



A Certain Sensitivity - Estate Planning for Women

By: Nancy L. Sander, Esq.



Estate planning for women requires a certain sensitivity. Women typically fail to take active roles in planning their estates and need education as to its importance. Estate planning workshops generally present women as “surviving spouses.” Conversely, planners are told, “the wife makes the decisions.” Techniques focus on the nuclear long-term marriage with children, but in reality that model is waning. Consequently, women are more likely to become key clients and require sensitivity to their situational needs.

While unique, a woman can be in one of three basic groups – married, single, and previously married. Estate counseling should address a relevant group’s concerns. There are also considerations affecting women regardless of group, such as those of professional women, including women business owners.

Married Women Should Participate

Married women include those who have remarried. They need active involvement in planning, although many, especially first wives, rely on their husbands to plan.

(Continued on p. 8, “A Certain Sensitivity - Estate Planning for Women”)

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Asset Protection Considerations for Business Owners

By: Ryland F. Mahathey, Esq., CPA, LL.M and Brad Milhauser, Esq., LL.M



Many business owners devote much time and energy “working in” their business to improve business operations and profitability; however, they often neglect to “work on” their business by not addressing certain asset protection issues. Business owners, particularly those owning their business in corporate form, should consider the following: 1) how to own C corporation or S corporation stock to minimize exposure to creditors, an “outside” asset protection issue; and, 2) whether to implement several basic business agreements designed to protect and even enhance business value from the “inside” of the corporation.

Stock Ownership

Generally, a creditor of a corporate shareholder may seize the shareholder’s stock and thus have the same management and liquidation rights as the debtor shareholder. Charging order protection (described below), normally applicable to limited liability entities, does not apply to S corporations or C corporations. S corporation owners may have additional concerns if a creditor is an ineligible S corporation shareholder thereby causing the corporation to lose its S election.

(Continued on p. 10, “Asset Protection Considerations for Business Owners”)

Safety in Numbers: Using WealthCounsel Attorneys to Protect and Expand Your Practice

By: Gary Fales, Esq.



I joined WealthCounsel for their document drafting system. Sure, they gave me the best system around, but what I didn't expect was the world-class collaborative network of fellow attorneys. This network, along with the abundant resources and tools available from WealthCounsel, enabled me to start and grow my own law firm. Now, as times are getting more turbulent, the collaboration with fellow WealthCounsel attorneys is more important to me than ever. Let me share just some of the collaborative tools that you can use to enrich your practice

I like to think of the network of WealthCounsel attorneys as being one jumbo size law firm spread over all 50 states. It gives me the confidence that there

will be an expert within the "firm" on every estate planning, tax, asset protection, probate or elder law issue that I encounter — not to mention experts in practice development and management. So, let's say that you are hearing chatter either on the listserv, in WealthCounsel newsletters or you see some new education offered on Charitable Remainder Trusts. You read up on them just enough to talk about them in a workshop but not enough to be competent. Then, you find a client who wants one. When that situation happens to me, I simply explain that a colleague in WealthCounsel will work with me to provide the service. I collect the check and call one of my favorite WealthCounsel attorneys to draft the documents. That was easy! The client is happy and my WealthCounsel buddy and I receive a nice check.

What if you had a funding issue in Texas? Or what if your client has an Illinois company and the registered agent is a corporate solution company instead of an attorney who can keep it well oiled on a maintenance plan? Or you want to form a company in a jurisdiction that has favorable charging order protection? Folks, before you use another paralegal service, corporate solution company or even a non-WealthCounsel attorney think first of using the attorneys at your own jumbo "law firm." If our network of WealthCounsel attorneys was in fact a jumbo size law firm, you would be disciplined for not using the firm's other offices. Being in WealthCounsel is even better than belonging to a jumbo firm because you can be discriminating as to which attorney has the best personality or ...

(continued on page 8)



Rainmaking 101: Top 20 Influencers

By: Mark Powers & Shawn McNalis



Top 20 Influencers

In an ideal world all referral sources would be created equal. They would send you nothing but the best and brightest clients and cases — a steady stream of high quality work and loyal clients. Wouldn't life be grand? Unfortunately, in the real world, there is a great deal of difference in the quality of your referral sources and the sooner that you realize the difference, the better. Your existing group of referral sources is far from equal in terms of the amount and quality of work that they refer to you. In this lesson we are going to help you tell the difference by introducing the concept of your "Top Twenty" influencers.

Your Top 20 Influencers

Your Top Twenty Influencers are those referral sources that send you your highest quality business. They send you the kind of matters you specialize in, and the kind of clients you most enjoy. These are the influencers who consistently send quality "A" client referrals your way. Most attorneys who have practiced for five or more years will have a small group of referrers that fit into this category — even if they don't yet have twenty of them.

This is an extremely important group of names to identify for yourself. These referral sources have probably kept you in business over the years because their good referrals have resulted in money

in your pocket. Often, very substantial money. Calculated, or uncalculated, you have done something to impress this group and they demonstrate their trust and confidence in your abilities by continually sending you new clients.

Why Do They Refer To You?

As you work through the attached Top Twenty exercise think about what you have done to cultivate the relationship you have with each referral source. Do they like you because you have a lot in common as people? Do they send you work because of your quick turn-around time? Do you possess a certain expertise that they have come to rely upon? Does your work make them look good to their superiors, their clients or end-users?

This group of referral sources often has the potential to send you even more business than they send you now.

(The rest of this article is available online at <http://www.wealthcounsel.com/newsletter/january2009.html>)



WealthCounsel's Year in Review

By: *Matt McClintock, JD and Jonathan Mintz, JD*
Co-Executive Directors of WealthCounsel



This has been a busy year at WealthCounsel, and at our sister companies The Advisors Forum and ElderCounsel. We introduced many aggressive initiatives, shared in many of your successes, faced some significant challenges, and are eagerly looking forward to the opportunities ahead of us in 2009. Here is a brief recap of some major milestones we executed in 2008:

- WealthCounsel passed the 1,000 mark for member law firms in WealthCounsel;
- In November, The Advisors Forum passed the 800 member mark for attorneys, financial advisors, CPAs and other affiliated professionals, significantly ahead of our best projections;
- To fully address the professional needs of WealthCounsel members who practice elder law, and to appeal to the wider elder law community, WealthCounsel formed the ElderCounsel partnership with four of the brightest, most creative minds in elder law;
- We introduced the Member Forum support program to provide organizational and financial assistance and special WealthDocs programming, and to facilitate organized discussions among members to address unique, state-specific issues;
- WealthCounsel's education team spearheaded a book project to which many WealthCounsel members contributed. The book, titled "Estate Planning Strategies: Collective Wisdom, Proven Techniques" is now available for purchase through the WealthCounsel Marketplace;
- To assist members with creating new, consistent streams of revenue, we introduced SettlementCounsel™, a comprehensive, systematic approach to attracting and managing

profitable trust and estate management clients. (Visit our website for information on a special offer for WealthCounsel members.);

- We developed the Physicians Document System and introduced it in WealthDocs 6.2. This system provides unique planning solutions for physicians, dentists, or other medical professionals, and includes strategies for those professionals' practices and personal estate and asset protection planning;
- Our senior editorial and programming staff, in collaboration with our partners and several leading WealthCounsel members, developed the next generation of WealthDocs irrevocable trusts, including a highly-sophisticated, Delaware-based Domestic Asset Protection Trust. That redesigned irrevocable trust system was released in Beta form mid-December. We are holding a series of teleconferences with members who Beta test the system to put finishing touches on the system through March 2009. To sign up, contact jenny.ellingson@wealthcounsel.com

Finally, we will continue to create opportunities to provide you with the resources necessary to not only survive difficult financial times, but to thrive and make them profitable.


We are extremely proud of our WealthCounsel members and friends, the staff at the WealthCounsel family of companies, and of the success they are responsible for this year. Their diligence and relentless commitment to excellence propelled us through 2008, and will continue to drive us ahead in the years to come.

We wish you and your loved ones a satisfying, peaceful, and very happy New Year.


Upcoming Events

Jan. 4, 2:00 - 4:00 p.m. EST
Webinar
"WealthDocs Orientation"

Jan. 13, 1:00 - 2:00 p.m. EST

Teleconference
"CPE Series for 
CPAs: Planning Opportunities in Today's Low Interest Environment"
by Robert Keebler

Feb. 3, 1:00 - 2:00 p.m. EST

Teleconference
"CPE Series for 
CPAs: 10 Best Ideas to Reduce Your Client's Taxes & Keep You Busy Throughout the Summer"
by Robert Keebler

Feb. 10, 2:00-3:00 p.m. EST

Teleconference
"Special People, Special Planning"
by Peggy Hoyt. Free book with paid registration!

Feb. 11, 2:00 - 4:00 p.m. EST

Webinar
"WealthDocs Orientation"

Feb. 28 - Mar. 1; San Diego, CA

The Art of Attraction - Estate Planning Marketing & Methods

Mar. 1-2; San Diego, CA

Planning in Low Interest Rate Environment


Mar. 2; San Diego, CA

The Business of Law with Ed Poll

Mar. 3-4; San Diego, CA

Trust Administration Workshop

Mar. 4-6; San Diego, CA

Elder Law 
Fundamentals

Mar. 5; San Diego, CA

Administering Estates - Settlement-Counsel Process & Practices

Mar. 11, 2:00 - 4:00 p.m. EST

Webinar
"WealthDocs Orientation"

More information at www.wealthcounsel.com.



Variable Life Insurance Products: The Flaw is in the Design, Not the Concept

By: Alan R. Jahde, Esq., LL.M.

On November 6, 2008 the *Wall Street Journal* published an article entitled “Annuities Annoy Insurers’ Holders.” The article relates to losses insurers, and therefore their stockholders, are experiencing because of annuity product guarantees and gimmicks. It is a good example as to why we, in our private practice of law as estate and tax planning attorneys, have not been able to recommend retail variable insurance products to our clients for years. Too many gimmicks that at the end of the day cost far too much and leave the client, who was depending on the product, empty handed and without needed coverage because their policy lapses. While the WSJ article focused on variable annuities, the same criticism applies to variable life products. This is an issue

that we fought over with insurance companies for years, to no avail. We finally decided to do something about it. We founded our own insurance company, Castle Re, where we have reinvented insurance products.

Why reinvent? Because the concept of efficient, well designed variable life insurance is a good one. Designed right, variable life insurance can solve more estate and tax problems than any other single estate planning concept available. Like many things that fail, the failure is not due to a bad concept, it is due to placing the concept into a bad product design, inefficient pricing, and a poor implementation plan. The gimmicks we fought against did not improve upon the concept.

(The rest of this article is available online at <http://www.wealthcounsel.com/newsletter/january2009.html>)

The Irrevocable Income Only Trust

By: Brian F. Mahoney, Esq.



An often discussed mechanism in Medicaid/Nursing Home planning is the IIOT, an Irrevocable Income Only Trust.

Aside from Nursing Home issues and look back periods we need to first ask about financing issues. Consider whether the Trustee might ever need to obtain financing on the realty, perhaps for a new burner or roof. Most Lenders will not mortgage realty owned by any irrevocable Trust. Would deeding realty into an IIOT make a pre-existing mortgage due and payable?

If the sale of realty after it is deeded into the IIOT is a possibility we can structure the IIOT as a Grantor Trust. If an Elder

Trustmaker later moves into Assisted Living or into a Nursing facility, there is no spouse at home and that realty is sold by the Trust, we want the Trustmaker to be able to elect the \$250K capital gain exclusion.

To that end I insert a testamentary power of appointment allowing the Trustmaker to appoint Trust property by Will to a class of persons described in the IIOT. I do not include a lifetime power to appoint because it may be considered too much power in the skeptical eye of a Medicaid caseworker especially in this era of recession. Their position might be this would render the IIOT a “Medicaid qualifying trust.” It can be overcome but do we want to go into the trial Court to refute their arguments?

(The rest of this article is available online at <http://www.wealthcounsel.com/newsletter/january2009.html>)

Are You Missing An Opportunity to Help a Veteran?

By: Valerie L. Peterson, Attorney at Law and ElderCounsel Education Director/Member Liaison



According to the Armed Forces Veterans Homes Foundation, there are currently more than

9.2 million veterans aged 65 or older living in the United States. Many of these veterans lack the financial resources necessary to sustain them in their final stages of life.

The good news is there is financial help for many of these veterans. There are pension benefits available to wartime veterans or their surviving spouses who are either disabled, or over age 65, and who have low income and assets. Maximum pension benefits range from \$661 per month for a surviving spouse, \$985 for an unmarried veteran, and up to \$1,291 per month for a married veteran.

For those wartime veterans or surviving spouses who require the care of another person, or who are in a care facility, additional pension benefits may be awarded. These additional benefits are often referred to as “Aid and Attendance” benefits. A surviving spouse can be awarded up to \$1,056 per month, an unmarried veteran can receive up to \$1,644 per month, and a married veteran can receive up to \$1,949 per month.

There are numerous planning opportunities for attorneys to assist clients in obtaining these types of Veterans Benefits.

(The rest of this article is available online at <http://www.wealthcounsel.com/newsletter/january2009.html>)

Succession Planning for Solos: Peace of Mind for Your Family; Opportunity for Your Practice

By: Stephen T. O'Neill, Esq.



As a sole practitioner, and a 64 year old one at that, I often get the question from clients, “what happens to our estate plan and file if you’re no longer around?” I am proud to tell them that I have a documented succession plan in the event of my death or incapacity. (What I haven’t yet told them is that having a succession plan also makes it easier for me to sell my practice should I choose to do so.) I have shared my plan with my trustees, my accountant and my personal attorney, each of whom would play a role in transitioning my practice and clients. Two years ago I began to study the subject, leading to co-presenting a program at the Rhode Island Bar 2008 annual meet-

ing on “*Succession Planning for Solos: Death, Disability or (You Should Live so Long) Retirement*”¹.”

Under my plan, as required by the Code of Professional Responsibility, each client would be given the opportunity to transfer his/her file to an attorney of choice. However, my representatives would contemporaneously attempt to sell my practice to one or more estate planning practitioners. My plan sets forth a specific, extensive list of potential purchasers. At its top are attorneys or firms who most nearly share my ideals and resources.

(The rest of this article is available online at <http://www.wealthcounsel.com/newsletter/january2009>.)

¹ *The materials, including Economic and Tax Aspects of the Sale of a Law Practice by Peri Ann Aptaker CPA, Esq., of Providence, RI (content beyond the scope of this Article), are available in the WealthCounsel Knowledge Base.*

Fat-Free Fat: Nontax Considerations for Discussing Philanthropy With Your Clients

By: Matt Brown, Esq.



In the words of John Steinbeck: “No one wants advice, only corroboration.” So it may seem when it comes to discussing philanthropy with clients, particularly with those seemingly content to continue deferring philanthropic pursuits indefinitely.

It is hard for some of us to imagine discussing philanthropy with clients without pulling out our hefty planned giving toolbox. Indeed, many of my dedicated philanthropist clients began their pursuit of philanthropy for the tax benefits. But knowing the joy that philanthropy brings to the giver, surely we in the estate planning community have some duty to encourage our clients to include some degree of philanthropy in their overall planning.

But these discussions can be awkward. Many attorneys worry that they will be viewed as hard-selling philanthropy or guilt-tripping clients into giving. But neither approach is necessary, and most clients ultimately appreciate attorneys who care enough about them to give valuable advice instead of mere corroboration.

The root of the approach I consider most effective is to realize the power of asking the “why” questions instead of the “what” questions. If you simply ask your clients what they want to give to whom, they will almost inevitably default to giving everything to the children in equal shares.

(The rest of this article is available online at <http://www.wealthcounsel.com/newsletter/january2009>.)



The Need for a Pour Over Will and the Search for Rich Aunt Mabel

By: Bruce G. Kaufmann, JD

If your practice is like mine, some clients will wonder, “Why do I need a Pour Over Will if I have a Revocable Living Trust?” The answer of course is that you may not need the Pour Over Will if you properly fund the Trust. If you transfer all your assets into the trust then the Pour Over Will is not necessary. But often an asset gets left out of the trust either intentionally, accidentally or incidentally.

Some recommend that the automobile be intentionally placed in a separate trust or left in the individual’s name if all other assets are in the trust. Since the automobile is often involved in expensive accidents the thought is that if it is left out of the trust then it will be more difficult to attach other assets in the trust to pay for any damage exceeding the limits of the insurance policy coverage. I have used

automobile trusts for years to provide creditor protection for the automobile and asset protection for the trust or the owner. In the state of Florida, the Department of Motor Vehicles requires all trusts to renew the license in the month of June instead of the birthday month of the private owner. If the vehicle is held in the owner’s name then the Pour Over Will can be used to transfer the automobile into the assets of the trust upon the owner’s death so that the automobile can be distributed in accordance with the terms of the trust.

Some have found over the years that banks do not like to fund mortgages on homestead or real estate property if it is in a trust.

(The rest of this article is available online at <http://www.wealthcounsel.com/newsletter/january2009>.)

A Bargain Sale of Land to a Land Trust

How You Can Make Some Money While Making a Difference (and Save On Taxes, too...!)

By: Robert A. Ross, Esq.



In this article, Attorney Robert A. Ross shares his expertise in the use of the Charitable Bargain Sale

as a means of helping donors accomplish their personal and philanthropic goals while benefiting land preservation in Door County.

The title says it all!

A bargain sale is a unique opportunity for individuals to make significant outright gifts and support land preservation. This charitable planning technique is often overlooked and definitely underused.

What is a Bargain Sale?

A bargain sale is “part gift and part sale.” A bargain sale is a simple agreement in which a landowner sells real estate to a Charity for less than its fair market value. The difference between the fair market value and the purchase price is considered a charitable gift for which the donor will receive an income tax deduction. With a bargain sale, the seller also avoids capital gains tax on the donated portion of the property.

A bargain sale can be an effective way to dispose of property that has increased greatly in value and on which the owner would otherwise owe a significant amount of capital gains tax.

A bargain sale is the only donation plan that can give the donor a lump sum of cash and a charitable income tax deduction at the same time.

(The rest of this article is available online at <http://www.wealthcounsel.com/newsletter/january2009.html>)

Beta Testing Underway for Physicians Module

“WealthDocx 7” in Spring 2009 to Feature Contributions from DAPT Beta Testers

The hallmark of the WealthDocs drafting system is the collaborative input from thousands of users throughout the country versus the contributions of a few. As we approach the release of “WealthDocx 7” in 2009, we are pleased to acknowledge those members who are currently participating in the Beta testing of the vastly expanded Domestic Asset Protection Trust (DAPT).

This Delaware-based assembly is part of a total overhaul of our Irrevocable Trust System recently released in Beta form as part of the Physicians Module in the WealthDocs 6.2 Update.



WealthCounsel Principal Stan Miller discusses the Physicians Program in San Antonio.

During the first quarter of 2009, the DAPT Beta testers will be assembling the trust, experimenting with its full range of options, and continually providing us with feedback. Through a series of conference calls and other communications with the testers, the DAPT will be thoroughly vetted as our editorial and development teams address any issues, refine the content, and incorporate any additional features. The end result will feature a robust trust solution unlike any other product on the market today.

If your clients include physicians, dentists, business owners and real estate developers, you are very much aware of the business risks these professionals face due to lawsuits. The unique features of our new Irrevocable Trust System will help you better protect the assets of these high-risk clients.

If physicians and other high-risk business clients are not currently part of your practice, this exciting new feature will help you expand your client base as you confidently draft sophisticated trust documents with increased competence and efficiency.

“The new Domestic Asset Protection Trust can be used for a variety of purposes, and not only as a special purpose asset protection trust.”

Stan Miller
WealthCounsel Principal

There is no extra charge to members for the Physicians Module, as it is included as one of the many new features with the impending release of “WealthDocx 7”.

For more information email Blair Janis, Director of Technology, at blair.janis@wealthcounsel.com, or Matt McClintock, Co-Executive Director of WealthCounsel, at matt.mcclintock@wealthcounsel.com.

Industry Trends Survey Generates Strong Interest

Full Report To Be Released in Mid-January 2009

WealthCounsel launched its second annual Industry Trends Survey in November 2008. Invited participants included members of WealthCounsel as well as non-member estate planning attorneys throughout the country. Fifty percent of the 514 respondents (259) were WealthCounsel members and the other fifty percent (255) were non-members. We were pleased to see the high level of interest from non-members whose input brings added breadth and balance.

WealthCounsel developed this annual survey in 2007 in order to identify challenges facing today's practitioners and to assemble data points that will provide insight on developing trends.

The survey consisted of six categories of questions as follows:

1. Profile of Respondent (years practicing; size of firm, etc.)
2. The Industry (expected demand, industry shifts, etc.).
3. Client Demographics & Concerns
4. Practice Profile (revenue generation; business challenges, etc.)
5. Professional Development (CLE)
6. Marketing & Client Generation
7. Staffing

Although a complete report of the results will be available on the WealthCounsel website in mid-January, below are selected highlights from the 2008 survey.

Chart #1 below tells us that 53% of the respondents practice in firms with two or more attorneys, while 47% indicate they are solo practitioners.

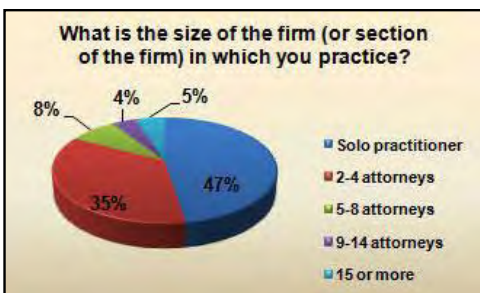
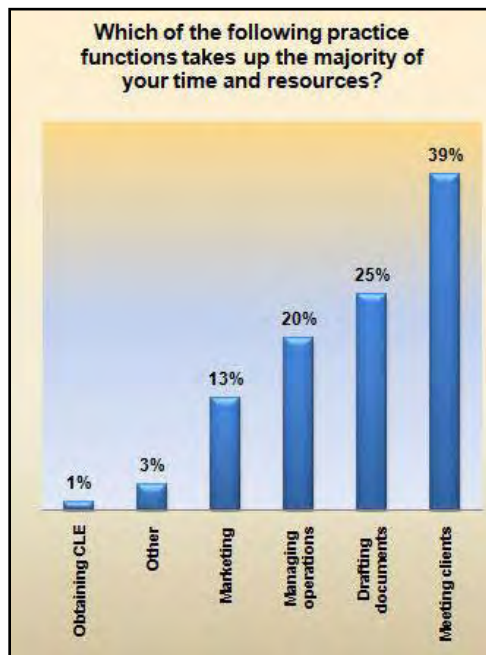


Chart #2 below indicates that 54% of respondents described their clients as having a net worth of between \$1-5 million. Only a small percent (9%) describe their clients as having greater than \$5 million in net worth.



Chart #3 below illustrates that an attorney spends most of his/her time meeting with clients. Document drafting is the second most time-consuming activity.



As with last year's survey, the results will be released via national newswires from the exhibit hall at the 43rd Annual Heckerling Institute on Estate Planning, January 12-16, 2009 in Orlando. If you plan to attend Heckerling, be sure to stop by booths 205-206 and visit with team members and principals of WealthCounsel, The Advisors Forum, and ElderCounsel who will be on hand to discuss the survey.

Industry Trends Survey Winner



Participants who took part in the 2008 Industry Trends Survey were entered into a random

drawing to win full tuition to the 2009 *Planning for the Generations Symposium* - the nation's premier interdisciplinary symposium for estate, elder law, and financial professionals. We are pleased to announce that Michael J. Sweeney of the law firm of CROSBY and CRONAN, LLC located in Madison, CT, was selected as this year's winner. The 2009 symposium will be held August 5-7, 2009 at the Hyatt Regency Chicago Hotel.

Congratulations, Michael!

Now Available - WealthCounsel Estate Planning Strategies – Collective Wisdom Proven Techniques

WealthCounsel's new book helps consumers of all income brackets and family situations understand the importance of estate planning. This informative publication makes an excellent gift for prospective clients who may need additional motivation to begin their planning in 2009.

Members will receive one complimentary copy and may purchase additional copies at the discounted price of \$19.95 (regularly priced at \$29.95) through the MarketPlace section of our website, or by calling 888-659-4069, Ext. 814.



(Continued from p. 2, "Safety in Numbers")

which has a reputation for being organized, prompt or experienced.

Actually, I can be naïve. Because of the dramatic and immediate impact WealthCounsel has had on my life since I joined in 2004, I assumed that everyone treated it like I do. I've made so many clients happy and made so much money from the WealthCounsel network that when I learned some of us don't refer to other WealthCounsel attorneys I actually complained to Lori Berry at WealthCounsel (Lori, wasn't it more like a plea for understanding?).

Here's my last idea I'll share for now.

(Continued from p. 1, "A Certain Sensitivity - Estate Planning for Women")

Sometimes a husband presents without his wife because he handles the finances. Planning should not be commenced until both participate.

Today's wife has good odds of becoming a previously married woman and should be informed about financial matters in any event. She will likely live with the results of (or lack of) financial, retirement and estate planning decisions. Planning should address children's expenses, which often are otherwise paid for out of spousal support. Planners should always include wives in planning.

Single Women Need Thoughtful Planning

Single women include those never or not yet married, as well as previously married women and those in unmarried relationships. Many are single parents, many working, some on government assistance, and/or caring for elderly parents. Their issues include children's guardians, parent's caregivers, possibly pets, and continuing care of dependents

For those of you who draft asset protection trusts for beneficiaries (that should be all of you) when that beneficiary receives the assets in trust, they will have no idea of the protection they have from lawsuits. That protection may be jeopardized due to actions by the beneficiary as a result of the beneficiary retaining some control over the assets in the trust. I postulate that unless they are given instructions from an attorney who understands how these types of trusts function they may feel unduly restricted by such protection and transfer the assets out of the trust into their own names. I encourage my clients to insert a provision that the beneficiary must consult with a WealthCounsel attorney before they can receive any trustee rights over their individual trust. I require a WealthCounsel attorney

because, chances are, a WealthCounsel attorney is going to know how to advise the beneficiary to ensure the lawsuit protection features of the trust are preserved. Only if they cannot find a WealthCounsel attorney (unimaginable) does the trust let them consult with another attorney.

Whether you're thriving in your practice or merely surviving, you will always do better by utilizing the network of WealthCounsel attorneys.

Gary Fales is the managing attorney of the Law Offices of Gary L. Fales & Associates. His firm practices in the areas of estate planning, asset protection, tax planning, elder law and estate settlement. He received his J.D. from Brigham Young University.

at disability or death. Single women encompass a broad spectrum of women needing at least wills and durable powers of attorney for financial matters and healthcare. Single women require extra attention as they struggle on their own.



Previously Married Women are Rebuilding Their Lives

Previously married women include homemakers displaced after traumatic divorces, and grieving widows. These women are rebuilding their lives. Previously married women who participated in planning while married have the advantage of exposure to its importance and principals, and knowledgeable widows

can continue plans. Those who did not participate need education on the planning process and implications. These women should address continuing care for children and other loved ones. For example, while the court favors the biological father as guardian, it must consider the mother's desires in determining the children's best interests. Planners should watch for often raw emotions in these circumstances.

Plan for the Unique Needs of all Women

There are matters affecting all women regardless of group. Women live five to seven years longer than men so need additional retirement planning. Young women should begin retirement planning early to mitigate lower employer-provided benefits. Women earn about three-fourths of what men earn for the same work. Women, especially married women, often forego retirement plan contributions to get current income. Women's pensions and social security benefits suffer from family-related career interruptions for children and elderly parents.

(Continued on p. 9)

(Continued from p. 9, "A Certain Sensitivity - Estate Planning for Women")

Women in professions with high litigation risks, like medicine, law and real estate, need asset protection planning. Planners should be aware that professional women, while shrewd, may not understand estate planning and need guidance.

Women business owners, a rapidly growing sector, need business succession planning. In 2005, U.S. women owned almost half of United States businesses, employed twelve to twenty million people and had two to three trillion in sales. (See http://www.score.org/women_stats.html.) However, women are less likely than men to appreciate estate tax effects on their businesses and many are underinsured. (See Life and Health Financial Services Edition (08/26/03) <http://tinyurl.com/57fqeg>).

Consider philanthropy when planning for women. Marilyn Monroe neglected planning for her charitable desires. A stranger, her widower's new wife, inherited Marilyn's estate. Women often harbor charitable passions.

Weave Women's Intricate Facets Into Planning

Women's unique situations necessitate thoughtful estate planning for retirement, long-term healthcare, children's care and education, and parental dependence, as well as asset protection, philanthropy, and other issues where appropriate. Such planning should be sensitively approached through the lens of women's challenging circumstances.

Nancy L. Sander, is a sole practitioner in Palm Desert, California.

The Granite State's Entry into Asset Protection Trusts

By: Gary Holmes, Esq.



New Hampshire, with the adoption of the Qualified Disposition in Trust Act in 2008, has created an attractive alternative for the creation of Domestic Self Settled Asset Protection Trusts (DAPTs). New Hampshire has positioned itself with its very favorable tax climate; its elimination of the Rule Against Perpetuities; and modern, flexible Trust laws, to make itself more attractive than other APT laws including Alaska, Delaware and South Dakota.

Effective January 1, 2009, New Hampshire has created the Qualified Disposition in Trust Act (RSA 564-D). The New Hampshire Legislature declared that "New Hampshire is uniquely positioned to provide the most attractive

legal and financial environment for individuals and families seeking to establish and locate their trusts and investment assets. The Act will serve to continue New Hampshire's firm commitment to be the best and most attractive legal environment in the nation for Trusts and fiduciary services. . . ." Together with the enactment of important amendments to the UTC in 2006 and 2008, New Hampshire has fine tuned its law to allow open architecture trust structures which complement the effectiveness of creating APTs in the State.

New Hampshire's APT is similar in concept and quality to statutes in Delaware and South Dakota. Here is a summary of the important points:

(The rest of this article is available online at <http://www.wealthcounsel.com/newsletter/january2009.html>)



Tax Aspects of Life Settlement Arrangements

By: Randy Gardner, JD, LLM, MBA, CPA, CFP®, Julie Welch, MS, CPA, CFP®, and Neil Covert, JD



Every day 30,000 people turn 65. Over 85% of universal life insurance policies and over 95% of term life insurance policies do not end up in a death benefit getting paid. Life settlement arrangements allow a policy owner over age 65 who no longer needs the insurance coverage to get cash out of a policy in excess of the cash surrender value.

Life insurance is a tax-advantaged product. Generally if the policy holder dies, the policy holder's estate or heirs may have to pay estate tax, but a beneficiary, such as a family member or significant other named by the policy holder, receives the life insurance proceeds free

of income tax. This income tax exclusion is lost if the policy is transferred for value to a third party beneficiary, such as an investor or life settlement provider. The life settlement provider will pay income tax on the difference between the face value of the policy and the sum of the purchase price and premiums paid, unless the life settlement provider qualifies as a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer. If the life settlement provider is in the trade of business of buying insurance policies (the typical case), the gain is ordinary income.

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(Continued from p. 1, "Asset Protection Considerations for Business Owners")

As a result the corporation will be treated as a C corporation and exposed to double taxation.

A business owner who owns S corporation or C corporation stock should consider the asset protection benefits of converting or merging the corporation to a new Limited Liability Company ("LLC"). There are several limited liability organizations that can protect business assets from the personal liabilities of the owner. However, entities such as limited partnerships, or limited liability limited partnerships, are treated as partnerships for federal tax purposes and therefore cannot own S corporation stock; whereas, an LLC electing to be taxed as a corporation may.

Generally, the asset protection benefit of an LLC is a judicial remedy as known as a "charging order" which protects the owner's interest in the LLC from his or her personal liabilities. If a creditor obtains a charging order, the creditor is limited to the rights of an assignee of a membership interest in the LLC. If a distribution is made from the LLC, the creditor is entitled to receive a proportionate distribution. However, the creditor has no voting rights and thus, cannot force a distribution, liquidate the LLC, or otherwise manage the business.

With proper planning, both C corporation and S corporation owners may be able to avail themselves of the LLC asset protection benefits by converting the corporation to an LLC taxed as a corporation. Generally, such conversions are treated as nontaxable "F" reorganizations under IRC Section 368(a)(1)(F). However, potential income tax consequences and individual state law considerations should be carefully evaluated. For instance, C corporations considering conversion should analyze potential exposure to the "built-in-gains tax" under IRC Section 1374. Also, the strength of the charging order protection provided by an LLC varies depending upon state law.

Business Agreements to Protect Value "Inside" the Business

Among the basic business agreements or legal documents that should be considered by business owners to protect business value include a Non-Compete and Confidentiality Agreement, Buy-Sell Agreement, and perhaps even a Deferred Compensation or Bonus Plan for key employees.

Few events can sap the value of a small business like a key employee or associate leaving the business and starting a similar enterprise, especially if such an employee departs with trade secrets, confidential information or even customer lists. Business owners should require their employees to sign Non-Compete and Confidentiality Agreements to prevent this from occurring. If the terms of such an agreement are considered reasonable under state law, the agreement should be enforceable.

A Buy-Sell Agreement is another key document that if properly structured, funded, and updated will protect the value of both the exiting and remaining business owner's interest in the business. The Buy-Sell Agreement accompanied by proper planning should provide the exiting owner a fair value for his or her ownership interest and provide the remaining owner a means to purchase the exiting owner's interest without depleting the business of cash flow and its value. A Buy-Sell Agreement is designed to establish a predetermined and agreed-upon business value (or method of arriving at the value) at the occurrence of certain trigger events such as the death, disability, voluntary or involuntary termination, or retirement of a shareholder or partner.

It is crucial that planning be done to ensure there are sufficient funds available to implement the buy-sell provisions when triggered. Funding at an owner's death with life insurance may be the easy part. More problematic may be how to buy-out a departing owner's interest in the event of disability, retirement or volun-

tary termination, especially if a portion of the business' cash flow must be devoted to that purpose. Further, once in place a Buy-Sell Agreement should periodically be updated to reflect changes in the business value and the owners' objectives.

Finally, business owners should consider putting into place a deferred compensation or bonus plan designed to reward key employees who meet certain performance targets. A properly planned deferred compensation or bonus arrangement can serve two purposes which will work toward protecting the value of the business. First, the plan should be designed so that employees are rewarded for achieving benchmarks that not only protect but increase the business value. Second, such agreements, for example through gradual vesting schedules, should place "golden handcuffs" on valuable employees by making it difficult for a key employee to leave the business and forfeit certain benefits.

A detailed discussion of the aforesaid legal documents is beyond the scope of this article. The point here is that when considering asset protection strategies for business owners, protecting the internal value of the business through a few important but often overlooked documents can be just as important as the legal wrapper placed on the ownership of the business. It should also be noted that implementing such agreements not only protects the value of the business but also enhances its value and makes the business a more attractive target to a potential buyer when the owner eventually exits.

Ryland F. Mahathey and Brad Milhauser practice in the areas of sophisticated estate planning, wealth preservation and asset protection, and business exit planning at Redgrave & Rosenthal, LLP in Boca Raton, Florida. Brad holds an LL.M. in Estate Planning from the University of Miami. Ryland is both an attorney and C.P.A. and holds an LL.M in Taxation from the University of Florida.

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- Succession Planning
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Associate Pay: Meet Firm Objectives by Rewarding the Behavior You Wish to Promote

By: Mary Merrell Bailey, JD, CPA, MBA, MST, MSA



How do you encourage your Associate

Attorneys to be billable and also to bring in clients? At the Estate Planning & Legacy Law Center, PLC, we designed our compensation plan to reward Associates for spending their time on activities that ensure we will meet our firm's business objectives.

We use a combination of incentives to focus our Associates' efforts on production, marketing and sales.

Pay Based on Production

Base Pay:

Each Associate decides how much is the minimum amount of payroll s/he needs to take home – the Base Pay. We use one-fourth of the Associate's hourly billable rate to calculate the Nut Rate. Dividing the Base Pay by the Nut Rate establishes the minimum billable hours that the Associate is expected to produce – the Nut Hours.

For example, meet our new Associate Pat. Pat desires a Base Pay of \$5,000 per month. Pat has a billable rate of \$200 per hour. Pat's Nut Rate, then, is \$50. Divide \$5,000 by \$50, and Pat's Nut Hours equal 100 per month. In other words, to be considered minimally productive, Pat must bill 100 hours each month to satisfy the \$5,000 Base Pay.

We use Timeslips™ to track all of our activities, but for payroll purposes, only certain kinds of time count.

(The rest of this article is available online at <http://www.wealthcounsel.com/newsletter/january2009.html>)



State Forum News

By: Jenny Ellingson, Director of Project Management & Employee Relations

What is a state forum?

Group of attorneys who get together on a regular basis to discuss specific issues that are relevant to their practice of estate planning in their area, and who often address legal issues unique to their jurisdiction

Active forums:

AZ, CA, CO, IL, MA, Mid-Atlantic, NC, Northwest, OH, RI, TX, UT, & WI

New forums: North Carolina

How do I get involved or learn more?

WealthCounsel's website has information about how to start a forum in your area, how to take advantage of WC's forum financial assistance, and how to get involved in a forum. Visit www.wealthcounsel.com and log into the member's website. Click on the "Re-

source Center" tab, and then "State/Regional Forums." You may also subscribe to your state listserv to receive updated forum information. Please call Jenny Ellingson at 888-659-4069, Ext 825 with any questions.

Active State/Regional Forums with WealthCounsel Member Participation



Blue=Active State Forums
Yellow=Active Regional Forums

Upcoming Forum Events

IL: Jan 30 – Rosemont
MA: Jan 30 – Framingham
NC: Jan 30 – Raleigh
NW: Date TBD – Salem
OH: Date TBD – Columbus
TX: Feb 28 – Austin
UT: March 19 – Location TBD
WI: March 6 – Appleton

Contact Your State Forum Leader

AZ	Mark Bregman
CA	Joe Strazzeri
CO	Carl Stevens
IL	Heinz Brisske
MA	Paul Bernstein
Mid-Atlantic	Wade Scott
NC	Thomas Sanford
Northwest	Eden Rose Brown
OH	Ted Gudorf
RI	Stephen O'Neill
TX	Erin Thrash
UT	Ben Connor
WI	Bob Ross

Visit the WealthCounsel Forum website for updated event information and contact numbers.

THE WEALTHCOUNSEL QUARTERLY

JANUARY 2009



THE WEALTHCOUNSEL QUARTERLY

CALL FOR ARTICLES - April 2009

The *WealthCounsel Quarterly* is published January, April, July and October. It is a communication tool through which WealthCounsel members can share legal expertise with their colleagues while enhancing their professional exposure within the estate planning community. Members are invited to contribute a legal/technical article or a column on practice-building strategies for the April 2009 issue. Article length should be less than 750 words.

Publishing deadlines for the April 2009 issue of *The WealthCounsel Quarterly*:

- 2-16-09: Please submit topic idea to reserve space in the layout
- 3-09-09: Article Manuscripts Due

To reserve space for your article in the April 2009 issue, send an e-mail to Marlene.Frith@wealthcounsel.com.

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