CLIENT UPDATE *and wealth advisor*

WINTER 2022

KEMPE

Law | Estates | Tax | Wealth

Offices in Jupiter, Stuart & Vero Beach

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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.

BACK TO SQUARE ONE!

- SIGH OF RELIEF, BUT NOW WHAT? -

For now, it appears that tax reform affecting estate planning is off the table, at least based upon reports that Senator Manchin has ended discussions over President Biden's marquee legislation- Build Back Better ("BBB"). Threats of tax reform lowering exemptions have regularly occurred since 2012, causing trillions of dollars of family wealth to be gifted into trusts in anticipation of the lowering of exemptions. Since the Fall of 2020 many have been pressured into creating trusts to use exemptions due to the imminent threat of major tax reform after the Biden election. In what was

Continued on page 12

ARE WE REALLY IN A NEW GILDED AGE?

- HOW MANY GENERATIONS BETWEEN [ROLLED-UP] SHIRT SLEEVES- - SHOULD TAXATION SHORTEN IT? -

Andrew Mellon argued against the use of wealth taxes to break-up large fortunes because he believed the continuation through generations of a single fortune had proven impossible. "[Rolled-up] shirt sleeves to shirt sleeves in three generations," the proverb is told, and the proverb is now being questioned. Bernie Sanders' and Sheldon Whitehouse's "For the 99.5% Act" legislation introduced in March of 2021 was announced with backing from a number of academics, politicians, and billionaires, such as Bill Gates and Warren Buffett. Furthermore, it placed the legislation in historic context by claiming that over the past 40 years (actually much longer), there has been an enormous transfer of wealth from the middle class to the wealthiest

Continued on page 8

IS A "GRAT" A LOOPHOLE?

- SOME THINK THIS LAW PASSED BY BILL CLINTON IN 1993 IS ONE -

A grantor retained annuity trust ("GRAT") is an estate planning tool that has been cited by many as a loophole that should be closed, in order to curtail tax free transfers of wealth using trusts. Bill Clinton, as President in 1993, signed legislation authorizing the enactment of Internal Revenue Code § 2702 and made GRATs statutory. It thus cannot be considered a "loophole," because it is statutory entitlement that can be used by all taxpayers. Code § 2702 also authorized the use of qualified personal residence trusts or QPRTS, which are common tools used by taxpayers in their estate

Continued on page 10

GRANTOR TRUST STATUS - A SECRET BENEFIT OR REAL LOOPHOLE?

- ELIMINATING THE NEGATIVE CONSEQUENCE OF CARRYOVER BASIS -

A hesitation of some when confronting tax reform and gifting large amounts of wealth using current gift tax exemptions involves "carry-over basis." In essence, the historic cost basis of the donor of property is transferred to the donee when property is gifted. For example, if a husband desires to use his $11.7 million gift tax exemption (in anticipation of reduction by tax reform), he might gift that amount to a trust for his wife, recognizing that he and her can enjoy the income while the growth is removed from their

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2022: Better but Still Not Great!

Rating: ★★★★★

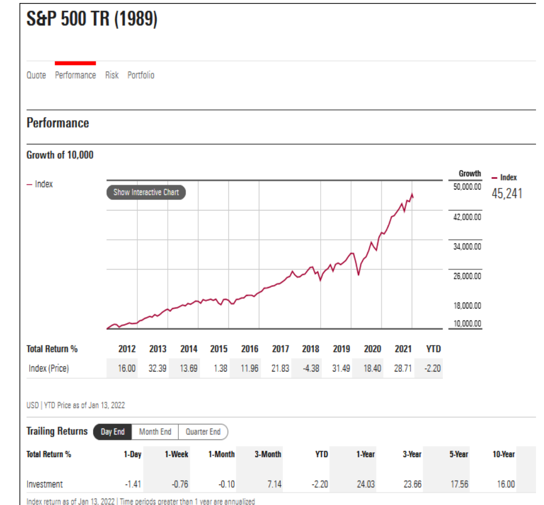
Like in our last Client Update, how you view 2021 will depend a lot on your health, age, and location. It was a year of political debate, COVID variants, and surprisingly good investment markets, with real estate prices around the country soaring and the stock market continuing its rise. Technology plowed forward and the Metaverse was created. The S&P 500 has had a total time weighted return of 100.37% over 3 years, with rises of 31.49%, 18.40%, and 28.71% since 2019. Notwithstanding political banter over who is participating in these market returns, economists believe that there is ample proof that "trickle down" is proving its case and that Americans are participating in record increases in standards of living. If we are living in a New Gilded Age, at least more are enjoying it than in the late 19th and early 20th centuries and increases in wealth are spreading downward in an exponential manner.

Planning to confront tax reform occupied a substantial amount of time, effort, and money since President Biden was elected. A number of tax reform measures were proposed by an increasingly progressive (socialist) side of the political left. A bipartisan infrastructure measure was passed, while billions of dollars remain unspent from 2020 for Covid relief, with some of those funds having been redeployed. Proposals to increase estate, gift, and generation skipping taxes; to increase income taxes; to tax wealth and unrealized capital gains; and to impose a recurring tax on trusts, all died as a result of two moderate Senators (Manchen and Sinema) holding their grounds based upon certain principles. Some of those principles involved a recognition that easy money weakens the United States by spurring inflation and decreasing the strength of the dollar. Others were a result of a fear that tax policy is a tool, for good or bad, and that new types of taxes that have never been tested could be quite damaging. Manchen and Sinema gained considerable political capital and stature. An interesting example of how holding ones values can produce positive results, even when you are the lone standouts. I didn't feel the same when McCain voted "No" to repeal Obama's Affordable Care Act, as I thought it was more of an anti-Trump position (political) rather than principled. I could be wrong. Also, some (ProPublica) believe that a wealthy real estate family engaged a former Manchen aide to lobby Manchin to thwart taxes on the wealthy.

So, we are back to square one with protecting our wealth by avoiding (not evading) taxation. Trusts are our friends and there are many types of trusts that can be used. This Client Update revisits several common strategies, and how they might continue to be used at the outset of 2022 and until any new tax reform. Everyone should be reminded that under our current law, what is now a $12.06 million estate, gift, and generation skipping tax exemption, is essentially reduced in half (by 50%) on January 1, 2026. Time to plan is also a friend, and we haven't had the luxury of time over the past 16 months as a result of the many tax reform measures that have been proposed, some having retroactive effective dates. As we commonly explain, there are essentially four phases of estate planning: (1) base wills and trusts to avoid probate, guardianship, and to use our given exemptions; (2) more advanced planning, such as with family partnerships, qualified personal residence trusts ("QPRTs"), and common gifting trusts, where gifts are discretionary and have negligible effects on senior family member cash flows and finances; (3) even more advanced planning involving interest rate planning, valuation discounting, and leveraging of low interest rates, with intrafamily loans and sales; and (4) post mortem planning, that is often tied to the planning that a patriarch or matriarch did for their family while alive. This Client Update reminds us of a few of those strategies while providing a context of the political views on wealth.

We are looking forward to at least a 3 star 2022. My favorite number from my old "football days" is 22 and I turned 65. My youngest daughter applied to a number of law schools, and we are awaiting her options. The Firm keeps growing to satisfy client demand(s), and we are thankful for them. God Bless and all the best for the New Year!

Joe Kempe



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Back To Basics And Using What You Are Given

- Lifetime and Annual Exemptions Have Increased -

The estate, gift, and generation-skipping tax exemptions have increased from $11.7 million to $12.06 million in 2022. Furthermore, the 2022 annual gift exclusion has been increased to $16,000 per donee from $15,000. A $1,000 increase from last year, and the first adjustment to the exclusion amount since 2018. The annual exclusion is the amount of cash or other assets that can be transferred to a person without incurring a gift tax, or reducing the donor's basic exclusion amount (the total value that can be transferred tax-free through gifts or by inheritance at death). Taking advantage of the annual exclusion over the course of one's lifetime can produce significant wealth transfer (and tax savings) results.

When shifting wealth to junior family members, most senior family members desire to protect it from the four unfriendly hands: (1) divorce, (2) in-law rights at death, (3) third party liability exposure, and (4) once they under the generation-skipping tax, the wealth transfer tax system too. By adhering to proper formalities, wealth can be contributed to a trust while counting each beneficiary's annual exclusion against the gift- in other words, counting all junior family members (including grandchildren), while providing for an equal division to just children (if desired) on a future triggering event.

The ability to count multiple beneficiaries' annual exclusions, and the compounding nature of investment returns, makes use of gifting trusts of this nature a highly effective vehicle for wealth transfer planning. For example, a married couple with four grandchildren may contribute up to $128,000 per year to the Trust without incurring gift taxes or using their lifetime exemption amounts. Done over 20 years, and assuming a 6% rate of return, the total accumulation in the trust would amount to $4,709,000. The estate tax savings in this example would be as high as $1,884,000 at today's rates! This amount could be provided to only the grandchildren or to any combination of the grandchildren and children of the senior family member who settled the trust.

A gifting trust is a simple and effective tool that allows senior family members to retain control or convey control to the next or third generation over assets and should be considered by those who aren't prepared to make large gifts. By making smaller contributions over a longer period of time, compounding investment returns optimize wealth transfer in a protected format, free of the wealth transfer tax system.

Charitable Lead Annuity Trusts Provide Dual Benefits For Philanthropic Families

- Leveraging Low Interest Rates Enhances Their Benefits -

Charitable lead trusts ("CLTs") have existed since the 1970s, and have been used by the likes of Jacqueline Kennedy Onassis and the Walton family for tax and philanthropic planning. CLTs can be tailored to achieve a litany of charitable objectives while providing upside potential in the form of tax-free wealth transfer to junior family members. They can be structured to provide large upfront deductions to those experiencing a liquidity event, or to preserve the tax deductibility of charitable donations for taxpayers' who otherwise cannot benefit from them. These trusts are especially effective in today's (still) low interest rate environment.

CLTs are typically structured to provide an annuity payment to a charity or group of charities for a fixed number of years, or over the lifetime of the settlor (the "lead interest"). Private foundations and donor advised funds can also be charitable annuity recipients when properly structured.

The annuities can be structured so the present value of the payments to charity (the lead interest) is equal to the funding amount, eliminating any potential gift. Alternatively, a gift can be generated where desired after analyzing the economics. After the expiration of the lead term, any amount remaining in trust can pass to the next generation free of death taxes in the settlor's estate. When structured as grantor trusts, the settlor receives an income tax deduction in the year of contribution, and pays tax on the CLT's income during the term (thereby preserving Trust principal for the remaindermen). Alternatively, the CLT can be structured as a non-grantor trust, in which case the trust claims a deduction for charitable contributions and is taxed on any income it recognizes in excess of the charitable annuity payment. How the CLT is structured is based upon the objectives of the client, after the economics are analyzed and understood.

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There May Be More Going on With a Patient in a Vegetative State Than We Thought

Persistent Vegetative State is a relatively new medical created state of being. These patients breathe on their own and have sleep wake cycles: that's it. Patients become persistently vegetative having survived a near death experience by being placed on a ventilator for sufficient time to allow the respiratory center located on the brain stem to heal, and they then resume breathing on their own without help of a ventilator or a respirator as it is sometimes called.

Because these patients do not show any obvious neurological reaction to touch, voice, audible or visual stimuli, we have believed them to be "non-responsive" to remain that way indefinitely…forever.

However, with the advent of new brain imaging, it has been recently learned that patients' brains can light up when these patients are placed in MRI machines and given very specific brain imaging. As reported, when a patient who had formerly played a lot of tennis was tested and asked to "play tennis," he showed brain activity similar to the activity reflected when a healthy person plays tennis. In another report, a twelve-year PVS patient's brain lit up when asked if he liked a particular TV show over other TV shows that had consistently played in his room during the 12 years.

Interestingly there has been no reported answer to "Would you like us to let you go?" or "Would you like to stay as you are?"

As of now, a Persistent Vegetative State is one of limited conditions to have "no reasonable medical hope of recovery "and is one of the medical conditions included in the Florida Statutory Living Will.

Questions About Proposed Treatment

We are often asked: "What questions should I ask my doctor about a proposed treatment?"
We believe there are various iterations of the following five questions:

1. What is currently going on with my health?
2. Why are you proposing this treatment?
3. What will most likely happen to me in the short term if I have this treatment?
4. Are there any alternatives to your proposed treatment?
5. What will happen if I refuse this treatment?

It is a good idea to take note of the answers so that you can think about the discussion and, if desired, you have a basis to talk to another physician if pursuing a second opinion.

Why Health Care Advance Directives Are Usually Not Applicable with a Covid Patient

- Your Rights Are Yours To Exercise -

The threshold to trigger a patient's Health Care Advance Directive must be a medical finding that the patient lacks sufficient mental capacity to make a medical decision. Most patients with Covid present to a hospital in respiratory distress but with mental capacity. Even with a serious decline in respiratory function, patients usually maintain mental capacity. Thus, when a patient in acute respiratory distress is offered the option of artificial ventilation (respirator), he or she usually chooses to go on a ventilator. Respiratory distress is not only uncomfortable, it can be downright terrifying. The usual response to such discomfort is to elect the oxygen relief a ventilator provides. Subsequently, these same patients may lose capacity during the ventilation period. However, their documents still do not provide for clear decision-making on the part of either the surrogate or the medical staff because their prognosis for recovery remains uncertain (There are some patients who survive the overwhelming antigen-antibody reaction referred to as a cytokine storm and come off a ventilator even after a period of weeks. They then go on to recovery).

Part of the complexity of this virus: absent other factors, a patient with a diagnosis of Covid can and usually does recover…. regardless of age. So now, although the patient lacks capacity, physicians are unable to determine their prognosis to the medical certainty legally required to follow either a Living Will, or as to whether their "capacity is lost with little chance of recovery" so as to invoke their Advance Directive Plan of Care.

To summarize: patients usually have capacity when the treatment decision whether to ventilate is made (hence the decision is made by a capacitated but oxygen hungry person who is just plain looking for relief); and then, upon loss of capacity, there is no medical certainty as to the prognosis of the virus. This is a serious medical/legal/ethical issue. It confronts patients, health care surrogates and physicians. The situation is further exacerbated by the "no visitors allowed" pandemic hospital restrictions. We have received calls from clients asking for advice as to how can they best protect themselves from long term ventilation and ultimately futile efforts.

We suggest the following:

1. Clearly express to your health care surrogate your desired parameters of care. Particularly when "enough is enough." This is your best protection for both appropriate and compassionate care.

2. Request a conversation with the medical team (with you surrogate present by phone) as early as possible during treatment. Because of staff rotation, request the plan/conversation be noted in the medical chart. Make certain staff knows who your surrogate is and has all contact information.

3. Finally, make clear the determination of your surrogate is to be respected.

As always, we remain available to help you when and if you need us.

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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Health Care Advocacy
Bioethics Law
Death With Dignity
Guardianship Proceedings

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7520 Rate History

	2021	2020	2019	2018	2017
Jan	0.6	2.0	3.4	2.6	2.4
Feb	0.6	2.2	3.2	2.8	2.6
Mar	0.8	1.8	3.2	3.0	2.4
Apr	1.0	1.2	3.0	3.2	2.6
May	1.2	0.8	2.8	3.2	2.4
June	1.2	0.6	2.8	3.4	2.4
July	1.2	0.6	2.6	3.4	2.2
Aug	1.2	0.4	2.2	3.4	2.4
Sept	1.0	0.4	2.2	3.4	2.4
Oct	1.4	0.4	1.8	3.4	2.2
Nov	1.4	0.4	2.0	3.6	2.4
Dec	1.6	0.6	2.0	3.6	2.6

Use of the 7520 rate is required in many estate tax planning strategies, including GRATs. Generally, the lower the rate the better. Those that acted since the second half of 2020, and who act before rates significantly rise further, have or will benefit.

Homestead: Continued Confusion in the General Public

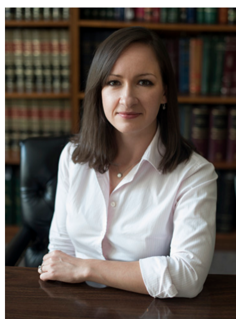
- Not Easy To Understand Because There are Three -

There are many benefits under Florida law applicable to a Florida resident's primary residence, also known as the resident's "homestead." Homestead in this article refers to residential real property and is limited to one-half of an acre of contiguous land if located in a municipality, or 160 acres of contiguous land if located outside a municipality. The homestead benefits include (1) protection from general creditors, (2) ad valorem tax benefits (i.e., homestead exemption and "Save Our Homes" protection), and (3) rights of a surviving spouse (assuming he or she has not validly waived such rights in a marital agreement) and/or minor child to inherit an interest in the homestead. Homestead status offers the greatest level of asset protection under Florida law. Some courts have gone as far as to rule that even a fraudulent transfer into a homestead escapes the reach of creditors.

Ad valorem tax benefits, include what is essentially a valuation exclusion of $25,000 when assessing the tax. There is also the "Save our Homes" rule, that limits any increase of the assessed value to a maximum of 3% each year or the amount of the change in the CPI, whichever is lower.

There is also a marriage entitlement. Section 732.4015, Florida Statutes, and the Florida Constitution, prohibit a married Florida resident, or the unmarried Florida resident who is a parent of a minor child, from devising his or her homestead, except that a married resident with no minor child may devise his or her homestead only to his or her spouse. If not lawfully devised (e.g., if married and not devised to the spouse), or if there is a minor child, the surviving spouse (if any) receives a life estate, and the remainder interest passes to the owner's descendants, per stirpes (i.e., equally to the owner's surviving children with the share of a predeceased child passing to his or her descendants). Section 732.401(2), Florida Statutes, provides, however, that in lieu of a life estate, a surviving spouse may timely elect to take a 50% interest in the homestead as a tenant in common with the owner's descendants taking the remaining 50% interest. A spouse may be motivated to make this election to reduce the burdens of being a life tenant, or to own an interest in the homestead, which may be disposed of by the spouse as the spouse determines.

If the owner does not want the surviving spouse to own the homestead or any part of it upon the owner's death, then Section 732.4017, Florida Statutes, allows the owner to transfer the homestead to an irrevocable trust during the owner's life. If the owner is married, the owner's spouse will be required to join in this conveyance, but once made, the spouse will only have those rights granted by the trust to the spouse. When the owner subsequently dies, the trust determines how the homestead descends without devise restrictions, even if the owner is survived by a minor child. There is also much confusion on the advantages of placing a homestead into revocable living trusts, which is quite common but beyond this article.



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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
44,675,668.48	S&P 500 - MSCI ACWI ex US 85-15		USD

Analysis

Asset Allocation

	Portfolio Long	Portfolio Short	Portfolio Net	Bmark Net
Cash	0.42	0.13	0.29	0.00
US Stock	83.11	0.00	83.11	84.26
Non US Stock	14.68	0.00	14.68	15.74
Bond	0.72	0.00	0.72	0.00
Other	0.07	0.00	0.07	0.00
Not Classified	0.00	0.00	1.13	0.00
Total	99.00	0.13	100.00	100.00

Equity Investment Style %

	Value	Core	Growth
Large	27	41	18
Mid	2	5	1
Small	2	3	1

Total Stock Holdings 8750
Not Classified % 0.00
0-10 10-25 25-50 >50

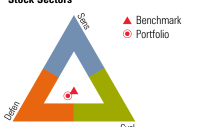
Fixed-Income Investment Style %

	Ltd	Mod	Ext
High	43	0	0
Med	10	47	0
Low	0	0	0

Total Bond Holdings 16599
Not Classified % 0.00
0-10 10-25 25-50 >50

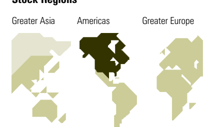
Stock Analysis

Stock Sectors



	Portfolio %	Bmark %
Defen	**31.10**	**22.02**
Cons Defensive	13.51	6.61
Healthcare	15.86	12.83
Utilities	1.73	2.58
Sens	**39.93**	**46.16**
Comm Svcs	4.77	9.65
Energy	3.07	3.02
Industrials	11.46	8.75
Technology	20.63	24.74
Cycl	**28.97**	**31.81**
Basic Matls	9.01	3.14
Cons Cyclical	5.46	12.11
Financial Svcs	13.27	13.85
Real Estate	1.23	2.71
Not Classified	0.00	0.01

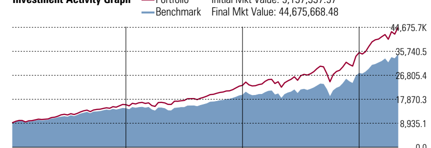
Stock Regions



	Portfolio %	Bmark %
Americas	**86.04**	**85.68**
North America	85.68	85.38
Central/Latin	0.36	0.30
Greater Asia	**7.50**	**6.80**
Japan	1.17	2.15
Australasia	0.40	0.67
Asia Developed	2.42	1.69
Asia Emerging	3.51	2.29
Greater Europe	**6.45**	**7.52**
United Kingdom	1.39	1.77
Europe Developed	3.94	5.08
Europe Emerging	0.30	0.22
Africa/Middle East	0.82	0.45
Not Classified	0.00	0.00

Performance (Return as of date 12/31/2021)

Investment Activity Graph



Trailing Returns	3 Mo	1 Yr	3 Yr	5 Yr	10 Yr
Portfolio Return	11.06	26.70	25.95	19.17	17.77
Benchmark Return	9.57	24.99	23.65	16.71	14.71
+/- Benchmark Return	1.50	1.71	2.30	2.46	3.05

Time Period Return	Best %	Worst %
3 Months	17.65 (04/20-06/20)	-19.26 (01/20-03/20)
1 Year	54.07 (04/20-03/21)	-3.71 (04/19-03/20)
3 Years	25.95 (01/19-12/21)	7.35 (04/17-03/20)

Portfolio Yield	Yield %
Trailing 12 Month	1.86

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 https://advtools.morningstar.com/advisor/login/FamilyInfocontents.asp

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Bitcoin and Blockchain -Do You Need To Know?-

"Bitcoin is a technological tour de force." Bill Gates, co-founder of Microsoft

"Stay away from it. It's a mirage, basically. In terms of cryptocurrencies, generally, I can say almost with certainty that they will come to a bad ending." Warren Buffet, CEO, Berkshire Hathaway

"Still thinking about #Bitcoin. No conclusion- not endorsing or rejecting. [I] know that folks also were skeptical when paper money displaced gold." Lloyd Blankenfein, CEO of Goldman Sachs

"I really like Bitcoin. I own Bitcoins. It's a store of value, a distributed ledger. It's also a good investment vehicle if you have an appetite for risk. But it won't be a currency until volatility slows down." David Marcus, CEO, Paypal

"Maybe I'm just too old, but I'm going to let this mania go on without me." Jeffrey Gundlach, CEO, Doubleline Capital

"[Virtual currencies] may hold long-term promise, particularly if the innovations promote a faster, more secure and more efficient payment system." Ben Bernanke, Chairman of the Federal Reserve.

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Blocks of Digital Assets

- Bitcoin, Non-Fungible Tokens (NFT's), and Property -

We are finding an increasing number of clients with digital assets on their balance sheets and, as such, we are investing our time, effort, and money learning about these new forms of property and other uses of blockchain. As property, some forms of digital assets are regulated by the Securities and Exchange Commission and digital assets are considered capital assets by the Internal Revenue Services for tax purposes. As property, they can also be held in trusts and conveyed to others, perhaps by a blockchain trust or will. Blockchain is not only used to create assets, but is used as a medium of contract, payment, and other processes.

Blockchain is a general purpose technology, meaning that it is a medium instead of an end product. Yes, it was created as the backbone of Bitcoin, but that is simply one implementation of the technology. As an analogy, man created paper to deliver his word more easily, since sheets of rock and animal skins seemed primitive. However, the creators of paper did not realize they created a medium that could be utilized to create new products, such as paper airplanes, paper snowflakes, coffee cups, or origami. Blockchain is currently at its infancy in our society. Whether you understand it, are aware of it, keep hearing about it, or feel you do not need to understand it, blockchain will be within all of our daily lives in a matter of a few years. The purpose of this article is to explain the mechanics of how a blockchain functions and how a blockchain can be utilized for things not cryptocurrency-related.

A blockchain is exactly what it sounds like, a chain of blocks. A 'block' is the encryption of data or transactions within it. The "chain" is the link between the two blocks in order to trace the block up the chain. There are four components to a blockchain: (1) the previous block's hash, (2) input data, (3) the current blocks hash, and (4) the nonce. A block hash refers to the transformation of input data into a fixed size string of variables performed by a specific algorithm. Each block contains three components: (1) the input data, (2) the previous block's hash, and (3) the nonce. The input data can be anything from a ledger of transactions (as in Bitcoin), to a picture, or your will or trust (we are not advising this as of now). The block's data, when input into the specific algorithm utilized by the blockchain, will generate a string of variables called the block hash. This is the encryption mechanism. However, one variable still remains, the nonce. In order to encrypt a block, digital data miners input different nonce in order to complete the block and generate a correct current block hash. Therefore, the following formula is used to explain a completed block.

previous block hash + input data + nonce = current block hash (indicating a completed block)

Imagine that we have 3 completed blocks: Block 1, Block 2, and Block 3. If anyone were to change any variable to Block 2, the algorithm will generate a new block hash for Block 2. Remember, Block 3 is "chained" to Block 2 by the utilization of Block 2's hash. So, the "chain" is now broken and every party on the chain now knows this. The defect must be cured in order for the break to be mended to effectuate the payment, a smart contract, or other blockchain use. This is the mechanism that makes blockchain dependable: every party to the block is dependent on the other to complete the block and any tomfoolery immediately becomes apparent.

The blockchain can be centralized or decentralized. A centralized blockchain stores the blocks and input data within a central location, computer, or firm. A decentralized blockchain does not utilize a central storing house for the input data and is, therefore, decentralized. Bitcoin functions on a decentralized blockchain. The main selling point of a decentralized blockchain is that it is not dependent of any authority. This is why many have taken to securing assets in decentralized cryptocurrencies, as they do not trust the future of our financial systems and find decentralized cryptocurrencies more secure, even in light of the current cryptomarket volatility.

Where blockchain gets even more interesting is in its utilization for purposes other than currencies. Digital artwork is being sold on blockchains as a Non-Fungible Token ("NFT"); contracts are being implemented as smart contracts on blockchains; major overseas shipping companies are utilizing blockchain to organize their shipping process (ShipChain); and even whole "new worlds" are being created in the Metaverse. And if you thought this technology is only being implemented by start- up companies, consider Lockheed Martin who has recently implemented blockchain into their cybersecurity system and are currently researching implementation of blockchain into their company software. Ford Motors recently filed a patent suggesting the company is seeking to implement a blockchain system that allows a driver to transfer cryptocurrency to another driver to pass them on the highway. The main selling point for utilization of this technology by businesses is the full transparency for any party to the blockchain and assurance that all is secure. Again, if any part of a block is tampered with, the chain will not be complete and the parties will not be able to proceed until it is corrected. As you can see through major business implementation, blockchain will become as common as the internet and, therefore, it is advisable to at least become conversational of the technology.

Conner R. Kempe, Esq., LL.M, has received a certificate from MIT's Sloan School of Management, on Blockchain Technologies: Business Innovation and Application, 2021-2022, and is attending the Saïd Business School, University of Oxford, England, How are Cryptocurrencies Driving Innovation, program where he will receive a second certificate in blockchain technology.

A Historical Perspective of the Estate and Gift Tax Exemptions and Rates

The original estate tax was enacted in 1916, with an exemption of $50,000 and a rate of 10%. The highest the rate has been is 77%, which was in the 1960s. The current exemption is reduced under current law in 2026 to $5 million (indexed).

Historical Gift Tax Exemption Amounts (Per Person)

Year	Estate Tax Exemption	Top Estate Tax Rate
1997	$600,000	55%
1998	$625,000	55%
1999	$650,000	55%
2000	$675,000	55%
2001	$675,000	55%
2002	$1,000,000	50%
2003	$1,000,000	49%
2004	$1,500,000	48%
2005	$1,500,000	47%
2006	$2,000,000	46%
2007	$2,000,000	45%
2008	$2,000,000	45%
2009	$3,500,000	45%
2010	$5,000,000 or $0	35% or 0%
2011	$5,000,000	35%
2012	$5,120,000	35%
2013	$5,250,000	40%
2014	$5,340,000	40%
2015	$5,430,000	40%
2016	$5,450,000	40%
2017	$5,490,000	40%
2018	$11,180,000	40%
2019	$11,400,000	40%
2020	$11,580,000	40%
2021	$11,700,000	40%
2022	$12,060,000	40%

The Tax Cut and Jobs Act Expires 2025

Note: The generation skipping tax rate and exemption is the same as the highest estate and gift tax rate and the exemption threshold has historically been the same as that of the estate and gift tax.

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Date of Death Value and Cost Basis Consistency

- New Burdens of the Executor and Potential Penalties -

Historically, beneficiaries of estates could take different positions on the value of assets they received from a decedent. For example, an asset may have been filed on an estate tax return, Form 706, with date of death value of $750,000. This becomes the heir's cost basis for capital gains purposes. When selling the asset, the beneficiary historically could take the position that the asset was really worth $1 million, in an attempt to reduce capital gains on sale. The value filed in the Form 706 was not binding on the heir. This opportunity is no longer available, in some cases. Executors and personal representatives of estates are now required to file Form 8971 "Information Regarding Beneficiaries Acquiring Property From a Decedent," or risk substantial penalties. Form 8971 is required to be filed if an estate has to file an estate tax return using Form 706. Code Sec. 1014 (f)(2) provides that the basis consistency rule only applies to a property whose inclusion in the decedent's estate increases the estate's federal estate tax liability (reduced by credits allowable against such tax). The regulations clarify and confirm that the reporting requirement under IRC § 6035 does not apply if a federal estate tax return is otherwise not required to be filed, including where returns are filed solely to make the portability election or a generation-skipping transfer tax election or exemption allocation. A beneficiary who reports their basis in property that is inconsistent with the amount on Schedule A may be liable for, among other penalties, a 20% accuracy-related penalty under section 6662.

The form is filed separately from the 706 and not attached to the Form 706. Code § 6035(a)(1) provides that the executor of any estate required to file an estate tax return under Code Sec. 6018(a) must furnish, both to the IRS and the person acquiring any interest in property included in the decedent's gross estate for federal estate tax purposes, a statement identifying the value of each interest in such property as reported on such return and such other information with respect to that interest as IRS may prescribe.

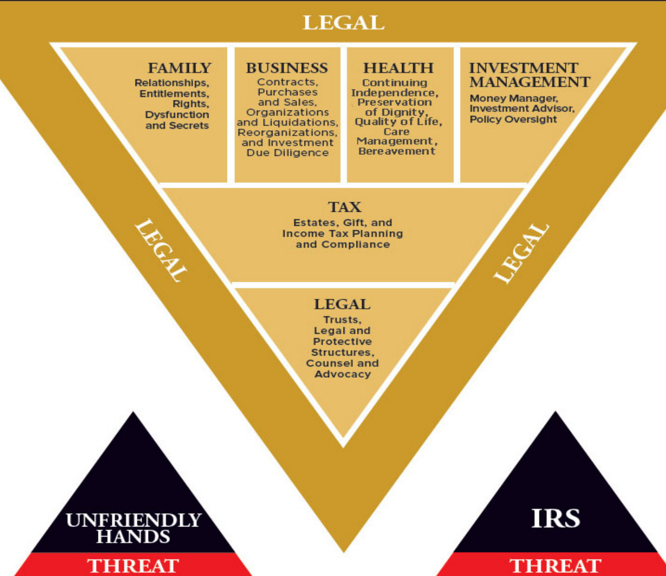
Form 8971 and only Schedule A must be filed no later than 30 days after the date on which Form 706 is required to be filed with the IRS or the date that is 30 days after the date the Form 706 is actually filed with the IRS. A beneficiary can be served Schedule A by email. The executor of the estate must certify on Form 8971 the date Schedule A was provided to each beneficiary and should keep the proof of delivery for his or her records.

A controversial rule requires a beneficiary who previously received reported property to also report on a Schedule A if they transfer any part of that property by gift or otherwise to a related transferee in a transaction in which the transferee's basis for federal income tax purposes is determined in whole or in part with reference to the transferor's basis. That transferor is required to file and furnish both the IRS and the transferee a supplemental Schedule A documenting the new ownership of this property. This proposed reporting requirement is imposed on each recipient of the property.

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

- Don't Confuse Investment Management with Wealth Management -

Is Your Wealth Being Managed And Guarded?



No Rolled Up Shirtsleeves in the 5th Generation!

As reported by ProPublica, one of E.W. Scripps great-great grandsons, Sam Logan, is a personality on the MTV reality show “Siesta Key.” He also owns a cannabis startup and regularly posts on Instagram deplaning from a private jet or lounging atop a Rolls Royce. (His brother and fellow heir, Max Logan, is the Lamborghini and watch enthusiast; one red-gold-and-diamond Richard Mille timepiece he displayed on Instagram retails for $285,000.)

A spokesman for the brothers declined to comment. A separate spokesman for the rest of the family said the brothers are “rare exceptions to the low-profile culture” of the Scripps family.
“Almost all live lives that are low-key, dignified and in keeping with the communities in which they live and work,” that spokesman said.

A picture posted by Max Logan on Instagram with the caption, “This week’s carry on essentials.” Logan is E.W. Scripps’ great-great-grandson. Credit:Screenshot via Instagram

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Shaming The Wealthy
April 21, 1916

CALENDAR FOR TODAY

Day of Month	Day of Week	Stage of Moon	Sun Rises	Sun Sets	Moon Rises	Hours of Daylight
24	Mon.	☾	4.39	6.25	12.54	13.44

Partly cloudy and continued cool tonight and Tuesday; probably light frost tonight.
This day, 1847, Michigan troops left by boat for Vera Cruz to enter the Mexican war.

The Toledo News-Bee

HOME

Full Leased Wire Service of the United Press Associations.

41ST YEAR. TOLEDO, OHIO, MONDAY EVENING, APRIL 24, 1916. PRICE ONE CENT.

MILLIONS STOLEN FROM TREASURY

Rich Rob U. S. of $320,000,000 By Income Tax Evasion

BASIL M. MANLY, foremost economic investigator in America, who directed the investigations conducted by the United States commission on industrial relations under the chairmanship of Frank P. Walsh and who wrote the famous Manly report, has completed for the newspapers which are members of the Newspaper Enterprise association, a sweeping investigation of the workings of the United States income tax.

BASIL M. MANLY.

The work has taken Manly and a corps of newspaper men and statistical experts six months. The revelations he is about to make to the people of America represent the final word on this subject.

Manly's training as an economist was gained at Washington and Lee university, from which he graduated, and the University of Chicago, where he specialized in the subject for two years under Prof. J. Lawrence Laughlin, famous economist.

In 1907 he became attached to the United States bureau of labor and was connected with that governmental department's investigation into the subject of woman and child labor in the United States, largely writing the "Report on Women and Children in the Glass Industry."

For this bureau he next had charge of its investigation of the steel industry. This was finished in 1912, signed by Manly, and published in three volumes. It is known today as the authoritative work on the steel industry.

In 1913 Manly made for the United States labor bureau the famous inquiry into the rise of prices in anthracite coal.

The next year Manly became the director of public hearings and of the department of investigation for the United States commission on industrial relations and wrote his famous report, presented to the public by Chairman Frank P. Walsh. This report is the greatest analysis of the relation of capital and labor in the United States ever made.

He has worked on this inquiry for over six months. The first of his findings are presented here today, others will follow in daily succession.—Editor.

prominent citizens and thousands of the most profitable American corporations.

The income tax should have produced at least $400,000,000 revenue. The total collections were only

At least $10,000,000 of annual income, upon which the tax should have been paid, succeeded in evading the law.

The United States income tax is a failure both as

tors practically secure from detection and punishment.

These are the big facts that stand out as the result of the first exhaustive investigation of the workings of the income tax law.

I have the facts as the result of an investigation made especially for The News-Bee, extending over more than six months.

In a series of articles, beginning tomorrow, I will lay these facts before you clearly and completely. I will show you:

1.—How these millions are stolen.
2.—Who some of the tax thieves are.
3.—How to stop the thefts.

"Preparedness" even on the moderate program advocated by President Wilson will create a deficit of $167,000,000, if the sugar tariff and stamp taxes are discontinued.

But, if the income tax thefts are stopped and the $320,000,000 stolen from the treasury are recovered, the administration will have not only more than enough to pay the entire cost of military preparedness, but also more than $100,000,000 which can be used for old age pensions, unemployment insurance, and other social measures, which must form the basis of any true national preparedness and efficiency.

The penalty for failure to make a return is the addition of 50 per cent to the tax originally due, and for fraudulent returns 100 per cent.

If the penalties which are now due upon the $320,000,000 evasions of last year are collected, the nation will have at its disposal $500,000,000 to spend as it chooses for national preparedness and social welfare.

The committees of congress are now busy devising new taxes to meet the impending deficit. These new taxes will rest either upon the common people or upon those of the rich who are honestly paying their income taxes.

Do you want to pay more taxes?

If not, insist on immediate action by the president

Are We Really In A New Gilded Age?

(continued from cover)

people in America. In America today, the top one-tenth of one percent owns almost as much wealth as the bottom 90 percent. The 50 wealthiest people in this country own more wealth than the bottom half of Americans — 165 million people. Since 1985, the bottom 90% of Americans have seen their share of our nation’s wealth plummet from 34% to just 24% in 2019, according to the most recent data. A recent study by ProPublica focused on the Scripps, Mellon, and Mars families and found that the fortunes of the wealthiest families is tending to be more durable than the shirt sleeve proverb, finding one third of the top 50 wealthiest Americans inherited their wealth and much of that wealth is reaching the fifth generation and beyond.

The concern behind the proverb was explained by E.W. Scripps as a fear that a “fortune amassed by one generation will be frittered away by the third.” He feared his heirs might become “unutterable snobs.” He also worried that the laborers, incensed by the selfishness of America’s plutocrats, would rise up in a “violent, costly, and perhaps bloody revolution.” Thomas Mellon, creator of the Mellon fortune, explained the proverb this way: “Where a family has enjoyed their career of wealth and prosperity for a generation or so, we may expect ‘degenerate sons’.” Arguing the proverb is wrong, ProPublica highlighted two of Scripps’ great-great grandsons and their private jets, with one holding stacks of cash, ferrying a fleet of Lamborghinis between Aspen and Miami homes where he shoots a gold AK-47, and an arm full of diamond laced watches. Much of these lifestyles are paid by multimillion dollar annual distributions from trusts, the value of which has grown for generations- five or more at this point and still growing, with no rolled-up shirt sleeves in sight.

Scripps pressed President Woodrow Wilson to fund World War I with income and inheritance taxes, and the income tax was ratified in 1913 and the estate tax in 1916. Scripps’ newspaper supported the enactment of progressive income and estate taxes until 1921, when he complained to then President Harding that his taxes had risen 30 fold- which he found “absurd” and “unreasonable.” The following year Scripps placed all of his newspaper stock in a trust. The gift tax was not enacted until 1924, over then Treasury Secretary Andrew Mellon’s objection. At this time the top income tax bracket was 73% and when the estate tax was proposed to be increased to 40%, Mellon called it “economic suicide” and compared the actions of certain senators proposing the increase to “the revolutionists of Russia.” Mellon’s anti-tax, trickle down, philosophy waned by the time Hoover left office, with Congress reinstating the gift tax and increasing estate and income taxes. After Roosevelt’s election in 1932, he increased the top income tax rate to 94% and the top estate tax rate to 77% to pay for World War II. Roosevelt, his treasury secretary, Henry Morgenthau, Jr., and some members of Congress, using newspaper headlines, shamed and threatened members of the Mars, Scripps, Mellon, and other families of millionaires, many of which reacted with anger and put their money to work fighting against expanding taxation.

The Sanders’ “For the 99.5% Act” and President Biden’s “Build Back Better” proposals introduced in 2021, greatly expanded entitlement programs. To pay for them, tax proposals varied but taxing the wealth of billionairs and accumulated wealth in trusts was a focus of these pieces of legislation and of

Continued on page 13

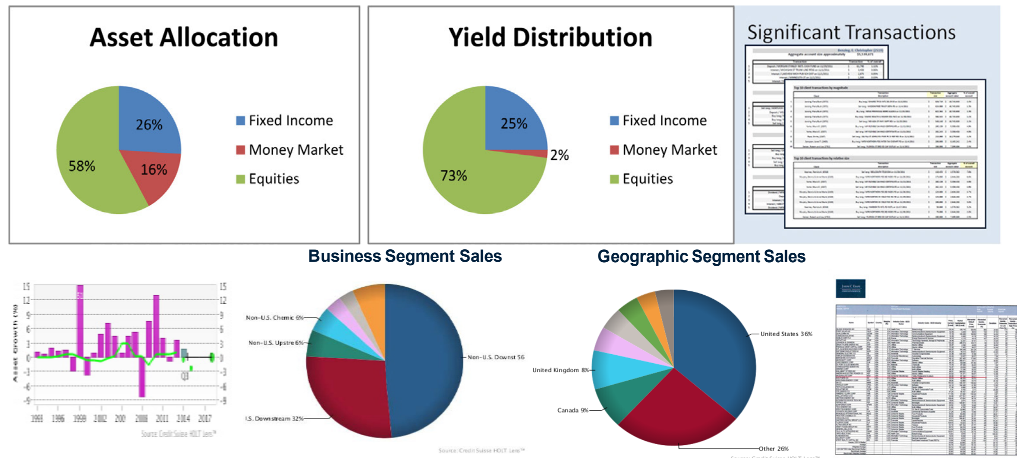
The IRS Is Buried and Sending Out Mistaken Notices

- The Pandemic and Understaffing are to Blame -

National Taxpayer Advocate Erin Collins has warned that taxpayers and tax professionals face the "most challenging" filing season ever, as the IRS wrestles institutional obstacles and taxpayers navigate new complexities. As of late December, the IRS had a paper backlog of 10.3 million unprocessed returns, and about 5 million pieces of taxpayer correspondence that date back to at least April, the report said. Collins' annual report to Congress details major problems the IRS and taxpayers are likely to run into as the filing season opens Jan. 24: from a mountain of paper backlogs, fewer workers to answer phones, and lower resources to quickly resolve issues, to complications with pandemic-relief programs such as the advance child tax credit payments and stimulus checks. Those issues, Collins said, make this year's filing season the most challenging taxpayers and tax professionals have ever experienced. "Paper is the IRS's Kryptonite, and the agency is still buried in it."

Collins said each financial relief program "consumed considerable IRS resources to administer," including overall planning, IT programming, implementation, public communications, and responding to taxpayers' questions and account issues. The IRS had to reallocate personnel and other resources from its main tax-collection activities.

Senate Finance Chairman Ron Wyden (D-Ore.), in a statement reacting to the report, touted Democrats' plan to give the IRS more funding. The Biden Build Back Better tax and social spending package included an additional $80 billion for the agency over a decade, which many argued was intended to weaponize the IRS rather than fix its backlog.



KEMPE
Law | Estates | Tax | Wealth

Client Snapshot

Client Name:	John Doe
Client #:	999.281
Date:	12/17/21
Reporting Period:	November 2021
Legal Assistant:	Sonya Mochegova
CPA:	Michael L. Posten, II
Advent Analyst:	Aaron Flood
Lawyer:	Joseph C. Kempe

CURRENT

Total Family Wealth:	$103,688,000
Tax Exempt Trusts & Entities	72,561,000
Husband's Estate Size:	-
Wife Estate Size:	31,127,000
Joint Estate Size:	-
Current Estate Tax:	10,528,000
Percent of Current Estate:	10%
*Projected Gross Estate:	123,079,000
*Projected Estate Tax:	13,679,000
Percent of Projected Estate:	9%
Estate Tax Bracket:	40%
IRA Portfolio:	435,000
*Total Family Partnership	33,952,000

•Based upon a 3% return, net of expenses over life expectancy and no valuation discounts.
•The current Estate Tax estimate assumes a $11,700,000 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:	**15.07%**
S&P 500:	23.18%
Barclays Agg:	-1.29%

Performance Since 2011

Portfolio:	**9.03%**
S&P 500:	16.19%
Barclays Agg:	2.95%

Current Year Realized Gains and Estimated Tax Status

2021 Gains/(Losses):	$560,306
Protected Tax Status:	N/A

(Performance and Realized Gains are through November 30, 2021 on monitored investment accounts. The IRR for periods over a year are annualized as per GIPS recommendation.)

Income for the Period Ending 2020

Total Income:	$459,294
Tax Free Income:	158,675
Adjusted Gross Income:	300,619
Taxable Income:	285,619
Marginal Tax Bracket:	15%

Gift & GST Exemption Used

Husband Gift:	N/A
Wife Gift:	$9,641,913
Husband GST:	N/A
Wife GST:	$11,247,255
DSUE Available:	N/A

Capital Loss Carryover

Short-Term Cap. Loss CO.	$1,255,646
Long-Term Cap. Loss CO.	$892,417

Estate Planning Developments

Reviewed & Current	YES	NO
Will:	X	
Trust:	X	
DPOA:	X	
HCP:	X	
Living Will:	X	
IRA Integration:	X	
Recommendations:	Update LP agreement	
Document Code:	Single 80/20 mod.	

Miscellaneous

Promissory Notes Current:	Yes	
QPRT Lease Dates:	FL - June MI - December	
Crummey notices verified:	N/A	
Family LP Records Current?	In progress	
Family Office Review Date:	May 1, 2022	
RBD Date: H/W	-	12/05
RBD Compliance:	-	Yes
RMD Compliance:	Yes	

Legal Developments

The Senate is debating the Build Back Better tax and spending bill promoted by President Biden, with any changes necessitating that the Bill will be referred back to the House for a new vote. As proposed, the Bill does not contain any estate and gift tax increases, though they could be added by the Senate. There are some increases in tax rates on high income earners and trusts, which will have some impact on estate planning. Democrat members of Congress desire to push the Bill through, though it will need to wait until 2022. Then the question will be the consequences of any new rules and whether they will be retroactive.

Economic Developments

PPI

12-month percent change, not seasonally adjusted

10% 8% 6% 4% 2% 0% -2%
Jan-11 Mar-13 May-15 Jul-17 Sep-19 Nov-21
Total — Total less foods, energy, and trade services
Source: https://fred.stlouisfed.org

Observations

Threats of inflation have created market volatility, as investors digest the data and readjust valuations with higher discount rates- which lower present values. Wholesale prices, seen through the producer price index ("PPI"), rose in November more than was projected. This was not good news, as the PPI is the wholesale price index, which is a leading indicator for future consumer inflation. This acceleration in wholesale prices forecasts a rise in inflationary pressures which forced the Fed to accelerate its bond sales and tapering, pulling money out of the economy. During December meeting, the Fed also signaled rate rises could occur earlier in 2022. At the same time, politically it provides Republicans and Democrats, like Manchin, a context in which to argue against the Build Back Better tax and spending bill.

Economic Statistics

	Reported	SGS
Consumer Inflation	6.81%	14.91%
Unemployment	4.24%	24.80%
GDP	1.39%	-2.17%

Source: BLS, ShadowGovernmentStatistics

Benchmark Returns YTD

30% 25% 20% 15% 10% 5% 0% -5% -10%
S&P 500 TR, Dow Jones TR, Russell 2000, MSCI EAFE, MSCI Emerging
Source: Yahoo Finance. Total Returns. Data through 12/21/21

Joseph C. Kempe
PROFESSIONAL ASSOCIATION
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Is A GRAT Really A Loophole?

(continued from cover)

plans. The Scripps family, discussed in the cover articles, used GRATs prolifically. Nine members of the Scripps family together had more than 125 of these trusts, tax records leaked to ProPublica show. A great-great-granddaughter alone had already used at least 10 GRATs. By the age of 17, she had her very own dynasty trust, which can last for centuries. GRATs were also famously used by the Walton family. In a victory for taxpayers, the Tax Court, in Walton v. Commissioner, 115 TC 589 (2000), disagreed with the Internal Revenue Service and sanctioned the creation of a GRAT in which the remainder interest (and the amount subject to gift tax) was valued at zero. But, despite the mathematical possibility of zeroed-out GRATs, the IRS took the position that a GRAT remainder interest always had some value, so the gift tax cost was never zero. The IRS never indicated if it would fight that Tax Court decision, until 3 years later. In Notice 2003-72, the IRS announced that it would accept the result in Walton and not contest the creation of "zeroed-out" GRATs. With IRS acquiescence in the Walton decision, zeroed-out GRATs became safely used for estate planning purposes.

A simple example can help explain the benefits of GRATs. Essentially, GRATs can be used in low interest rate environments to shift growth exceeding a hurdle rate of return to junior family members. The lower interest rates are, the lower the hurdle rate. There are generally two types of GRATs: (1) a zeroed-out GRAT, as used by the Walton's, and (2) a longer term GRAT. For example, in January of 2022, the hurdle rate (aka 7520 rate) is 1.6%. If a 70 year old (the trust "settlor") transfers $1 million to a GRAT and over 2 years receive $512,032 at the end of the first and second year, the remainder value is deemed to be zero whether or not the $1,000,000 in the first year doubled in value. If the remaining trust corpus doubled again in the second year, in excess of $2.53 million would remain in the trust after repaying the settlor $1.25 million (in essence, the initial gift plus the 7520 rate are repaid to the settlor and any excess left over is a tax free wealth shift). The $2.53 million is essentially a tax free gift, legally avoiding $1.12 million of estate and gift tax. Short term, zeroed-out, GRATs are typically used in two scenarios: (1) where there is a potential investment windfall, or (2) using a plan to continually roll-over the trust corpus to capture the ups and downs of market cycles. Short term GRATs also minimize the risk that the trust settlor will die within the term, causing the trust corpus to be taxed in the settlor's estate.

Longer term GRATs are also beneficial, but involve greater risk that the trust settlor will die holding a retained interest in the trust that causes it to be taxed in the settlor's estate. For example, if a 70 year old conveyed $10 million of investments into a 15 year GRAT, and retained a 5% payout ($500,000 a year) the settlor is deemed to have kept $8.4 million resulting in a gift with a present value of $1.6 million, that would be reported on a gift tax return to the IRS. If the investment portfolio generated an 8% return (2% income and 6% growth) after 15 years the trust would be worth $18.35 million. By making a $1.6 million gift 15 years earlier, the settlor shifted $18.35 million out of their taxable estate, resulting in a $7.34 million estate and gift tax savings. If the settlor dies during the retained term, and interest rates rise, there can also be beneficial estate tax reductions

Third Party Network Transactions - A Major Change -

Small business owners and commercial users of apps like Zelle, Paypal, Venmo, and Cash App may be surprised to receive Form 1099-K for the 2022 tax year. Starting next year, third party payment providers will be required to complete and provide Form 1099-K to any user with commercial transactions that exceed $600 annually, a very significant difference from the 2021 reporting requirements.

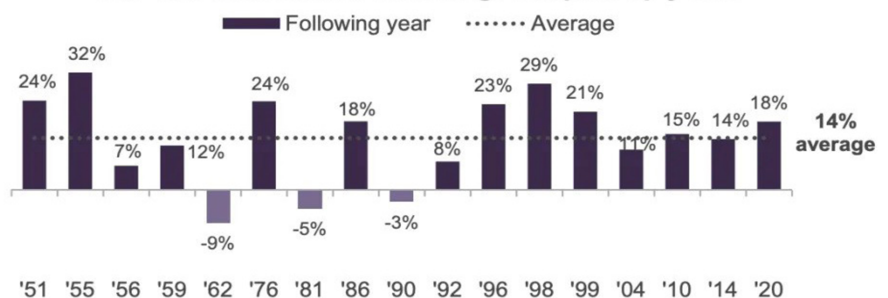
Currently, reporting was only required if a user had $20,000 in gross payment volume and exceeded 200 payments for commercial goods and services for the 2021 tax year. Business owners will need to confirm their U.S. taxpayer status and identification number (SSN, EIN, ITIN) directly to the payment provider. Upon receiving Form 1099-K, taxpayers will need to report the income on their Federal and State income tax returns. Please consult with your tax advisor on how to complete your tax return.

https://www.irs.gov/payments/general-faqs-on-new-payment-card-reporting-requirements

Data Points to a Continued Market Rise

- But Anything Can Happen - and It Might! -

After a nearly 29% total return for the S&P 500 in 2021, history suggests 2022 may see more gains for investors. Historic data suggests that when the S&P 500 has a total return of at least 25% in a year, stocks usually rise in the following year. The outcome during a 71 year stretch since 1950: stocks advanced 82% of the time, or 14 out of 17 instances. History repeats but is uncertain. There is lots of money in the economy and no signs of recession, so the backdrop is promising for continued rises. Nevertheless, it pays to always be cautious and to assess liquidity time horizons. It is not always sunshine and rainbows after a big year for stocks.



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New Independent Contractor Reporting

Recent changes have been enacted by the Florida legislature which require all Florida businesses to report Independent Contractor relationships to the Florida Department of Revenue's Child Support Program. This marks a significant change from prior statutory regulations, in which only newly hired employees required disclosure to the State. Florida businesses will be required to report new hire information for Independent Contractors to the Florida Child Support Program within 20 days of payments to any individual Independent Contractor exceeding $600 dollars.

The newly enacted Florida reporting requirement is similar in nature to the annual federal filing requirement of Form 1099, with the same $600 dollar threshold. The main difference is federal reporting is only required once per year (on or before January 31st of the following year), whereas Florida is requiring the information to be reported within 20 days of payments exceeding $600 to any and all Independent Contractors. This may result in multiple reports being filed with the State of Florida throughout a given year. For more information, please visit the Florida Department of Revenue website at *https://servicesforemployers.floridarevenue.com/Pages/home.aspx* or contact our office with any questions.

Our Tax Compliance and Planning Accounting Team

What makes us somewhat unique is the synergies we create by having two groups of professionals collaborate on client projects. Most business and estate planning we do is done by a team of lawyers, CPAs, and paralegals. Several of the lawyers have post doctorates in tax law. These teams that collaborate provide a more robust service for our clients, where planning, implementation, and tax reporting is done by the same team. A more quality product is often produced and more accurate and proper tax reporting occurs. Because it is done routinely by us, it often reduces the cost that would otherwise occur from two or more professional service organizations.

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Supreme Court Justice
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Tax Evasion vs. Avoidance

"I live in Alexandria, Virginia. Near the Supreme Court chambers is a toll bridge across the Potomac. When in a rush, I pay the dollar toll and get home early. However, I usually drive outside the downtown section of the city and cross the Potomac on a free bridge. This bridge was placed outside the downtown Washington, DC area to serve a useful social service, getting drivers to drive the extra mile and help alleviate congestion during the rush hour. If I went over the toll bridge and through the barrier without paying the toll, I would be committing tax evasion ... If, however, I drive the extra mile and drive outside the city of Washington to the free bridge, I am using a legitimate, logical and suitable method of tax avoidance, and am performing a useful social service by doing so. For my tax evasion, I should be punished. For my tax avoidance, I should be commended. The tragedy of life today is that so few people know that the free bridge even exists."

Planning for Tax Reform and Elections

(continued from cover)

promoted as a landmark tax bill introduced in March of 2021, Senator Bernie Sanders (D-VT) and Senator Sheldon Whitehouse (D-RI) introduced the "For the 99.5% Act," which reduced the estate, gift and generation skipping tax exemptions from $11.7 (now $12.06) million to $3.5 million. It was hailed as one of the most important pieces of legislation in our time. See *A New Gilded Age* on the cover page. Many clients reacted during 2020-2021 and have continued to react by using advanced strategies to "lock-in" their exemptions.

As various tax reform proposals were released from the House, Senate, and Biden Administration, threats to tax individual wealth varied and involved taxing unrealized capital gains at death, on gift, and every 21 years, as well as by reducing estate, gift, and generation skipping exemptions. Effective dates also varied, with some being retroactive, many as of the date of enactment, and others prospective by becoming effective on the first day of the year after enactment. With it more difficult to confront the so called "reciprocal trust doctrine" in shortened windows of time, client choices varied as new legislation was introduced and BBB slipped into 2022. (See, *Use Your Tax Exemption: Gift to a Trust for Your Spouse in our Winter 2021 Client Update-* *https://www.jckempe.com/wp-content/uploads/2020/09/Newsletter-Fall-2020.pdf*)Many married clients chose to create trusts for one another and their families, while others repositioned assets among themselves and delayed the creation of at least one trust. With time, various legal issues created when spouses create trusts for one another become less important and lessen the potential for the Internal Revenue Service ("IRS") to take an adverse position. Clients learned that associated risks were manageable and that having wealth in trusts that were growing outside of their taxable estates offered many significant advantages.

Recognizing that under current law the estate, gift, and generation skipping tax exemptions are automatically reduced by approximately 50% in 2026 (to $5 million, indexed), there remains just under 4 years' time to use any unused exemptions. After gifting all growth in value remains captured under the exemption. Though its possible that new legislation will be proposed and enacted before then, there seems to be an increased window of time to create trusts and to avoid providing the IRS with any arrows in their quiver to argue for application of the reciprocal trust doctrine. As time rolls on though, with any new proposal that time window may shorten and create renewed pressure for prompt action. As such, we suggest taking advantage of exemptions while available because the benefits often substantially outweigh the potential risks. See *Grantor Trust Status- A Secret Benefit or Real Loophole?* on the cover page

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Charitable Lead Annuity Trusts

(continued from page 3)

Current low interest rates provide an opportunity to achieve impressive results with CLTs. For example, a CLT funded in the first quarter of 2022 with $1,000,000, designed to make annual payments of $58,821 to charity for 20 years, can provide an upfront income tax deduction worth as much as $370,000 at today's rates. Assuming a 6% investment return on the portfolio, $1,043,000 will remain in the trust at the end of the lead term, after satisfying 20 years of charitable gifts, passing free of estate tax to the donor's heirs (an additional $417,000 tax savings at today's estate tax rates).

Charitable lead trusts are an effective tool for those who regularly contribute to charities and have taxable estates. They can also be designed to benefit donors who are not currently benefiting from charitable income tax deductions as a result of phase-outs. They are flexible tools that can achieve desired philanthropic and tax reduction outcomes, and are a valuable tool in the taxpayer's toolkit or arsenal.

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others, most notably proposals by Senator Warren (D-Ma.) and Senator Wyden (D-Or.). It has been viewed by many as a "New Gilded Age of Inequality." While low-income workers at Walmart are forced to rely on food stamps, Medicaid, and public housing to survive, the Walton family is now worth over $220 billion. More than a century ago, Republican President Theodore Roosevelt fought for the creation of a progressive estate tax to reduce the enormous concentration of wealth that existed during the Gilded Age. As Teddy Roosevelt said:

> ***"The absence of effective state and, especially, national restraint upon unfair money-getting has tended to create a small class of enormously wealthy and economically powerful men, whose chief object is to hold and increase their power. The prime need is to change the conditions which enable these men to accumulate power … Therefore, I believe in a … graduated inheritance tax on big fortunes, properly safeguarded against evasion and increasing rapidly in amount with the size of the estate."***

Tax overhauls are not easy to achieve, particularly when they include new and novel forms of taxation. It took a 14 year campaign to pass the 16th Amendment before an income tax could be ratified in 1913, with the support of newspapers like Scripps'. Sanders', Warren's, and Wyden's 2021 wealth tax proposals taxed unrealized gains on investments as income, which is novel under our present tax code. Media and politicians are equating wealth to the holder's income and tax paid to judge whether they are underpaying their taxes. Appreciated wealth has never been taxed in the United States until realized as income. Bernie Sanders states "billionaires should not exist" when announcing his tax plan, and like Scripps and Mellon feared in 1924, media attacked the wealthy to promote tax increases. Recently, the IRS leaked a trove of data on some of America's wealthiest, just in time for tax reform debates! The narrative goes that the 25 richest Americans saw their wealth grow $401 billion over the four years ending in 2018, but only paid a tax rate of 3.4% or $13.6 billion on that wealth. Rather than recognize gains, the wealthy borrow from eager lenders against their holdings. This has prompted some to dismiss the whole comparison and narrative, arguing that wealth and income are different things and calculating taxation as a percentage of amassed wealth is fundamentally misleading. Some argue that it is only a policy choice, but one that would necessitate a major overhaul of our tax code. Many senators were unwilling to leap into unchartered and novel tax legislation.

Roosevelt invoked Supreme Court Justice Holmes when arguing before Congress a need to raise taxes and close loopholes: *"Taxes are what we pay for civilized society,"* adding *"[but] too many individuals … want the civilization at a discount!"* Others will argue they pay their fair share, and that entitlements always grow and grow. Manchin recognized this when he took a stance against a paired down version of Biden's Build Back Better proposal, that claimed to provide 1 to 3 years of social spending on progressive programs, that would be paid for over 10 years. Many also realize the history of how our tax system has been used to fund deficits, created by ever expanding entitlement programs. Tesla's Elon Musk, one of the billionaires whose income taxes were revealed in the leaked IRS records, reacted to the medias' portrayal of billionaires and the wealth tax proposed, by stating: *"Eventually, they run out of other people's money and then they come for you!"* In reaction to the controversy Musk, viewed as the worlds richest man, and in a Musk-like-way, recognized some gains in his Tesla holdings and expects to pay the largest single tax bill ever for 2021- $18 billion.

In reaction to the progressive narrative in support of tax increases, that incomes of the majority of Americans have stagnated for years and that gross income and wealth inequalities exist, others argue hogwash! Noted economist, Ed Yardeni, takes issue with Professor Stiglitz (he taught Yardeni at Yale) and progressive claims that working Americans haven't gotten a raise in 30 years, despite unprecedented growth and increases in the cost of living. Yardeni took a "deep dive" into data on standards of living and income inequality and concluded:

> ***American households are enjoying record standards of living. Income stagnation is a myth. Income inequality isn't a myth but an inherent characteristic of free-market capitalism, an economic system that awards the biggest prizes to those entrepreneurs who benefit the most consumers with their goods and services. Perversely, inequality tends to be greatest during periods of widespread prosperity. Rather than bemoaning that development, we should celebrate that so many households are prospering, even if a few are doing much more than the rest of us.***

He explains how common government publications distort income of the working class because, among other reasons, it excludes government subsidies and is pretax, excluding redistribution of income through, for example, earned income and child care credits.

See- *http://blog.yardeni.com/2019/05/income-stagnation-is-progressive-myth.html*

So, where are we? The same place we have been for the last 120 years, but unlike some periods of time American's have prospered and increased their standards of living. Like children, grandchildren, and working class Americans, the prosperity of those creating wealth have increased the standards of living of others. Some grow reliant and entitled, while some use the opportunities and what they have been given to do more. Wealth is a tool of opportunity that can be used for good or bad, and from time to time it may create what Scripps feared: "unutterable snobs" and "degenerate sons." In reaction to the ProPublica piece on the Scripps great-great grandsons, a spokesman for the brothers declined to comment. A separate spokesman for the rest of the family said the brothers are "rare exceptions to the low-profile culture" of the Scripps family. Wealth creation in some families may grow beyond the ability to be disrespected and wasted within just three generations, as it has with the Scripps family. Warren Buffet has famously stated: "The ideal inheritance is enough money so they would feel they could do anything, but not so much that they would do nothing." His money will largely go to charity, with his children serving as stewards of that philanthropy. In the end, political winds blow and money does funny things. But, wealth should be held in trusts for conservation and preservation and in order for it to be strategically unleashed from the guidance of the wealth creators. I am not so sure governments have created or can properly create wealth! History has taught us that governments are not the best conservators of wealth. One thing that can be said in hindsight, however, is E.W. Scripps' trust(s) could have been drafted to prevent and discourage what showed up in the 5th generation, by heeding the warnings and recognizing the potential for abuse and disrespect toward family wealth.

Grantor Trust Status

(continued from cover)

taxable estates. If his cost basis in the assets transferred were $5 million, that cost basis is ostensibly transferred and carried with the assets to the trust. Upon sale, the difference between the sale price and cost is typically recognized as capital gain ($11.7 million minus $5 million equals $6.7 million gain). If the husband were to hold those assets at death, the cost basis would be stepped-up to fair market value ($11.7 million) and no gain would exist if sold at that value - a $1.54 million capital gains tax savings, but possible $4.68 million added estate tax. As a result, many confronted with tax reform balanced the removal of assets from their taxable estates against the supposed loss of a basis step-up and elimination of unrealized gains at death.

Though debated by tax commentators, the loss of the step-up in cost basis is far from clear in the example above and we have successfully received cost basis increases after the deaths of taxpayers who have settled trusts like described. In general, a trust created for the benefit of a spouse will be considered a "grantor trust." Grantor trust status is an exception to normal rules, that cause the original donor-grantor to continue to be deemed to own the assets for income tax purposes. The law in the area is not settled, however, which means that there is no "substantial authority." Under IRC § 6662, an accuracy related penalty of 20% of any underpayment of tax is imposed if a position is taken on a tax return that lacks substantial authority.

However, a taxpayer is relieved of this penalty if there is reasonable cause. Since there is no adverse regulation dealing with this position, if a taxpayer files Form 8275 with an adequate disclosure of a reasonable basis position, the penalty is waived. A reasonable basis means one that has a greater than 20% probability of being sustained. We have been successful filing these disclosures in these cases.

As a result of grantor trust status and the position that gifts can be made without loss of the step-up in basis at death, many taxpayers pursued making gifts to trusts for their spouses during the 2020 -2022 window of proposed tax reform. Doing so removed wealth and growth of that wealth from the estate, gift, and generation-skipping tax systems, potentially without loss of the step-up in cost basis and related capital gain tax. Felt to be a loophole and supporting the view that a reasonable basis in law exists to receive a basis step-up at death of a grantor of a grantor trust, various proposals for tax reform expressly sought to eliminate this result by taxing the gain in grantor trusts at death. Commentators are using these proposals as confirmation that the "loophole" exists. Note, that all preexisting grantor trusts were grandfathered from these, which made existing grantor trusts extremely valuable for long term estate planning and wealth management. It is hoped any future changes of law would also grandfather grantor trusts from any negative effects.

Sector Performances as of December 31, 2021

Source: Morningstar

Sector	1Yr	3Yr	5Yr
Basic Materials	28.20	22.92	12.63
Communication Services	13.55	22.58	11.14
Consumer Cyclical	22.69	31.51	22.48
Consumer Defensive	15.04	16.75	9.36
Energy	49.33	0.65	-5.18
Financial Services	25.37	18.63	12.27
Healthcare	19.38	18.24	15.80
Industrials	20.08	19.30	12.05
Real Estate	34.43	14.92	7.34
Technology	33.36	41.45	30.16
Utilities	13.67	9.82	7.85

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Tax Policy Study

- Are Opportunity Zones Working -

Tax policy is why some become tax lawyers. The concept of tax law encouraging investment to produce beneficial economic and social results is quite interesting and can be rewarding. Senate Finance Committee Chairman Ron Wyden (D-Or.) has started investigating whether Opportunity Zones investments are benefitting low-income areas, as intended. "I have long been concerned that the Opportunity Zone program may permit wealthy investors another opportunity to avoid billions of dollars in taxes without meaningfully benefitting the distressed communities the program was intended to help," Wyden, an Oregon Democrat, said in a letter. IRS data through 2019 showed that more than 6,000 funds reported holding about $29 billion in qualified property under the program. Skybridge representative, Anthony Scaramucci, in response to a request for comment, said, "We are very proud to be a part of the program and are fully cooperating with Senator Wyden's request. We built a beautiful hotel in New Orleans which I hope added a lot of construction jobs and permanent hotel jobs."

Wyden said he is worried that the Opportunity Zones, which were created in the 2017 Republican tax law, aren't helping struggling communities develop, but rather funding luxury real estate projects -- including a yacht marina in Palm Beach, Florida, and a Ritz Carlton hotel in Portland, OR. The Senate Finance chief is proposing to add transparency requirements for investors to demonstrate the benefit they are providing to the low-income communities to qualify for tax breaks. A Government Accountability Office report from October found that some investments in Opportunity Zones would have happened even without the incentive. The federal watchdog also recommended that the Internal Revenue Service develop safeguards to make sure wealthy taxpayers didn't abuse the tax break.

New Florida Community Property Trust Law

- Benefits and Detriments of Electing In -

Florida recently enacted a Community Property Trust Act that allows married couples to elect community property treatment for assets held in a trust that meets certain requirements. As described below, community property can have considerable income tax planning benefits on the death of the first spouse due to Internal Revenue Code Section 1014(b)(6), which provides for all community property assets (including the surviving spouse's interest in community property) to receive a full step-up in basis upon the death of the first dying spouse. This means that there is the potential for a full, rather than 50%, cost basis step-up on what are otherwise considered joint assets. There are potentially negative marital and creditor rights consequences to electing this status, and proper legal counsel is essential.

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Bookkeeping Services Now Offered

- Helping Our Clients Maintain Independence -

As our clients have aged, the services they need to maintain independence has caused the Firm to grow to meet those needs. A common need is bookkeeping and bill payment assistance. Related to this is reporting of financial and medical oversight to family members in distant states. A summary of the level of personal bookkeeping services we offer and customary pricing is provided below:

Estimated Fees	Description of Options
No bill paying. Review of bank activity only. **$250/mo.** **($3,000/yr), per account**	**Option 1: Viewing/Monitoring Account Only** • Obtain online login and password bank information from client; • Monitoring of bank activity including checks and automatic payments such as utilities, caregiver/household employee, and independent contractors; and • Immediately notify client if any inconsistencies or fraud like activity.
Less than 15 checks a month. Bill Paying and Bookkeeping services. **$416.67/mo.** **($5,000/yr), per account**	**Option 2: Limited Bill Paying/Bookkeeping Services** • We provide limited bill paying services; • Set up and manage QuickBooks Account; • Obtain online login and password banking information from client • Travel to/from client home for signature of checks on a biweekly basis; • Collect and gather bills from client; • Download or Manual input of bank activity into QuickBooks account and perform monthly bank reconciliation; • Provide monthly bank register; and • Provide Quarterly limited financial statements, ex. Profit and Loss and Transaction List by Vendor Report.
The same as above but with 15 checks or more a month **$625/mo.** **($7,500/yr), per account**	**Option 3: Full Bill Paying/Bookkeeping Services** • We provide full bill paying services; • Set up and manage QuickBooks Account; • Obtain online login and password bank information from client; • We prepare checks with any 3 Firm members sign checks after client's approval; • Collect and gather bills after change of billing address to the firm. Provide client Weekly Unpaid Bills Report for approval: • Download or Manual input of bank activity into QuickBooks account and perform monthly bank reconciliation; • Provide Weekly accounts payable reports; • Provide Monthly bank register; • Provide Quarterly Transaction by Vendor Reports; and • Provide annual Balance Sheet and Profit and Loss Statement, General Ledger, ex. Profit and loss, and detailed expense breakdown.

These services are often combined with reporting services and financial oversight, such as are illustrated by examples of some reports used on pages 5 and 9 of this Client Update. Reports are shared with other family members as directed.

Date of Death Value and Cost Basis Consistency

(continued from page 7)

Proposed Regulation section 1.6035-1(f) is controversial and provides that, with regard to property previously reported or required to be reported on a Schedule A furnished to a recipient, when the recipient distributes or transfers (by gift or otherwise) all or any portion of that property to a related transferee, whether directly or indirectly, in a transaction in which the transferee's basis for federal income tax purposes is determined in whole or in part with reference to the transferor's basis, the transferor is required to file and furnish with both the IRS and the transferee a supplemental Schedule A documenting the new ownership of this property. This proposed reporting requirement is imposed on each recipient of the property. For purposes of this provision, a related transferee means any member of the transferor's family as defined in IRC section 2704(c)(2), any controlled entity - meaning here a corporation or any other entity in which the transferor or members of the transferor's family (whether directly or indirectly) have control within the meaning of IRC sections 2701(b)(2)(A) or (B), and any trust of which the transferor is deemed owner for income tax purposes. This last prong would include a revocable trust or grantor trust.

“As Is” Clause In Residential Contracts Does Not Eliminate the Duty to Disclose Material Defects Not Readily Observable

- Sellers Beware -

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The most widely used contract for the sale and purchase of residential property in Florida is the “FAR/BAR As IS Residential Contract for Sale and Purchase.” Under this contract the buyer is given a period of time to inspect the property, usually 15 days, subject to negotiation. The buyer has the right to terminate the contract prior to expiration of the inspection period for any reason. The seller has no obligation to perform any repairs to defects that the buyer may discover during the inspection, but the norm is for the parties to negotiate a credit for the defects. However, there can be defects that are not discovered by the buyer’s inspection, but come to light after the expiration of the inspection period or even after the closing, such as what happened to Robert Lorber. In a recent case, Mr. Lorber entered into such a contract to purchase a home. Two days before closing, Mr. Lorber discovered that the seller had settled a significant insurance flood claim after water intrusion several years earlier. The Seller’s property disclosure form indicated that “the property had not been affected by any past or present water intrusion issues, or any past or present drainage or flooding problems.” Upon learning of the flood claim, Mr. Lorber instructed his agent to cancel the contract. The agent did so in an email stating, “Ever since my client first came to the home, he indicated that there was a suspicious odor.” The email stated that Mr. Lorber believed that the odor was due to the water damage, that the odor was strong, and that he felt burning in his lungs. When Mr. Lorber did not close, the seller filed such for breach of contract. Mr. Lorber counterclaimed for breach of contract, fraud in the inducement, and negligent misrepresentation.

The seller argued that both Mr. Lorber and his agent had given depositions that showed Mr. Lorber was aware there was an issue with the property. Mr. Lorber had testified that he smelled an odor that was musty or dank, and that he asked about the odor “ three times.” Mr. Lorber also testified that the seller’s agent attributed the odor to the air conditioning being turned off. Mr. Lorber argued that the smell was “dismissed convincingly” by the seller’s agent. A memorandum in opposition included an affidavit of Mr. Lorber asserting that the seller’s agent provided a disclosure indicating that the property had not been affected by water intrusion or flood damage, that Mr. Lorber accepted the explanation of the odor provided by the seller’s agent, that Mr. Lorber would have terminated the contract had he known of the water intrusion and flooding issues, and that Mr. Lorber could not investigate flood and water intrusion issues he did not know existed. The trial court judge granted the seller’s motion for summary judgment on the counterclaim finding that the assertions were based on an obvious defect because Mr. Lorber testified that he observed an odor which might have been mold and his agent’s statement that the odor was like that detected in other properties with water intrusion issues. The seller then filed for summary judgment on the complaint, which was granted by a successor judge. Mr. Lorber appealed.

On appeal, the Fourth District Court cited Johnson v. Davis, 480 So.2d 625 (Fla. 1985), held “where the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer.” The Court then relied on Nelson v. Wiggs, 699 So.2d 258 (Fla. 3d DCA 1997), defining “readily observable” as information “within the diligent attention of any buyer,” and that “a buyer would be required to investigate any information furnished by the seller that a reasonable person in the buyer’s position would investigate.” The Court noted that if Mr. Lorber’s claim had been based on the presence of mold his failure to investigate the source of the odor would preclude recovery. However, Mr. Lorber’s claim was based on a prior flood that was not disclosed and it was a possible material fact whether the prior flood event was readily observable and discoverable through the exercise of due diligence. The Fourth District Court also relied on Johnson v. Davis in considering the fraud in the inducement counterclaim finding that an “as is” clause in a contract does not waive the duty imposed on a seller by Johnson in the context of a residential contract, and such a clause does not bar a claim for fraudulent misrepresentation or nondisclosure. Finally, the Court found that as to the negligent misrepresentation count there were genuine issues of material fact including whether the seller knew of the falsity of the disclosure form, if he intended to induce Mr. Lorber to rely on the disclosure form, and whether Mr. Lorber justifiably relied on the disclosure form. Accordingly, the Court determined the “trial court failed to consider whether the ‘prior flood’ was a defect that was ‘readily observable’ in context of Buyer’s specific counterclaims,” and reversed.

The take-away? As a Seller if you are aware of prior events that have resulted in damage to your property, it is better to disclose the event and put the buyer on notice. Just because the property is sold “AS IS”, the seller still has a duty to disclose information that would materially affect the property’s value and is not readily observable by an inspection and the exercise of diligent investigation.

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