

Cohen and Burnett, PC

Legacy Analytics, LLC

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Estate and Financial Planning Update



Founding Partner



I. Mark Cohen
JD, LLM & CFP™

October is my favorite month in Virginia. Sunny days, crisp nights, colorful trees and a feeling of good things to come. Michael, now 16, is enjoying being a sophomore at Thomas Jefferson High and is learning how to drive. Rachel, at 14½ is a freshman at Marshal High School in the Latin pre-IB program and plays clarinet in the band.

Some of you know that we recently moved to a larger house down the street. In this house I finally have a room in the basement dedicated as my wood working shop. Now, between work, travel, carpool, homework help, triathlon training, and the honey-do list, you can find me happily puttering away in my shop.

On another note, thank you for all the responses to my query in the last newsletter. The consensus advice was to move the family dinner to Saturday during the football season.

On a final note, I did run and finish the Dewey Beach Triathlon on September 18th. You may recall that Hurricane Ivan was in the area at the time, making for heavy seas. Not being a strong swimmer (and having never swum in the ocean) getting into the surf and swimming ½ mile was one of the scariest things I have done in a long time. You can find my times and pictures at

www.deweybeachtriathlon.com

Annual Gifting Reminder

We recently received our first annual end-of-the-year gifting question from a client by email. For many of our clients we have been assisting with gifting to children or grandchildren over the years. This is usually done through irrevocable trusts or family partnerships.

The annual exemption is the same this year, \$11,000 per donor to each donee. A married couple could gift \$22,000 to each of their children as each parent can gift \$11,000. For 529 plans (education), you can gift up to five years all at once so each parent or grandparent could put \$55,000 into a 529 plan right away with no gift tax but they would be using their annual gift exemption to that donee for the next five years. Any gift this year must be completed by December 31, 2004. That means the check must be cashed or the stock received in the other person's brokerage account by December 31, 2004.

If you gift more than \$11,000 from yourself to a donee, you may use your spouse's gifting authority (if not otherwise used), which is called gift splitting. Gift splitting requires that you file a gift tax return. You do not pay gift taxes but you record the fact that one spouse split the gift thereby using the other spouse's annual exemption (with the other spouse's consent). But if a husband and wife gift more than \$22,000 to a single person, or a single person gifts more than \$11,000 to a single donee, they have exceeded the annual exemption amount and must file a gift tax return. There is probably no gift tax due since there is a lifetime \$1,000,000 gift tax exemption in addition to the annual gift exemption. To the extent that one uses the lifetime gift exemption, you reduce the estate tax exemption which is presently \$1,500,000 per decedent.

The donee does not pay any income tax or gift tax on these gifts and there is no limitation on who the donee must be. In other words, you can gift to a perfect stranger. You can gift an unlimited amount to a charity, but there are limits on how much you can deduct in any given tax year for charitable donations (50% of adjusted gross income).

Cohen & Burnett, PC and Legacy Analytics, LLC
7601 Lewinsville Road, Suite 460, McLean, VA 22102
Cohen & Burnett, PC (703) 847-8900 Legacy Analytics (703) 847-0965
Fax (703) 847-8902
www.cohenandburnett.com www.legacyanalytics.com

Managing Partner



Weston D. Burnett
JD, LLM & CFP™

The hero in my life is my wife, Barbara F. Burnett. She has taught math for 31 years for students ranging from fourth graders to post graduate students on three continents and at least eleven different schools and universities. The first Friday in October, for the sixth year, she had a large turnout, this time 130 students, working to land a position on her Longfellow Middle School MathCounts team of ten.

For 2 hours every Friday afternoon after school, she keeps 130 students challenged (I would have a hard time keeping 2 or 3 12- to 14-year olds gainfully occupied on a Friday afternoon after school lets out). The kids flock to this program for which she receives not one penny in compensation.

The Longfellow Middle School has won the Virginia Middle School Math Count competition for the five years that Barb has mentored the team and they have finished nationally 2nd, 1st, 4th, 12th and 5th in those five years.

Beyond what she does for math whizzes, I quote from one letter among dozens she receives each year from her former students: "You have really made a difference. Thanks you I have developed a true love for math. Thank you for all your extra effort with me. It made a world of difference. You are a one-in-a-million teacher and I will never forget all you did for me."

Email Alerts

Clients often call us uncertain as to whether it's time to schedule a review appointment with Mark or Wes to go over existing estate planning documents. Our answer always begins with: **please reread your estate planning documents and use the following checklist.** If you continue to have questions or concerns, then call us to schedule a time to come in and discuss your concerns, questions or changes.

Checklist:

- I. Are the trustees, executors, attorneys-in-fact, guardians, etc, as currently named in the estate planning documents and in the sequence in which they are scheduled to serve, still the way you would like them to be?
- II. Are your assets:
 - a. Still going to the people or organizations you would like them to go to?
 - b. In the time frame you would like them to go?
 - c. In the proportions you would like them to be distributed?
- III. Regarding changes in your personal circumstances:
 - a. Has your estate grown? Is it substantially in excess of \$1,500,000 for one person or \$3,000,000 for a couple, so that estate taxes are still a planning consideration? Do you want to do annual gifting? Do you need to accelerate annual gifting using a Limited Liability Family Partnership with Valuation Discounts?
 - b. Do you have substantial term or other life insurance (*e.g.* more than \$200,000) that you would like removed from your estate to reduce estate taxes?
 - c. Do you have new requirements such as a Grandchildren's Education Trust, Special Needs Trust, Charitable Remainder Trusts, etc?
 - d. Has a spouse, who was *not* a citizen, become one?
 - e. Has a spouse passed away? Or has someone else in the existing trust passed away, been born, married, or divorced? If so, does the current trust adequately cover the changed circumstances?
 - f. Were your estate planning documents written before '97 with "Qualified Plan" language? The law changed in 1997 regarding Qualified Plans and the way they are placed in a trust.
 - g. Were your estate planning documents written before '94 and do they include "real estate" placed into one or both trusts? A 1994 change in VA Law has changed the way deeds are handled.
 - h. Are you retiring soon or have you recently retired?
- IV. Update your Powers-of-Attorney, both Medical and General, if the date is five or more years old.

We recommend an appointment if you have questions or need changes after going through this checklist.

Great Quotes: It is hard to say whether the doctors of law or divinity have made the greater advances in the lucrative business of mystery.

Transcripts from actual court cases.

Q. Are you married?

A. No, I'm divorced.

Q. And what did your husband do before you divorced him?

A. A lot of things I didn't know about.

Q. Were you acquainted with the defendant?

A. Yes, sir.

Q. Before or after he died?

Q. What happened then?

A. He told me, he says, "I have to kill you because you can identify me."

Q. Did he kill you?

A. No.

Q: What is your relationship with the plaintiff?

A: She is my daughter.

Q: Was she your daughter on February 13, 1979?

Q: Do you drink when you're on duty?

A: I don't drink when I'm on duty, unless I come on duty drunk.

Q: Are you sexually active?

A: No, I just lie there.

Q: (Showing mans picture.) Is that you?

A: Yes, sir.

Q: And you were present when the picture was taken, right?

Q: Was it you or your brother that was killed in the war?

Q: The youngest son, the 20-year-old, how old is he?

Q: Were you alone or by yourself?

Q: How long have you been a French Canadian?

Q: Do you have any children or anything of that kind?

Q: Were you present in court this morning when you were sworn in?

Q: So you were gone until you returned?

Direct Investments-Futures Funds

Managed futures funds are pooled investment funds that utilize professional money managers, called commodity trading advisors ("CTAs"), to trade investor accounts. CTAs utilize exchange traded futures contracts and currency forward contracts to participate in market price changes in a wide variety of markets including currencies, interest rates, metals, energy, stock indices and agricultural commodities. These contracts are highly liquid and priced on a daily basis in actively traded domestic and international markets. Futures contracts can be bought or sold short in an attempt to profit from both rising and falling markets. As is the case with all investments, there is risk of loss.

Managed futures funds have historically demonstrated little correlation to stock, bond and real estate indices. Proper diversification requires investments that do not behave similarly under a given set of market conditions. The objective in such a portfolio is to combine investments with low (close to zero) correlation coefficients. Managed futures funds often fit the bill.

We are familiar with four managed futures funds, Campbell and Company, Inc, Sunrise Capital Partners, LLC, Willowbridge Associates, Inc and Aspect Capital Ltd. Steben and Company combines the above four into their Futures Portfolio Inc and has a fourteen year track record of performance. Their annual returns have actually been equal or better than the S & P 500 from 1990 to 2004. Please call us and we can send you information that will more fully explain this investment.

Dunham

For our clients invested with Dunham Trust Company: Dunham has decided to register a series of 11 mutual funds covering 11 different assets. The new series of mutual funds will have two classes of shares -- N and C. The N-shares will be no-load and will be offered with Dunham's performance-fee-based advisory program to clients who have a net worth of \$1.5 million or above. The C-share class will be offered to all clients with a net worth under \$1.5 million.

The same investment managers who sub-advise Dunham's limited partnerships and trust funds will manage the new mutual funds. Dunham will also add two new asset classes and remove one over the next six months. The fourth quarter of 2004, they will be opening a short-term bond asset class. In the first quarter of 2005, they will add a "Fund of Funds" absolute return strategy for trusts and limited partnership funds. The US Treasury Total Return Bond Fund will be discontinued. Other changes that may affect individual accounts are best dealt with individually. Once SEC approval has been received, Dunham will advise you of the forthcoming changes and we will call you to discuss these changes and your investment at Dunham. You should anticipate having to sign new account forms.

Laughing so hard it hurts.

It Takes Two

The Judge was hearing a case in which the defendant had skipped his court date. The Judge announced that he was going to issue a bench warrant to have the defendant picked up. The public defender replied, "You cannot do that your honor. The defendant is a schizophrenic." The judge replied, "In that case, I'll issue two."

Dumber than he looks

A jewelry thief lost his temper at sentencing when a judge accused him of showing no remorse.

"Are you gonna sentence me to the max? Is that what you're getting at?" Herminio DeJesus yelled. "Go ahead! You're going to give it to me anyway!"

The judge proceeded to make his day and handed down a maximum sentence of 3 1/2-to-seven years in prison.

Dejesus, 21, was convicted of third-degree grand larceny for stealing jewelry from his girlfriend's parents last year. The family, who took Dejesus in to help him save money and find a job, said the stolen items, including the couple's wedding rings, were worth \$12,000.

The defense maintained that Dejesus accepted responsibility and was remorseful - though he insisted he only took four or five pieces of jewelry worth less than \$1,000.

His lawyer, David Morabito, alleged that Dejesus' girlfriend also was stealing jewelry along with a friend who admitted pawning some of it.

Dejesus denied assertions by his girlfriend's mother, Linda Breese, that he was abusive toward her and her daughter.

"I don't know where they get all this stuff," he said, adding that he "got bamboozled" and "got convicted of a crime I didn't do."

See Through Trusts

What happens when an IRA names the Revocable Living Trust as the "Designated Beneficiary?"

Thanks to the regulations that were promulgated in 2002, designating a revocable living trust as the beneficiary of your IRA has become much simpler. There are four requirements to a see through trust:

1. The trust must be valid under state law. (Not an issue with our trusts)
2. The trust is irrevocable, or it becomes irrevocable upon the IRA owner's death. (Always the case with your own revocable living trust, but not with a joint trust.)
3. The beneficiaries are individuals who are identifiable from the trust instrument. (This could be a problem if, for example, the beneficiaries include a charity or other organization.)
4. The plan administrator must receive a copy of the actual trust document that is named as beneficiary of the plan by October 31st of the calendar year following the year of death. Or alternatively, the trustee can provide the plan administrator with a final list of all trust beneficiaries as of September 30th of the year following the year of death, certify that all other conditions are met, and agree to provide a copy of the trust instrument upon demand).

If the above four conditions are met, the life expectancy of the beneficiary is used to measure the minimum required distributions (MRD). Who is the beneficiary in our typical bypass trust which pays income to spouse for life then to the children? Answer: when a class of beneficiaries is the "designated beneficiary" then the oldest of the class is the measuring life. This is almost always the spouse. What else does this mean? According to a recent Private Letter Ruling (PLR200438044), designating the trust as the beneficiary of the IRA gives the trustee complete discretion to allocate between the marital bequest and the bypass trust. If you want the IRA to be held for some other beneficiary, such as a particular child, then you will need to designate that particular portion of the trust as the beneficiary of the IRA. Then you can use that child as the measuring life for purposes of the MRD.

This only works for revocable living trusts not wills. Even though you can do a bypass trust in a will, designating the will (*i.e.*, your estate) as the beneficiary will not work. There is no concept of a "see through will." Instead, you are left with the "5 year rule" meaning that all the funds must come out by the end of the fifth year following the employee's death.

In most cases we have advised our clients to designate their spouse as the primary beneficiary and their own trust as the alternate beneficiary. This is still the best option in most cases. If, however, you want someone other than the spouse to be the measuring life, we need to review your plan.