers Want

Boomers have vastly different wants, needs, likes and dislikes from the generations before them. In terms of language, religions and customs, boomers are more diverse than the prior generations of retirees. Like most people, boomers don't want to feel old and don't want others to think they're getting old. Boomer clients may better receive the estate and retirement planning conver-

Leisure decades planning is the future of estate planning for the aging client not subject to a federal estate tax.

sation if it's recast into more positive terms that are less focused on aging issues. Perhaps planning for the "leisure decades" may more palatably identify the process. The post-retirement years will, generally, entail less than full-time work for most boomers, and the goal of many is active leisure years that will last for decades.

Not Your Mom's Estate Plan

Estate planning for boomers in general will be different from estate planning for the prior generations. Consider that median wealth levels of current retirees who are age 75 and over are higher than those of younger generations. The Silent Generation (that is, those born during the Great Depression) tended to be strong savers and often retired when defined benefit pension plans and other retirement benefits were plentiful. Far fewer boomers will have this level of protection.

For decades, retirees have had significant wealth at the very time when the estate tax exemptions were dramatically lower than they are today. No wonder the estate-planning "conversation" usually became a bypass trust conversation. Qualified personal residence trusts

and planning for beneficiaries of retirement accounts were all quite important. But, will that continue to be true? Baby boomers have saved an average of \$262,541, about a third of the \$805,398 they predict they'll need at retirement.⁸ Many boomers don't have the financial resources to support the active and long retirement they anticipate.

The combination of the declining wealth status of boomers and higher exemptions provides an insight into the future of estate planning that's quite different from what merely looking at the increased exemptions or general boomer economic data might indicate. The professional literature has been filled with articles on planning for the 3.8 percent Medicare surtax and portability, but for the vast majority of boomers, these matters are irrelevant.

Practitioners will, generally, be able to use their tax planning and other expertise for the wealthiest upper tier of aging boomers, and to the extent that services can be cost effectively (for the boomer) and profitably (for the practitioner) provided, an array of other services might be feasible to provide to a larger cross-section of boomers.

Leisure Decades Planning

Leisure decades planning is essential for all boomers to address as they age. It's a different conversation from the traditional estate-planning one and much more difficult. Saving taxes was rather sterile and had little to do with recognizing one's age in most cases. Ignoring the issues of aging could enhance the likelihood of your client becoming an elder financial abuse statistic, or worse. For boomers on the lower end of the wealth spectrum, these issues might be even more important to address because there's little reserve resources.

Leisure decades planning is the future of estate planning for the aging client not subject to a federal estate tax. Consider how each of the issues or steps below creates a practice development opportunity:

- What steps can the client take to assure that he'll remain in control over his assets for as long as possible?
- While the prior generation of clients focused on saving estate taxes on the wealth they spent a lifetime accumulating, the boomer clients are focused on assuring they'll have adequate cash flow for the

duration of their lives. This change isn't only a result of the demise of the estate tax but also of increased longevity. Economic issues, such as the Great Recession, have exacerbated this situation. These clients need realistic budgets that are monitored as part of an integrated financial and investment plan to assure they stay on course.

- As a client ages, what can be done to minimize the risks of elder financial abuse? Whatever the statistics on financial abuse indicate, I believe that most abuse is undetected, and of those situations that are identified, most are unreported because either family is involved, or there's no one adversely affected who has knowledge of the situation.
- Most estate plans include the preparation and execution of a durable power of attorney (POA) to name an agent to handle financial matters in the event of the client's disability. Yet, it's rare that anything is done to address practical steps clients can take to more safely manage their assets as cognitive and physical abilities wane with age. Little, if anything, is typically done to address the practicalities of an agent actually using a POA when the client can no longer manage his affairs.

Leisure decades planning includes the obvious, like preparing current durable POAs, living wills, health proxies and, perhaps, other documents. But, it requires much more and, in many cases, includes topics that aren't squarely within the purview of what's traditionally been handled by attorneys, CPAs or other professionals.

Many boomers expect to live as long as 20 to 30 years after the traditional (but no longer necessarily relevant) retirement age. Most boomers hope for those later years to be quite active. The estate-planning conversation has to be much broader to remain relevant. What steps might help make those later decades more secure? These issues entail not only estate-planning steps, but also financial planning, home design, personal organization and much more.

- **Downsizing:** Considering the aging and health challenges facing many boomers, often "less is more." Less space means less to care for and fewer time demands. Thoughtful downsizing can also eliminate family fights and protect your client from an array of physical and other problems. For those boom-

ers expecting to remain very active in their later years, their budgets may be heftier than prior generations of retirees. Downsizing, to the extent that it's also "downcosting," with lower costs for a smaller residence, may make those active later years more financially secure. For boomers with less financial security, downsizing might well be an essential step in reaching financial security in their later years. The earlier the cost reductions are realized, the more likely the client will achieve those financial goals. Many clients fight the process of moving to a home that's safer for them; perhaps one that has no stairs or

Often, clients view moving out of a long-time home as a defeat and loss of independence.

that's even fully wheelchair accessible. Often, clients view moving out of a long-time home as a defeat and loss of independence. In reality, it can be the opposite. Moving to a home that's appropriately suited for the client's current and likely future health challenges can be incredibly empowering and safer and foster the more active lifestyle many boomers seek. But, who has these discussions with the client? If a care manager (see below) isn't yet involved, who can guide the client?

- **Scanning:** Many clients have attics full of boxes brimming with old tax returns and financial records. This clutter can be an impediment to downsizing, a fire hazard and a risk for elder financial abuse. A home repair person could pilfer documents with Social Security and account information. The process of going paperless is daunting for older clients. Practitioners can advise clients to begin by scanning current items. Once clients grow comfortable taking this step, they can slowly begin the arduous task of culling through old tax, legal and personal documents.
- **Digitizing:** Many boomer clients have boxes of old 35mm slides and the required videos of toddlers

waving. This material can take up a tremendous amount of space and be impossible to pass on to heirs. Which child should get these priceless heirlooms? Digitizing everything can make it easy to secure and disseminate this family legacy. Many clients don't realize that those priceless home videos degrade over time. The sooner they digitize, the better.

- **Home safety:** What safety features should the client have in his home? Is it feasible to modify the existing home, or is it better to relocate to a different type of home or different area? Most people tend to ignore the realities of health challenges and aging, often until

Forty-five percent of the American population has at least one chronic condition.

an event occurs that forces a change. For example, grab bars are essential in bathrooms, but properly installing them requires blocking in between the wall studs. To add this feature to an existing bathroom can be incredibly costly because it requires removing the tile and walls. Depending on the quantity and nature of modifications that are now or in the future advisable, should the client stay or move?

- **Automation:** Home automation can empower those facing the challenges of aging or disability. Almost every system in a client's home, such as dependent temperature, security and audio-visual, can be programmed to meet health challenges or the client's later goals. For those with any physical challenge, these systems can be controlled from an iPad or smart phone.
- **Accessibility:** Most of the literature on home accessibility focuses on wheelchair access. While critical to address, it's not enough because only about 7 percent of those with disabilities use any type of walking aid. The challenges faced vary by disease. Fatigue is a common debilitating symptom for those living with multiple sclerosis (MS), Parkinson's disease (PD) and chronic obstructive pulmonary disease

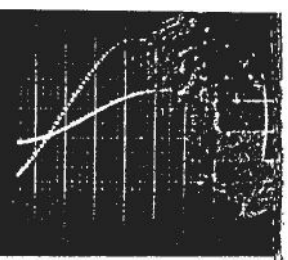
(COPD). Sometimes, simple modifications can make an incredible difference. However, unless a care manager is involved as part of the estate-planning team, many of these practical steps will be overlooked. As the population as a whole ages, more practitioners should reach out to care managers to integrate their expertise into the estate-planning team.⁹

- **Professional health care and other agents:** Explore the possible use of health care fiduciaries, especially for infirm or elderly clients with no close friends or family. Establishing safety nets, monitoring relationships and using institutional trustees will increase in importance as family relationships continue to weaken.
- **Checks and balances:** Building in safeguards to the plan and legal documents will grow in importance. These steps should provide some protection from elder financial abuse. Reports reveal that 7.6 percent to 10 percent of elderly study participants experienced abuse in the prior year.¹⁰ This number is disturbingly large and will likely grow as the population ages. In 2010, there were 5.8 million people age 85 or older. By 2050, it's projected that there will be 19 million people age 85 or older.¹¹

Chronic Illness

Preparing for health challenges that statistically increase with age should be part of the planning process:

- Of those ages 65 to 74, 26 percent are living with a chronic illness that has a significant impact on their lives.
- More than 5 million Americans are estimated to have AD.¹²
- Forty-five percent of the American population (125 million) has at least one chronic condition, such as paralysis as a result of trauma or stroke, AD, mental disorders, HIV/AIDS, allergies, asthma, diabetes or high blood pressure.¹³
- In the United States, approximately 60 million people (22 percent of the population) suffer from multiple chronic conditions.¹⁴
- Approximately 400,000 Americans are living with MS.¹⁵
- Approximately 1 million Americans are living with PD.¹⁶



- Approximately 12 million Americans have been diagnosed with COPD.¹⁷
- Some estimates are that an equal number may have COPD but haven't been diagnosed.¹⁸

Financial and estate-planning decisions must factor in estimated actual life expectancy. Practitioners will more frequently be involved in these matters as clients age. The answers will often be different from expected, and they'll almost assuredly vary based on each client's issues. Even clients with significant health challenges may still likely have a long or even full life expectancy.

How can planning for these boomer clients be modified? Consider:

- In addition to durable powers, practitioners can use health proxies and living wills to protect clients through a long-term disability.
- Practitioners can build a monitoring relationship into a POA and, perhaps, into a revocable living trust. For example, a practitioner can send to a CPA copies of all monthly statements and have the CPA create reports and review statements for obvious signs of financial abuse or other problems.
- Clients' finances can be consolidated into one or a few institutions to facilitate simpler management if the client faces health or cognitive challenges.
- An institutional trustee could be incorporated into a living trust as a current co-trustee, successor co-trustee or sole trustee. This will become more common as aging clients with few or no family to rely on seek protection.
- A care manager can be integrated into the planning team. The role of the care manager could even be integrated into the actual documents. For example, a revocable living trust could require that after the grantor is disabled, an independent care manager must evaluate the grantor and issue a quarterly written report to the trustee and a monitor.

Quicken

CPAs can guide clients to use Quicken, or any other personal checkbook program, to address many of the critical and practical issues of leisure decades planning that otherwise are ignored. In coming years, this education will represent a grow-

ing opportunity for the local practitioner. It will fill planning voids many clients need addressed:

- Reminders can easily be set in Quicken so that clients don't overlook important bills.
- As every practitioner knows, a financial plan requires a realistic budget and an investment plan built on financial targets (for example, a grandchild's wedding). Too often, budgets are based on computer assumptions or estimates because the client provides no hard data. Once you computerize a client's checkbook and other financial transactions, it becomes a

The role of professional planners in boomers' investing, as well as guiding boomers on budgeting, will be essential.

simple task to generate current and prior year expenditures by category and develop a realistic budget. For boomers looking to assure adequate cash flow for decades of later life, this process is far more important than for prior generations.

- Boomers plan active leisure decades. If an active boomer is off on safari, how will bills be paid? In the event of disability, who will handle payments? Automation can facilitate these requirements.
- Once you've automated a client's finances, periodic monitoring of Quicken records can provide incredible protection for the aging or ill client from elder financial abuse.
- Quicken reports are the best guides to facilitate anyone serving as a fiduciary, whether as an agent under a durable POA or successor trustee under a revocable living trust. A common provision in many POAs is to permit agents to make gifts. Many standard forms, as well as attorney-prepared documents, have language that in some form permits the agent to make gifts to individuals or charities to whom the client has historically made gifts. How can one

determine to whom gifts were historically made? While a Form 1040 might be useful for purposes of charitable gifts, Quicken reports should provide a comprehensive listing of all gifts to individuals and charities, which can support the actions of an agent.

Cash Flow

Under the current paradigm, the income tax is the new estate tax for most clients. That being said, the adage that seems to ring clear for most boomers is “cash is king.” Boomers will require adequate cash flow for the long leisure decades. For boomers with inadequate savings, maintaining adequate cash flow will be a tough challenge, but it’s essential. Even those wealthier

Assuring adequate cash flow might be the most important step a planning team can take.

boomers who’ve saved may remain concerned about cash flow in light of their desire for active or charitably involved leisure decades.

The role of professional planners in boomers’ investing, as well as in guiding boomers on budgeting and appropriate withdrawal rates from savings, will be essential. Many clients overlook the need for professional guidance, believing that they can handle these matters on their own. The statistics suggest otherwise. The average individual investor’s 20-year annualized return was a paltry 2.1 percent over the 20-year period that ended on Dec. 31, 2011. During that same period, the S&P 500 returned 7.8 percent. A portfolio allocated 50/50 in bonds/equities would have earned a nominal annualized return of 7.2 percent.¹⁹

Whether estate planners view themselves as having the investment expertise to advise on budgeting and investing, they can be part of the process, and most important, serve as the catalyst to get the client to address these issues.

The critical issue for many clients is determining an appropriate rate of withdrawal from their savings to sup-

port their standard of living. At a given withdrawal rate, what’s the probability of running out of money before the end of the client’s lifetime? What ages should be used for this calculation? How large a probability of running out of funds is acceptable? Bear in mind that you should use an estimate for actual estimated life, not a general life expectancy. What allocation among different asset classes is reasonable to support the desired withdrawal rate? While some commentators had considered 4 percent a reasonable withdrawal rate, is that really a realistic rule of thumb? Other commentators suggest that a rate closer to 3 percent may be preferable.²⁰

This type of analysis is essential to determining whether the client’s assets will grow beyond the exemption or fail to sustain the client’s lifestyle. For prior generations with significant savings, the analysis for a typical client might have been different. For this generation of retirees, many with insufficient savings, assuring adequate cash flow might be the most important step a planning team can take. Most important, whatever is done, if you don’t periodically revisit and update the planning, projections and withdrawal rates, the client’s ship will likely sail off course.

Boomer Charitable Giving

Sophisticated charitable gift strategies will still be of interest to some wealthier boomers. But, for many, their unique manner of charitable giving may have little tax planning import. Many boomers will follow the role model of Bill Clinton, who started a post-retirement charitable career using his knowledge in pursuit of the boomer-specific ideals I discussed above.

So, while estate planners have almost universally focused charitable planning on tax considerations, helping a client who volunteers for a charitable cause involves only modest, if any, tax planning. Volunteering may become one of the most dominant forms of charity for retired boomers. Questions of what expenses can be deducted for these efforts, rather than how to structure a donation of appreciated stock, might be more common.

For boomers with sufficient wealth and motivation to give to charity, the changed tax paradigm for many will favor inter vivos over testamentary gifts. A \$100,000 bequest to charity generates a \$100,000 estate tax deduction. For most boomers, there will be no federal estate

tax in light of the high inflation-adjusted exemptions, spending patterns and long life expectancies. However, if the \$100,000 donation to charity was instead made while the client is alive, the gift would not only generate a \$100,000 gift tax charitable deduction (that will be of little import for most), but also a \$100,000 income tax deduction that might generate a tax benefit at a rate topping 40 percent with state income tax considered (the current top federal income tax rate is 39.6 percent). Consider:

- The client can include in his durable POA the right to make charitable gifts as an advancement of a bequest.
- If the client uses a revocable living trust, it should similarly permit the trustee to prepay a charitable bequest as an advancement.
- In some instances, the client might leave a personal letter to his heirs to make the charitable gift so that they'll benefit from the income tax deduction.

Raised in the idealism of the Age of Aquarius, boomers might well adhere to the motto that estate planning is not only about the transmission of wealth, but also about the transmission of values:

- A simple bequest in a will to a charity can be used to demonstrate commitment and values to one's heirs.
- Add a phrase to the testamentary bequest, "I've made this bequest to charity to demonstrate the importance to my heirs of making a contribution back to society" or whatever drives home the client's point.
- A personal letter of instruction can help emphasize the objective.

Gift annuities may become more common to satisfy the dual goals of charitable intent and desire for certainty of cash flow. A gift annuity is a contract between the donor and his favorite charity in which the donor gives the charity a one-time payment and receives a contractual commitment for a periodic payment, an annuity, for life. The amount of the annuity is determined at inception, without modification (worries) about investment performance/volatility.

Many boomers will want more input into how their charitable dollars are used, rather than merely making a donation to their designated charity's general fund.

A carefully crafted donor agreement between the client and the target charity in advance of consummating the gift will assure that a specific charitable intent is carried out. Such an agreement might:

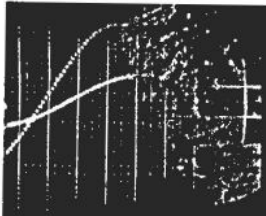
- Specify how the gift will be used.
- Confirm how the gift/bequest will be named, what prominence will be given to the name, how the plaque or other naming device will be displayed and what happens if the facility moves.
- Address what happens if the purpose of the gift is no longer relevant.
- Address other issues to assure the client's objectives are met.

CRTs as a Retirement Plan

Charitable remainder trust (CRT) variants can:

- Provide clients with cash flow for many post-retirement years in the leisure decades.
- Further charitable objectives consistent with the boomer goals discussed above.
- Conform to the marital realities of the more common incidence of divorce among the boomer cohort as contrasted with prior generations.

A CRT can be structured as a unitrust (CRUT), providing the client a fixed percentage of the value of the assets of the CRT each year. This structure can provide an inflation hedge because payments will increase if CRUT assets increase in value. Such a hedge will be critical to maintain adequate cash flow. A net income CRUT (NICRUT) can be used to enhance the retirement plan "feel" of a CRUT plan. The income beneficiary will only receive the actual trust income if earned. So, the 82 percent of boomers working past retirement age can time when to trigger the cash flow from the NICRUT with their phase-down of work and minimize income tax. The NICRUT can be structured with a make-up provision (NIMCRUT). The CRT won't produce significant income until the CRT sells the property. In a NIMCRUT, if the income in any year is less than the unitrust amount for that year, the shortfall is made up in future years when trust income exceeds the unitrust amount in those later years. This structure can provide the boomer flexibility to time cash flow to needs.



CRTs and IRAs

How will the boomers handle their individual retirement accounts to meet charitable, cash flow and other personal goals? One approach may be to combine IRA planning with CRUT planning. The planning focus for IRAs has generally been to stretch out payments for as long as possible to defer income tax. Under current law, a beneficiary may defer distributions over his remaining life expectancy, which often runs to about age 83. Boomers might consider naming a second generation CRUT as beneficiary of their IRAs. The surviving spouse could receive an annuity for life, for example, 5 percent of the value of

A properly crafted and planned revocable trust can be an indispensable technique to provide a protective financial and personal shield for the large and growing boomer client base.

the trust each year. This might be similar to what the surviving spouse may have received from the payment of income from a bypass trust if that more traditional approach had been used. When the surviving spouse dies, the annuity stream could be paid to the children. For many boomers, these children will be from a prior marriage because boomers have a higher divorce rate than preceding generations. In 1990, fewer than one in 10 people who divorced were 50 or older. In 2009, that figure was one in four.²¹ There would be no income tax triggered by the transfer from the IRA to the CRUT as a tax-exempt trust. On the death of the last child, whatever assets remained in the CRUT would pass to charity.

POA Gift Provisions

Past generations of retirees provided that the agent could make gifts of up to the annual gift exclusion to

children and other descendants to capture the annual gift exclusion and reduce estate taxes. With a \$5 million inflation-adjusted exemption (\$5.43 million in 2015), few boomers will be subject to estate tax. Gifted assets won't garner a basis step-up on the boomer's death. When prior generations executed durable POAs, the moniker "elder financial abuse" hadn't even existed. In the current environment, including a gift provision in some instances will provide a common avenue of elder financial abuse. For many boomers, it might be advisable to eliminate the gift provision altogether and, perhaps, even to state that the power intentionally includes no gift provision.

For some boomers, a different type of gift provision might be warranted considering the financial support obligations they have for their aging parents. Forty-seven percent of Americans have an elderly parent and a dependent adult child.²² About 15 percent of Americans are supporting both of these family members.²³ Thirty-two percent of those who have a parent age 65 and older have provided financial support to that parent.²⁴ Approximately 20 percent of baby boomers are supporting an elderly parent.²⁵ Some 63 percent of all boomers have at least one child age 18 or older, and of this group of boomer parents, about 68 percent are supporting an adult child financially.²⁶ Thus, approximately 40 percent of boomers have this type of financial obligation. If a client is supporting a parent or child, it might be necessary to permit the agent to provide gifts or support to these relatives. Thus, a gift provision for many boomers might have to be tailored to address family economic responsibilities.

For the wealthiest boomers, none of the above may be appropriate. Instead, a broad gift provision permitting gifts to heirs or, perhaps, to irrevocable trusts for heirs might be appropriate. This gift provision might permit gifts of up to the large federal exemption to save state estate tax (in a state that has decoupled but which has no gift tax). For wealthier boomers, an express gift provision might include gifts of the annual gift exclusion and the inflation adjustment increase in the exemption for the boomers who've already used most of theirs.

Clients With Chronic Illness

While revocable living trusts are nearly ubiquitous in estate planning, their typical use is to minimize ancillary probate or avoid probate entirely. Whatever the

merit and values of these applications, a properly crafted and planned revocable trust can be an indispensable technique to provide a protective financial and personal shield for the large and growing boomer client base facing the challenges of aging and/or chronic illness. One hundred and thirty-three million Americans are living with a chronic condition.²⁷ Four of five older Americans live with a chronic condition. More than half of older Americans have two or more chronic conditions.²⁸ When adapting a living trust to serve these objectives for an aging boomer client, practitioners may need to change some of what might otherwise be standard drafting:

- **Trustee selection:** Selection of a trustee is a decision process with which all practitioners are familiar, but there are nuances to consider when planning for clients with chronic illness. The nuances vary depending on the particular disease and its stage. Many practitioners draft revocable trusts with the client as the sole initial trustee. However, for a boomer client living with challenges of aging or a chronic illness, having a co-trustee serving from inception with the client may be preferable. For many boomers who lack the safety net of close responsible family members to name or whose family members don't live close or have the time to commit to serving alone, incorporating an institutional trustee into the planning may be essential.
- **Trust assets:** For aging boomer clients, especially if the client already has health challenges, a fully funded revocable trust may be the appropriate approach.
- **Distribution and related provisions:** For many aging boomers with chronic illnesses, their homes serve as refuges and sanctuaries from a world that's not very accommodating. Their homes may reflect years of ongoing renovations at much expense and personal effort to make them as comfortable and safe as possible. For these clients, an express directive to retain the home and facilitate the client's continuing residence there may be a priority. There are charitable organizations dedicated to serving those living with practically any illness. Many clients may wish to authorize charitable gifts to such organizations, especially to fund research to find a cure for the disease with which they struggle. The purchase of gift annuities that benefit a particular charity may be

something the client wants, but the Prudent Investor Act or a trustee's lack of authorization could prevent.

- **Grantor's disability:** Treat disability clauses with particular care. For example, many common diseases (for example, COPD and MS) are typified by an attack or flare up. If the client is hospitalized for several weeks, during that period of hospitalization, the client may meet the definition of disability and technically be terminated from serving as a co-trustee of his revocable trust. However, when the client is released from the hospital, he may be capable of and want to resume managing his own revocable trust. This situation could result in an on-again/off-again pattern of removal and reinstatement. Apart from the sheer awkwardness of such a provision, there could be significant legal issues if a third party has to determine whether the trustees appropriately took a particular action. An alternative might be to provide a trigger mechanism that requires perhaps 30 days of consecutive disability before the grantor/client is removed as a co-trustee.
- **Additional precautionary provisions:** Practitioners can take a number of steps to provide additional safeguards for a boomer client who's infirm, may be infirm in the future or likely to be totally dependent on outside help. You can create a monitor relationship. For example, you can designate a trust protector or independent accountant to receive and review monthly brokerage and bank statements to provide a check and balance on the trustees. The trust can authorize, or if appropriate, mandate, that the trustees retain an independent, licensed, care manager to periodically meet with the client/grantor, conduct an interview and evaluation in the home or facility where the client resides and issue a written report to the trustees and, perhaps, others. This process can provide objective and professional assessment of the client's status and identify any abuse or other issues that should be addressed. The attorney can revise the existing care plan to reflect any new developments.

POAs

POAs for elderly parents of boomer clients may become more common. As stated above, many boomers support elderly parents. This data has important drafting and planning implications. For example,

consider the planning idea of securing a basis step-up by granting an elderly family member a general POA to secure a basis step-up to that person's remaining exemption. If 20 percent of boomers support a parent, that scenario may be appropriate for such planning. The parent likely has little net worth if the child is supporting him. Because of that support, a relationship may exist in which the child is more comfortable

To address many of the issues of aging, it may be beneficial to involve a care manager in the planning process.

assuming whatever risks creating the general POA might create.

Expanding Role of Care Managers

To address many of the issues of aging, it may be beneficial to involve a care manager in the planning process.²⁹ Care managers are typically social workers, nurses or other service professionals. A care manager can evaluate the client's emotional and physical status, functional abilities and home or other living environment. A care manager can provide the practitioner, family and client recommendations as to how to address many of the impediments to planning. She can also act as a liaison between the client's medical team and the estate-planning team, interpreting and explaining health issues and the course of a disease, so that the estate planning can be tailored appropriately. For example, a care manager can interpret medical information useful to counsel's determination of competency. A care manager can make recommendations for care based on the information gathered from the assessment.


Care managers coordinate experts in different specialties to establish a comprehensive plan of care for the client. This input can be valuable to the estate planner crafting a plan or guiding a family on implementing one, because it provides professional expertise to

complete gaps that may exist and that the financial and legal service professionals who dominate the planning team don't have the expertise to address. In addition, care managers can advocate for the client to receive benefits eligible to him, further increasing the value of the care manager's role in the financial planning process.

Some of the questions a care manager can address include:

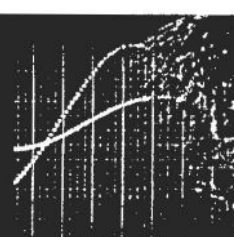
- Who's appropriate to designate as a health care proxy in light of the chronic illness involved?
- What's the current and likely future economic impact of the chronic illness on the client and his support system?
- How might the client's disease course affect his economic and personal support system? This answer is fundamental to determining an investment plan and crafting trust distribution provisions.
- What impact will the client's aging or chronic illness have on the support system and/or family structure? How might this change in the future, and what planning implications might this have?

Marketing to Boomers

The goals and objectives of many boomers are quite different from prior generations of retirees. Serving this large market of prospective estate-planning clients will likely require different avenues of marketing. Practitioners need to educate boomers as to why they need to plan. 

Endnotes

1. Pew Research Center, "Baby Boomers Approach Age 60: From the Age of Aquarius To the Age of Responsibility," Dec. 8, 2005, <http://pewsocialtrends.org/files/2010/10/socialtrends-boomers120805.pdf> (Nov. 8, 2013).
2. *Ibid.*
3. "A Profile of Older Americans: 2012," Administration on Aging, Administration for Community Living, U.S. Department of Health and Human Services, www.aoa.gov/Aging_Statistics/Profile/2012/docs/2012profile.pdf; Kelvin Pollard and Paola Scommegna, "Just How Many Baby Boomers Are There?" <http://www.prb.org/Publications/Articles/2002/JustHowManyBabyBoomersAreThere.aspx>.
4. Based on a poll by the Associated Press-NORC Center for Public Affairs Research. Matt Sedensky, "Aging baby boomers to delay retirement plans" (Oct. 14, 2013), www.deseretnews.com/article/865588352/Poll-Half-of-older-workers-delay-retirement-plans.html?pg=all.



5. MetLife Mature Market Institute, "The Oldest Boomers: Healthy, Retiring Rapidly and Collecting Social Security," May 2013, cited in Tammy Flanagan, "How Baby Boomers are Retiring," National Institute of Transition Planning (Aug. 23, 2013).
6. *Ibid.*
7. *Ibid.*
8. Benjamin Zhang, "Troubling Survey Shows Baby Boomers Don't Have Enough Savings to Retire," www.businessinsider.com/financial-advisor-insights-august-25-2014-8.
9. See Martin M. Shenkman, Marci Sadorf and Stephanie Chong, "The Role of a Care Manager," *Trusts & Estates* (February 2012), at p. 32.
10. Lifespan of Greater Rochester, Inc., Weill Cornell Medical Center of Cornell University and New York City Department for the Aging (2011), citing "Under the Radar: New York State Elder Abuse Prevalence Study" New York (2011), www.ncea.aoa.gov/Library/Data/; R. Acierno, M.A. Hernandez, A.B. Amstadter, et al., "Prevalence and correlates of emotional, physical, sexual, and financial abuse and potential neglect in the United States: The national elder mistreatment study," *American Journal of Public*, 100(2), at pp. 292-297. www.ncea.aoa.gov/Library/Data/.
11. U.S. Dept. of Commerce, U.S. Census Bureau (2010), www.ncea.aoa.gov/Library/Data/; "The Next Four Decades: The Older Population in the United States: 2010 to 2050" (Publication P25-1138).
12. www.alz.org/alzheimers_disease_facts_and_figures.asp.
13. See "Partnership for Solutions, Better Lives for People with Chronic Conditions, The Prevalence and Cost of Chronic Conditions," www.nccconline.org/pdf/PrevalenceandCostFacts.pdf.
14. *Ibid.*
15. "Estimating the prevalence of MS," www.nationalmssociety.org/About-the-Society/MS-Prevalence.
16. See "Statistics on Parkinson's," www.pdf.org/en/parkinson_statistics.
17. www.nhlbi.nih.gov/health/public/lung/copd/.
18. www.lung.org/lung-disease/copd/resources/facts-figures/COPD-Fact-Sheet.html.
19. Michael Maye, "Average Investor 20 Year Return Astoundingly Awful," (July, 18 2012), www.thestreet.com/story/11621555/1/average-investor-20-year-return-astoundingly-awful.html.
20. Rob Brown, "4% Failure," *Financial Advisor Magazine* (September 2013), at p. 93.
21. Greg Clary and Athena Jones, "Baby boomer divorce rate doubles," (June 27, 2012), www.cnn.com/2012/06/24/living/baby-boomer-divorce/.
22. Kim Parker and Eileen Patten, "The Sandwich Generation: Rising Financial Burdens for Middle-Aged Americans" (Jan. 30, 2013), www.pewsocialtrends.org/2013/01/30/the-sandwich-generation/. See also Pew Research Center, *supra* note 1.
23. *Ibid.*
24. *Ibid.*
25. *Ibid.*
26. *Ibid.*

27. Shin-Yi Wu and Anthony Green, "The Growing Crisis of Chronic Disease in the United States," Projection of Chronic Illness Prevalence and Cost Inflation. RAND Corporation (October 2000), www.fightchronicdisease.org/sites/fightchronicdisease.org/files/docs/GrowingCrisisofChronicDiseaseintheUS-factsheet_81009.pdf.
28. "Chronic care: A call To Action for Health Reform," http://assets.aarp.org/rg-center/health/beyond_50_hcr_conditions.pdf, at p. 12.
29. *Supra* note 9.



SPOT LIGHT

Where For Art Thou...

"Juliet" (28³/₈ in. by 19 in.) by John William Waterhouse, sold for \$1,511,125 at Christie's recent Victorian, Pre-Raphaelite and British Impressionist Sale in London on Dec. 11, 2014. Waterhouse was known for his depictions of fictional women, largely drawn from Greek mythology and Arthurian legend.

TRUSTS & ESTATES

The WealthManagement.com journal for estate-planning professionals



Red Roses—"The Gardener's Daughter" (9/8 in. by 7/2 in.) by John Ingle Lee, sold for \$23,550 at Christie's Victorian, Pre-Raphaelite & British Impressionist Art Sale in London on Dec. 11, 2014, p. 4.

BRIEFING

7/ Tax Law Update • Philanthropy • Tips From the Pros

COMMITTEE REPORT THE MODERN PRACTICE

15/ Navigating the Discussion of Business Succession Planning

Help clients address this sensitive issue

By Avi Z. Kestenbaum & Christine K. Knox

20/ Creating a Family Legacy

Provide guidance for future generations

By Marvin E. Blum & Anna K. Selby

29/ Boomers and Beatles

A growing stream of potential clients

By Martin M. Shenkman

40/ Charge It

Ethical and professional concerns when accepting credit card payments

By Nat Wasserstein

44/ Blurred Lines

Navigating obligations regarding extraprofessional relationships

By Jason J. Smith & Kelly A. McGowan

FEATURES

49/ Directed Trusts: Panacea or Plague?

Proper drafting clarifies responsibilities

By Todd A. Flubacher

56/ Maximizing Tax Benefits With Real Estate Partnerships

A solution using freeze structures

By Scott M. Sambur & Nordin M. Farez

#BXBSSP *****AUTO**5-DIGIT 07024
#TE0231981# DECL5 REG
FEB TRUST FEB15 0032
#82 #11863
MARTIN M. SHENKMAN
MARTIN M. SHENKMAN PC
1512 PALISADE AVE APT 10N
FORT LEE NJ 07024-5356