CLIENT UPDATE *and wealth advisor*

WINTER 2019

KEMPE

Law | Estates | Tax | Wealth

Offices in Jupiter, Stuart & Vero Beach

IN THIS ISSUE

WEALTH MANAGEMENT

When Will It All End ____ 2
How We View Client Portfolios Using Morningstar ____ 5
Slowbalisation ____ 5
What Wealth Management Should Look Like ____ 7
Passive Index Funds ____ 9
Wealth Monitoring Services ____ 9

ESTATE PLANNING

Making (Keeping) Florida Home ____ 1
Homestead: Benefits and Burdens ____ 1
Designing Trusts ____ 1
Multi-Generation Representation ____ 8

TAX PLANNING

Integration of IRAs with Trusts ____ 1
Avoiding the Passage of Capital Gains to Heirs ____ 3
IRS Fast Tracked Regulations Under 199A ____ 5
7520 Rate History ____ 6
Where Does Your Trust Reside ____ 7
Family Offices Go Mainstream ____ 8
2019 Estate and Gift Tax Exemptions ____ 14
Simplifying Code Section 199A ____ 15
Code Section 199A Flow Chart ____ 15
Code Section 199A Examples ____ 15

MISCELLANEOUS

Helping our Clients Avoid Anxiety with Vigor ____ 4
Health Management and Reporting ____ 4
Foreign Bank Accounts and Entities ____ 7
Sector Performances ____ 11
Denise Alpert, CPA Joins Firm ____ 11
Confusion Persists Over Advance Directives ____ 13
Advance Directives in Estate Planning ____ 13
Save Thousands on Your Next Real Estate Transaction ____ 16

The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you select an attorney, ask them to send you free written information about their qualifications and experience.

MAKING (KEEPING) FLORIDA HOME

- DOMICILE AND RESIDENT STATUS -

Establishing resident status in Florida is not a difficult task. You simply have to intend to be a "permanent resident" of Florida and own or occupy a residence in Florida. More difficult is abandoning the former principal residence and domiciliary status within a former jurisdiction. (Domicile is your home or state where your principal residence is located.) Otherwise, the former state may claim tax deficiencies based on your domicile status.

Continued on page 12

HOMESTEAD: BENEFITS AND BURDENS

- UNDERSTANDING THE THREE FORMS OF HOMESTEAD -

A substantial benefit associated with being or becoming a Florida domiciliary is entitlement to homestead status. There are also possible detriments, burdens, and restrictions from that status. When referring to the benefits of homestead, most people are referring to the Florida property tax exemptions, but homestead status also provides creditor protection, whereby the home is exempt from attachment by a judgment creditor. But, homestead status also restricts devise of the property if the owner is married or has minor children at time of death and transfer during life if the spouse does not join in the

Continued on page 14

INTEGRATION OF IRAS WITH TRUSTS

- IT'S IMPORTANT AND IRA CUSTODIANS REMAIN CONFUSED -

Since Mr. Kempe's Florida Bar article in 1993, titled *Designating Trusts as Beneficiaries of Retirement Plans*, the Firm has had to explain how and why this is so important to 100s if not 1000s of financial and investment advisors. Recent court decisions simply place an exclamation point on the importance! For some individuals, retirement accounts constitute a large portion of their wealth. They can also serve to form a large portion of the wealth of heirs, including spouses, children, and grandchildren. Continued deferral of retirement funds is often a goal, over younger lives. However,

Continued on page 3

DESIGNING TRUSTS

- CONTROL, PROTECTION, TAX EXEMPT STATUS -

Trust design has been evolving since the 12th Century from the time of the Crusades under the jurisdiction of the King of England. When a landowner left England to fight in the Crusades, he conveyed ownership of his lands in his absence to another to manage the estate and pay and receive feudal dues, on the understanding that the ownership would be conveyed back on his return. However, Crusaders often encountered

Continued on page 6

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When Will It All End?

- Politics Increases Risk and Worry -

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The answer is apparently it won't, and coping with change and worry may never end until your last day. Life goes on, and so does politics and what it creates, with politics being more polarized than I can remember at my new age of 62. Nevertheless, we must manage risk and the Firm has recently expanded departments to confront change and to help our client's and their families avoid worry. Our estate planning, estate and trust administration, tax planning and compliance, and wealth management departments have all expanded with new staff. As a result we have had to acquire new space, which is adjacent to our main office in Jupiter.

The November 2018 midterm elections did not make estate and tax planning any easier, especially on the back of Trump's Tax Cuts and Job's Act of 2017. Socialist voices rose, with freshman Rep. Alexandria Ocasio-Cortez (D-NY) advocating a 70% marginal tax on income above $10 million. Berkeley professors of economics Gabriel Zucman and Emmanuel Saez are also advocating a wealth tax, with a 1% recurring tax on wealth over $32.2 million starting in 2020, raising $1.26 trillion over a 10 year budget window-a decade. This narrative became a hot topic in global news and at the Davos World Economic Forum, where billionaire Michael Dell suggested his private foundation would do better for society than the government would using those dollars. However, MIT professor Erik Brynjolfsson, who was on the panel with Dell, said a 70% income tax rate worked well in the U.S. after WWII.

The future is unknown. All the more reason we encourage clients to make wealth exempt from the estate and gift tax systems at the earliest point possible. We have confronted so called "fiscal cliffs" in the past, with the first occurring January 1, 2013. In late February 2012, Ben Bernanke, chairman of the U.S. Federal Reserve, popularized the term "fiscal cliff" for the upcoming reduction in the deficit. Before the House Financial Services Committee he described that "a massive fiscal cliff of large spending cuts and tax increases" would take place on January 1, 2013. In reaction, it is estimated that trillions of dollars of family wealth were transferred by senior family members to avoid the cliff by using their exemption before it was reduced. Under current law, our next fiscal cliff will occur on January 1, 2026, unless our government sooner modifies existing law. That could occur as early as 2021, after the 2020 elections. Under the current Democratic proposals, should the Democratic party control the Congress and Presidency the current $11.4 million estate, gift, and generation skipping tax exemptions would be cut in half.

Anything seems possible in our current political environment. President Obama and Hillary Clinton proposed lowering the estate, gift, and generation skipping tax exemptions to $3.5 million, and eliminating the increase in cost basis to date of death value. That would push these taxes to some of the highest in the World. Furthermore, they advocated for elimination of many commonly used estate tax reduction techniques. Family partnerships, qualified personal residence trusts, and grantor retained annuity trusts were all proposed to be eliminated, as vehicles commonly used to legally avoid full payment of wealth transfer taxes but only used by the wealthy.

Ignorance is bliss, for a reason, until it becomes reality. After we die, we may not care. But if the reality hits us beforehand, we may. We worry and care to help our clients and their families, so perhaps they can worry less and care more, from a well-positioned level of strength. Trust in trusts and proper planning- as you will see in this Client Update, they have been with us for a reason for nine centuries!

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Avoiding the Passage of Capital Gain to Heirs
- Exempt Wealth First, Reduce Gains Later -

As discussed throughout this Client Update, our current polarized political system and fiscal state encourages the use of tax exemptions and sophisticated planning measures to exempt wealth from the wealth transfer tax system. Doing so often causes wealth to grow outside of an individual's estate in such a way that on death there is no step-up in costs basis (elimination of unrealized capital gain). Assets included in the taxable estate of a decedent generally secure a cost basis increase, eliminating capital gains, but assets gifted or shifted to exempt form during life often do not. Since the 2012 fiscal cliff (see inside cover), a tremendous amount of wealth has been gifted and shifted, meaning a tremendous amount of capital gain has been shifted too!

Much of our time in recent years has focused on contingent and actual shifts back from exempt form to senior family members in order to avoid not only the estate tax on their deaths, but avoidance of heirs receiving unrealized capital gains. There are a variety of ways of achieving these mutual objectives, but caution and proper counsel is required to avoid inherent traps for the unwary and from unforeseen political change. Shifting assets back for this purpose does not necessarily mean assets are actually transferred.

Where the next generation is wealthier than the most senior generation living in a family, tax basis planning can also involve borrowing the senior family member estate, gift, and generation skipping tax exemptions. Doing so often involves use of trusts that grant senior family members power that cause estate inclusion, but in such a way that those powers can be toggled on and off should the level of wealth and exemptions change. Optimum planning would involve causing taxable junior family member wealth to become sheltered by the exemptions of the less wealthy senior family member(s) and using those exemptions to avoid them becoming taxable in the next generations, virtually indefinitely exempting wealth while providing control as the wealthier junior family dictates.

In general, for those projected to have taxable estates, the bias is to effectively use estate, gift, and generation skipping tax exemptions to shelter or exempt wealth from the wealth transfer tax system. Those exemptions shelter wealth from taxation (currently 40%) for each dollar over the exemption threshold- currently $11.4 million (sunsetting to $5 million in 2026)- at a fixed point in time that we can't control – death! On the other hand, the capital gain tax inherent in wealth shifting out of a taxable estate is realized on a possible arbitrary or flexible decision to sell and the tax is based not on the full value, but on the unrealized capital gain from original cost basis. Nevertheless, our job is to avoid both taxes whenever possible and as time and opportunity permits.

Integration of IRAs With Trusts
(continued from cover)

loss of such wealth as a result of poor estate planning can result in complete loss. Failure to protect retirement funds from reach in a divorce or from a judgment creditor or from the estate tax system often makes income tax deferral a secondary consideration, but all can often be accomplished.

Integrating retirement accounts with a trust means naming appropriate and optimum beneficiaries. Doing so requires consideration of not only income taxes, but current and anticipated estate tax exposures as well as protection of the funds once inherited from unfriendly hands (in a divorce, a law suit, etc). The recent Supreme Court case of Clark v. Rameker (2014) and its extension in In Re Lerbakken (2018), In Re Todd (2018), and In Re Hamm (2018) place in considerable doubt whether retirement funds received by heirs are a protected class of asset. Whether inherited retirement funds are protected will often depend on state law, which is not uniform. Florida law was changed in 2011 to exempt inherited IRAs by Florida resident beneficiaries from reach and attachment. However, this law does not apply to beneficiaries of IRAs of Florida residents if paid to a nonresident beneficiary; e.g., a child living outside of Florida. In any event, having the benefits paid to a properly structured trust permits the retirement funds to be exempt while also permitting payment over the lifetime of the designated beneficiary. Under federal tax law, the "designated beneficiary" is not necessarily the beneficiary at the time of death but, for example, the oldest trust beneficiary as of September 30 of the year after the owner's death. The period of time through September 30 permits what is commonly referred to as "post mortem tax planning," which can be used to create optimum results with proper advance planning.

See Integration of IRAs on page 13

You Are In Control

Thoughtful drafting of advance health care directives, maintaining their relevance as your health status changes, and communication of your desires to loved ones and physicians has proven to be the most secure method for achieving a "good life" as time fades away!

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How We Help Our Clients Avoid Anxiety and Age With Vigor

- Be The Younger Generation -

We are often advocating the health care needs of our clients, not only with doctors and hospitals, but health care providers. Furthermore, not only our clients worry, but so do their children who often live North and who worry about their parents in Florida. It is not uncommon for us to report on the health and living conditions of parents to their children. As our clients and we age, we have learned a thing or two from them and from ourselves. The first is "sitting is the new smoking." Our culture has become more and more sedentary between driving to everything from the grocery store, to work, to golfing. And then when we get home to the internet, TV and Netflix! One approach is to begin to revisit old habits. Perhaps the first is to dance to the radio at least three times a day: morning, noon and night. Just one song, but everyday, three times.

Walking 10,000 steps a day to someone in the 1950's was commonplace. Today it needs to be scheduled and planned. Start your day with a brisk walk, end your daylight hours with a brisk walk. Park farther away from the store entrance and forego valet at restaurants and the club. This effort is well worth it: health reports claim extended sitting to be the new health risk. You may not reach 10,000 steps, but you will increase your steps and feel more energized. We are often encouraging our clients to reach their goals.

The second major issue that concerns clients is an inability to lose weight. Again blame it on a change in culture. Nutrition merely for the sake of survival is over. Food: purchase, preparation,and dining reflect ends and goals in and of themselves. When not actively doing any of those, many are consumed with watching the preparation and discussion of such on TV shows and the internet. Food preparation has become entertainment with caloric consequences. Becoming and being recognized as a "foodie" has become a status symbol. No wonder we cannot control weight.

The third health issue clients report to us is difficulty with getting a good night's sleep. Interestingly, the above three concerns are often relayed to us by retired clients who not only worked hard all their lives but many have achieved outstanding financial success. Retirement was supposed to be the reward for their effort…travel, golf, time for good restaurants with friends and family…the good life. It is often not turning out as anticipated. All of a sudden there are health problems (statistically within 18 months of retirement), loss of energy, reported anxiety, and depression. Sometimes simple goals are best and we are commonly in a role to assist them or counsel health care providers of these issues. A good night's sleep can go a long way in a change of life. Not a medicated one, rather an earned one.

Wouldn't it be great if we all could sit down and have a chat with our respective grandmothers? We know what they would probably say, so we will try to capture their particular wisdom:

Everything in moderation … including golf and wine.

Three meals a day, no skipping, no gorging.

Don't drive the car unless you must. (walk the course!)

No longer have to work? Good for you, now volunteer.

Learn something, share something every day including a laugh.

Pray or meditate or at least acknowledge some force greater than you every day.

Expect goodness.

Turn off the lights and the TV before you go to sleep.

Do at least one thing a day for someone else.

Happy New Year to each and every one of you!

Slowbalisation -The Current World and Investment –

The pendulum associated with globalization has swung around the World and it is affecting trade and markets, including the securities markets. The so called golden age of globalization has slowed and in the Trump era hasn't come to a halt, but may have reached a snail's pace. Investors need to understand the consequences, and a recent article on Slowbalisation in The Economist suggests possible results.

It is suggested that deeper links and trade will occur in regional blocs, as opposed to globally. Supply chains will source closer to home. For example, Asian firms just recently made more foreign sales within Asia than in America. The article argues that emerging markets were able to close the standard of living gap, but trading their way to richer societies may be slower and more difficult. The Economist argues that China will grow stronger in its neighborhood, than it would have through globalization where it could be moderated and contained. All of this impacts markets and the outcome is likely greater volatility and the need for fundamental knowledge on those markets and their participants.

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IRS Fast Tracked Regulations Under 199A

- Creative Tax Incentive to Encourage Business Profit and Paying Wages -

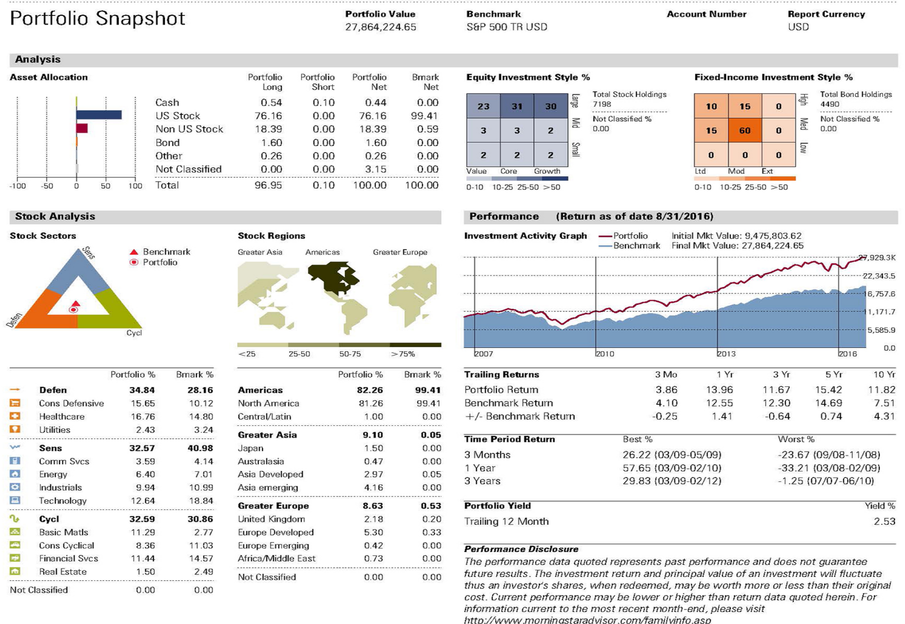
One of the key provisions of the Tax Reform Act of 2017 for small businesses, was Code Section 199A. Unlike any other tax provision that I can recall in history, it provides a deduction for profit, thus creating business oriented tax free income which provides incentives for investment and the payment of wages. It also encourages investment in real estate. On January 18, 2019, the IRS released guidance on a large number of Sec. 199A issues, including the eagerly awaited final Sec. 199A regulations (in an as-yet-unnumbered Treasury decision). The IRS also issued new proposed regulations on how to treat previously suspended losses and how to determine the deduction for taxpayers that hold interests in regulated investment companies (RICs), charitable remainder trusts (CRTs), and split-interest trusts. The guidance also includes a notice that provides a safe-harbor rule for rental real estate businesses and a revenue procedure on calculating W-2 wages.

Sec. 199A allows taxpayers to deduct up to 20% of qualified business income (QBI) from a domestic business operated as a sole proprietorship or through a partnership, S corporation, trust, or estate. The Sec. 199A deduction can be taken by individuals and by some estates and trusts. The deduction is not available for wage income or for business income earned through a C corporation.

The deduction is generally available to taxpayers whose 2018 taxable incomes fall below $315,000 for joint returns and $157,500 for other taxpayers. The deduction is generally equal to the lesser of 20% of the taxpayer's qualified business income plus 20% of qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership (PTP) income, or 20% of taxable income minus net capital gains. Deductions for taxpayers above the $157,500/$315,000 thresholds may be limited, and the application of those limits is described in the regulations. On page 15 of this Client Update, we provide further information and some examples of how the rules work.

How We View Client Portfolios in Morningstar to Assess Risk

- Just One Lense That We Use To See -



John Doe : Account Aggregate

Portfolio Snapshot

Portfolio Value	Benchmark	Account Number	Report Currency
27,864,224.65	S&P 500 TR USD		USD

Analysis

Asset Allocation

	Portfolio Long	Portfolio Short	Portfolio Net	Bmark Net
Cash	0.54	0.10	0.44	0.00
US Stock	76.16	0.00	76.16	99.41
Non US Stock	18.39	0.00	18.39	0.59
Bond	1.60	0.00	1.60	0.00
Other	0.26	0.00	0.26	0.00
Not Classified	0.00	0.00	3.15	0.00
Total	96.95	0.10	100.00	100.00

Equity Investment Style %

	Value	Core	Growth
Large	23	31	30
Mid	3	3	2
Small	2	2	2

Total Stock Holdings 7198
Not Classified % 0.00

Fixed-Income Investment Style %

	Ltd	Mod	Ext
High	10	15	0
Med	15	60	0
Low	0	0	0

Total Bond Holdings 4490
Not Classified % 0.00

Stock Analysis

	Portfolio %	Bmark %
Defen	**34.84**	**28.16**
Cons Defensive	15.65	10.12
Healthcare	16.76	14.80
Utilities	2.43	3.24
Sens	**32.57**	**40.98**
Comm Svcs	3.59	4.14
Energy	6.40	7.01
Industrials	9.94	10.99
Technology	12.64	18.84
Cycl	**32.59**	**30.86**
Basic Matls	11.29	2.77
Cons Cyclical	8.36	11.03
Financial Svcs	11.44	14.57
Real Estate	1.50	2.49
Not Classified	0.00	0.00

	Portfolio %	Bmark %
Americas	**82.26**	**99.41**
North America	81.26	99.41
Central/Latin	1.00	0.00
Greater Asia	**9.10**	**0.05**
Japan	1.50	0.00
Australasia	0.47	0.00
Asia Developed	2.97	0.05
Asia emerging	4.16	0.00
Greater Europe	**8.63**	**0.53**
United Kingdom	2.18	0.20
Europe Developed	5.30	0.33
Europe Emerging	0.42	0.00
Africa/Middle East	0.73	0.00
Not Classified	0.00	0.00

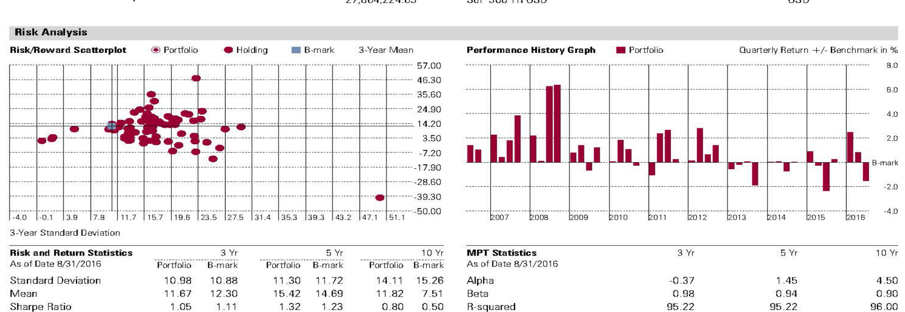
Performance (Return as of date 8/31/2016)

Trailing Returns	3 Mo	1 Yr	3 Yr	5 Yr	10 Yr
Portfolio Return	3.86	13.96	11.67	15.42	11.82
Benchmark Return	4.10	12.55	12.30	14.69	7.51
+/- Benchmark Return	-0.25	1.41	-0.64	0.74	4.31

Time Period Return	Best %	Worst %
3 Months	26.22 (03/09-05/09)	-23.67 (09/08-11/08)
1 Year	57.65 (03/09-02/10)	-33.21 (03/08-02/09)
3 Years	29.83 (03/09-02/12)	-1.25 (07/07-06/10)

Portfolio Yield	Yield %
Trailing 12 Month	2.53

Performance Disclosure
The performance data quoted represents past performance and does not guarantee future results. The investment return and principal value of an investment will fluctuate thus an investor's shares, when redeemed, may be worth more or less than their original cost. Current performance may be lower or higher than return data quoted herein. For information current to the most recent month-end, please visit http://www.morningstaradvisor.com/familyinfo.asp



Portfolio Snapshot

Portfolio Value	Benchmark	Account Number	Report Currency
27,864,224.65	S&P 500 TR USD		USD

Risk Analysis

Risk and Return Statistics As of Date 8/31/2016	3 Yr Portfolio	3 Yr B-mark	5 Yr Portfolio	5 Yr B-mark	10 Yr Portfolio	10 Yr B-mark
Standard Deviation	10.98	10.88	11.30	11.72	14.11	15.26
Mean	11.67	12.30	15.42	14.69	11.82	7.51
Sharpe Ratio	1.05	1.11	1.32	1.23	0.80	0.50

MPT Statistics As of Date 8/31/2016	3 Yr	5 Yr	10 Yr
Alpha	-0.37	1.45	4.50
Beta	0.98	0.94	0.90
R-squared	95.22	95.22	96.00

7520 Rate History

	2019	2018	2017	2016	2015
Jan	3.4	2.6	2.4	2.2	2.2
Feb	3.2	2.8	2.6	2.2	2.0
Mar		3.0	2.4	1.8	1.8
Apr		3.2	2.6	1.8	2.0
May		3.2	2.4	1.8	1.8
June		3.4	2.4	1.8	2.0
July		3.4	2.2	1.8	2.2
Aug		3.4	2.4	1.4	2.2
Sept		3.4	2.4	1.4	2.2
Oct		3.4	2.2	1.6	2.0
Nov		3.6	2.4	1.6	2.0
Dec		3.6	2.6	1.8	2.0

Use of the 7520 rate is required in many estate tax planning strategies. Generally, the lower the rate the better. Those that acted in the second half of 2016, and who act before rates significantly rise further, have or will benefit.

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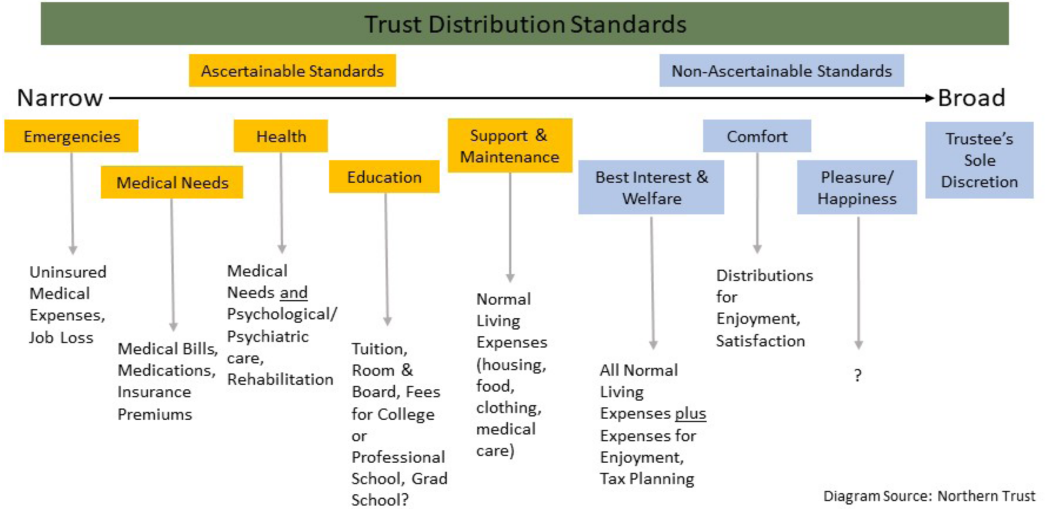
Designing Trusts

(continued from cover)

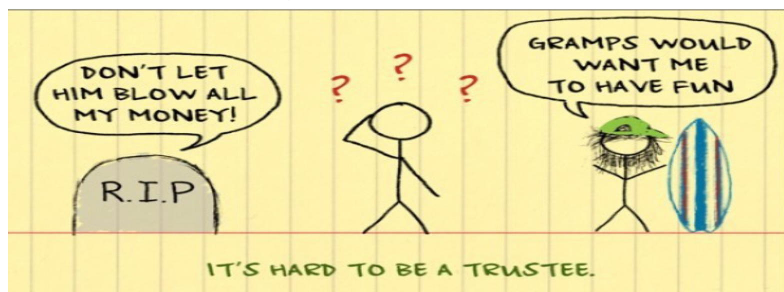


refusal to hand over the property upon their return. Courts of equity developed and held the discretion to declare that the real owner "in equity" (i.e., in all fairness) was another person- today, a "beneficiary." This form of trust ownership evolved to those Crusaders avoiding taxes in England and in 1536 the Statute of Uses was passed by King Henry III as a way to rectify his financial problems by simplifying the law of uses, which moved land outside of the reigns of royal tax revenue jurisdiction, traditionally gathered through seisin. The new laws invalidated all uses that did not impose an active duty on trustees, with the beneficiaries of the use being held as the legal owners of the land, meaning they had to pay tax. These days we can call this system the equivalent of our property tax and estate tax systems.

Trust design to protect property and avoid taxes has thus been evolving for nine centuries. However, effective design essentially breaks down into answering several basic questions: (1) who should control the property and decisions; (2) who should manage the property and what limitations, if any, should be imposed; (3) what standards for use of the trust property does the creator (trust "settlor") desire; and (4) how is protection of the property from everyday life risks of beneficiaries (divorce, in-law rights at death, and third party liabilities) and state and federal tax systems impacted by the answers to those first three questions.

There are three parties to a trust: the settlor, the trustee, and the beneficiary or beneficiaries. With a common living revocable trust, the settlor is all three- settlor, trustee, and beneficiary, and is the person who holds absolute control of the property and all decisions. If he or she becomes incapacitated, the settlor names one or more persons as his or her successor while answering the first three questions in the previous paragraph. After death the same questions are asked, with most educated settlors transferring wealth in trust for heirs. Living revocable trusts are primarily used to organize an estate and in order to avoid guardianship and probate.

Most individuals desire wealth to be controlled by family members. Most individuals also desire wealth to be protected from threats and unfriendly hands, including the tax system. Proper design and use of trusts commonly accomplishes these objectives. Where both are desired, heirs are commonly their own trustees and hold the power to make distributions, subject to an "ascertainable standard." See Chart on top of page. The art in trust design and drafting is in the pen, and the settlor holds the power to design the trust as he or she wishes, subject to nine centuries of evolving trust law.



Where Does Your Trust Reside

- Using Florida Law and Situs -

As Florida residents, you have the ability to site trusts in Florida and to use its laws. Properly structured, a Florida sited trust may avoid state income taxes in states where your children and grandchildren reside. If you are not a Florida resident, you may also have the ability to choose Florida, for tax and other reasons. Doing so may offer you and your beneficiaries tax advantages, such as avoidance of state income tax where you or other beneficiaries reside. The degree to which any state in the United State may assert a tax on a trust that is not sited within their jurisdiction has been constrained by several recent state supreme court cases and the Supreme Court of the United States has granted certiorari to determine the extent to which a foreign state can constitutionally tax a trust sited in another jurisdiction under the Due Process Clause. The Court in Kaestner 1992 Family Trust v. North Carolina phrased the question this way:

QUESTION PRESENTED

More than $120 billion of our nation's income flows through trusts. That income is a vital source of tax revenue for the states. Eleven states, including North Carolina, tax trust income when a trust's beneficiaries are state residents.

For the last ninety years, however, this Court has been silent on whether these taxes comport with due process. The Court's last words on the subject come from the Pennoyer era of due-process analysis. Pennoyer v. Neff, 95 U.S. 714 (1878). As a result, lower courts and state taxing authorities have been searching in vain for modern guidance.

There is now a direct split spanning nine states. Four state courts have held that the Due Process Clause allows states to tax trusts based on trust beneficiaries' in-state residency. Five state courts, including two state supreme courts [during 2018], have concluded that the Due Process Clause forbids these taxes.

The Due Process Clause should not have different meanings in different states—particularly when billions of dollars of state-tax revenue hang in the balance. The question presented to this Court is:

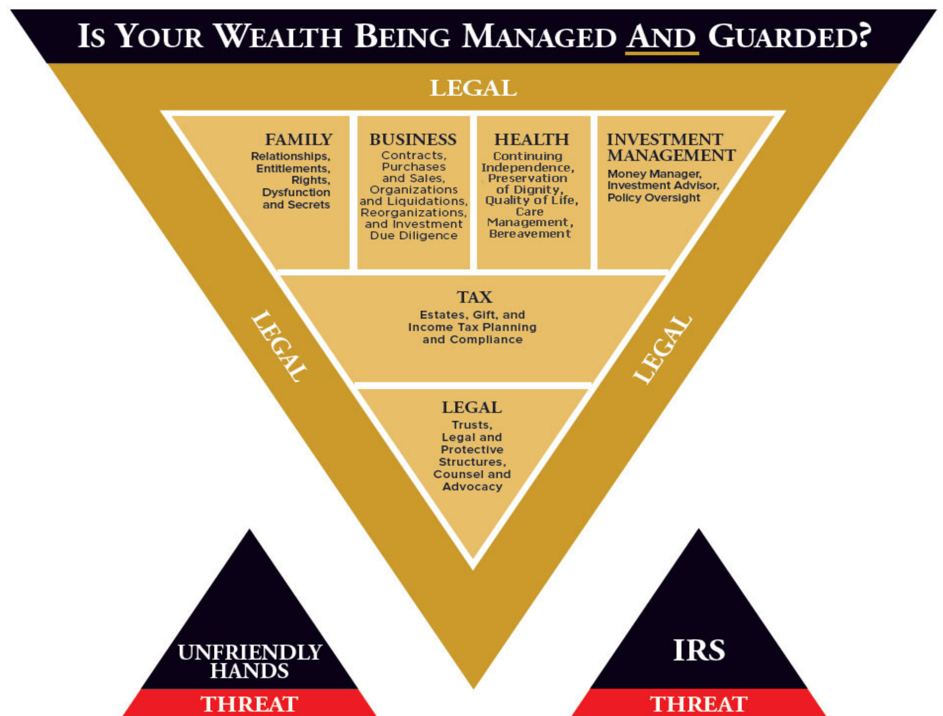
Does the Due Process Clause prohibit states from taxing trusts based on trust beneficiaries' in-state residency?

Foreign Bank Accounts and Entities
- The IRS and Courts Get Meaner! -

U.S. taxpayers are finding that being careless isn't the same as innocent when failing to comply with FBAR. Being careless will expose you to serious penalty. In several recent cases, the courts have made a point of stating that when you sign tax returns saying you are signing them under penalty of perjury and that they are accurate, if you omit to disclose foreign accounts you are willfully violating the law, which requires that you report foreign bank accounts with balances exceeding $10,000. The maximum penalty for a willful violation is the greater of $100,000 or 50% of the account balance. Govern yourself accordingly!

What Wealth Management Should Look Like But Popularly Doesn't!

- Don't Confuse Investment Management with Wealth Management -



Melissa D. Lazarchick, Esq.

Probate Litigation
Estate Administration
Guardianship Proceedings
Fiduciary Services

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Family Offices Go Mainstream in Light of Tax Reform

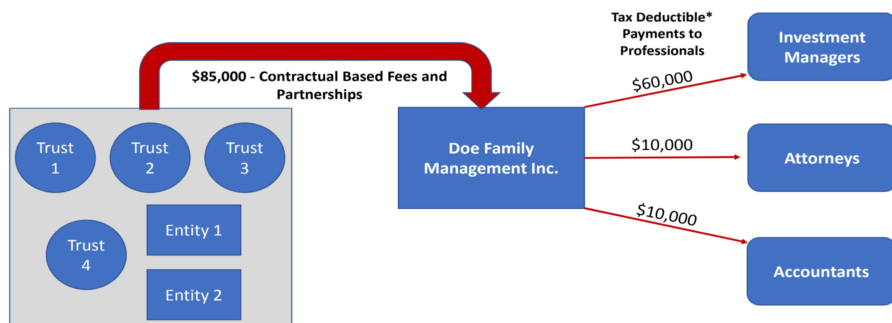
- Kempe Multifamily Office Resources Extend Services to More Users -

Our multifamily office practice has for many years extended the services used by the very wealthy to those of more moderate wealth - e.g., $10 million dollars under management or greater. We are now available to assist families create their own office, whether by using our service platforms and models or in meeting the state and federal requirements associated with forming their own family office. Law firms are uniquely suited to assist families with the creation of family offices and in overseeing their legal, tax, and financial circumstances. This is particularly true of law firms staffed with lawyers specialized in tax law and estate planning, supported by teams of CPAs, paralegals, analysts, and support personnel dedicated to servicing the unique needs of families. The Tax Cuts and Jobs Act of 2017 ("2017 Tax Reform Act") has increased the demand for family offices, that are scaled to serve a wide range of family needs. This is the result of the elimination of the deductibility of certain investment and property management type fees that are paid directly by family members or trusts. Properly structuring and organizing a family office, often affiliated with family partnerships, can simulate and preserve the deductibility of costs that are now non-deductible. The result is a decrease in net cost for these services by potentially in excess of 50%. Once a family office is properly modeled, families are routinely extending their knowledge and services to others within the family tree and to non-family members, often for profit.

The 2017 Tax Reform Act has eliminated the deductibility under IRC § 212 of a variety of investment and property management type fees for trusts and individuals through 2025. At that time, these changes to § 212 sunset and, unless extended, revert to prior law. The deduction of these fees can be viewed as reducing their cost by the taxpayer's highest marginal tax rate, which for individuals and trusts can exceed 50% (state and federal). An example of the savings using $10 million dollars under management and a management cost of 60 basis points (.60%) can be seen in the illustration below. As miscellaneous itemized deductions, these fees were previously subject to a variety of limitations, including the 2% itemized deduction limitation, the "Pease" limitation (3% reduction up to 80% phaseout), and the alternative minimum tax. The likelihood is that should the sunset actually occur these limitations would remain. Properly structuring a family office to deduct investment and property management fees converts the expense from deductible under IRC § 212 to a trade or business expenses deductible under IRC § 162. This reallocation of expense to a trade or business expense, if done properly, would avoid not only the change under the 2017 Tax Reform Act but also the phase-out and other limitations under prior law. The method of conversion of itemized expenses into trade or business expenses was recently approved by the Tax Court in Lender Management, LLC v. Commissioner of Internal Revenue, T. C. Memo 2017-246.

Family offices historically evolve out of a family's need for routine services or expertise. As a family's wealth spreads

See Family Offices on page 10



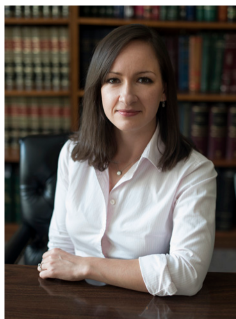
Multi-Generational Representation - Valuable and Appreciated -

The vast majority of our clients come to us either by word of mouth or referral from existing clients. The highest compliment we receive is a referral from a client.

Increasingly, clients are asking us to represent their children and grandchildren. We are both honored and gratified with such a request. Many estate plans we develop involve favorable Florida laws and can benefit junior family members regardless of geographic location. Consequently, we are often involved with dovetailing estate plans of junior family members living up North, with the estate plans of senior family members domiciled in Florida. We are also sometimes asked to serve as administrative trustee, in order to avoid northern state income taxes.

This continuity of representation can be particularly helpful to younger generations when anticipating family transition as a result of incapacity or death of seniors. However, we understand that the next generation must exercise their own due diligence in seeking counsel. We would be happy to discuss this type of representation on a courtesy basis, and provide examples of past representations and accomplishments that may be relevant to your family's circumstances.

References are also available from those in other states.



Sonya Mochegova, J.D.
Senior Paralegal
B.S. U of M Amherst, Honors
M.A. Micro and Cell Biology, Berkeley
J.D. University of North Carolina
Estate Planning
Real Estate
Wealth Management

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Passive Index Funds
- Beware of Hidden Fees and New Risks –

Passive index investing has been the rage since scholars like Princeton's Malkiel, Dartmouth's French, Chicago's Fama, and Yale's Swensen, and investors like Warren Buffet, endorsed Vanguard's Jack Bogle's invention from 1975, as the best approach for most investors. The idea is simple: capture a market's return at the least cost possible. Since an efficient market recognizes all available information, why pay for an active manager who time has proven seldom beats that market. A recent Barron's article found that "Nearly 90% of actively managed large-cap stock funds lagged behind their benchmarks over the past 10 years." Cost became the issue in competing with market performance, since it was right there to capture and in recent years cost has come-down to levels approaching zero, but with caveats.

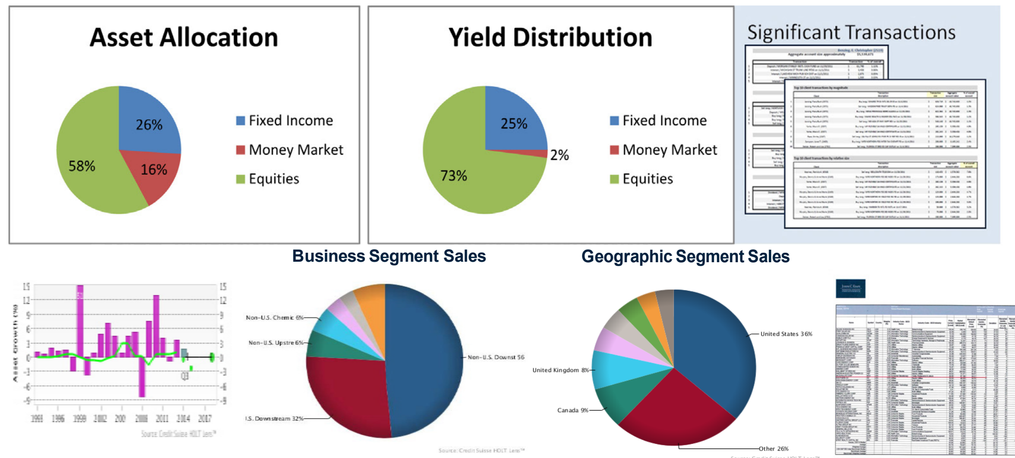
Strange things are happening in the passive industry. New risks are occurring and rising. Warning signs are signaling, and a recent one came from the inventor just before his death. Jack Bogle died January 16, 2019, and just prior to his death he warned of the concentration of too much corporate control in too few hands. Liquidity risks also exist.

(continued in margin page 10)

John L. Avery Jr., Esquire
Trial and Litigation Attorney
Appellate Law
Real Estate and Business Litigation

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Wealth Monitoring Services
- Our Proprietary Monthly Client Snapshot -



KEMPE
Law | Estates | Tax | Wealth

Client Snapshot

Client Name:	Jane Doe
Client #:	999.281
Date:	01/22/2019
Reporting Period:	December 2018
Legal Assistant:	Sonya Mochegova
CPA:	Chris G. Bourdeau
Advent Analyst:	Aaron Flood
Lawyer:	Joseph C. Kempe, Esq

	CURRENT
Total Family Wealth:	$22,221,000
Tax Exempt Trusts & Entities	13,936,000
Husband's QTIP Trust Size:	4,683,000
Wife Estate Size:	3,602,000
Joint Estate Size:	-
Current Estate Tax:	33,000
Percent of Current Estate:	0.15%
*Projected Gross Estate:	25,158,000
*Projected Estate Tax:	113,000
Percent of Projected Estate:	0.45%
Estate Tax Bracket:	40%
IRA Portfolio:	1,621,000
*Total Family Partnership	10,802,000

•Based upon a 3% return, net of expenses over life expectancy and no valuation discounts.
•The current Estate Tax estimate assumes a $11,180,000 exemption and 40% tax through 2025, reverting to the 2017 exemption of $5.49M indexed for inflation in later years. We are assuming an inflation rate of 2.5%.

YTD Investment Performance

Portfolio:	**6.25%**
S&P 500:	(4.38)%
Barclays Agg:	0.01%

Performance Since 2011

Portfolio:	**13.47%**
S&P 500:	12.70%
Barclays Agg:	2.10%

Current Year Realized Gains and Estimated Tax Status

2018 Gains/(Losses):	$46,360
Protected Tax Status:	Yes

(Performance and Realized Gains are through December 31, 2018 on monitored investment accounts. The IRR for periods over a year are annualized as per GIPS recommendation.)

Income for the Period Ending 2017

Total Income:	818,990
Tax Free Income:	129,895
Adjusted Gross Income:	689,095
Taxable Income:	622,347
Marginal Tax Bracket:	33.0%

Gift & GST Exemption Used

Husband Gift:	N/A
Wife Gift:	2,976,669
Husband GST:	N/A
Wife GST:	638,560

Estate Planning Developments

Reviewed & Current	YES	NO
Will:	X	
Trust:	X	
DPOA:	X	
HCP:	X	
Living Will:	X	
IRA Integration:	X	
Recommendations:	Review Bequests /Accelerate Gifting/ Basis Planning	
Document Code:	Single 80/20	

Miscellaneous

Promissory Notes Current:	Yes	
QPRT Termination Dates:	2021	
Crummey notices verified:	N/A	
Family Partnership Records Current?	Yes	
RBD Date: H/W	N/A	4/1/99
RBD Compliance:	N/A	Yes
RMD Compliance:	2018 Complete	

Legal Developments

You have settled Florida trusts, which perpetuate for the benefit of children and grandchildren who live or will live in other states. These trusts can often be used to avoid income taxes imposed by some of those other states. Various states impose taxes on trusts and their beneficiaries in many ways and the courts have been active in addressing when. For the first time since 1878, the Supreme Court is addressing the topic which will hopefully settle that a Florida trust, administered in Florida, can avoid state level tax on the trust and beneficiaries residing in taxing states, even if that beneficiary controls the trust and how it is invested. The Kaestner case was accepted for review on January 11, 2019.

Economic Developments

Real GDP Growth

Percent; Actual | Projected; 2000–2028

Source: CBO.gov

Observations

There is a lot of uncertainty out there, given weaker growth forecasts around the world; political unrest; a messy Brexit; and concerns with emerging markets, including China. This on the back of a current government shutdown. All of this is causing a decrease in GDP forecasts for 2019, by some to as low as 2%, which has caused interest rates to drop from a 2018 high of 3.232% to a recent low of 2.716%. All of this causing the Fed to take its foot off the brake in raising rates. On the other hand, unemployment is at record lows; China trade negotiations are going well; and demand for Treasuries is vacillating with the news. All that said, the state of our economy is positive but the markets aren't sure and it has been increasing volatility- with a recent rise driven by the Fed's more dovish tone.

Economic Statistics

	Reported	SGS
Consumer inflation	1.91%	9.63%
Unemployment	3.86%	21.40%
GDP	3.00%	-1.23%

Source: BLS, ShadowGovernmentStatistics

Benchmark Returns YTD

S&P 500 TR; Dow Jones TR; Russell 2000; MSCI EAFE; MSCI Emerging

Source: Yahoo Finance. Total Returns. Data through 01/18/19

Passive Index Funds - Beware of Hidden Fees and New Risks – (continued)

This year (2019) index funds are predicted to own for the first time more than 50% of the U.S. stock market, with the big three (Vanguard, Blackrock, and State Street) holding 81% of those assets. Prof. Coates of Harvard warns that we are slipping to a point where the voting power will be controlled by a small group of individuals.

Liquidity risk is also a concern that is raising its head more frequently, particularly with the shift from active mutual fund investment to passive indexes. In November last year, $50 billion of active fund redemptions occurred but with an equivalent amount contributed to index funds. “Active fund investors have a history of panicking when things get tough,” says Eric Balchunas, senior analyst with Bloomberg Intelligence. James Rickards, former general counsel to failed Long Term Capital Management, warns of the age old problem in economics- “free riding.” As Rickards points out, “The active investor contributes to markets while trying to make money in them. A passive investor is a parasite. The passive investor simply buys an index fund, sits back and enjoys the show. Since markets mostly go up, the passive investor mostly makes money but contributes nothing to price discovery.” “If everybody indexed, the only word you could use is chaos, catastrophe. The markets

(continued in margin page 12)

Dawn Chadwick, LA
Litigation / Health Care

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

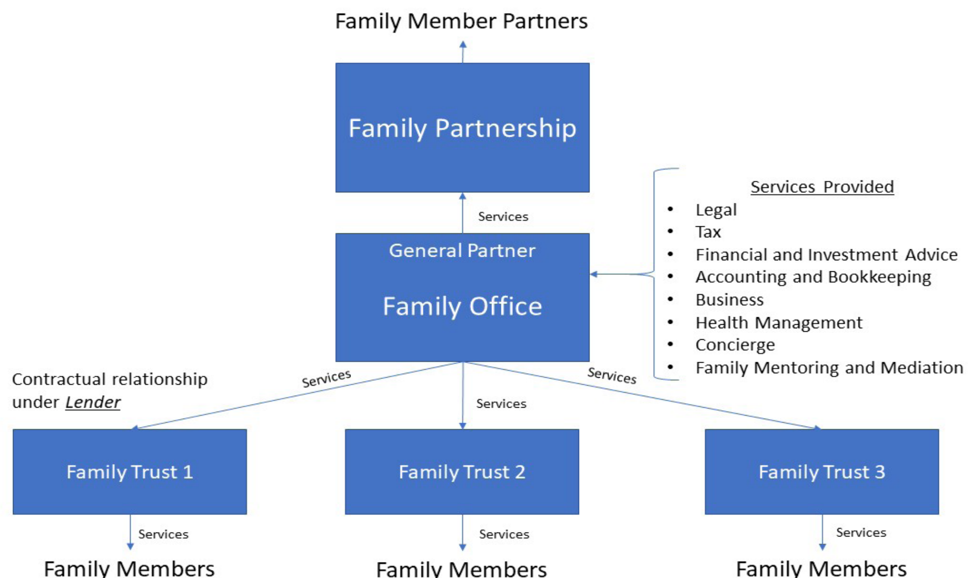
Family Offices

(continued from page 8)

to junior family members, economies of scale can be created in serving the common needs of family members in a uniform, consistent, and trustworthy manner. Asset protection and estate and tax planning are essential for adult family members. Financial planning, investment advice, business planning, accounting, and bookkeeping are generally desired. Legal and other professional services, such as trust counsel, health care advocacy, mentoring junior family members, and business and real estate advice are also often useful or required. Once a senior family member has undertaken these processes and acquired resulting knowledge and experience, that knowledge and experience has value that can be shared with others. This includes due diligence on service providers and others that may form the basis of the family office and the services it may offer. A common structure can be illustrated by the diagram shown below.

Families demand trust of and from their service providers and they prefer an organization where advice is not tied to selling financial products. In a single family office setting, these providers are often employees with a duty to one employer- the family. The family office may contract with lawyers, investment advisors, and others, but it coordinates and seeks to deliver the necessary services to the family it represents. A multi-family office does the same, but loyalty, duty, and time can be diluted by being spread amongst several families and thus are tailored to meet the demands of families who do not need the fulltime services of all of the needed service providers. Here, at Kempe, we do not sell investments or any products but offer our legal services and guidance to families, their offices, and in the creation of family offices. Our sole role is to advocate and represent our clients as their lawyer, while performing tax and accounting functions that are dictated by the legal structures and needs of families. In the role of lawyer, we are often asked to oversee family wealth, money managers, and investment advisors and to negotiate their fee structures, while benchmarking their performance against their peers.

The creation and operation of family offices can be rewarding and those rewards can be shared with others. Whether fulfilling the role of a family office using the resources of Kempe or creating your own single family or multifamily office, we have experience that can help you. Legal advice on business, trust, tax, and securities laws is often required, and we stand ready to assist you and your family.



Sector Performances as of January 18, 2019

Sector	1Yr	3Yr	5Yr	
Basic Materials	-15.84	13.74	4.38	
Communication Services	1.39	10.56	7.2	
Consumer Cyclical	2.99	16.5	11.25	
Consumer Defensive	-6.07	6.47	7.72	
Energy	-14.42	8.17	-3.79	
Financial Services	-6.8	17.6	10.1	
Healthcare	4.58	12.68	11.4	
Industrials	-8.27	15.21	8.3	
Real Estate	7.22	7.61	8.39	
Technology	-1.26	22.06	15.12	
Utilities	10.59	11.52	10.96	

Source: Morningstar

We are pleased to announce that
Denise B. Alpert, CPA
has joined the Firm

Ms. Alpert joins our Tax and Wealth Management Departments from the Palm Beach Gardens firm of LKD, CPAs & Consultants, where she practiced since 2005. Prior to that time, Ms. Alpert gained considerable experience in a broad range of tax planning for individuals and businesses at the national and international firms of Deloitte and Touche and Marcum LLP, where she was a Tax Manager. She gained valuable experience with Tyco International (Sensormatic Electronics Corp) as a senior financial analyst.

Ms. Alpert holds a Master's in Business Administration (MBA), a Master's of Professional Accounting (MPA), and a Bachelor's of Science (BS), magna cum laude, from Barry University. She grew up in the Miami area and is a member of the American Institute of CPAs and the Florida Institute of Certified Public Accountants.

Our Tax Compliance and Planning Accounting Team

Mike Posten II, CPA
f/w PricewaterhouseCoopers
Tax Accountant and Wealth Management

Kyle Donham, CPA
f/w PricewaterhouseCoopers
Tax Accountant and Wealth Management

Nadia Pasicznyk, CPA
f/w Deloitte Tax LLP
Tax Accountant and Wealth Management

Benjamin Devlen, CPA
f/w WTAS LLC (Arthur Andersen) Tax Accountant and Wealth Management

Chris Bourdeau, CPA
Tax Accountant and Wealth Management

Charles R.L. White, Esq.
Civil Litigation Attorney
General Practice

<u>Joe and Tami's Kids:</u>

As many know, two years ago their oldest, Conner Ryan, became an attorney with the Firm. Their younger son, Colby Jack, is currently completing his second year of law school and intends to secure a post doctorate in tax law, following the path of his father and brother. Their youngest, Kylie Layne, an All American Lacrosse player, committed to attend Johns Hopkins and is a member of the women's lacrosse team. The biggest news is from their oldest daughter, Kirby Catherine, who was approached by Nobel Prize winning Economist, Al Roth, after her speech at Stanford, to accelerate her PhD and join him and the rest of the economics department at Stanford University, as a post doctoral scholar. She and her husband, Sam Nielsen, relocated within one month of that offer and are now living in Mountain View, California. Congratulations Kirby!

Passive Index Funds - Beware of Hidden Fees and New Risks – (continued)

would fail." - John C. Bogle. "Eventually a tipping point arrives when there are so many parasites that the elephant dies," Rickards warns. At that point, the parasites die too. Passive investing works until it doesn't! When the market goes down, passive fund managers will be forced to sell stocks in order to track the index. This selling will force the market down further and force more selling by the passive managers. This dynamic will feed on itself and accelerate the market crash. Passive investors will be looking for active investors to "step up" and buy. The problem is there won't be any active investors left or at least not enough to make a difference. "The market crash will be like a runaway train with no brakes," Rickards warns.

Exacerbating the problem is the trend for index fund fees to go to zero, even though most investors are not aware that there are classes of funds, with some fund family classes charging as much as 2.33% for a simple S&P 500 index. Where fund fees go to zero, there may be more risk. For example, index fund prospectuses at Fidelity and others provide that they may lend securities in dealer activities, creating short positions, which can exacerbate a liquidity event caused by investor panic.

This guy (Joe Kempe) has become a sound believer in solid fundamental investing and portfolios built on companies with strong fundamentals! Indexes have a place, but caution is advised!

Sandy Parrish
Administration
Receptionist

Stephanie Sintima
Administration
Estate Planning Asst.

Making Florida Home

(continued from cover)

A court can only find one domicile of a person. In choosing between two, courts begin by looking to the domicile acquired first- the one prior to the move to Florida. The presumption is that the former continues as the individual's domicile, with the taxpayer carrying the burden of proof that it has been changed. More than just self-serving declarations must be offered into evidence should the matter be audited and then litigated. To overcome the presumption, evidence must be presented regarding the person's desire or preference for making the new or second home (Florida) his or her principal residence.

In order to meet the burden, a taxpayer must establish (1) a physical presence in the new state of domicile (Florida) and (2) a bona fide intent to make that state his or her new domicile. Presence is a matter of objective determination that is not difficult to establish. The more important of the two elements is establishing one's intent, which is ostensibly subjective. However, the quality of a person's physical presence is often looked at to determine whether there are objective circumstances that bolster the taxpayer's self serving declaration of intent. Continued ownership of a home that was the former domicile is a strong indicator of intent, but one that can generally be easily rebutted. It is often said that there must be acts of abandonment of the former domicile that evidence the change of intent.

Abandoning Former Domicile. Acts of abandonment should be carefully documented. Obtaining Florida voter's registrations and driver's licenses, and filing a declaration of domicile, are often viewed as self-serving, since Florida will welcome you without objection.

A record should be built that supports a finding of an intent to abandon old ties and to gain new ones. Is significantly more time spent in Florida than in the past; have old ties been severed in the former domicile and new ones gained in Florida with attorneys, accountants, financial advisors; home, social, religious, and charitable affiliations changed; have all business and personal relations been informed of the change of address for mailing to Florida; are all regular and intermittent bills sent to the new address; have all investment accounts, payors, and obligors been directed to send checks and other forms of payment to the Florida residence; are old banking relations terminated and new ones established in Florida; have safe deposit boxes been moved; have family collectibles, photo albums, the good china, and artwork been moved to Florida and insurance policies changed to reflect the Florida address as their location and where premium notices should be sent; have friends and family been notified of the change by personal correspondence; have local and federal government bodies been informed of the change; and have passports been renewed to reflect the new address?

A change of domicile is a process and the process should be documented. No one of the above factors is determinative. A preponderance or greater weight of the evidence must support a taxpayers proclaimed intent to change a principal residence or domicile if a taxpayer is to be successful on audit or in court. The more of the above factors that demonstrate a change, the less likely an audit would result in litigation or an unfavorable settlement.

Resident Income Tax. You should understand the former residency rules and their impact. The easiest way to understand these rules and their impact is to first focus on the concept of "domicile." As above discussed, domicile is essentially your permanent or primary residence; the place where you intend to return whenever absent. The facts and circumstances, as above outlined, determine which of several homes is your domicile or primary residence. If you are domiciled in another, except under certain rare instances, you will be subject to that state's income tax should they impose them. This rule will not be applicable once a change, to Florida for example, has been accomplished.

If you are domiciled in Florida, you can still be considered a resident of other states for income tax purposes. To avoid this, you generally must not spend more than 183 days in that other state. You can spend that time anywhere, but not in the other taxing state.

To become a resident of Florida, you must establish a home or a permanent dwelling and demonstrate the intent to make Florida the place of permanent legal residence. As a Florida resident, you will be entitled to the benefits of Florida law, including Florida "homestead" status on your Florida home. There is no Florida income, estate, or gift tax. Homestead is discussed separately in this Client Update, beginning on the cover.

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Confusion Persists Over Advance Directives
-At Least You'll Have a Plan-

Studies suggest between 20% to 30% of us will develop dementia. Most advance directives don't address quality of life during demented years. Standard advance directives tend to focus on powers in others in the event of incapacity or when in a "persistent vegetative state," but do not address how you may want to live life during years where you may be suffering from dementia. The burden for making decisions is thrust upon those who may not know and who may feel guilt. Ellen Goodman, founder of The Conversation Project, points out that families need to be involved in these decisions. "No checklist on earth is going to cover everything you encounter. Most important is the conversation with the decision-maker. That person has to understand what you value and what's important to you." Dr. Rebecca Sudore, a geriatrician and palliative care specialist at the University of California, San Francisco, agrees. "At the bedside, the 'why' is very important." This is why we customarily have the decision maker appointed discuss the matter and sign the advance directive.

Donna Baummier, LA
Estate Administration
Fiduciary Services
Wealth Management

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Advance Directives in Estate Planning

- It's Not Always About A Living Will -

Much confusion persists in basic estate planning over the purpose and meaning of advanced directives. This note is intended to provide a summary of the considerations and directives available:

Health Care Surrogate Designation: A directive that addresses the scope of authority of your designee to make medical decisions for you, were you to become incapacitated, as determined by either your primary or attending physician or both.

Living Will: A directive that is a statutory document which gives direction in the event you have lost capacity to make medical decisions and are in one of four medical states: in the process of dying; in the end stage of a chronic illness; are considered to have a less than six month prognosis regardless of medical intervention; or are in a persistent vegetative state.

Advance Directive Plan of Care: A directive that recapitulates the above directions and gives further instruction to your surrogate regarding your care were you to lose your medical decision making capacity. It is designed to capture both those medical procedures you do not wish to have as well as the kind of quality of life and preservation of dignity actions you desire to have undertaken on your behalf.

Out of Hospital Do Not Resuscitate Order: A written physician's order which denotes your desire to not have resuscitation efforts rendered to you by paramedics or others in the event of a natural death in your home.

Ancillary Directives for Parents with Minors:

Pre-Need Guardianship Designation for Minor: A document that reflects your nomination of a person to become legal guardian of your children in the event you become incapacitated to continue to parent. It is filed with the Court on your behalf in the event it is ever necessary.

Health Care Surrogate Designation for Minor: A document that reflects your designation of someone to make health care decisions on behalf of your children in the event you are unable to make such decisions. This is not filed with a court but is given by you to the designee and to your local pediatrician's office in the event it is needed.

Other and particular documents can be drafted to allow you to designate your desires in a variety of circumstances and situations.

Integration of IRAs With Trusts

(continued from page 3)

Where an IRA owner does not possess ample assets to fully fund their estate and generation skipping tax ("GST") exemptions without counting their retirement funds, the bias often shifts from an income tax priority to one focused on avoiding loss of estate and GST exemptions. Where a spouse is involved, this commonly involves naming a series of beneficiaries with the spouse first, a trust for the spouse second (commonly a "QTIP" trust), and trusts for children third. Doing so permits optimum post mortem tax planning, allowing the spouse to roll over the retirement funds as his or her own or disclaiming direct receipt in favor of the QTIP trust, from which he or she is the sole beneficiary. Should diversion to children or grandchildren be desired, further disclaimers can be accomplished to do so. If the spouse is of a second marriage, the QTIP trust would often be the primary beneficiary.

In a first marriage, if sufficient non-retirement funds exist to fund the deceased owner's estate and GST exemption, optimum planning would result in the spouse rolling-over the assets as his or her own and naming trusts for their children and grandchildren as successor beneficiaries. This permits optimum income tax deferral. If this were a second marriage or insufficient funds did not exist, naming the QTIP trust as beneficiary would shorten the income tax deferral available in order to retain control and capture the available estate and GST exemption. The optimum structure is often accomplished after proper analysis and consideration. Agreements between spouses can also serve to satisfy any concerns with designating a spouse of a second marriage as a primary beneficiary, in order to achieve optimum family results.

Integration of retirement plans with trusts is seldom ill advised, except in small estates or where asset protection is not desired, which is seldom the case.

Homestead Benefits and Burdens

(continued from cover)

conveyance. These restrictions may upset the objectives associated with an intended estate plan, unless waived in a prenuptial agreement or by the spouse.

The Tax Benefit: Homestead property is entitled to a $50,000 property tax exemption when applying the millage tax rate for county property tax. After the first year a home receives a homestead exemption and the property appraiser assesses it at just value, the assessment for each following year cannot increase more than 3% or the percent change in the Consumer Price Index (CPI), whichever is less. This is called the "Save Our Homes" (SOH) initiative and is the most beneficial aspect for tax purposes. Entitlement to homestead status and applicable exemptions from ad valorem taxation are determined by the simultaneous existence of three factors as of January 1: (1) possession of title to Florida property; (2) residence on the property; and (3) your intention to make the property your permanent residence (your domicile).

Where a husband and wife split domicile, an important rule should be understood. (This is not uncommon when one spouse desires to retain former domicile, possibly to retain a capital gain exclusion on the sale of the former residence.) A husband and wife can only obtain the benefits of one homestead exemption unless they have established "separate family units." The Florida Department of Revenue and property appraisal offices consider you to obtain the benefits of homestead on another property, whether in Florida or not, if either of you receive some ad valorem tax exemption, no matter how nominal, that is based upon a classification of the property as a principal or permanent residence. The STAR exemption in New York, for example. Assuming you have no other homes that receive an ad valorem property tax exemption, you will not jeopardize homestead status. If you do, however, you would either need to give-up that exemption or claim and be prepared to prove that you are "separate family units." When you apply for homestead you may be asked to sign an affidavit that you are not receiving an ad valorem tax exemption on any other property. If both spouses do not join in the petition, the property appraiser's office may investigate whether you are in fact receiving another ad valorem tax exemption somewhere. If you are, they may then inquire as to the facts and circumstances supporting entitlement by one spouse independent from the other, which will raise issues regarding how you conduct your financial affairs.

Creditor Protection: The Florida Constitution exempts the use of a homestead to satisfy the liabilities owed to a judgment creditor. It provides that *"there shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty."* These rules essentially exempt a homestead from the reach of creditors, except laborers and lenders who have liens on the property for services or where the property serves as security for debt.

Restriction on Transfer: Section 732.4015, Florida Statutes, and the Florida Constitution, prohibit a married Florida resident, or an unmarried Florida resident who is a parent of a minor child, from devising his or her homestead. A married Florida resident, however, with no minor child may devise his or homestead only to his or her spouse, unless that spouse waives his or her rights. As a result, in many circumstances, a spouse's waiver is required to transfer property to various trusts that may form the basis of an effective estate plan. Furthermore, use of qualified personal residence trusts ("QPRTs") and a homestead to fund certain exempt trusts can be jeopardized without effective waiver.

An attempted devise by a deceased owner of a homestead to someone other than the surviving spouse, will cause the surviving spouse to receive a vested life estate with remainder to the deceased owner's descendants. A relatively recent change of law permits the surviving spouse to timely elect to take a 50% interest in the homestead as tenants in common with the descendants. This option is often exercised to reduce the burdens of a life tenant, who is solely responsible for recurring costs, such as tax, assessments, and insurance.

Size of the Homestead: The Florida Constitution provides that a homestead, if located outside a municipality, may not exceed 160 acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family. Therefore, annexation of parcels that are larger than one-half acre into a municipality will not cause homestead property to lose its status.

Renting a Homestead: Though it is not impossible to rent a homestead property without loss of benefits, serious attention needs to be given to the timing and the duration of any lease. In order to qualify as homestead, the owner must occupy the home on January 1 of each tax year, which limits the possibilities.

2019 Estate and Gift Tax Exemptions
- Highest Ever -

Annual Per Person: $15,000 for present interest gifts of property or by using "crummey notices" for gifts in trust.

Medical and Education: unlimited if paid directly to institution.

Lifetime Gift Tax: $11.40 million to anyone.

Estate and Gift Tax: $11.40 million to anyone less lifetime taxable gifts.

Generation Skipping Tax: $11.40 million to anyone 2 or more generations below or for gifts in trust for multiple generations, including the next.

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Simplifying Code Section 199A - Some Rules to Understand -

1. If you are under the taxable income thresholds ($157,500/$315,000), the deduction is 20% of qualified income.
2. If your taxable income is above the income threshold but under the full limitation phase-in ($207,500/$415,000), a percentage of the limitations reduce the deduction.
3. If over the full limitation phase-in, the limitations are tied to W-2 wages paid and qualified property value. The higher each is the better, as less reduction of the deduction occurs.
4. If over the full limitation phase-in and a disqualified service business, there is no deduction (doctors, lawyers, athletes, and entertainers lose out).
5. For qualifying businesses, the higher the wages a business pays, and greater the investment in depreciable property, the less phaseout of the deduction.
6. Planning will involve ways of increasing W-2 wages but not cost, reducing taxable income, and increasing the unadjusted basis of qualified property.
7. For service businesses, planning will involve segregating business functions so that segments aren't considered disqualified service businesses.
8. None of the above matters to investments in REITS and publicly traded real estate partnerships- 20% of their income is deductible.
9. The deduction may be taken even if the taxpayer does not itemize, but the deduction is limited to not more than 20% of taxable income, which either itemizing or the standard deduction will reduce.

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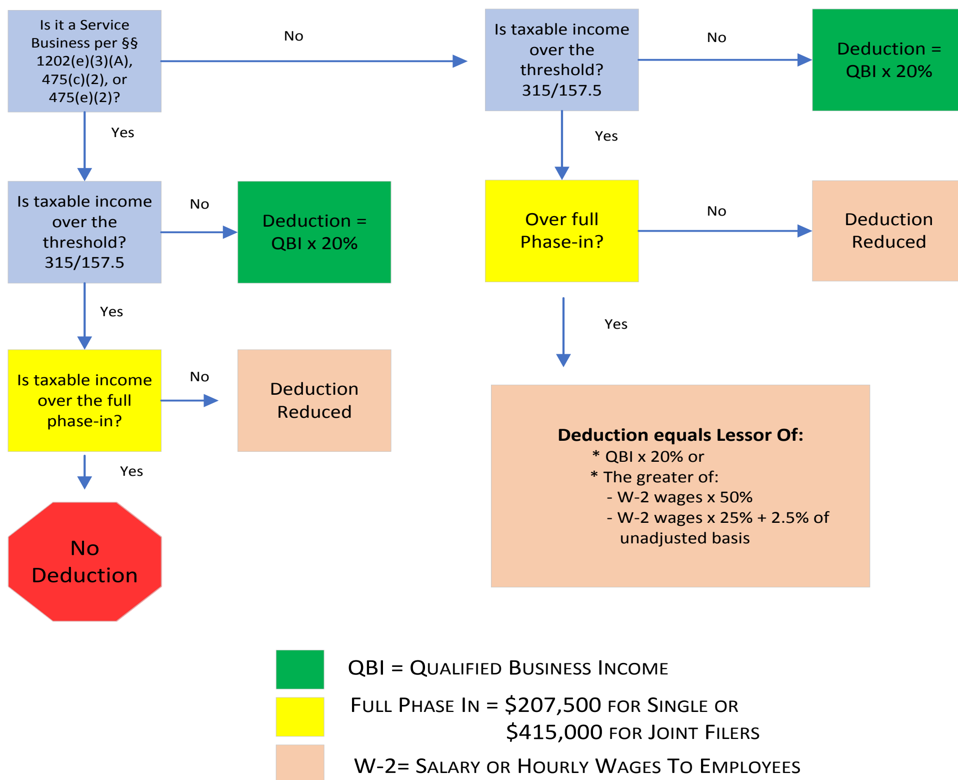
Code Section 199A Flow Chart

- Private Business and Real Estate Investor Guide -



Code Section 199A Examples

- Real Estate and Business Investors -

Bob and Jane are married, file a joint return, and have $1 million of taxable income (excluding capital gains). They have a real estate LLC that has an unadjusted cost basis of depreciable improvements of $5 million and the LLC throws off $650,000 of taxable income. The LLC pays no wages and is a passive investment with net, net leases to tenants. Bob and Jane also have invested $100,000 in a public REIT that throws off $10,000 of income. Bob and Jane will receive a deduction of $125,000 for the LLC investment and $2,000 for their REIT investment. Though one might originally think they are entitled to 20% of $650,000 or a $130,000 deduction, the deduction is limited by the so-called "wage rule" because their income exceeds $415,000 (joint filer threshold where limitation is completely phased in). Since there are no wages, the limitation is 2.5% of $5 million, or $125,000. Therefore, Bob and Jane's total deduction for 2018 is $127,000 when adding the $2,000 deduction from the REIT investment.

John is single and has taxable income of $150,000 (excluding capital gains). He operates a local hardware store under an S corporation business structure and has no other income. He pays $215,000 in wages and has depreciable tenant improvements with an unadjusted cost of $500,000. John's deduction is 20% of income or $30,000. He has no asset or wage limitation because his taxable income is under the phaseout threshold for a single filer of $157,500 (for a joint filer it is $315,000).

Where a single or joint filer has taxable income between the phaseout threshold ($157,500 single or $315,000 joint filer) and the complete limitation phase in threshold ($207,500 single or $415,000 for joint filer), the limitation is imposed on a proportional basis tied to the level of taxable income.

Save Thousands on Your Next Real Estate Transaction

- Clients Benefit From Routine Service and Customary Cost -

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In a previous article we explained how our clients can save thousands in their next residential transaction and receive legal representation at no charge: whether selling or purchasing. To date we have put approximately $140,000 back in our clients' pockets for those who have taken advantage of our program. Clients receive legal representation at no cost, and they have achieved their real estate goals in the transaction.

Our law firm has two affiliated companies: Counselors Title Company LLC and Counselors Realty LLC. Counselors Title closes real estate transactions and issues title policies and Counselors Realty primarily acts as a referral agent for our clients to local, highly capable realtors that we trust to effectively service our clients' needs or as otherwise chosen by the client.

The typical residential sale transaction starts when an owner contacts a realtor who lists their property for sale pursuant to an exclusive listing agreement, markets the property, receives an offer and helps the seller negotiate the contract. In Florida most real estate brokers act as transaction brokers, meaning that the broker may facilitate the transaction by assisting the seller and the buyer, but does not represent either in a fiduciary capacity or as a single agent. If you are not represented by an attorney in a real estate transaction, there is no person in the transaction with a duty to look out exclusively for your interests. We have seen many transactions where the client was not well served under the terms of the contract because their realtor was focused on the transaction, and there were terms in the contract that were not in the client's best interests.

Often a realtor will encourage their clients to use a title company for their closing in which the realtor or their agency has a financial interest. Typically, these are non-attorney owned title companies depriving a client the opportunity for cost effective legal representation.

We should be your first contact when you want to purchase or sell property. Here is why: First, you want Counselors Realty to refer you to either: (i) the realtor of your choice or (ii) one of the several trusted real estate professionals with whom we have worked for years. The agency to whom you are referred will pay Counselors Realty a referral fee of 25% of their side of the commission, which Counselors Title will credit to you minus an amount to cover our expenses. For example, if your home sells for $1,000,000 and you pay the listing agent 6%, the selling side is 3% or $30,000. The referral fee will be $7,500, of which Counselors Realty will retain $1,000 and $6,500 will be credited to you at closing. The larger the transaction, the larger the benefit to you.

Typically the seller will pay for the owner's title policy and you would use Counselors Title to close the transaction and issue the owner's title policy for which Counselors Title would earn a premium. As a benefit of using Counselors Title, Counselors Title will cover all legal expenses in the transaction owed to our affiliated law firm. Therefore, you will receive legal representation at no charge. We will assist you in negotiation of the listing agreement, negotiating the purchase and sale agreement, and with any issues that arise up to and including the closing.

In a purchase transaction where you are not paying for title, the referral fee will be used to pay for your legal representation, which would typically range from between $750 to $1,000 depending on the time involved. So in our example, the amount remitted to you would be approximately $5,500.

In summary, if we are your initial contact in a real estate transaction, you will receive highly capable real estate professional services, an experienced real estate attorney's representation at no cost to you, and pay a reduced commission if you are selling or will get money back if you are purchasing. If you have any questions as to how this works, call us.

Affiliated Personal Service Organizations

Counselors Title Company, LLC
•
Counselors Realty, LLC d/b/a Coastal Estates

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law
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