FALL 2016

CLIENT UPDATE and wealth advisor

KEMPE

Law | Estates | Tax | Wealth

Offices in Jupiter, Stuart & Vero Beach

IN THIS ISSUE

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.

IRS THREATENS FAMILY PARTNERSHIPS AND BUSINESSES

- LONG AWAITED REGULATIONS ARE PROPOSED -

Families have used partnerships for decades to accomplish a variety of objectives, including business planning, income and estate tax reduction, and management succession. To close perceived loopholes, Congress passed legislation in 1990 to curtail estate tax reduction strategies and these laws were followed by IRS regulations. Essentially these laws sought to

Continued on page 6

NEW LAW COMPLICATES TRUST AND ESTATE ADMINISTRATIONS

- Executors and Their Attorneys Have Greater Responsibility, and Therefore Risk of Liability -

New rules significantly increase the burdens of some executors of estates and their attorneys. Commencing this year, tax basis reporting rules must be followed and related reporting must occur, or heirs will receive zero cost (tax) basis for capital gains purposes in assets they inherit. As such, the liability of executors for noncompliance or failure to follow certain draconian rules has greatly increased, should heirs be adversely affected.

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WHOSE MONEY IS IT ANYWAY?

- When Entitled Children Feel Aggrieved -

Our clients are aging, with many now in or approaching their 90s. A recent case reminds us of how much our clients desire independence, and will fight for it, even if it is against their children. As clients age, conflicts can evolve over buying or selling property; the management of money or other property; the gifting of property; or even over health care or life decisions, including marriage. When younger spouses or companions are the age of children, who themselves are reaching retirement age and desire to quantify their own retirement, the circumstances can become explosive. Surprisingly, this is especially

Continued on page 10

WHY WE OFFER COMPLIMENTARY REVIEWS OF ESTATE PLANS

- Pointing Out Mistakes or Omissions Allows us to Educate -

We spend a lot of time reviewing the existing estate plans of prospective clients, and we do so without cost. It has proven to be a beneficial policy, as it produces benefits to individuals and their families while establishing long term relationships with new clients. There are several common errors or omissions that we find, and this article will attempt to communicate why these errors and omissions are so common. Whether these exist, we sometimes find overreaching, where inappropriate involvement of

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Gatekeepers in an Era of Time Compression

- The World Looks Different in Compressed Time -

Joseph C. Kempe, Esq.

Chair, Florida Bar Tax Section,
Estate and Gift Tax Committee (1993-1997)

•

Member, Florida Bar,
Tax Law Certification Committee
(1993-1999)

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ABA Probate and Trust Section
Vice Chair, Family Businesses
(1995-2000)

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Board Certified, Tax Law
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Register of Preeminent Lawyers
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(1989-Present)

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Post Doctorate Degree in Tax Law,
University of Miami (1983)

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St. Thomas University School of Law
Postdoctorate Studies in International
and Offshore Tax Planning
Summa Cum Laude
(2001-2002)

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AV Rated
(1989-Present)

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National Author & Lecturer
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Family Partnerships
Estate and Trust Administration
Estate Tax Reduction
Estates and Trusts
Business Planning
Securities Laws

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B.S. in Real Estate Finance and Appraisal
(1979)

Joseph C. Kempe
Professional Association
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In International Best Selling Author, Joshua Cooper Ramo's, latest release *The Seventh Sense*, he sets forth one of the best researched books I have read on the World as it is changing through networks. It is being read by many of our World leaders. With astonishing speed (the compression of time and space), things are viewed differently and sometimes things that were meaningful, aren't anymore. Things that weren't and were disregarded, all of a sudden become meaningful and need to be recognized. Whether you are in a network or out of one may determine your knowledge of future decisions and destiny. Gatekeepers will control what you see and whether or not you will know. Under traditional literature, gatekeepers are considered elitists and the gated powerless. Citing works from information theorist, Karen Nahon, Ramo claims that in our new networks it is necessary to give sufficient weight to the role of the gated, since being subject to gatekeeping does not imply the gated are powerless, lack alternatives, or that gatekeeping is forced upon them. Actually, they both recognize, being gated sometimes is a matter of choice or one of necessity. Who will be allowed a gate or inside a network may dictate power in our future.

Some view this Firm as a gatekeeper for some of the clients we represent, where certain forms of information are routinely provided with (one network) or without (another network) cost. Ramo explains these differences as topologies and the gatekeeper sets the topology. But, we too are gated from sources of information. Not all is readily available, which is sometimes a result of intended secrecy and other times a result of costs associated with entering a network. Data costs money! Some networks are expensive, but worthwhile. Networks can provide competitive advantage and power. If it weren't for one network in which we are gated at a cost, we wouldn't have known that the IRS proposed regulations on family partnerships (see first article on page 1) had been released and been able on the same day to inform those within our network (those for whom we are a gatekeeper) that action may be required within a short time frame. The resulting consequences for some may mean millions of dollars of tax savings. This brief example is a very simple explanation of our future, where viewing life, financial, and other circumstances as a network within which we are gated will have profound consequences and will become a lens with which to understand our World.

Ramo concludes that we are in a network revolution and that revolutions are not meant to destroy humanity. They come to advance it, but that is our responsibility and it means running at, and not away from, terrifying forces that we come to understand. So, we have begun a journey with networks that started in 1969, as a result of a terrifying threat- nuclear war. The Internet was born and has become the means by which a potentially infinite number of networks operate with time compressed. Our goal is to become the gated of some networks and the gatekeeper for our clients of others, as their attorney. We are hopeful we are and continue to be a worthy one!

This issue of our Client Update addresses current legal, tax, and financial topics that we believe are relevant on both micro and macro levels to our clients. Our goal is to educate our clients and to provide them with proactive access to relevant information. Various levels of information mandate service and cost. Rights and freedom from arbitrary rules demand a vigorous defense. In his criticism of President Obama's policy that America should be guided by just "not doing stupid stuff," Ramo, citing history and Churchill, argues "liberty and freedom demand vigorous defense and not complacency."

Joseph C. Kempe

Professional Association
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Abuses in the Financial Industry

- A Summary and Some Stories -

Most don't think it will ever occur to them, but financial abuse has been increasing and both the federal government and many states have taken notice (think Madoff and Stanford ponzi schemes). New laws aimed at providing harsh penalties and criminal sanctions are increasingly available remedies and pending legislation is seeking to streamline reporting of abuse. Significant remedies have become available to the aggrieved. In Florida, punitive damages can be imposed for egregious situations that greatly exceed the value of actual damages incurred by the elderly. Remedies are even available to protect vulnerable adults from emotional distress, in many instances. Increased regulation requiring more customer focused duty ("fiduciary duty"- *see*, Is Your Advisor a Fiduciary ... below) is being imposed to encourage those in the financial industry to place the customer's best interests before their own self-interest, when advising and selling investment products.

In Florida: A vulnerable adult who has been abused, neglected, or exploited has a cause of action against any perpetrator and may recover actual and punitive damages for such abuse, neglect, or exploitation. The action may be brought by the vulnerable adult, or that person's guardian, by a person or organization acting on behalf of the vulnerable adult with the consent of that person or that person's guardian, or by the personal representative of the estate of a deceased victim without regard to whether the cause of death resulted from the abuse, neglect, or exploitation. As an incentive to help redress wrong, the statute provides for recovery of attorneys' fees and costs.

There is also a new criminal statute, where there is now a presumption of exploitation if there is a transfer of money or property over $10,000, by a person age 65 or older, to a nonrelative whom the transferor knew for less than

See Abuses in the Financial Industry on page 13

Is Your Advisor a Fiduciary and Should You Care?

- New Rules Impose Greater Duty on Only Some -

People can't know everything, so they rely on advisors. But, what are the duties of those advisors to be fair and honest with their customer? Do they have a duty to care, to be loyal in their service, and charge a fair fee? To disclose conflicts and true costs? Three of the strongest fiduciary relationships are between the attorney-client, doctor-patient, and the trustee-beneficiary. Many, however, may not know how standards of duty apply or whether they apply at all to their investment advisors. As a result of the 2007-2008 Great Recession, Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 was enacted, which required the SEC to conduct a study to determine the effectiveness of existing regulation of investment advisors (the "SEC study"). That study concluded that many advisors on whom individuals rely for investment advice are not required to place their clients' financial interests before their own- in other words, they do not have a fiduciary duty of care and loyalty. They hold only a duty to offer "suitable" investments, whether or not conflicts of interest or the receipt of higher commissions on products offered are sold.

As the law currently stands, broker dealers, insurance salespersons, and some advisors operate under the "suitability standard" and are merely required to ensure an investment is suitable for a client, notwithstanding alternatives at less cost. Broker-dealers (stockbrokers) who also serve as a customer's investment advisor often fall under the lower suitability standard. Today, 88% of investment adviser representatives are also registered as brokers. Fee-only investment advisors, not acting as a broker, are generally under the higher fiduciary duty to their customer.

As a result of the SEC study, the Labor Department promulgated rules in 2016 that require the imposition of fiduciary standards to all advisors and brokers, *but only when they are providing investment advice associated with retirement accounts.* The rules do not impact taxable accounts. So, as long as brokers sell products that are suitable for a client's needs, and don't involve a retirement account, they are generally free to recommend investments that earn higher compensation (thus generally lowering investment returns), even if cheaper alternatives would be better for the customer.

See Is Your Advisor a Fiduciary on page 6

Florida Advance Directive Law Update

- Should You Make A Simultaneous Appointment -

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 death" when the time comes.

Marnie Ritchie Poncy, Esq.
registered nurse and lawyer

Health Care Advocacy
Bioethics Law
Death With Dignity
Guardianship Proceedings

Joseph C. Kempe
Professional Association
Attorneys and Counselors at law

Since 1992, Florida residents have enjoyed the ability to designate another adult to become a health care surrogate to make medical decisions on their behalf, were they to become incapacitated. Last year the law was expanded. There are four changes which warrant discussion concerning this new law:

1. **Simultaneity of Appointment**: The most profound change allows you to designate the surrogate to make medical decisions upon signing the designation, without a finding of incapacity. Should there be a discrepancy between the principal and the named surrogate, the decision of the principal is controlling, as long as the principal retains the power to make such a decision. Many reasons for this expansion of the surrogate power were presented resulting in the change. We, however, have some concern. Such a provision appears unnecessary. Allowing for simultaneous decision-making by both the principal and surrogate may cause confusion and possible controversy at a time when calm should be the prevailing goal. Two hypotheticals are outlined below to illustrate the possible confusion which could result from a simultaneous delegation of authority:

(a). An elderly parent is diagnosed with a serious life threatening condition (e. g., recurrence of breast cancer) which, although treatable, it is not easy and the outcome cannot be assured. The patient elects to refuse treatment choosing to continue to maintain her current quality of life for as long as possible. Surrogate daughter who has been given simultaneous authority insists mother should be treated, and states her mother is just fearful of the proposed therapy and not making "right" decisions (e.g., surrogate questions her capacity to make the decision).

(b). An elderly parent faces the same situation but chooses to undergo treatment, which will require either costly live-in care or a live-in family member during the out-patient chemotherapy and radiation. Surrogate daughter disagrees with mother's decision, saying that the effects on mother and remaining family are overly burdensome and mother is not being realistic about her chances of recovery (e.g., surrogate questions her capacity to make the decision).

In each of these situations, the treating physician is now placed in the position of determining capacity of the patient, which ought not to be an issue because either answer is medically reasonable, just a question of personal choice. Such determination would not have been required by the physician if the elderly mother retained sole decision-making authority because either decision is medically reasonable. The already very difficult situation is now exacerbated by inter-family conflict and could result in a complicated perhaps even court determination of capacity. **Consequently, we will continue to recommend a surrogate assume the power and responsibility for making health care decisions on behalf of the principal only upon a medical determination of the principal's incapacity.**

Please note: we have always advocated communication with the proposed surrogate and, in fact, have requested the named surrogate acknowledge having both read and agreed to follow a principal's wishes when the client has authored an Advance Directive End of Life Plan of Care. However, that is quite different from enabling the surrogate with immediate authority unless overridden by the principal. Nevertheless, we will offer our clients all choices allowed by law.

2. **Simultaneous Specific HIPPA Waiver:** Another change allows the health care surrogate to have immediate access to the principal's protected health care information. Regardless of assigning a putative surrogate, any adult can author a Health Information Portability Accountability Act Waiver (HIPAA waiver) to allow family or close friends information access. A HIPAA waiver is often executed by elderly family members for their adult children so as to create a team in the planning and care of an aging family member. We, in fact, recommend such action because if someone is going to ask another to make decisions on his or her behalf, that person ought to know the subject matter regarding requested decisions.

3. **Parental Appointment of Surrogates for Minor Children:** The third item is probably the most important change for families with minor children. Florida Statutes have now specifically recognized and given authority to parents of minors, as well as legal guardians and legal custodians, to name a surrogate to make decisions for their children in the event they are unavailable to make medical decisions for them. Even more importantly for the health of the children, the surrogates now enjoy statutory protection in exercising the authority given to them by the parents. Over the years, we have drafted various documents for parents who are scheduled to travel and thus be unavailable. We have, of course, drafted pre-need guardian papers in the event of demise. However, such advance planning now enjoys statutory protection. We are delighted!

4. **Organ Donation:** The question of organ donation upon death is a difficult one. The need is tremendous and new law promotes discussion. There is, however, an innate discomfort with the idea. The State of Florida has long been requesting persons who drive to make such a designation upon getting a driver's license. We have discussed this concept in particularity with many clients. Often they have chosen not to place such a desire upon their drivers license but would, in fact, like to be a donor. Historically, the ability to donate has been an option upon making an Advance Directive End of Life Plan of Care. We will continue to offer this very personal Advance Directive but will also offer a specific Uniform Donor Card as another option.

Marnie Poncy, RN, Esq., is a registered nurse and attorney who limits her practice to health care issues, including advocacy, bereavement counseling, palliative care counsel, and is available as a resource to our clients and their families when issues of medicine and care intersect with our legal system. She is commonly asked to educate families on living wills, health care surrogate designations, do-not-resuscitate orders, and assisted living arrangements. Please feel free to call her.

Banks: 12 Upgraded 4 Downgraded

Bank	Rating
Bank of America	B- ↑
Bank of NY Mellon	C+ —
Bank United	A- —
BB&T	B ↑
Bessemer Trust	B+ —
CenterState Bank of Fl	B- ↑
Citibank NA	B ↑
Deutsche Bank and Trust	B ↓
First Citizens Bank & Trust	B- —
First Republic Bank	B+ —
Goldman Sachs Bank USA	A- ↓
Grand Bank and Trust	acquired
Haverford Trust	A- ↓
JP Morgan Chase NA	B- ↑
Morgan Stanley Bank NA	A- ↑
Northern Trust NA	B ↑
Sabadell United Bank	B —
Scottrade Bank	B- —
Seacoast NB	B- ↑
Stonegate Bank	B+ ↑
TD Bank NA	C —
TIAA-CREF Trust Co	D ↓
UBS Bank USA	A- ↑
Wells Fargo Bank NA	C+ ↑
Wilmington Trust Co.	B ↑

Source: Weiss Ratings as of June 30, 2016. Please note that other rating organizations may have higher or lower ratings for these institutions and that these ratings may have changed.

The green or red rating arrow shows direction since our last publication in 2015.

Kyle Donham, CPA
Tax Accounting
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Art and Other Valuable Tangible Property

- Value, Fractionalization, and Quasi-Private (Public?) Museums -

Consider the problem Ileana Sonnabend's had with her estate plan as a result of owning Robert Rauschenberg's 1959 mixed media piece *Canyon*, which featured a stuffed bald eagle in the foreground. While doing her estate plan, the work was considered to have zero value because it is illegal to sell stuffed bald eagles. After her death in 2007, the IRS's Art Advisory Panel valued *Canyon* at $65 million and the IRS demanded an estate tax of $29 million plus $11.7 million in undervaluation penalties and interest. (Talk about a liquidity problem!) The moral of the story is that it is important to understand the value of your "stuff," and it is often advisable to seek agreement with the Art Advisory Panel before transactions occur or returns are filed that involve the value of significant pieces of art. From 2011-2014, the IRS raised appraised values for estate and lowered charitable deductions on 41% of the total 1,394 appraisals it reviewed. In 2014 alone, the 58 out of 159 estate appraisals the IRS Art Advisory Panel reviewed were increased from a total of $36.8 million to $66.8 million in value, or by 84%. The value of art is impacted by a finicky market, and the impact of what are generally higher auction prices and the terms of auction contracts need to be considered.

Recognizing the true value of property is a necessary component of estate planning, as Ileana Sonnabend's heirs discovered. This is primarily because the tax on that illiquid asset must be paid from somewhere, and specifying who bears taxes is either specified in wills and trusts or mandated by state law. Under current law, the value of all wealth exceeding the estate tax exemption ($5.45 million in 2016) draws a 40% tax. There are essentially only two factors, and one (the tax rate) can't be changed. But can value be changed?

See Art and Other Valuable Tangible Property on page 15

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 27,864,224.65 | Benchmark S&P 500 TR USD | Account Number | Report Currency 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 % — Total Stock Holdings 7198; Not Classified % 0.00

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

Fixed-Income Investment Style % — Total Bond Holdings 4490; Not Classified % 0.00

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

Stock Analysis

Stock Sectors — Benchmark / Portfolio; Sens, Defen, Cycl

Stock Regions — Greater Asia, Americas, Greater Europe; <25, 25-50, 50-75, >75%

	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	10.59
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)

Investment Activity Graph — Portfolio / Benchmark; Initial Mkt Value: 9,475,803.62; Final Mkt Value: 27,864,224.65

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

Risk Analysis

Risk/Reward Scatterplot — Portfolio, Holding, B-mark, 3-Year Mean; 3-Year Standard Deviation

Performance History Graph — Portfolio; Quarterly Return +/- Benchmark in %

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

	2016	2015	2014	2013	2012
Jan	2.2	2.2	2.2	1.0	1.4
Feb	2.2	2.0	2.4	1.2	1.4
Mar	1.8	1.8	2.2	1.4	1.4
Apr	1.8	2.0	2.2	1.4	1.4
May	1.8	1.8	2.4	1.2	1.6
June	1.8	2.0	2.2	1.2	1.2
July	1.8	2.2	2.2	1.4	1.2
Aug	1.4	2.2	2.2	2.0	1.0
Sept	1.4	2.2	2.2	2.0	1.0
Oct	1.6	2.0	2.2	2.4	1.2
Nov		2.0	2.2	2.0	1.0
Dec		2.0	2.0	2.0	1.2

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 2012, early 2013, the end of 2014, and who act before rates significantly rise, have or will benefit.

Benjamin Devlen, CPA
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IRS threatens Family Partnerships and Businesses

(continued from cover)

value shares of family controlled entities at their liquidation value. Liquidation value is appropriate where members have a right to withdraw and liquidate their share of the family entity, and under the historic rule any attempt to limit a members right to liquidate by "agreement" is ignored. For example, if you and another family member are 50%-50% partners in an entity that owns $1 million and you have the right to withdraw and take your $500,000, shouldn't the value of your shares be worth $500,000? Yes, but what should the value be if you must secure the other family members consent? Something less, but under the original regulations family controlled restrictions are ignored.

What if state law prohibits a members right to withdraw or liquidate? This condition is what has been the basis for valuation discounts since 1990. Valuation discounts imposed by appraisers typically approximate 35%. If the agreement between members is silent or prohibits a members right to liquidate, but the state default rule prohibits members from withdrawing and liquidating, then state law rather than the agreement of family members imposes the restriction and valuation discounts have been permitted. Many states encouraged by their attorney Bar members changed their state default rules to eliminate a members right of withdrawal in partnerships, limited liability companies, and other entities, unless an agreement among members provides otherwise, so that estate tax reduction through valuation discounts (approximately 35%) could be achieved. Nevada was one of the first, and Florida followed.

The proposed regulations are attempting to mandate the state law, by assuming the family could modify their agreement to change the state default rule and allow members to withdraw and liquidate their interest. For example, in Florida, a member does not have a right to withdraw and liquidate their interest by statute, unless the agreement among members permits withdrawal. The proposed regulations are essentially imposing a valuation rule that says, "since a family controls the circumstances and could change their agreement to permit withdrawal rights, we are requiring the valuation of members interest in family controlled entities as if they did. (This position seems to conflict with Rev. Rul. 93-12, where the IRS announced they would no longer amalgamate family ownership for valuation purposes to recognize their control.)

The regulations are proposed and are not set to become effective until thirty days after they become published as final. A public hearing is scheduled for December 1, 2016, and substantial commentary is occurring. Commentary ranges from the view that they are unconstitutional, not supported by the statute, and harmful to family businesses. Furthermore, two bills have been recently introduced in Congress to nullify the regulations. Whether they will become final is thus not known and if finalized in what condition. Proposed regulations can remain proposed for many years. Furthermore, these regulations are likely to be impacted by the elections. Within days of the release of the proposed regulations, Donald Trump stated he would put a moratorium on any new regulations if elected.

Many clients and friends have family controlled entities. These should be reviewed for possible transfer (by gift or sale) before December 1. Consideration should be given to sales or gifts to trusts in order to lock in the effects of current law. If you have any particular questions or comments, please call.

Is Your Advisor a Fiduciary

(continued from page 3)

Note: Kempe does not act as an investment adviser or broker. We believe wealth management starts with a legal structure that serves as a foundation and that clients are best served by having a qualified lawyer oversee their affairs. As a result, our wealth management platform of service involves a holistic representation of a client in overseeing their legal, tax, and financial affairs. In this capacity, we often assist our clients in understanding their relationship with their investment advisor, the costs being incurred, and the appropriateness of the investment policy on which their money manager is acting. We believe our clients receive better performance and incur less cost as a result of our representation.

Some Definitions of Investment Metrics
- A laundry list of key terms -

Alpha- a measure of the difference between actual return and expected performance relative to a benchmark's, given the benchmark's level of risk.

Beta- risk related to a benchmark. Often used in association with R-squared. An investment beta of 1.10 is expected to perform 10% better in up markets and 10% worse in down markets. Conversely, a low beta investment isn't expected to perform as well in an up market or to fall as much in a down one.

Mean- commonly the monthly average return of an investment over given periods- typically 3, 5, and 10 years.

R-Squared- the relation of an investment to market (benchmark) movement- 100 means there is a perfect correlation, and zero means none.

Sharp Ratio- a risk measure of the average return in excess of a risk free rate of return- zero is riskless, and the higher the ratio the greater the expected risk adjusted return.

Standard Deviation- a measure of volatility and dispersion from an average performance. The greater the deviation the greater the range (risk) of expected returns.

Melissa D. Lazarchick, Esq.

Probate Litigation
Estate Administration
Guardianship Proceedings
Fiduciary Services

Joseph C. Kempe
Professional Association
Attorneys and Counselors at law

America is the New Banking Center of the World

- And it Isn't Playing Fair with Others -

America taxes its citizens and residents on their worldwide income, regardless of where they live and work. In 2009, the IRS struck a groundbreaking deal with UBS for $780 million in penalties and also disclosure of the names of Americans who were hiding assets and income in untaxed foreign accounts. Recently, Credit Suisse accepted a guilty plea and paid a record $2.6 billion fine for helping hide US taxpayer accounts. Since then, with over a hundred Swiss banks accepting a Department of Justice settlement offer, banking is now more transparent than could have ever been imagined - all as a result of "FATCA" - the Foreign Account Tax Compliance Act. Some foreign banks that previously preached secrecy, now market themselves as willing and able to process all required account disclosures by the US government, while others won't deal with US persons at all. But, is the US doing the same for other countries, or something else?

More than 80 nations—including virtually every one that matters—have agreed to comply with FATCA. So far, over 77,000 financial institutions have agreed with the US to comply. If they don't, they face major economic consequences. Even tax havens have agreed to comply. Even notoriously difficult China and Russia are on board. Why? Foreign banks that fail to comply are exposed to a 30% withholding tax and potential exclusion from the US markets, which for some would jeopardize their viability.

So, what and why does that make America the new banking center of the World? The US isn't reciprocating! Inspired by FATCA the Organization for Economic Co-Operation (the "OECD, which drafts model treatise) drafted an international mutual compliance treaty. Of the nations the OECD requested sign the treaty, only Bahrain, Mauru, Vanuata, and, you guessed it, the US refused to sign. As a Swiss banking lawyer commented in a recent journal, "How ironic- no, how perverse – that the US, which has been so sanctimonious in its condemnation of Swiss banks, has become the banking secrecy jurisdiction du jour! That giant sucking sound you hear is the sound of money rushing to the US." Is it affecting our markets?

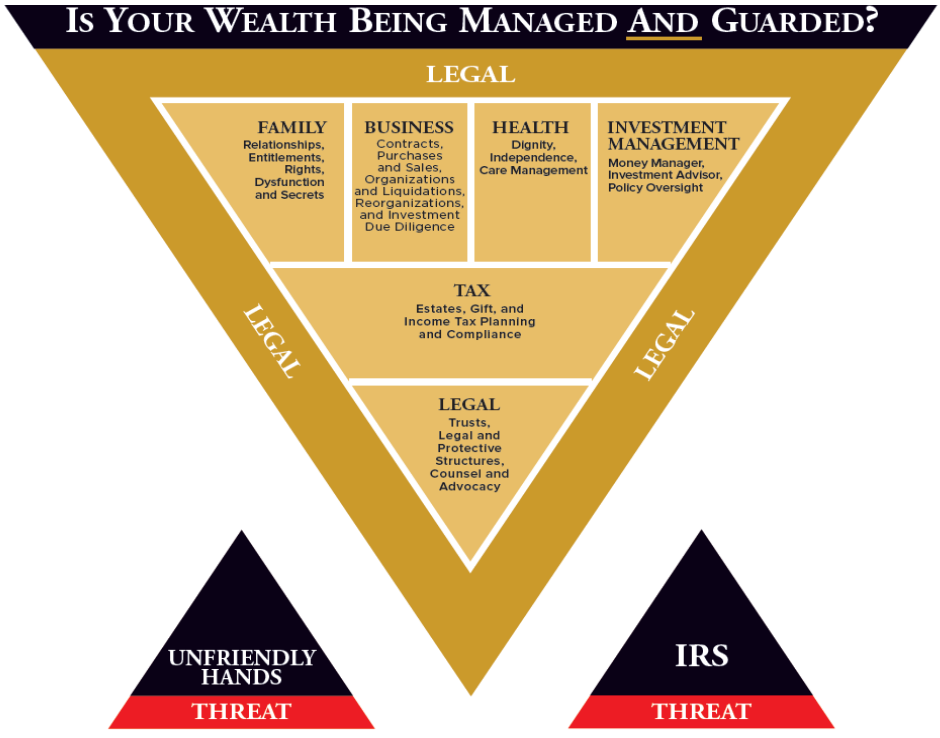
The result of this is that many international money firms are also setting up offices to service wealthy foreigners, who desire secrecy and security. Tax evasion is not the aim. Many foreigners are concerned with privacy, and have legitimate concerns with their health and welfare and that of their families- think kidnapping, ransom, and extortion in their home countries. Money is flocking-in to the US from previous tax haven destinations, like the Cayman Islands, Switzerland, and the Bahamas- Russia and China too.

The US is, however, concerned that this new influx could involve illicit activities and gains, including money laundering. It is illegal to aid overseas customers evade foreign

See America is the New Banking Center of the World on page 10

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

- Don't Confuse Investment Management with Wealth Management -



Seven Common Mistakes Made by Estate Planners
-Proper Wealth Management is Specialized and Multigenerational -

1. Ancestor Wealth: Failing to consider the impact of wealth passing from parents and other ancestors or from trusts established by them. It may be advisable to modify them, even if irrevocable.

2. Not Considering all the Pieces: Failing to consider all existing legal documents that may impact the estate plan and to verify the title to assets. Just because a will or trust says to transfer property to someone, if that property isn't properly titled it won't go there. It is common for us to find that retirement accounts and life insurance are omitted from consideration or improperly integrated with trusts for family members.

3. Passing Wealth to Children in a Single Trust: Doing so could cause one child's needs to completely exhaust the trust, to the disadvantage of all others. At a certain point, children have their own lives and should be able to manage a trust for their benefit for themselves, and without interference from their siblings. The same can be said for family businesses or common investments.

4. Failing to Modify Old Irrevocable Trusts: Old trusts can have a variety of problems, including automatic allocation of tax exemptions (and resulting improper use) if you haven't properly filed gift tax returns; standards that are too rigid or not rigid enough; they may be taxed in your estate or the estate of your children; or they may fail to protect heirs from divorce or other risks of a child or grandchild. Many states, including Florida, have greatly liberalized the rules regarding how old irrevocable trusts can be modified.

CONTINUED IN MARGIN ON PAGE 9

Sonya Mochegova, Esq.
Estate Planning
Real Estate
Wealth Management

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Why We Offer Complimentary Reviews

(continued from cover)

third parties is unnecessarily (and unknowingly) interjected.

In general, most individuals want to control their wealth and to pass it on to family members, in such a manner that those family members succeed to that control and various protections. What most individuals (and some advisors) don't understand is that wealth can pass controlled, but also protected and tax exempt. Once understood, most individuals desire to achieve these benefits for their heirs. Why don't they? Most clients just don't realize they have this ability. For example, most individuals don't realize they have two sets of tax exemptions, one that avoids estate and gift tax on their estates and another that can be passed on to and be perpetuated by their heirs. In other words, we all have an exemption ($5.45 million in 2016) from tax on our estates. However, we also have another exemption (also $5.45 million) that can be passed to our heirs and perpetuated so that this amount of wealth and appreciation on it is not subjected to estate tax ever again. These exemptions are doubled when married. A simple example illustrates:

Dad has a $5.45 million estate and so does his son, Paul. If Dad dies in 2016, and assuming he made no taxable gifts during life, there would be no estate tax on Dad's death. However, if Paul died later in the year, his estate would be subject to a tax of $2.180 million ($10.90 less Paul's $5.45 million exemption, times tax of 40%). Like most individuals, Dad wasted his second exemption, which could have been extended to Paul and the $2.180 million tax could have been avoided. Doing so involves effective use of Dad's generation skipping tax ("GST") exemption. If married, Dad and Mom both have this second GST exemption and most people unknowingly waste it.

In the above example, Dad likely would have sought to avoid the tax exposure in the estate of his son, had he known he had such an exemption. Most individuals are not educated to the use of this exemption, but would use it if they understood. Related to use of the GST exemption is protection of what passes to heirs from divorce risk, in-law rights, and third party liability risk. Few clients want what passes to heirs exposed to third party liability risks and in-law rights, such as exist in a divorce. Most desire to protect wealth. What many advisors don't fully understand is that there is a relationship between the GST exemption and protection of wealth as it passes to heirs.

Once these exemptions become appreciated, there becomes a desire to preserve them. However, their waste is quite common, particularly where existing estate plans involve irrevocable trusts (insurance trusts, qualified personal residence trusts ("QPRTs), grantor retained annuity trusts ("GRATs"), or others. This is because if gift tax returns are not properly filed (even when taxable gifts have not been made), exemptions can be inadvertently wasted. The filing of a gift tax return is often required to opt-out of automatic allocations and use of exemptions, when use is not required and wasteful. The opposite is also sometimes true, where a gift tax return should be filed to affirmatively allocate and use exemptions. Filing gift tax returns is often a maintenance matter. As a result, our review of estate plans is often not just of legal documents, but of related tax return filings and compliance.

It is quite common for our review to lead to new engagements. After our review, should there be a need to update documents or to file tax returns, we provide a written fee quote for our services. Our goal is to educate and to optimize our clients' affairs on a competitive fixed fee basis and this is why we offer complimentary reviews of the affairs of prospective clients.

We are pleased to announce that Sofia (Sonya) Mochegova, Esq., has joined the Firm.

Ms. Mochegova joins us from the Durham, NC law firm of Stubbs, Cole, Breedlove, Prentis & Briggs, where she was an associate attorney in the real estate and estate planning and administration departments of the firm. Prior to her practice there, she was a legal extern with the United States Attorney's Office. A graduate of the University of North Carolina School of Law, Chapel Hill, Ms. Mochegova will be joining our Estate Planning, Administration, and Wealth Management Departments.

Ms. Mochegova obtained her Bachelor of Science Degree in Biology, at the University of Massachusetts, Amherst, *summa cum laude*, and a Master of Arts in Molecular and Cell Biology, with *Honors*, from the University of California, at Berkley.

CONTINUED FROM MARGIN ON PAGE 8

5. **Failing to Review or Properly File Gift Tax Returns:** It is common for us to hear that gift tax returns have never been filed by clients, because gifts to trusts were under the annual gift tax exemption. What people (including many attorneys and CPAs) don't realize is that some gifts automatically draw use of your generation-skipping tax ("GST") exemption unless you file a return and elect out. Also, if "crummey notices" aren't properly used when gifts are made to trusts, the gifts don't qualify for the annual exemption. Filing returns also starts statutes of limitations and are seldom audited.

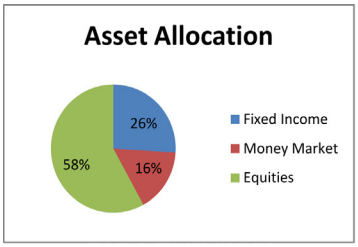
6. **Failing to Use the GST Exemption**: Most people fail to use their generation skipping tax exemption, but most want to once they understand it. Properly using it not only has multigenerational tax benefits but also is needed when protecting inheritances from divorce or in-law rights at death, third party liability risks, and other unfriendly hands. For example, if I don't pass my $5 million estate to my son or daughter using the exemption, I am likely exposing his estate to death taxation and exposing his inheritance to divorce and other liability risks.

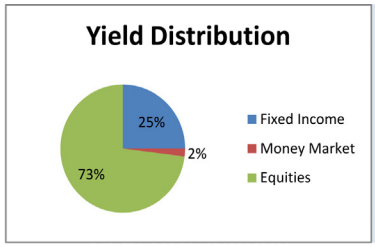
7. **Fixing a Trust Termination Date or Parceling Out at Given Ages**: This is an antiquated way of doing things, given the evolution of estate planning. It is quite common for us to review estate plans that have distribution provisions when a child reaches given ages- at 35 a third, 40 half the balance, and the residue at 45 or otherwise terminates the trust prematurely. What if the beneficiary is suffering from substance abuse or involved with a divorce or in a bankruptcy? Wealth these days should be held in trust as long as the law permits, and in most cases subject to the control of family members.

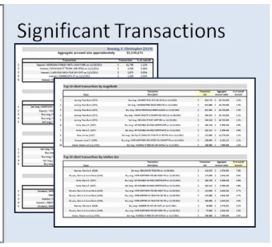
JOHN L. AVERY JR., ESQUIRE
TRIAL AND LITIGATION ATTORNEY
APPELLATE LAW
REAL ESTATE AND BUSINESS LITIGATION
Joseph C. Kempe
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

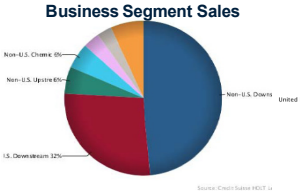
WEALTH MONITORING SERVICES

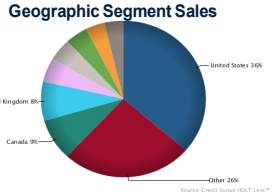
- OUR PROPRIETARY MONTHLY CLIENT SNAPSHOT -

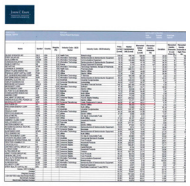












JOSEPH C. KEMPE
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

Client Name:	Jane Sample
Client #:	999.281
Date:	August 15, 2016
Reporting Period:	July 2016
Legal Assistant:	Alison Overton
CPA:	Kyle Donham
Advent Analyst:	Aaron Flood
Lawyer:	Joseph C. Kempe

Client Snapshot

CURRENT	
Total Family Wealth:	$26,366,000
Tax Exempt Trusts & Entities	15,853,000
Husband's Estate Size:	6,658,000
Wife Estate Size:	2,277,000
Joint Estate Size:	1,578,000
Current Estate Tax:	1,825,000
Percent of Current Estate:	7%
*Projected Gross Estate:	31,857,000
*Projected Estate Tax:	1,825,000
Percent of Projected Estate:	6%
Estate Tax Bracket:	40%
IRA Portfolio:	1,546,000
*Total Family Partnership	9,148,000

•Based upon a 3% return, net of expenses over life expectancy and no valuation discounts.
•The current Estate Tax estimate assumes a $5,450,000 exemption and 40% tax through 2016 and indexed for inflation in later years. We are assuming an inflation rate of 2.5%.

YTD Investment Performance

Portfolio:	**6.19%**
S&P 500:	3.84%
Barclays Agg:	5.31%

Performance Since 12/2011

Portfolio:	**9.68%**
S&P 500:	14.49%
Barclays Agg:	3.07%

Current Year Realized Gains and Estimated Tax Status

2016 Gains/(Losses):	30,000
Protected Tax Status:	**Protected**

(Performance and Realized Gains are through June 2016 on monitored investment accounts. The IRR for periods over a year are annualized as per GIPS recommendation.)

Income for the Period Ending 2014

Total Income:	$577,730
Tax Free Income:	273,697
Adjusted Gross Income:	299,606
Taxable Income:	143,753
Marginal Tax Bracket:	28%

Gift & GST Exemption Used

Husband Gift:	$208,867
Wife Gift:	$4,888,468
Husband GST:	$464,294
Wife GST:	$4,983,802

Estate Planning Developments

Reviewed & Current	YES	NO
Will:	x	
Trust:	x	
DPOA:	x	
HCP:	x	
Living Will:	x	
IRA Integration:	x	
Recommendations:	Value Shift	
Document Code:	Single 80/20	

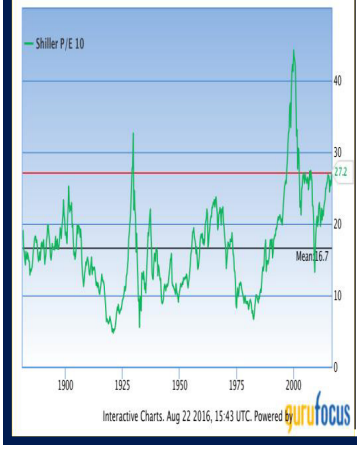
Miscellaneous

QPRT Termination Dates:	Life Estate	
Crummey notices verified:	Yes	
Family Partnership Records Current?	Yes	
RBD Date: H/W	9/1994	N/A
RBD Compliance:	Yes	N/A
RMD Compliance:	N/A, Roth	

Legal Developments

We alerted all clients that the IRS finally released proposed regulations to thwart the use of family limited partnerships to reduce estate taxes. A hearing is scheduled for December 1, and comments have been pouring in. Whether these regulations will become final, materially altered, or remain indefinitely proposed cannot be forecast. Nevertheless, we are evaluating your circumstances to determine what, if any, steps should be taken before December.

Economic Developments



Observations

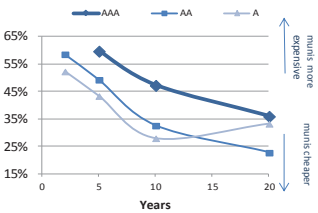
Market volatility will likely persist as mixed economic news balances anemic productivity against more upbeat employment and other indicators, within the context of an equity market valuation that falls into the top tenth of historical observations, according to Schiller's CAPE index- 62.9% higher than the historic 16.7% mean. Increases in commodity prices, a view that BREXIT may not be as bad as thought, and signs of economic growth are leading to more hawkish commentary out of the Fed, increasing the probability of an interest rate hike this year- as early as September. It is our low interest rate environment that some claim supports elevated market valuations, so an increase in the Fed rate would be expected to increase volatility and bring values lower. However, earnings surprises to the upside have permitted the market to climb. We are climbing a wall of worry!

Economic Statistics

	Reported	SGS
Consumer inflation	0.84%	8.48%
Unemployment	4.88%	23.00%
GDP	1.23%	-2.04%

Source: BLS, ShadowGovernmentStatistics

Muni-implied Tax Rate†



† We equate municipal and corporate yields

Seniors Adopt Technology
-Robots Preserve Independence-

A question our aging population must commonly confront, may become easier to answer: "should I drive any longer?" It is not uncommon for us to be involved with this question, before family members surreptitiously take or hide the keys. Clients desire independence, and one of the greatest providers of independence is mobility and ability to drive. The risk and liability associated with driving and corresponding cost of insurance increase on or about age 70, and the Insurance Institute for Highway Safety reports that Americans are keeping licenses and driving longer.

Tesla, Google, Apple, and traditional automobile manufacturers have noticed, and all have self-driving car projects. Joseph Coughlin, director of the MIT AgeLab, has too- "Younger people may have had smartphones in their hands first, but it's the 50-plus consumers who will be first with smart cars. For the first time in history, older people are going to be the lifestyle leaders of a new technology."

Chris Bourdeau, CPA
Tax Accountant
Wealth Management
Advent® Analyst

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Whose Money Is It Anyway?

(continued from cover)

true when the children have themselves been made wealthy through gifts or accommodations to family wealth. They commonly believe they are entitled to that presently owned by their parents- entitlement does breed aggrievement! Dr. Meril Sue Platzer, a neurologist, sums the circumstances and trend this way: "I think it's become an epidemic among those who have money. It breaks up families!" But not all fights are inappropriate and not in the best interests of senior family members, who may be exploited or deceived during a debilitated condition.

Fights over these circumstances often occur after the death of the senior family member, with claims of undue influence or a lack of capacity at the time predeath decisions were made. For example, a contest by children over a will provision or gift for the benefit of a second or third spouse, a companion, or household servant. Various laws limit a person's standing to fight about will or other provisions prior to a death. But, as in ours and Sumner Redstone's highly publicized cases, there is an increasing trend for impatient family members or companions to seek a means to securing inheritances to which they feel entitled before death. These battles are growing in scope and size and are placing significant pressures on many members of our growing elder population. The costs are considerable to fight and defend these cases, which involve battles of experts and extensive medical and psychological evaluations, and disclosure of private circumstances through testimony of numerous witnesses.

Often dementia or other signs of diminished capacity are the angle used to raise conflicts. Often hearing loss is mistaken for signs of dementia. With reason they can often be mediated, though emotions often set reason to the wind. A person with capacity and who is not being unduly influenced is free to do what they want with their property and life, with some common exceptions. But, what is undue influence? Have you ever been influenced by a spouse? Nevertheless, hearing loss, dementia, and other physical and psychological states can lead others to feel a person lacks capacity. When these conditions are presented to family members that feel aggrieved, emotions can lead one to pursue litigation. The best practice is to anticipate these conditions and to provide for the means to maintain the desired independence, while also recognizing that protections should be in place to confront diminished capacity that commonly occurs with age. Often preemptive medical and psychological diagnosis, coupled with proper legal documentation and witnessing, can stave off the loss of independence and fulfillment of true intent. The key is preemption and proper planning, because a court may have to decide your condition at the time of a decision many years in the future.

America is the New Banking Center of the World

(continued from page 7)

taxes, launder illegal gains, or facilitate illegal activities. The Bank Secrecy Act mandates that financial institutions (banks, brokerage firms, and others) implement anti-money laundering ("AML") policies and procedures and file Suspicious Activity Reports (a "SAR") if they suspect unlawful transactions or believe they are facilitating criminal activity. The Department of Treasury's Financial Crimes Enforcement Network ("FinCen") has proposed extending these rules to SEC registered investment advisers. History reveals, however, that though required to report, financial institutions have not been doing a good job. A 2015 SEC report revealed that of the 4,800 broker-dealers in the US required to file, the number of firms that filed "zero SARs or one SAR per year [was] disturbingly large." In 2015, Oppenheimer & Co., was fined $20 million, the largest civil penalty ever against a broker-dealer, for improper SAR reporting for executing sales of billions of shares of illegal penny stock trades for a Bahamian company while knowing or being reckless in not knowing that the company was executing illegal transactions and providing illegal brokerage services for its underlying customers, including many in the U.S.

Lawyers aren't required to report and are ethically bound to preserve client confidences. It would be unethical for them to file a SAR on a client or potential client. On the other hand, it would be illegal for a lawyer to facilitate such activity and prudence dictates implementing AML policies and procedures. The son of our attorney, Marnie Poncy, RN, Esq., Chip Poncy, Esq., served as the inaugural Director of the Office of Strategic Policy for Terrorist Financing and Financial Crimes (OSP) and a Senior Advisor at the U.S. Department of the Treasury from 2002 and 2013. As the Director of OSP from 2006-2013, Mr. Poncy led an office of strategic policy advisors in creating policies and initiatives to combat the full spectrum

See *America is the New Banking Center of the World* on page 12

Sector Performances as of September 23, 2016

Sector	YTD	1Yr	3Yr	5Yr
Basic Materials	12.92	15.15	5.09	7.14
Communication Services	14.69	15.08	11.07	16.41
Consumer Cyclical	3.54	4.14	9.05	17.14
Consumer Defensive	9.02	15.77	12.26	14.7
Energy	15.41	9.98	-5.14	2.33
Financial Services	2.26	4.26	7.73	16.75
Healthcare	2.73	1.19	13.52	19.7
Industrials	10.57	12.42	9.28	15.29
Real Estate	12.93	18.25	12.39	12.39
Technology	12.7	16.64	15.07	15.47
Utilities	20.66	22.18	13.25	12.14

Source: Morningstar

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

Dawn Chadwick, LA
Litigation / Health Care

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

We are pleased to announce the expansion of our Tax Accounting and Wealth Management Departments, with the addition of

Michael Posten II, CPA

Though a law firm, we have brought together a substantial group of highly experienced CPAs (some are below) with "Big Four" experience to support the estate and business planning, administration, real estate, and litigation work that we do. Properly integrating legal, estate, tax, and financial matters has become an increasingly important aspect of business and estate planning and wealth management. Forensic accounting in litigation is also imperative and cost effective in support of our trial attorneys. Mr. Posten bolsters these departments and we are happy to have him.

A graduate of the University of Florida Fisher School of Accounting with both a Master of Accounting and Bachelor of Science in Accounting, Mr. Posten joins us from the Stuart, Florida firm of Proctor, Crook, Crowder & Fogal, where he was a Tax Manager. Prior to his practice there, Mr. Posten was a Senior Accountant at PricewaterhouseCoopers, in Miami, Florida, where he was responsible for the supervision of associate accountants. He began his career with WTAS LLC (formerly Arthur Andersen) in West Palm Beach.

Mr. Posten is a member of the American Institute of Certified Public Accountants, Florida Institute of Certified Public Accountants, the Stuart/Martin County Chamber of Commerce, and the Stuart/Martin County LEADERship Alumni.

Patrick E. Mangan, CPA
f/w PricewaterhouseCoopers
Tax Accountant and Wealth Management

Kyle Donham, CPA
f/w PricewaterhouseCoopers
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

Tough Duties

The most difficult part of serving as an executor (among those who served)

29%	Commitment of time required
28%	Having access to and knowledge about records and information
25%	Having sufficient legal/ financial knowledge
25%	Managing expectations/disagreement among heirs or beneficiaries
23%	Filing tax return
14%	Paying bills or debts owed
13%	Distributing assets without clear instructions from the deceased
13%	Determining the value of assets
10%	Not compensated adequately for time
9%	Sharing decision-making with co-executor

Up for the Job

What people considered in naming an executor and/or trustee

SOURCE: 2014 US TRUST INSIGHTS IN WEALTH AND WORTH SURVEY THE WALL STREET JOURNAL

ANDREA L. BLAIR, MBA, CP, FCP
ESTATE ADMINISTRATION
FIDUCIARY SERVICES
WEALTH MANAGEMENT

Joseph C. Kempe
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

NEW LAW COMPLICATES ESTATE & TRUST ADMINISTRATIONS

(continued from cover)

The rules are designed to require heirs to use the date of death value of assets they inherit as the cost basis to determine capital gains on a future sale. Prior to the enactment of IRC Section 1014(f), an heir could take a position that the date of death value, and thus basis, of an asset they inherited was different from that reported or recognized by an executor. No more! Furthermore, their basis is dependent on the proper handling of the estate by the executor.

Under new IRC Section 6035, a Form 8971 and related statements must be supplied to both the IRS and the beneficiaries of the estate. That beneficiary may itself be another entity, such as a trust, and the trustee of that trust must furnish the statement to any beneficiary receiving a distribution of property that emanated from the estate and in some instances must file an additional Form 8971. Furthermore, should there be an error or omission in the statement that is consequential, the Form and statement must be supplemented and corrected. For this purpose, even an incorrect address, misspelling of a name, or the omission of a digit in a tax id number is considered "consequential," requiring correction and supplementation.

The Form 8971 and related statements must be filed and delivered within thirty days of the filing of a Form 706, Estate Tax Return. As drafted, regulations require in most cases that the statement go to all potential beneficiaries, potentially confusing heirs over what assets they will actually receive. There are various exceptions and lobbying efforts to change these rules, but they remain currently in effect.

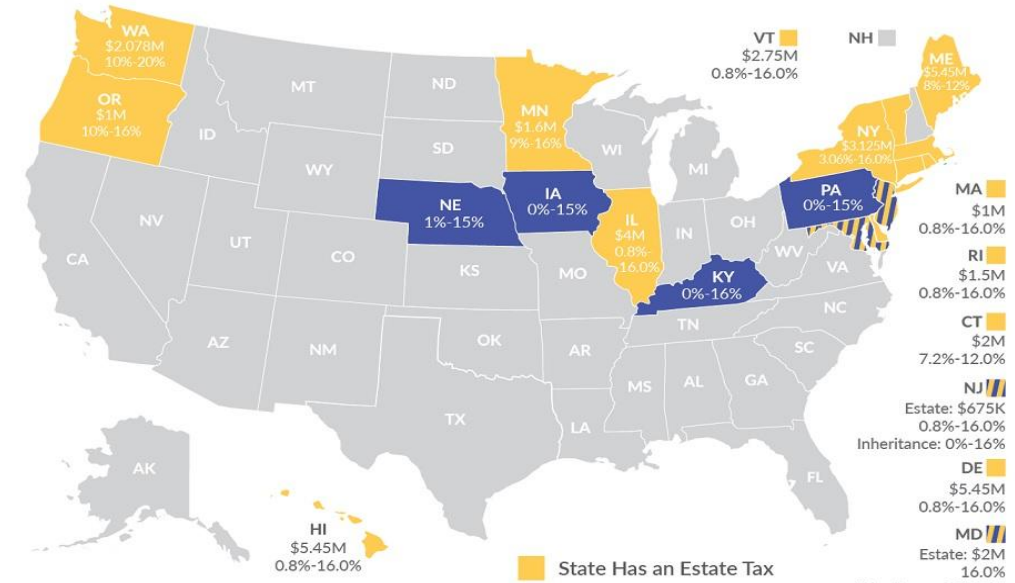
AMERICA IS THE NEW BANKING CENTER OF THE WORLD

(continued from page 10)

of illicit finance, including money laundering, terrorist financing, WMD proliferation financing, and kleptocracy flows. As a Senior Advisor from 2002-2006, Mr. Poncy assisted Treasury leadership in developing the U.S. Government's post-9/11 strategy to combat terrorist financing. He also assisted senior leadership in creating and developing the Office of Terrorism and Financial Intelligence in the post- 9/11 government reorganization. Mr. Poncy was recently a guest on a 60 Minutes piece that highlighted the willingness of US attorneys to create US shell companies for highly suspicious funds (from blood diamonds), without fully knowing the real owner. It is illegal for an attorney to knowingly and perhaps recklessly assist persons violating the Foreign Corrupt Practices Act. Nelsonian blind-eye nepotism should be viewed as naive in a transparent world!

DOES YOUR STATE HAVE AN ESTATE OR INHERITANCE TAX?

- STATE ESTATE & INHERITANCE TAX RATES & EXEMPTIONS IN 2016 -



Note: Exemption amounts are shown for state estate taxes only. Inheritance taxes are levied on the posthumous transfer of assets based on the relationship to the decendent; different rates and exemptions apply depending on the relationship.
Source: Family Business Coalition; state statutes.

TAX FOUNDATION @TaxFoundation

Abuse of Professional Athletes and Entertainers: It has been our experience that professional athletes and entertainers don't closely monitor their financial affairs and rely on friends and others to do so. We have seen first-hand how their perceived wealth can be wasted and abused. *In 2009, Sports Illustrated published a report stating that 78 percent of NFL players and 60 percent of NBA players are "bankrupt or broke" within two years of retiring. Recently some examples show why*:

NFL QB Mark Sanchez and MLB pitchers Roy Oswalt and Jake Peavy had $33 million secretly siphoned by Ash Narayan, who had worked for RGT Capital Management, of Dallas, Texas. The money was funneled into an affiliated business, which paid Narayan large sums of compensation. Sanchez met Narayan at church.

A group of 16 current and former NFL players, including Terrell Owens, Jevon Kearse, Fred Taylor, Frank Gore, Plaxico Burress, Clinton Portis, and Santana Moss are perhaps the most notorious examples, in what is believed to be the largest scam of player money in history. Two sources said the losses could approach $100 million or more. The lawsuit, which includes claims a Florida-based bank participated in the illegal opening of accounts and transfer of funds, claims nearly $53 million in losses. Their claims for relief against an investment advisor (Jeff Rubin) has now expanded to their agent, who introduced them to Rubin, and even to banks that only opened accounts and accepted transfer directions. This case demonstrates how broker misconduct can target high-income, inexperienced, and vulnerable investors, and reach those only peripherally involved.

In September 2016, a former registered advisor with Sun Trust Bank (Charles Banks, IV) was indicted for bilking former NBA Star, Tim Duncan, out of $7.5 million and losing as much as $26 million in imprudent private equity investments and undisclosed fees.

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Abuses in the Financial Industry

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2 years and for which the transferor did not receive the reasonably equivalent financial value in goods or services.

Federal Legislation: Both the House and Senate have pending bills, known as The Senior Safe Act, which are designed to extend civil and administrative liability protection to advisers, broker-dealers, and others who report suspected abuse to a so-called covered agency. The purpose of this legislation is to permit reporting from "whistleblowers" of suspected abuse without fear of violating certain privacy rights.

Structured Products: On June 23, 2016, The Securities and Exchange Commission announced that Merrill Lynch agreed to pay a $10 million penalty to settle charges that it was responsible for misleading statements in offering materials provided to retail investors for structured notes linked to a proprietary volatility index. Two former brokers taped calls and blew the whistle on the firm. The investment at issue lost as much as 95% of its value.

Unsuitable Annuities: The Attorney General and Insurance Commissioner of the State of California filed a $110 million-plus lawsuit against a "living trust mill" that allegedly tricked senior citizens into using retirement investments to buy annuities. The complaint alleged that the defendants used the pretext of the offer and sale of estate planning products and services to establish confidential relationships with consumers to find out about their assets, and then exploited those relationships by using financial information to induce consumers to purchase annuities. This was the second lawsuit brought by the California attorney general's office against a living trust mill. Two years ago, a state appeals court affirmed a multi-million dollar judgment against Fremont Life Insurance Company, which was found to have conspired with a living trust mill called Alliance for Mature Americans.

The State Securities Division for the Commonwealth of Massachusetts recently questioned 15 financial firms, including some of the largest brokerage companies, in an extensive investigation into whether senior citizens are being sold variable annuities that are not appropriate investments for them. Massachusetts officials accused Citizens Financial Group of "unethical or dishonest conduct" for targeting seniors in selling variable annuities.

During a speech at The National Academy of Elder Law Attorneys a commentator characterized deferred annuities as a "uniformly horrendous product," and are unsuitable for people over age 75 and arguably not for people at much younger ages. But half or more of annuities are being sold to individuals 65 or older, and probably 15 to 20 percent are sold to those 75 or older. Some of the insurance companies have maximum issue ages as high as 90. Minnesota-based Allianz Life Insurance of North America is the largest in the field of equity indexed annuities, selling tens of billions of dollars worth. The abuse was found to have two elements: the products themselves and the process by which they are sold. Deferred annuities are "highly illiquid, highly expensive, and very poorly performing." A principal reason why the products are so inappropriate for older Americans is that heavy surrender penalties apply if the money is needed before the annuitization occurs. If you buy at age 65, you're generally looking at a 10- to 15-year surrender period, with a penalty as high as 25% at the front end. Sales agent commissions are often as high as 15% and are priced into the products, while the companies' own internal rate of return is typically 12 percent on top of that. Deferred fixed annuities often pay an attractive "teaser" interest rate that lasts only for a short time.

Start-ups and High Flyers: FINRA suspended a former Tampa, Florida Wells Fargo adviser for four months for talking customers into investing in a technology start-up and thinly traded securities. What is legitimate private equity should be disclosed in a prospectus, that requires comprehensive review and appropriate due diligence.

Using Private Charities

- Private Foundations Serve Many Purposes -

"Wills are uncanny and electric documents. They lie dormant for years and then spring to life when their author dies, as if death were rain. Their effect on those they enrich is never negligible, and sometimes unexpectedly charged. They thrust living and dead into a final fierce clasp of love or hatred. But they are not written in stone—for all their granite legal language—and they can be bent to subvert the wishes of the writer."

Strangers in Paradise: How Gertrude Stein and Alice B. Toklas got to Heaven, by Janet Malcolm, The New Yorker, Nov. 13, 2006, at 57.

With the Trump and Clinton foundations in the news, we thought we would provide some possibly useful information. Families create foundations for a variety of reasons. Contributions made are deductible for income tax purposes (subject to a variety of rules), even though the funds or property aren't immediately given to public charities or expended on the foundation's own purposes. Usually, a large upfront contribution is made and after the first year, the greater of income or 5% of the foundations assets is donated to public charities or spent on charitable causes. Generally, transactions between foundations and family members are prohibited and can incur large penalties. Nevertheless, family members can receive reasonable compensation for services rendered in the management of the foundation and the foundation can pay various legitimate office and other expenses. Various rules also penalize disqualified persons who directly or indirectly benefit from foundation assets through so called "private inurement" rules.

The benefits of foundations can be substantial, particularly as part of an overall estate plan. This is because property that passes on death to a foundation is free of death taxes, but those assets remain under the control of family members. See, e.g., the discussion regarding private museums in *Art and Other Valuable Tangible Property*, page 5. Similarly, they can be used to defer or eliminate estate tax, while perpetuating beneficial intrafamily lending facilities (leverage). For example, it is not uncommon for intrafamily loans and sales to leave a substantial portion of a senior family member's estate composed of promissory notes bearing low interest, while growth assets are held by junior family members. Family can continue to pay this low interest to the foundation while the assets continue to grow in their hands. No estate tax is due on the notes necessitating a need for liquidity and prepayment of the notes on death. The benefits continue over the term of each note without a need to pay estate tax, and note payments are made to the foundation which in turn uses payments to service the foundation's charitable objectives. A proper structure for this is involved, but has been approved by the IRS.

Foundations serve a legitimate purpose and can offer substantial benefits, but they are subject to a variety of detailed regulations. We are routinely asked to assist individuals create and maintain them in good standing with the IRS.

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Recent Trends of Some Market Value Indicators: Data Current 9/23/2016

Economic Metric	Previous Period	Current Period	% Change	Previous Year	YTD
TMC/GDP Ratio	110%	116%	5.45%	124%	-6.45%
Shiller's CAPE Ratio	27.16	26.39	-2.84%	25.69	2.72%
10 - 2 Treasury Yield Spread	0.83	0.82	-1.20%	1.47	-44.22%
Tobin's Q	0.9782	0.9701	-0.83%	1.093	-11.24%

Recent Trends of Some Economic Indicators: Data Current 9/23/2016

Economic Indicator	Previous Period	Current Period	% Change	Previous Year	YTD
GDP	18230.1	18436.5	1.13%	17913.7	2.92%
Jobless Claims	263000	259000	-1.52%	275000	-5.82%
Housing Starts	1212000	1142000	-5.78%	1132000	0.88%
Unemployment Level	7770	7849	1.02%	8018	-2.11%

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Art and Other Valuable Tangible Property

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As a result of the recent Fifth Circuit decision in *Elkins*, previous uncertainty over the value of fractional ownership of art and other tangible property has been resolved. Elkins essentially establishes that two or more partial ownership interests in art aren't worth the whole, and can be worth substantially less- as much as 51.69% to 79.74% less. In its simplest form, division of the ownership of art in "tenancy in common" between husband and wife, or through partial gifts to children or any variety of trusts, will cause a substantial valuation manipulation that substantially reduces estate tax. This same principle would apply to all property, including other forms of tangible personal property and real estate.

Though Elkins does not eliminate the tax, properly used in an overall estate plan it can substantially reduce it. Total elimination is often accomplished by combinations of gifts of art to family and portions to charity, and having sharing agreements for possession and use. Alternatively, family's can establish private operating foundations, in the form of museums. A donation of a family's art collection to such a private foundation would be entirely exempt from the estate and gift tax system. The popularity of private museums has raised scrutiny. The Senate Finance Committee, chaired by Senator Orrin G. Hatch, R-Utah, has questioned whether the tax-exempt status of a number of these private museums is justified by sufficient public benefit, and specifically, whether some of the smaller museums that are on or close to a donor's home, and are accessible to the public during limited times and in some cases by appointment only, meet the guidelines set forth by the Internal Revenue Service.

Trump Revises Death Tax Proposal

Donald Trump has recently altered his stance on the estate tax. His current platform calls for eliminating the estate tax, but requiring the recognition of unrealized capital gains exceeding $10 million as of date of death. It is presently unclear whether the first $10 million would receive a basis step-up and whether the $10 million is the total for a married couple or per individual.

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Tax Plans of the Candidates
Here are some of the highlights.

INDIVIDUAL INCOME TAXES	**INDIVIDUAL INCOME TAXES**
Clinton: Would impose a 4% "fair share surcharge" on Americans making more than $5 million annually. Would implement the "Buffett rule," imposing a minimum 30% effective tax rate on Americans making more than $1 million annually.	**Trump:** Would reduce the current seven tax brackets to three: 12%, 25% and 33%.
CAPITAL GAINS AND INVESTMENT TAXES	**CAPITAL GAINS AND INVESTMENT TAXES**
Clinton: Last year, Ms. Clinton proposed higher capital gains rates on shorter-term investments.	**Trump:** Did not mention investment taxes.
TAXES ON RETIREMENT PLANS	**TAXES ON RETIREMENT PLANS**
Clinton: Would end what she calls the "Romney loophole" through "limiting the ability of the very wealthiest to game the system by sheltering large incomes in tax-preferred accounts," a summary on her campaign website states. She also mentions building on President Barack Obama's proposals in this area.	**Trump:** Does not specifically mention taxation of retirement plans.
ESTATE TAX	**ESTATE TAX**
Clinton: Would restore the estate tax to 2009 levels, $3.5 million for individuals at a rate of 45%. In 2016, the estate-tax exemption is $5.45 million for individuals and $10.9 million for couples, with a 40% rate. She also would "crackdown on loopholes in the estate tax, including methods that people can now use to make their estates appear to be worth less than they really are."	**Trump:** Would eliminate the estate tax.
CARRIED INTEREST	**CARRIED INTEREST**
Clinton: Would eliminate this deduction that is used by private-equity practitioners.	**Trump:** Would also eliminate this deduction.
CHILD CARE	**CHILD CARE**
Clinton: Would expand the child tax credit.	**Trump:** Would provide an "above-the-line deduction" for child-care expenses, according to a campaign fact sheet. Low-income taxpayers could deduct them from their payroll taxes.
CORPORATE TAXES	**CORPORATE TAXES**
Clinton: Does not specifically mention corporate taxation in her plan.	**Trump:** Would establish a top corporate tax rate of 15%, which also would apply to businesses that are operated on the proprietor's personal income-tax return as a pass-through.

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Real Estate Developments and Client Service

- Saving Money and Avoiding Contract Issues -

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Client Service and Savings: For some years now we have offered our clients a service that is intended to reduce transaction costs and provide fuller representation. David Tassell, Esq., heads our real estate practice group and title company, Counselors Title, where we have developed a program to save clients considerable money in real estate transaction while being able to provide legal representation at no cost. Before you contact a real estate agent in connection with a purchase or a sale, call David. In five minutes David will explain how our program works to save clients considerable sums when selling or purchasing property, either commercial or residential.

Change in Law Can Render Leases Void: A recent Florida case regarding a lease provision that was affected by subsequent legislation was voided as a result of a case cited as precedent that was 100 years old. A tenant walked away from a lease where he operated an adult arcade and the lease disallowed the use of any coin-operated amusement device. The tenant's business was to operate a network of computerized, "slot-style" machines which were legal until Sec. 849.16, F.S. was amended after the lease was signed. The amended statute prohibited computerized, "slot-style" machines except in designated casinos, but allowed amusement centers that utilized coin-operated amusement machines. Recall though that the lease prohibited tenants from using any coin-operated devices. Following the amendment to the statute, tenant closed its business and vacated the premises. Landlord sued tenant and tenant lost at trial but on appeal the Fourth District Court cited Christopher v. Charles Blum Co., 82 So. 765 (Fla. 1919), and said: "it seems to be well settled that where a lease restricts and limits the use of premises let to a particular specified purpose, and thereafter, because of the enactment of a valid statute, such use becomes unlawful, the subject-matter of the contract is destroyed, and the covenants of such lease will not be enforced against either party thereto." The appellate court reversed the trial court's order.

Lack of Mutuality of Obligation May Be Cured by Subsequent Conduct: Buyer and seller entered into a contract for the sale of real property. The contract called for deposits totaling $75,000 and had a clause that provided that an escrow deposit would be forfeited to seller as liquidated damages on buyer default. The clause went on to add that if seller failed to perform, buyer's sole remedy would be to receive the return of buyer's escrow deposit. Subsequently, the parties had a disagreement and sued each other. The trial court denied buyer's claim and granted seller's summary judgment finding that the liquidated damages provision was valid and enforceable. The buyer appealed. The appellate court noted that "application of similar one-sided liquidated damages clauses have routinely been struck down based on one of the parties lacking any real obligation," if the seller could simply walk-away and return the deposit. In these cases, buyers are commonly compensated where the seller walks away from a contract in order to sell to a buyer paying a higher price. However, in this case, the court found that because the party with no real obligation (the seller who in theory could have defaulted by refusing to close and its only obligation was to return the deposit) was seeking to enforce the liquidated damage clause against the party with the obligation (buyer), his attempt at performance under the contract cured any defect as to lack of mutuality. As seller in this case was not at fault, and was ready, willing, and able to perform under the contract, any lack of mutuality of obligation which may have existed at contractual inception was thereafter cured. So Mr. Buyer beware, if you think you have an out because of lack of mutuality of remedy, think again. If the seller is not defaulting, you are obligated to close. **[Note: We would not allow our clients to sign a contract where the buyer's sole remedy was a return of its deposit. Typically a buyer should be able to sue for specific performance; i.e., require the seller to complete the transaction, or for damages. Sometimes sellers will attempt to negotiate out the damages provisions (which we do not recommend when representing buyers), but we never agree to forego the remedy of specific performance.]**

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