



President's Message

Rebecca Rosenberger Smolen, Esq.

I'm writing this column at the beginning of August as I count down the days to my summer vacation at Cape Cod at the end of the month. It's amazing to me how quickly the summer and the years are flying by at this point in my life (at age 46), and I understand that time will likely only pass more quickly as I get older. A friend helped me recognize a few years back that every year represents a smaller fraction of our lives as the denominator keeps increasing, so that partly explains why the years seemed so much longer when we were younger and now they seem to never last long enough.

I'm sure the next year of the PEPC activities will also speed by for me and you – not only because we are all aging, but, perhaps more importantly, because we have so many great programs planned for the upcoming Council year to enrich our professional lives. As in past years, we are fortunate to have a wonderful array of nationally acclaimed speakers slated to join us at the Union League for our 6 core luncheon programs over the coming year to address important issues we all face as we work to best address our clients' needs.

During our Fall season, thanks to the efforts of our Program Committee, we will have speakers address (i) our evolving thinking on how to best address estate planning needs for the majority (i.e., the 99%) of the populace whose asset base will ultimately not exceed the increased federal estate tax exemption thresholds at our September luncheon; (ii) the complex web of issues to be mindful of when advising clients with international ties – whether due to the residency or citizenship of the clients themselves or their family members, or due to the location of property owned by (or trusts created by) them or their family members at our October luncheon; and (iii) a cutting edge prognosis of the current state of the economy along with what's in store for the future at our November luncheon (by a highly rated speaker who

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Marriage Equality in Pennsylvania – What Does it Mean for Same-sex Married Couples?

Rosalind W. Sutch, CPA, MT and William C. Hussey, II, Esquire

In a decision that will continue to generate significant changes in the treatment of same-sex married couples in the U.S., the Supreme Court in *U.S. v. Windsor* struck down portions of the federal Defense of Marriage Act (DOMA), holding those provisions of the Act were unconstitutional. Specifically, the Court held that Section 3 of DOMA (which provides that "marriage" means only the legal union between one man and one woman, and "spouse" refers only to a person of the opposite sex who is a husband or wife) violated the equal protection clause of the Fifth Amendment of the Constitution as it applies to same-sex couples legally married under the laws of their state. The Court's decision opens the door for same-sex married couples to enjoy many federal tax and other benefits previously available only to heterosexual married couples, including many income, gift and estate tax advantages.

By explicit recognition of same-sex marriages, or because of challenges to statutes banning such marriages, nineteen

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Rebecca Rosenberger Smolen, Esq., Bala Law Group
rebecca@balalaw.com 610-624-3391

Vice President:

Douglas S. Simon, M.D., Deutsche Bank Alex Brown
douglas.s.simon@db.com 215-854-1550

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Newsletter Co-Editors:

Peggy M. Robus, CPA, MT, Eisner Amper, 215-881-8813
margaret.robust@eisneramper.com
Alan Weissberger, Esq., Hirtle Callaghan, 610-943-4229
aweissberger@hirtlecallaghan.com



Coming
Events

2014-2015

LUNCHEON PROGRAMS

The Union League

140 South Broad Street

Philadelphia, PA

www.unionleague.org

Times

11:45 - 12:00 p.m.	Registration
12:00 - 12:30 p.m.	Lunch
12:30 - 1:45 p.m.	Program

Dates:

Tuesday, September 16, 2014
Tuesday, October 21, 2014
Tuesday, November 18, 2014
Tuesday, January 20, 2015
Tuesday, February 17, 2015
Tuesday, March 17, 2015

WELCOME BACK PARTY

Thursday, October 2, 2014

5:00 – 7:30 p.m.

The Racquet Club

215 South 16th Street

Philadelphia, PA

HOLIDAY CELEBRATION

Monday, December 8, 2014

5:30 – 7:30 p.m.

Crystal Tea Room

100 E. Penn Square

Philadelphia, PA

For information contact the
PEPC Office at 856-234-0330 or
staff@philaepc.org.

President's Message continued

addressed us for the first time 2 years ago and is now back by popular demand).

The Fall programming will also include several other events that I hope many of you will take the opportunity to enjoy. For the second year in a row, we are combining our traditional Welcome Back Party organized by our Social Committee (on October 2nd at The Racquet Club) with a special gathering to welcome our new members who joined over the prior 12 months. Last year the Membership Committee decided to experiment with replacing the New Member Breakfast with this new combined event with the hope of improving the experience for both new members and longstanding members by affording an opportunity for them to mix and mingle. After the positive feedback we received from attendees at last year's combined event, we are planning to make this our new tradition going forward.

Next, on November 5th, at the Union League, the Women's Initiative Committee has organized a program on "Managing End of Life Issues" with a panel of three local experts, including two doctors and one lawyer. This topic, obviously, impacts all of us and our clients but, historically, on a personal level, it has impacted the women on the Women's Initiative Committee more than their male friends, family and colleagues because in the past women have, overall, taken on a larger share of the caregiving roles in society. Going forward, it appears to me that this burden is being more evenly distributed between the genders so I expect this topic will have widespread appeal to our members for both personal and professional reasons.

The last of our currently scheduled events for the Fall season is our annual (and fabulous) Holiday Party at the Crystal Tea Room on December 8th organized by the Social Committee. However, you should stay tuned for additional very worthwhile programming during this period that we expect will be added by the Social and Roundtable Committees on an ad hoc basis. A new and successful effort by the Social Committee over the last year or so has been to schedule "Drop-Ins" at local bars for members of PEPC to congregate for happy hour which are announced by email blast a few weeks in advance of the event. Also, more traditionally, our Roundtable Committee routinely organizes 3 to 4 educational programs a year on topics of current interest for our members with local speakers.

Another exciting bit of news is our newly-formed Outreach Committee. Andrew Haas and Phil Jodz have embraced the challenge of co-chairing this new committee which we expect will create even more activities to help make time fly by for Council members. As I had noted in my comments at the Annual Meeting back in May, during my time thus far

on the Board, it occurred to me that our membership could benefit from concerted efforts by the Council to help better disseminate the message about the importance of careful estate planning in our communities, particularly considering the aging of the baby boomers (and, in many cases, their parents). I joked during my comments that perhaps we could develop something like the well implemented "Got Milk" campaign which, I think, over the course of the nearly 20 years it ran, resulted in us all considering getting more milk into our regular diets.

All kidding aside, I see a number of possibilities for this committee to help engage our members with each other and our communities at large, whether through a marketing campaign, a speaker's bureau, a referral service, external publications, informational events, or public service events. We need as much of your ideas and efforts as we can get to ensure that this Committee will best meet the interests of our PEPC membership. Our current hope is that the Outreach Committee will plan two events a year, one in the Fall and one in the Spring - starting in the Spring of 2015. I hope you will join us for the kick-off meeting on October 8th.

In addition to considering helping out with the new Outreach Committee, I urge each of you to consider joining (or rejoining) one (or more) of the other Committees I've mentioned above or one of the following other Committees which are essential to the quality of the experience for each of us as members of the Council: Annual Meeting, Awards, Ethics, Newsletter, Sponsorship and Technology. More information about each of these Committees is available on the PEPC website (www.philaepc.org) under the Community tab, and an email blast requesting you to join one or more Committees will be initiated in September. Please also take a minute to consider our sponsorship options (at the "Ads and Sponsors" tab) to help raise the profile of your organization in our community while providing much needed financial support to our Council.

With over 800 members, we have long been privileged to be the largest Estate Planning Council in the country. Perhaps that has something to do with our demographics as one of the oldest cities in the country, but, I suspect it is also attributable to the incredible programming we have year after year which is only possible with the continued contributions of the time, talents, and sponsorship dollars of as many of our members as possible. We need to remember that we are all in this together and the more we each put into making our Council as vibrant, beneficial, and relevant to our professional endeavors as possible, the more we will all get out of it.

I very much look forward to enjoying the upcoming Council year with each of you!

Marriage Equality continued

states and the District of Columbia now permit marriage between same-sex couples as of the writing of this article. Challenges to the remaining bans on same-sex marriage have been filed in the other thirty-one states, and pending appeal, have already been successful in at least twelve.

Judge John E. Jones II of the U.S. District Court for the Middle District of Pennsylvania ruled on May 20, 2014, in *Whitewood v. Wolf*, that Pennsylvania's ban on same-sex marriages violates both the due process and equal protection clauses of the U.S. Constitution. Shortly thereafter, the Corbett administration confirmed that the Commonwealth would not appeal that decision. Two weeks later, Theresa Santai-Gaffney (Schuylkill County Clerk of the Orphans' Court and Register of Wills) filed a Motion for Intervention which Judge Jones denied on June 18, 2014, effectively rendering his May 20, 2014 ruling final. The ruling paves the way for equal treatment of spouses in same-sex marriages for Pennsylvania income and inheritance tax purposes, and provides a plethora of other state and federal legal protections previously available only to heterosexual married couples. This article explores, while borrowing from the style so effectively used by Judge Jones in his opinion, the myriad of ways in which same-sex married couples may be affected by that decision.

The first order of business for most estate and financial planners is to identify those couples affected by this change in legal status. In many instances, elaborate plans have been laid to deal with the detrimental effects of non-recognition of same-sex marriages, including increased inheritance, estate and income tax liabilities. Those plans may no longer be relevant and often will have to be unwound to fully enjoy the many advantages given to married couples generally under state and federal laws.

To love, to cherish

We must acknowledge there are many very important reasons all of our clients consider when deciding if they should get married whose scope goes well beyond tax, estate and financial planning. Questions of love and lifelong commitment are inquiries only our clients can answer. We can and should however help them with the practical aspects of quantifying the tax, legal and overall economic impact of marriage.

To have, to hold

Once a couple has tied their emotional lives together under the law, their financial and tax lives become intricately intertwined as well. Like all married couples, the complexity of those financial and tax issues are impacted by their relative stages in life. Younger couples, usually with fewer assets, will

typically have different planning issues than older or wealthier clients.

A threshold issue for most married couples, regardless of their station in life, is how to properly title their assets. Although this decision has lesser importance for federal estate tax purposes since the introduction of "spousal portability" for the applicable exclusion amount, it can have a significant effect on a creditor's ability to reach certain assets. Both real and personal (e.g., bank and brokerage accounts, etc.) property held by a married couple as "tenants by the entireties" in Pennsylvania are generally exempt from claims by creditors of only one spouse. Note, however, that the protection is lost if the spouses are divorced or the debtor spouse survives the other and becomes the sole owner of the property. In addition, the tenancy by the entireties protection does not apply where both spouses are jointly indebted to the creditor. Therefore, the need to consider traditional liability insurance coverage, including "umbrella" policies, or other vehicles such as limited liability business entities and trusts, to protect assets is not reduced in the event of a same-sex couples' marriage.

For better, for worse

Marriages between same-sex couples will be subject to the same pitfalls that affect other married couples should the parties decide to part ways. For those "wedlocked" couples who had married under the laws of another state prior to the *Whitewood* decision, but subsequently parted ways, the ability to dissolve their other state marriage is now available to them in Pennsylvania. In fact, it took less than a month for the first same-sex married couple to file for a divorce in Pennsylvania following the *Whitewood* decision.

Those same-sex couples now seeking a divorce must deal with the same financial consequences that befall all divorcing spouses. Equitable distribution of the marital assets, alimony, alimony pendente lite and (possibly) child support will all be on the table. Whereas many of these issues may have been dealt with under a cohabitation agreement between the parties' prior to the *Whitewood* decision, it remains to be seen the extent to which those agreements will hold sway in a divorce proceeding. Had the parties entered into an antenuptial agreement under the laws of their state of marriage, we anticipate those agreements will be given full force and effect provided that all of the formalities incident to their execution were followed that would have applied to such agreements generally under the governing state law.

Couples contemplating marriage must now consider whether

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Marriage Equality continued

a prenuptial agreement is needed based upon their particular circumstances. For wealthier individuals, the need for a prenuptial agreement will usually be self evident.

For richer, for poorer

Marriage changes the tax and economic impact of a couples' financial landscape. Some of these changes are clear, while others remain clouded for our LGBT clients due to the inconsistent definition of marriage (state of celebration vs. place of domicile) in various federal agency policies, regulations and statutes.

Federal Income Tax

The Internal Revenue Service ("IRS") released Rev. Rul. 2013-17 on August 19, 2013, less than two months after *Windsor*. The Revenue Ruling, which was effective September 16, 2013, indicated the IRS would adopt the state of celebration rule, recognizing same-sex marriage if validly entered into in a state whose laws authorize same-sex marriage, no matter where that couple is domiciled. The Revenue Ruling stated that registered domestic partnerships, civil unions, or other similar formal relationships "not denominated as a marriage" under state law would not qualify a couple as married for federal tax purposes.

The Congressional Budget Office has reported same-sex marriage filings would likely be revenue neutral or raise insignificant revenue, suggesting an even split of revenue generated from same-sex couples facing the "marriage penalty" versus those benefiting from a "marriage bonus." The former being when a couple pays more income tax as a married couple than they would have as two single individuals, the latter, when they would pay less. The Tax Policy Center has a useful calculator resource¹ that may help you quickly determine if your clients generally may be in a marriage penalty or bonus situation.

Some income tax limitations, thresholds, etc. that change for married versus single taxpayers include: capital gain/loss and net operating loss/ordinary income off-set between spouses, annual maximum deductibility limits for capital and rental real estate losses, maximum mortgage interest deduction debt limitations, adjusted gross income (AGI) threshold ranges for phase out of various exemptions and deductions, modified AGI threshold ranges for social security benefit taxability, child tax credit phase-out and various individual retirement account contribution limitations. Additionally the annual net investment income exemption for the net investment income tax and earned income exemption for the hospital insurance tax are affected by the clients' marital status.

As a result of quantifying the tax impact of nuptials, some

clients may consider delaying their marriage, while others will proceed nonetheless. Regardless, advisors should take care to provide clients with the information they need to make informed decisions.

Some clients, who were married prior to the *Windsor* decision, may request an analysis of prior year returns where the statute of limitations remains open. Rev. Rul. 2013-16 provided those couples who would benefit from filing amended returns (because of removing imputed federal taxable income from their wages for health benefits of their spouse or because of a marriage bonus situation) may file amended tax returns claiming a refund in any year in which the statute of limitations remains open or for any years in which they filed protective refund claims. The Revenue Ruling did not mandate amended returns for those married couples who would owe more tax in those years in which they were not permitted to file jointly. What is unclear however; is if upon examination, those taxpayers would be required to correct their filing status. This unanswered question and many others were addressed in a five page letter to the IRS from the American Institute of Certified Public Accountants dated October 30, 2013.²

State Income Tax

States with income tax that have not yet adopted marriage equality continue to create headaches for tax professionals and clients alike. Since many states begin with federal AGI or taxable income, those couples filing jointly for federal purposes may have to "decouple" their federal return to comply with their resident state filing requirements. In essence creating a situation where they will have to prepare a minimum of five total income tax returns: a joint federal return, two single pro-forma federal returns and two single state tax returns. If clients also wish to file state level protective refund claims they would need to prepare a joint state return as well. If a couple has income sourced to multiple states the quantity of returns required could grow exponentially.

Those clients who are married, living and working in marriage equality states generally will file jointly for both federal and state purposes going forward. Simplifying what previously was a situation where pro-forma joint federal returns were necessary to file required joint state tax returns.

It is imperative that clients consult a qualified tax advisor to ensure they comply with these various filing requirements.

Social Security Benefits

Many benefit plans managed by the Social Security

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Marriage Equality continued

Administration (SSA) are tied to marital status. However, in June 2014, the SSA published new instructions allowing the agency to process more claims for same-sex couples, including those claims related to non-marital legal relationships (such as domestic partnerships or civil unions) if recognized by the state in which the applicant is domiciled, because SSA recognizes marriage, and now non-marital legal relationships, based on the place of domicile rule.

The most important advice a planner can give a client exploring their social security benefit options is to apply if they believe they are eligible for benefits. Applying will preserve their filing date, which is used by the SSA to determine the start of benefits. Since this area is still evolving, those clients in non-marriage equality states may avail themselves to retroactive benefits if the SSA's statutory definition of marriage changes or is declared unconstitutional, effectively keeping the statute of limitations open on their application for benefits.

Many couples will find it difficult to qualify for Supplemental Social Security Benefits (SSI) if they are married and living together. Thus, marriage for couples where one spouse may be entitled to such benefits may not be ideal if marriage would cause a reduction or elimination of those benefits.

Medicaid

Medicaid is administered at the state level, thus each state's statute, policies and regulations must be reviewed to determine a client's eligibility. Non-recognition states may be more favorable for same-sex married couples who need to employ Medicaid; however, forethought should be given to the possible impact of the Supreme Court granting certiorari to one or more of the many federal cases challenging state level bans on same-sex marriage. If one spouse's assets would disqualify the other spouse from Medicaid benefits, traditional Medicaid eligibility planning should still be considered.

In sickness and in health

Imputed Income on Health Benefits

Prior to the *Windsor* ruling the estimated value of an employer's financial contribution towards health insurance coverage for an employee's non-dependent same-sex partners had to be reported as taxable wages earned, often referred to as imputed income. This continues to be the case for same-sex partners who do not choose to legally marry. However, for those married same-sex couples, their employers no longer must impute income on the cost of their spouse's health insurance coverage. Further, if the employer offers health coverage through a cafeteria plan that permits employees to pay a portion of the cost through pre-tax salary reduction,

IRS Notice 2014-1 indicates the employee can now contribute towards their same-sex spouse's health coverage on a pre-tax basis.

Some employers did not correct their payroll reporting in 2013 and issued erroneous Form W-2s for LGBT employees married before or after the *Windsor* ruling and prior to December 31, 2013. The IRS provided guidance to employees on how to resolve this issue in Information Letter 2014-0012 dated June 27, 2014. If your client has already filed their 2013 tax returns and may have overlooked this issue, they should consult their tax advisor and consider filing an amended tax return. Further, they should alert their employer in order to ensure the error does not occur again in 2014. Their employer should also file amended payroll tax returns to recover any erroneous payroll taxes paid on imputed income by the employee. If the employer refuses to seek a refund, clients may wish to file Form 843 to request the refund themselves.

Cafeteria Plans

IRS Notice 2014-1 provides guidance about how employee benefit plan provisions relate to the *Windsor* ruling. In summary, cafeteria plans that include health benefits, health and dependent care flexible spending accounts (FSA) and health savings accounts (HSA) should now recognize and treat same-sex marriages in the same way that the plan would for heterosexual marriages. Clients should know that the maximum contributions limitations to FSA and HSA accounts will become more restricted once they are married since the married contribution limitation is less than two times the single contribution limitation.

Hardship Distributions

Many qualified retirement plans allow for a hardship distributions for certain medical, education and funeral expenses of an employee. The need for a hardship distribution extends to the employee, their spouse or dependent(s). Thus, expenses related to an employee's same-sex spouse and that spouse's dependent children, now also qualify for consideration of hardship distributions, consistent with Rev. Rul. 2013-16.

Family Medical Leave Act (FMLA)

As of the writing of this article, the Department of Labor (DOL) closed the comment period for the proposed rulemaking change to revise the definition of "spouse" under the FMLA. Currently spouse is defined based on the place of domicile rule, however the DOL proposes to change the definition of spouse based on the place of celebration rule. This change

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Marriage Equality continued

would entitle eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons relating to their same-sex spouse no matter where they live. Until the DOL implements this change, only same-sex married couples living in marriage equality states can take advantage of the FMLA.

Until death do us part

Thankfully, estate and financial planning for same-sex married couples will now be even more reflective of the planning we do on behalf of all married couples. That is, subject to unwinding prior planning if necessary, planning for same-sex married couples will be as simple or as complex as needed to deal with that couples' unique facts and circumstances. In almost all circumstances, however, the surviving spouse can benefit from the large number of federal estate and state inheritance tax breaks that inure to them under those laws.

Inheritance and Estate Tax Considerations

Prior to *Whitewood*, a surviving same-sex spouse would be subject to a fifteen percent (15%) tax rate applicable to collateral heirs for Pennsylvania Inheritance Tax purposes. Now such surviving spouses will be entitled to the applicable zero percent (0%) tax rate, resulting in substantial inheritance tax savings. The surviving spouse may also now be the beneficiary of a "sole use" trust for Pennsylvania Inheritance Tax purposes that will defer inheritance taxes until the death of the survivor. To the extent that an Inheritance Tax return was previously filed using the fifteen percent (15%) rate for which the statute of limitations has not yet closed, a same-sex surviving spouse should promptly apply for a refund of those inheritance taxes paid.

Likewise, for federal transfer tax purposes, the unlimited marital deduction now applies to qualifying transfers to same-sex spouses during life or at death. These married couples may now consider the use of marital trusts, including QTIP trusts, when appropriate. As referred to earlier, spousal portability of the decedent's unused applicable exclusion amount is now also available to the surviving spouse under appropriate circumstances. Whether spousal portability or more traditional credit shelter/marital trust planning will be more beneficial to the couple will be subject to the same considerations that planners have struggled to balance over the past several years.

Similar to the opportunity to amend Pennsylvania Inheritance Tax returns discussed above, surviving same-sex spouses who paid federal estate taxes may be in a position to file amended federal estate tax returns to recover tax that may have been sheltered by the unlimited marital deduction, provided the

statute of limitations is still open.

Under Pennsylvania intestate laws, a surviving same-sex spouse will now also be entitled to approximately one half of the decedent's estate in the absence of a Will depending on the decedent's other familial circumstances at death. Absent a binding agreement to the contrary, a surviving spouse will also be entitled to the "elective share" under state law if the decedent's Will does not adequately provide for him or her. This would entitle the surviving spouse to one-third of the decedent's estate taking into consideration certain assets that pass to the survivor outside of the Will. It is incumbent on advisors to these surviving spouses to fully advise them of those elective share rights and the limitations applicable thereto.

Some caution is still warranted when planning for same-sex married couples. Although it can be hoped that the laws of the other thirty-one states will soon follow those that have recognized marriage equality, that has not yet happened. Planners must therefore be cognizant of the possibility that their clients may move or travel to a state which has not yet

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Marriage Equality continued

provided the same protections to same-sex spouses and make contingency plans as appropriate. In particular clients traveling or living in non-equality states should be certain to execute and keep readily accessible, both a Durable Asset Management and Health Care Power of Attorney and Hospital Visitation Authorization documents that would protect their spousal rights in the case of an emergency.

Retirement Plans and Designated Beneficiaries

For many clients, their retirement plan assets, including Individual Retirement Accounts (IRAs), are the second most valuable asset after only the value of their homes. Importantly, the vast majority of retirement plan assets do not even pass under a Will or under the intestacy statutes due to the designation of a beneficiary to receive those assets after the death of the account holder – i.e., they are non-probate assets. In addition, qualified retirement rules generally require that a surviving spouse be entitled to the benefits under the plan unless the surviving spouse had consented to a different designation during the plan participant's lifetime. Absent such consent, the surviving spouse will be entitled to either a pre-retirement survivor annuity or joint and survivor annuity benefit depending on the age of the plan participant at the time of his or her death. Finally, most retirement plan assets will be considered "income in respect of a decedent" so the assets are not just subject to death taxes, but also to income taxes when ultimately received as a distribution by the named beneficiaries. Accordingly, planners should review with couples all of their retirement plan and other non-probate asset (e.g., life insurance, Payable On Death (POD) and In Trust For (ITF) accounts) beneficiary designations to ensure that they comply with those requirements and their current planning in light of the *Windsor* and *Whitewood* rulings.

Assuming the retirement plan participant has named his or her surviving spouse as the only designated beneficiary, several benefits will inure to the survivor that were previously barred to them prior to the ruling in *Windsor*. The surviving spouse is generally permitted to roll over the account balance into an IRA established in his or her own name, to be distributed after the surviving spouse's "required beginning date" (or RBD) using the uniform distribution table for required minimum distribution purposes. The surviving spouse can also name one or more individuals as a designated beneficiary of the account so the balance of the rollover IRA at the surviving spouse's death can be distributed to that beneficiary under the rules for inherited accounts.

The principal advantages of this technique are two-fold. First, even if minimum required distributions were required during the participant's life, distributions may be deferred until

the year after the surviving spouse attains age seventy and one-half (70.5) (i.e., the survivor's RBD). This may enhance or replenish the tax-deferred growth in the account until the survivor needs it most. Secondly, the ability to name new (or additional) beneficiaries means that the term of the IRA (generally most other retirement plans require the plan assets to be distributed out to a beneficiary other than a surviving spouse) may be "stretched out" over the remaining life expectancy of the newly named designated beneficiary. Especially in the case of a much younger spouse, these "stretch IRAs" can serve a wealth accumulation device in addition to a tax deferral vehicle.

You may now kiss your spouse

In the words of the Honorable Judge Jones: "In the sixty years since *Brown [v. Board of Education]* was decided, "separate" has thankfully faded into history, and only "equal" remains. Similarly, in future generations the label *same-sex marriage* will be abandoned, to be replaced simply by *marriage*." Unfortunately, there are still thirty one states in which even that future is not yet a possibility.

For tax, estate planning and other advisors in Pennsylvania, however, that time has now arrived. The traditional approaches we have used to deal with the duties, rights, liabilities and obligations of, and benefits afforded to, married couples now apply fully to all such Pennsylvania couples regardless of their sexual orientation. It may still be necessary to unravel complex estate plans laid to partially undo some of the injustices previously imposed on these same-sex couples. Hereafter, however, they and their advisors may simply deal with the vast complexities of the tax, estate and marital laws generally without the cloud of discrimination that previously shadowed them.

Roz Sutch is a shareholder and LGBT practice leader at Drucker & Scaccetti, a tax and business advisory consulting firm in Philadelphia, PA. Bill Hussey is chair of the Tax and Estates Practice Group at White and Williams LLP.

1 <http://taxpolicycenter.org/taxfacts/marriagepenaltycalculator.cfm>

2 http://www.aicpa.org/advocacy/tax/individuals/downloadabledocuments/10-30-13_irs_doma_guidance_request_comment_letter.pdf

IRA Strategies for Surviving Spouses

Kimberly Polaski and Richard J. Casmirri, CPA MSTFP

Inherited IRA Strategies for Surviving Spouses

When a spouse inherits an IRA (Traditional or Roth) from their deceased husband or wife, there are several planning strategies that the surviving spouse can follow in order to meet their specific needs. Spouses who are designated as the sole beneficiary of the IRA have special options available to them compared to the options available for non-spousal beneficiaries. Choosing the correct option for the surviving spouse's circumstances can be a powerful tool for minimizing IRD, preventing IRS penalties, ensuring the preservation of assets and possibly maximizing the special tax attributes of the account. Each strategy has advantages and disadvantages, and with careful tax and financial planning, the surviving spouse can choose the strategy that best meets their specific needs.

Traditional IRA

Option 1 - Receive a Distribution for the Amount of the IRA

This option is available to all beneficiaries of IRAs, whether the beneficiary is the spouse of the decedent or not. Distributions made to a beneficiary from the decedent's IRA after the decedent's death are exempt from the Code Sec. 72(t) 10% early withdrawal penalty.

Pros: Receive lump sum of money immediately; avoid 10% early withdrawal penalty. If prior nondeductible contributions were made to the IRA, the beneficiary receives that carryover basis in determining his or her taxable distributions.

Cons: The distribution is taxable, and depending on the size of the distribution, could raise the beneficiary into a higher tax bracket in the year of the distribution.

Option 2 - Elect to treat the IRA as the surviving spouse's own IRA

According to Reg. Sec. 1.408-8, Q&A 5(a), surviving spouses can make an election to treat the decedent's IRA as if it were their own. This election can be made by the spouse retitling the inherited account into his or her own name as the IRA owner, or it will be made automatically if the spouse begins to contribute money into the account, or take other actions that are consistent with being the owner of the IRA. With this option, the existing monies in the inherited IRA are treated as if the surviving spouse contributed it all themselves.

Pros: The beginning date for required minimum distributions will be deferred until the spouse turns 70 ½

(if the spouse is younger than the decedent, this may be beneficial); the spouse can use the Uniform Lifetime Table to determine the required minimum distributions rather than the less favorable single life expectancy table; the spouse can name his or her own beneficiaries and increase the overall lifespan of the IRA. If prior nondeductible contributions were made to the IRA, the beneficiary receives that carryover basis.

Cons: Unless a 72(t) exception is met, the spouse will be subject to tax and the 10% penalty on all distributions taken before he or she turns 59 ½. Additionally, if the surviving spouse was older than the decedent, the beginning date for required minimum distributions would have been accelerated.

Option 3 - Roll-over funds to an IRA in surviving spouse's name

A surviving spouse can decide to roll-over the funds from the decedent's IRA into his or her own IRA. Similar to the election in Option 2, the funds in the roll-over IRA will be treated as the surviving spouse's own.

Pros: Same as Option 2 – Potentially more favorable rules for Required Minimum Distribution, including beginning date; ability to name own beneficiaries.

Cons: Same as Option 2 – Generally, tax and penalty will be due on any distributions taken before the spouse turns 59 ½.

Option 4 - Leave IRA in decedent's name until surviving spouse reaches 59 ½ years old

As previously stated, a significant 10% penalty is charged by the IRS for any distributions made before the owner of the IRA is 59 ½ years old. So for certain younger spouses, it may be best to not make the election or roll-over the funds until the spouse is old enough to avoid this penalty. According to Reg. Sec. 1.408-8, Q&A 5 (a), the election or roll-over can be made any time after the death of the decedent. As such, distributions from the decedent's IRA to a beneficiary are exempt from the 10% penalty under Code Sec. 72(t)(2)(A) (ii). So in this option, the spouse would be free to take any amount of distributions while the IRA is still in the decedent's name and only have to pay the income tax. The surviving spouse can then make an election or roll-over the funds to their own IRA once he or she is old enough to avoid this 10% penalty.

Pros: Avoid 10% penalty on pre- 59 ½ withdrawals; receive benefits of election/roll-over after age 59 ½.

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IRA Strategies continued

Cons: any lump-sum distributed while the IRA is in the decedent's name is subject to tax in the year of the distribution.

Other Traditional IRA Considerations

It is important to understand that if the surviving spouse chooses to treat the inherited IRA as their own or if they choose to rollover the funds into their own account, the fair market value and any carryover basis from the inherited IRA will be included with any other traditional IRA they own directly. This is important for future distributions and could have a significant impact on the tax effect of making any future Roth IRA conversions. In particular, the backdoor Roth Contribution strategy could be jeopardized for the surviving spouse.

The backdoor Roth contribution strategy exists for clients who would otherwise be phased out, due to AGI thresholds, from making direct Roth IRA contributions. Instead, these clients typically make nondeductible contributions to a Traditional IRA and then convert the funds almost immediately to a Roth IRA. Since the contributions were nondeductible in the first place to the Traditional IRA, the Roth conversion generally has no tax impact. However, if the surviving spouse treats the inherited traditional IRA as their own account or rolls over the funds to their own IRA, a pro-rata portion of this Roth conversion may be deemed taxable.

Roth IRA Considerations

Qualified Distributions

Generally a non-spousal beneficiary of an inherited Roth IRA must (1) withdraw the entire balance within 5 years of the original owner's death or (2) begin withdrawals, based upon the IRS life expectancy tables, by December 31st of the year after the original owner's death. Similar to Traditional IRAs, if the sole beneficiary of the inherited Roth IRA is the spouse of the decedent, he or she has the additional options to treat the Roth IRA as their own account or to rollover the inherited Roth funds into their own Roth IRA.

The primary planning attribute for Roth IRAs is that distributions may be tax free to the beneficiary and may also avoid the 10% penalty of Code Sec. 72(t) if they are deemed to be qualified distributions. In order for distributions from a Roth IRA to be considered qualified, they must not be made within the five-year period that starts on the first calendar day of the tax year that the taxpayer made contributions to the Roth account. From there, in order for distributions from a Roth account to be treated as qualified, they must be:

- made after obtaining the age of 59 ½,
- made to a beneficiary (spouse or non-spouse) after the death of the original Roth IRA owner,
- made due to disability, or
- a special purpose distribution specifically exempted in the IRC (such as a distribution for a first-time home purchase).

Given the above, spouses who inherit Roth IRAs can generally receive tax free distributions from those accounts provided that the five-year period is met. If the spousal beneficiary of an inherited Roth IRA is giving consideration to converting or treating that inherited Roth IRA as their own (so to avoid the typical distribution requirements of inherited Roth IRAs) he or she should be aware of some other potential issues.

It should be noted that for purposes of determining the five-year period, the beneficiary of the inherited Roth IRA should generally use the decedent's holding period in determining whether that five-year threshold was met for qualifying distributions. This carry-over period is applicable to the inherited Roth IRA only and as such if the beneficiary independently funded a Roth IRA, the accounts may have separate five-year periods for determining qualified distributions. According to Reg. Sec. 1.408A-6, Q&A 7(b), surviving spouses who take advantage of the opportunity to treat the inherited Roth IRA as their own account or choose to rollover the inherited Roth funds into their own account, may use the five-year period that permits the earliest qualified distribution date. That is to say, the surviving spouse can use the earliest beginning date from either their separate Roth account or from the decedent's Roth IRA for this five-year period test.

Other Roth IRA Considerations

If a nonqualified distribution is made from an inherited Roth IRA to a surviving spouse, it is important to understand the make-up of the inherited Roth IRA. Certain ordering rules exist and the applicability of income taxes and/or the 10% penalty on a nonqualified distribution vary if the funds represent normal contributions, Roth conversions, or earnings. Under the IRC, distributions are first ordered against normal contributions to the account, then conversion contributions (first in, first out method), and lastly earnings. As such the tax basis in the inherited Roth account is allowed to be recouped before earnings are treated as being distributed to the surviving spouse. These earnings may be subject to income tax and the Code Sec. 72(t) penalty if the distributions are deemed to be nonqualified.

With respect to the 10% early distribution penalty under Code

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IRA Strategies continued

Sec. 72(t), there is an important planning point to be aware of as it relates to conversion contributions. The issue here is that Roth distributions ordered against conversions (based upon the previously discussed ordering rules) have a separate five-year period test than distributions that represent typical Roth contributions. The five-year period used in determining if a distribution representing a conversion contribution is subject to the 10% penalty, begins on the first day of the tax year in which the conversion took place. As such, this may be later than the five-year period from which the Roth IRA was funded by typical contributions. This effectively prevents a taxpayer from converting traditional IRA funds to an existing Roth IRA and taking penalty free distributions from the converted funds within five years of said conversion.

Conclusion

The rules for inherited traditional and Roth IRAs are complicated and far reaching, especially for a surviving spouse. As such, due considerations should be made by the practitioners advising such clients and they should look to insulate their clients by ensuring that their entire advisement team, from the attorney, to the accountant, to the IRA custodian understand the client's objectives and the steps for implementation. It is crucial that a surviving spouse also understands the available options and chooses the strategy that best suits their needs and circumstances. The potential IRS penalties and income tax imposed on certain withdrawals can be significant, and may be avoided with the right amount of planning between the surviving spouse and their team of advisors.

Kimberly Polaski is a Staff II Consultant at Marcum LLP, specializing in Closely Held Businesses, Pass Through Entities and Transaction Planning. Richard J. Casmirri, CPA MSTFP is a Supervisor at Marcum LLP, specializing in High Net Worth Individuals, Trusts, Estates and Wealth Transfer Planning.



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with our Council through the
PEPC LinkedIn group page.

Important Changes to Pennsylvania's Power of Attorney Law

Michael Mallick and Jacqueline A. Vilbert, JD

On July 2, 2014, Pennsylvania passed P.L. 855 Act No. 95 affecting Powers of Attorney (POA) documents. Most provisions are effective as of January 1, 2015, but there are some provisions which will take effect immediately.

Background

- Vine v. Commonwealth State Employees' Retirement Board, 9 A.3d 1150 (Pa. 2010). Case held that reliance by third parties on invalid POAs are not immune from liability
 - Facts: Plaintiff was involved in a car accident which left her mentally incapacitated. During this period, her POA was executed with an "X" as her signature naming her husband as agent. While incapacitated, Plaintiff's husband made retirement elections on Plaintiff's behalf to his benefit. After Plaintiff regained mental capacity and divorced her husband, she tried to retroactively change the retirement benefit decisions her husband made while he was the agent via her POA. The PA Supreme Court ruled that the third party was not immune from liability for relying upon a POA which was invalid.

Impact of the New Law

1. Third Party Reliance on POA

- Prior Law: if a third party relies upon a POA, they are protected from liability due to their reliance on the POA; however, the Vine decision provides no immunity to a third party where the POA is void, invalid or terminated
- Amendment: legislatively overturns the Court's decision in Vine by granting third parties who rely in good faith upon a POA protection from liability
 - Third party is immune from liability if they rely upon the POA in good faith and have no actual knowledge that the POA is void, invalid, or terminated
 - Third parties may ask the agent for more information, such as: certification of facts, translation into English, or counsel's opinion that the agent is acting within their authority
 - Person who refuses to honor the POA is subject to civil liability for pecuniary harm proximately caused by the refusal to accept the POA and a court order mandating an acceptance of the POA
- Effective: immediately

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Important Changes continued

2. Signatures

- **Prior Law:** signed and dated by principal. POAs executed by a third party for the principal required 2 witnesses
- **Amendment:** all POAs require 2 witnesses (neither being the agent nor the notary) and shall be acknowledged before a notary public
- **Effective:** 1/1/2015

3. Notice

- **Prior Law:** signed by principal and describes the breadth and impact of the powers the principal is giving to the agent
- **Amendment:** modifies the Notice with additional language advising the principal that the agent is to act in accordance with the principal's reasonable expectations, in the principal's best interest, act in good faith, and within the scope of authority granted by the POA
- **Effective:** 1/1/2015

4. Agent's Acknowledgment

- **Prior Law:** agent signs acknowledgment that he is acting for the benefit of the principal, to keep the agent and principal's assets separate, exercise caution and prudence, and keep a record of all actions
- **Amendment:** conforms to language of the Notice and states the agent must act within the principal's reasonable expectations and in the principal's best interest
- **Effective:** 1/1/2015

5. Modifiable v. Non-Modifiable Duties:

- **Prior Law:** agent has a fiduciary relationship with the principal
- **Amendment:** defines the duties of the agent in more detail and generally follows the Uniform Power of Attorney Act

- Non-Modifiable Duties: act in accordance with the principal's reasonable expectations; act in principal's best interest; act in good faith and only within the authority granted by the POA
- Modifiable Duties (default duties which may be changed): keep principal's assets separate from agents; create no conflict of interest; keep records of transactions; cooperate with health care agent; preserve principal's estate plan

- **Effective:** 1/1/2015

6. "Hot" Powers

- **Prior Law:** no specific delegation of duties to agent except for gifting and third party to act for agent
- **Amendment:** agent may not perform certain actions unless those powers are specifically given to him in the POA. These powers include:

- Create, amend, or terminate an inter vivos trust
- Make gifts
- Change rights of survivorship
- Change beneficiary designations
- Delegate authority granted under a power of attorney
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including in retirement plans
- Exercise the principal's fiduciary powers
- Disclaim property, including a power of appointment
- **Effective:** 1/1/2015

7. Limited Gifts

- **Prior Law:** gifts made by agent limited to principal's spouse, children, and children's spouses, do not exceed the federal annual gift exclusion amount, made for education or tuition expenses, and may gift split with spouse
- **Amendment:** follows the Uniform Power of Attorney Act gift provisions which are generally the same as PA's prior law; allows agent to make gifts to persons other than permissible donees without express authority; gifts must be in principal's best interest
- **Effective:** 1/1/2015

Practical Impact

POAs executed before January 1, 2015 are grandfathered for purposes of the new amendments. The conservative approach would be to have Clients execute new POAs which incorporate the new amendments. This will allow principals to specify which powers an agent may exercise on their behalf. Also, third parties who regularly deal with POAs will be looking for the new language in third party transactions. All new POA documents executed should take into account the new amendments and execution requirements, especially larger estates where principals may be concerned over their agent having too much power under a valid POA.

Michael Mallick is a Principal at Valley Forge Financial Group, specializing in business succession, estate planning, and life insurance consulting. Jacqueline A. Vilbert, JD is Vice President and Legal Counsel at Valley Forge Financial Group.

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Managing End of Life Issues – A Panel Presentation

The Women's Initiative Committee is carefully reexamining how we meet our current mission and purpose: "encouraging networking and professional development for women within our Council". Because it is important to accurately reflect this mission and purpose, our committee members have assessed our role in the creation and implementation of a substantive and engaging program addressing end-of-life issues.

The end-of-life journey is highly emotional and is typically unique for every human being. Navigating this journey can be daunting, whether for our own personal journey or in the role of supporting a friend in need, assisting a family member during their final days or months, reaching out to a colleague, or advising a client.

In spite of our best efforts, many come to this endeavor unprepared, often through no fault of our own. Recognizing that this is often the case, the Women's Initiative Committee members worked diligently over the past several months to plan and deliver a program that will help Council members provide essential and quality support during this important phase of life. This support is in anticipation of need and as well as at the time when our clients' and their family members face difficult and challenging end-of-life issues. We invite you to join us for a dynamic panel presentation as we discuss key issues critical to a better understanding of quality support at the end of life.

Please join us on Wednesday, November 5, 2014, at the Union League, from 5:30 – 8:30 PM for a dynamic panel presentation, Managing End of Life Issues. Expert panel members will speak passionately and articulately regarding multiple and complex issues associated with end of life. We expect a full-house for this important discussion, so please register early at www.philaepc.org.

This program will help answer many basic as well as complicated medical, financial and legal questions associated with caring for people at the end of their lives, such as:

- What happens when there is no end-of-life planning?
- How to assist family members who do not wish to adhere to available advance directives?
- How to address family discord associated with end-of-life decision-making?
- How to support prudent decision-making by family members in the midst of great stress?
- The role of the Guardian of the Person in end-of-life decision-making from legal, medical and ethical perspectives.

- How is the role of the family balanced with role of the guardian?
- How to help families understand the difference between hospice and palliative care?
- What is Physician Orders for Life-Sustaining Treatment (POLST)?
- What interventions are not permitted under Hospice according to the state of Pennsylvania?
- Are there insurance and/or Medicare ramifications while on hospice?
- What is the role of the attorney, financial advisor, and trust officer regarding end-of-life decision-making?
- What is the role of the health care team and the professional care manager?

Reserve your space today by registering online at www.philaepc.org.

Beverly Bernstein Joie, MS, CMC directed this initiative for the Committee and will act as moderator for the presentation. With many years of experience both as a psychotherapist and as a leader in the field of geriatric care management, Beverly's professional capabilities are unquestionable.

Committee members selected panel members for this presentation focusing on those experts best able to articulate the answers important to all of us. The following panelists are scheduled to participate in the Managing End of Life Issues presentation:

Karl M. Ahlswede, M.D.

Dr. Ahlswede completed his surgery residency at Thomas Jefferson University Hospital before joining the Main Line Health System. He practiced intensive care surgery in the department of cardiac surgery at Bryn Mawr and Lankenau Hospitals for 16 years. While caring for these patients, Dr. Ahlswede developed an appreciation for the difficulties they and their families encountered when faced with end-of-life issues or incurable chronic diseases. Since 2010, he has practiced full-time palliative medicine, and has served as the Medical Director of Palliative Care at Bryn Mawr Hospital since 2011. In June 2014, Dr. Ahlswede was named the Main Line Health Medical Director of Palliative Medicine.

Dana Breslin is a Certified Elder Law Attorney by the National Elder Law Foundation. She's a graduate of Villanova University School of Law in 1975, admitted to practice in the Commonwealth of Pennsylvania, Federal Eastern District Court of PA and the U. S. Supreme Court. She formerly managed the Senior Citizen Unit at Delaware County Legal Assistance. Ms. Breslin has extensive knowledge and experience as an elder law attorney and is well-known as an expert in her field.

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Panel Presentation continued

David Casarett M.D., M.A. completed his medical training at Case Western Reserve University. His additional training included a Master’s degree in medical anthropology at CWRU, and fellowships in ethics at the University of Chicago and in Palliative Medicine at the University of Pennsylvania. He is a Professor in the Division of Geriatrics at the University of Pennsylvania, a faculty member of the Penn Department of Medical Ethics, and Director of Hospice and Palliative Care for the University of Pennsylvania.

Dr. Casarett’s major research interest is understanding and improving the way health systems care for patients near the end of life. His work has included studies of hospice and hospice alternatives, as well as a randomized controlled trial of a decision aid to improve end-of-life care. Dr. Casarett is the author of *Last Acts: Discovering Possibility and Opportunity Near the End of Life* (Simon & Schuster; 2010) and *Shocked: Adventures in Bringing Back the Recently Dead* (Penguin-Random House; July 2014), as well as *Stoned: The Strange Science of Medical Marijuana* (Penguin-Random House; January, 2015).

Sheila Weiner, MSW, LCSW
Executive Director

Intervention Associates & Caring Friends Home Care
PEPC Women’s Initiative Program Committee

Welcome Back Party

THURSDAY, OCTOBER 2

Networking Cocktail Party

5:00 p.m. – 7:30 p.m.

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215 South 16th Street
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Message From The NAEPC President

Gregory E. Sellers, CPA, AEP® and Warren Averett, LLC / Montgomery, Alabama

Do you remember how the old movies had the seasoned editor and cub reporter (kind of like Perry White and Jimmy Olsen in Superman)? Do you remember in those movies and shows how the cub reporters, learning the ropes, were taught to ask the questions “Who, What, Where, When, and How”?

Then along came “Law & Order”. *Insert sound effect here “Dun, Dun”*. This program introduced a new facet to our tenacious desire to **know more**. Law & Order elevated which component of knowledge to the forefront? **MOTIVE**. No one can be convicted unless Jack McCoy can convince the jury there was motive for the crime. So now, we must know “Who, What, Where, When, How and...**Why**”

In his presentation on “How Great Leaders Inspire Action,” Simon Sinek points out that everyone knows “What” they do. For example - I do tax returns. I prepare individual income tax returns. I prepare trust income tax returns. I prepare gift tax returns. I prepare estate tax returns. I even do estate planning. Is that very unique? Not really. Some people know “how” they do it. I ask my clients to bring me their tax information; I sit down at my computer and enter the data. Sometimes, I have to compile the data into a usable format from client records. I then check over it for accuracy, and print out a copy for the client to review. After they have approved, I transmit the return to the government agencies. That’s not much better on the excitement scale. The government trained monkeys to be astronauts. That doesn’t say much for a tax return preparer. But very few people ever really think about, or express, “why” they do what they do. I help families, along with their other advisors, navigate the tumultuous web of income and wealth transfer tax laws, all the while, keeping at the core of my efforts the client’s desires to have a comfortable life, help their philanthropic causes, and preserve their wealth, large or small, enabling them to leave a legacy to the objects of their bounty. The “Why” is your purpose, your cause, or your belief. Which of those guys do you want to hire or work with?

Trusts & Estates magazine published an article this past April written by John T. Midgett, an attorney and AEP® in Virginia Beach, VA. John and his local estate planning council “get it” and have embraced the team concept of collaboration. John’s article follows an attorney from the time he learns of possible new clients through his initial meeting with them, and how he effectively uses teamwork to address the clients’ issues. Take a few moments to read that article if you have it. If you don’t have it, I encourage you to visit the current issue of the *NAEPC*

Journal of Estate & Tax Planning for it is present there.

Please read on for more information about what is happening at the National Association of Estate Planners & Councils. I know you will be as excited as I am about the benefits available to you, the members of the largest council affiliated with NAEPC, Philadelphia Estate Planning Council.

Robert G. Alexander Webinar Series

The monthly programs in this newly-launched series are designed with our core value in mind – the team approach to estate planning – and are available to you, a member of Philadelphia Estate Planning Council.

Continuing education credit will be available at each webinar for Accredited Estate Planner® designees. In addition, a certificate of completion will be made available for those professionals that feel the program satisfies their continuing education requirements and are able to self-file.

Our registration fees are low, just \$40 for an active Accredited Estate Planner® designee, \$60 for a council member, or \$100 for a non-member.

Upcoming Programs:

September 10, 2014 · 3:00 pm - 4:00 pm ET

“In-home, Private-duty Care is on the Rise: Understanding the Impact of New Legislation and How to Help Clients with Employment Risks & Responsibilities”

Expertise offered by: Tom Breedlove of CARE.com

This sponsored webinar is available at no-charge to NAEPC members!

The repeal of the Companion Care Exemption for third-party caregivers is changing the care landscape and driving more families to employ their own caregiver. Attend to learn how the new law will impact your clients and how to help them easily and effectively manage the payroll, tax, and labor law obligations that come with being a “household employer.” Attendees will walk away with tips and tools to help families avoid risk, save time, and save money.

September 17, 2014 · 1:00 pm – 3:00 pm ET

“Estate Planning Law Specialist Exam Live Review Course”

Expertise offered by: Randy Gardner, JD, LL.M., MBA, CPA, CFP®

Please contact Susan Austin-Carney, Estate Law Specialist Board Program Administrator, for more information about this program. Susan can be reached at 866-226-2224 or susan@naepc.org.

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NAEPC continued

October 15, 2014 (note special date) · 3:00 pm - 4:00 pm ET
"Increasing Client Receptivity from The Right Side of the Table"

Expertise offered by: Todd Fithian

You are not a commodity. The problem, however, is that the market thinks you are. Our industry is an interesting one, a fascinating one. Most advisors we've met either knowingly struggle with being viewed as a commodity, or unknowingly struggle with actually being a commodity. There are hundreds of thousands of people across the country purporting to do exactly what you actually do; even if that's not really what they're doing. That's why it's so important to decide to draw the line once and for all; to ensure you are seen for the value you bring. There are many things you can do about it, and that's why we want to share a bit of our Legacy magic that will help things shift.

December 10, 2014 · 3:00 pm - 4:00 pm ET

Avoiding the Twilight Zone of Estate Administration

Expertise offered by: M. Holly Isdale, JD

If you had died last night, would your family, partners, executors, or clients know how to access your online information - and more importantly, what to do with your digital footprint? Our lives are increasingly online

- our correspondence is often virtual, our "assets" now include online content, IP addresses, and music, books or memorabilia that exist only in the "cloud." The average home has 6 or more internet connected devices. To access these, most adults use at least five unique passwords that update at least quarterly. Could someone find, much less manage, all of your information if you died? What are the planning considerations for these unique assets? Attend this webinar to learn what structures or language you should be adding to your client's wills, revocable trusts, HIPPA documentation, and powers of attorney. The topic of digital death encompasses issues of access to data, in all its forms, as well as the problems of collecting, valuing or transferring these digital assets. Understanding the risks to investments, businesses and families from failing to plan for "digital death" is critical to preserving these assets intact. The webinar will also review the limits on digital assets, impediments to transferring assets, the current state of the law, the recently released Uniform Fiduciary Access to Digital Assets proposed legislation, and will recommend action steps advisors can take help clients organize and protect their digital assets.

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Collections Sell Better at Auction

This belief is at the heart of Freeman's auction house. When artworks and objects are sold as a unique collection, they consistently achieve higher prices than if offered individually or anonymously. From jewelry, paintings, and Chinese art, to antique furniture and historic flags, Freeman's carefully crafts and extensively markets these auctions. Our bespoke approach to the appraisal and sale of fine collections and estates has made Freeman's an industry leader in this field.

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FREEMAN'S



"Call it the Lehman premium: The daylong auction, expected to bring in around \$750,000, stretched well into the evening and brought in \$1.34 million, with every single artwork finding a buyer."

—Kelly Crow, *The Wall Street Journal* on The Lehman Brothers Collection sold at Freeman's

NAEPC continued

51st Annual Conference – November 5th – 7th, 2014, San Antonio

This year's conference theme is "The Multi-Disciplinary Approach to Estate Planning." Multi-disciplinary teaming is challenging. It requires a common vision and shared values. There are issues with respect to team dynamics, communication and designating roles and responsibilities on the team. Our speakers will weave into their presentations how to build a high performing, multi-disciplinary team of designated professionals, who collaborate with one another to achieve the ultimate purpose the wealth was designed to accomplish for the wealth holder, his or her family, and the institutions and causes they care most about. Why not consider forming your own elite professional network, and travelling to the conference together, as a team? Please consider joining us in November for this very special program to learn from the following exceptional speakers:

Thursday, November 6, 2014

- Robert S. Keebler, CPA, MST, AEP® (Distinguished) · *15 Best Planning Ideas for 2014 and Beyond*
- Todd A. Fithian · *The True Frontier of Estate Planning: Effective Collaboration*
- Bernard A. Krooks, JD, CPA, LL.M., CELA, AEP® (Distinguished) Nominee · *Planning for an Aging Population: Your Clients, Your Parents, and Someday You!*
- Repeated Breakout Sessions
 - Susan T. Bart, JD · Decanting: Refining a Vintage Trust
 - Elizabeth L. Morgan, JD · Life Insurance, Annuities, and Captive Insurance as Tools for Domestic and International Estate & Tax Planning
 - Thomas Rogerson · Family Communication, Values, Mission, Philanthropy - How Do You Help a Client Get Started?
- Samuel A. Donaldson, JD, LL.M., AEP® (Distinguished) · Hot Income Tax Tips for Estate Planners

Friday, November 7, 2014

- Jeffrey N. Pennell, JD · Annual Update
- Lee J. Slavutin, MD, CLU®, AEP® (Distinguished) Nominee · Tax Traps Involving Life Insurance
- Jerome M. Hesch, JD, AEP® (Distinguished) · Reality of Sale: Dealing with the 10% Myth for Seeding Installment Note Sales to IDGTs and BDITs
- Jonathan G. Blattmachr, Esq., AEP® (Distinguished) · Supercharged Shelter Credit Trust vs. Portability: It's Not that Complicated to Choose the Best
- S. Stacy Eastland, JD, AEP® (Distinguished) · Some of the Best Charitable Planning and Estate Planning Ideas We See Out There in the New 2014 Tax Environment©

- Stanley M. Johanson, JD, LL.M., AEP® (Distinguished) · Recent Developments Affecting the Estate Planning Practice

The early bird discount expires on September 12, 2014 – don't delay!

Accredited Estate Planner® Designation Program

I support the team concept of estate planning.

If this statement describes you, please consider attaining the Accredited Estate Planner® designation. Growing at a rapid pace, the program truly embodies the core value of NAEPC, multi-disciplinary teaming. Three compelling reasons to obtain the designation today:

1. Demonstrate that you have special knowledge, skill, and expertise in the field of estate planning
2. Gain the competitive edge...success requires setting yourself apart from the competition
3. Give clients and potential clients a way to identify you as a qualified estate planner who is able to meet their needs

While full details about the program requirements can be found online, read on for an abbreviated list:

- Credential – active license or certification as an attorney (JD), accountant (CPA), insurance professional and financial planner (CLU®, CFP®, ChFC®), or trust officer (CTFA)
- Experience – minimum of 5 years of experience in estate planning
- Reputation & Character – an applicant must provide 3 professional references; one of whom must share the same primary discipline and 2 others must be from 2 different disciplines
- Membership – applicants must be a member of an affiliated local estate planning council where one is geographically available
- Education – applicants must successfully complete 2 graduate courses from The American College or similar graduate courses through an accredited university, college or school of law as part of a masters' or doctoral degree program (a minimum of 15 years of experience in estate planning exempts one from this requirement)
- Ethics – applicants must sign a declaration statement to continuously abide by the NAEPC Code of Ethics
- Core Mission – applicants must acknowledge a commitment to the team concept of estate planning
- Membership – applicants must be a member of an affiliated local estate planning council where one is

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NAEPC continued

geographically available (you've most likely already met this requirement!)

- Continuing Education – an applicant must have a minimum of 30 hours of continuing education, 15 of which must be in estate planning, every 24 months

Interested in learning more? Please contact our national office at (866) 226-2224 or susan@naepc.org.

Member Benefits

Through the council's affiliation with NAEPC, you have access to a dynamic offering of member benefits, a list of which appears below. You are encouraged to visit www.naepc.org to take a look today. As you browse, please remember that some benefits are password protected. For these special benefits members must utilize a user name/password to access detailed ordering links and information. The Philadelphia EPC user name is "philadelphia" and the password is "epcmember".

New Benefits

American Bar Association RPTE Paralegal eLearning Program

The ABA Section of Real Property, Trust and Estate Law is proud to continue its professional development series focused on paralegals, legal assistants, and others working in the areas of Trust & Estate Law. This program is co-sponsored by the ABA Standing Committee on Paralegals.

Attendees of the Paralegal eLearning Program will learn substantive legal and ethics issues, as well as best practices, from leading industry professionals with in-depth knowledge and hands-on experience in Trust & Estate Law. The program includes ten 60-minute webinar sessions, and attendees can register for the entire series or individual sessions. Those who sign-up for the entire series after it begins will be registered for the remaining webinar sessions and receive recordings of the sessions that have already occurred.

Washington Institute for Graduate Studies

Washington Institute for Graduate Studies is a recognized, quality provider of advanced degrees for tax professionals. Our Masters in Taxation is sought after and earned by a wide variety of practitioners. We recognize the National Association of Estate Planners and Councils as a premier association for estate planners, providing continuing education, research and required information to keep their members at the top of their game. We fully support NAEPC's mission to serve its members, assuring their success in this important field of knowledge. Therefore, we are making available significant tuition waivers that are designed to enhance the careers of NAEPC members,

thereby aiding NAEPC in this mission.

In the offer details that can be found online, we've provided information on both the tuition waivers available, as well as how to access them. Additional information about the programs (i.e., admission requirements, graduation requirements, tuition payment programs, etc) can all be found on the website at www.wsltax.org.

Existing Benefits

- Acquire Seminar Marketing
- Advisys Back Room Technician
- American Dream Planner Software
- Amicus Creative Media
- BizActions e newsletters for practitioners
- BVR's Guide to Business Valuation Issues in Estate & Gift Tax edited by Linda Trugman, CPA/ABV, CBA, ASA, MBA
- Cards for a Cure
- Charitable Planning Desk Reference for Advisors offered by Strategic Philanthropy
- CBData Software to Simplify Your Life
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- Estate Planning Smarts, A Practical, User-Friendly, Action-Oriented Guide, By Deborah L. Jacobs
- EstatePlanningBinders.com
- Family Business Magazine
- Fiserv Investment Services
- Florida Domicile Handbook: Vital Information for New Florida Residents
- Heart2Hearts: Workbook and Deck of Cards, Discuss Directives, LLC
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- The Ultimate Estate Planner, Inc.
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Get Involved

NAEPC is a dynamic and growing association, led entirely by a volunteer board of directors, a strong committee configuration, and many volunteers serving on an as-needed basis for project-based or task force work. We are always looking to expand our volunteer base. Visit our website www.naepc.org/about/volunteering for a list of committees and an application.



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Holiday Celebration

Monday, December 8, 2014
5:30 - 7:30 p.m.
Crystal Tea Room
100 E. Penn Square
Philadelphia, PA 19107

2014 Mordecai Gerson Meritorious Service Award



The Board of Directors is pleased to announce that the recipient of the 2014 Mordecai Gerson Meritorious Service Award is Samuel T. Freeman, III. The award was presented at the May 19, 2014 Golf & Tennis Outing at St. Davids Golf Club.

This award is presented to a Council member with a minimum of five years of membership who has rendered extraordinary service to further the work of the Council. Some

of the past recipients in addition to Mordy Gerson are Eileen Dougherty, Mary LeFever, Huldah Robertson, Bill Thompson and Howard Silverman.

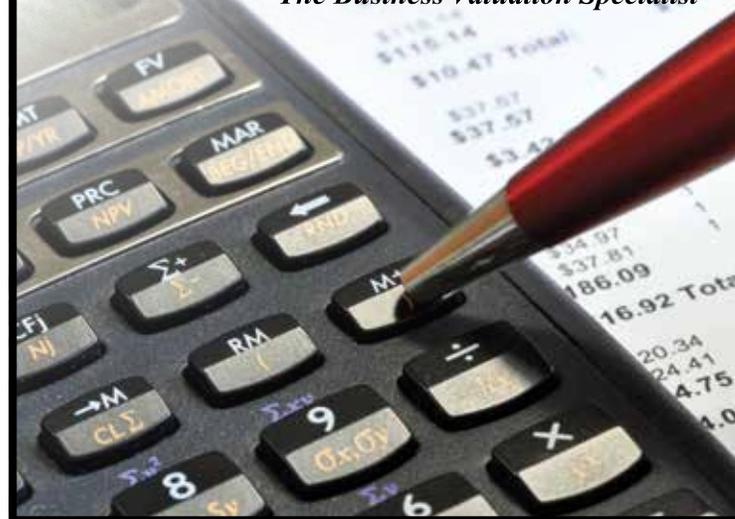
Sam Freeman serves as a Senior Vice President of Freeman's Trusts & Estates department. Mr. Freeman specializes in estate planning and administration as they relate to personal or collectible property.

Mr. Freeman joined Freeman's in 2005 to further develop the Trusts & Estates department, becoming the seventh generation of the Freeman family to follow in the footsteps of Tristram B. Freeman, the company's founder. With over 30 years of professional experience with finance, insurance and technology, his primary experience is in sales and customer service. Mr. Freeman brings a solid understanding of managing delicate relationships and customer relationship management to the Trusts & Estates department.

Mr. Freeman is serving his third term as a board member of the Philadelphia Estate Planning Council as well as being an active member of Estate Planning Councils around the mid-Atlantic region. In addition, he is involved with various charitable organizations and assists in their fund raising efforts at events throughout the year. He enjoys spending his free time at the New Jersey Shore and sailing on the Chesapeake Bay.

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PEPC Annual Golf and Tennis Outing

The PEPC Annual Golf & Tennis Outing was held on May 19, 2014. The golf outing was at St. Davids Golf Club and tennis was played at the Philadelphia Cricket Club.



Tom Mesko, Morris Gocial, Peter Scilovati and Jeffrey Sloan



Director JR Burke welcomes all the golfers



Past President Scott Small, Kelley Rilley, Julie Kelly and Sheila Gorman



Frank Branca, Jr., Frank Rock, Frank Branca, Sr. and Ben Cooper



Gary Lux, Mike Spadafora and Steve Sussman with their forecaddie

PEPC Annual Golf and Tennis Outing continued



Tennis players at the outing

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Past Presidents Melinda Rath, Dave Watson and Michael Bonventure

PEPC 2014 Annual Meeting

The 2014 Annual Meeting was held on May 6th at the Penn Museum. Samuel A. Donaldson spoke on "Contemporary Issues in the Federal Income Taxation of Trusts"



Past President Al Gibbons with Rebecca Rosenberger Smolen, President



Director Andrew Haas, Kevin Manning, Justin Esposito and Richard Schwartz, Secretary



Speaker, Samuel A. Donaldson



Tish Ewing with Past Presidents Kathleen Kinne, Melinda Rath and Andrew Wilusz, with John McCabe and James Mercer



President Kathleen Kinne passes the gavel to Rebecca Rosenberger Smolen



2013-2014 Officers: President, Kathleen Kinne, Immediate Past President, Mark Eskin and Vice President, Rebecca Rosenberger Smolen



2014-2015 Board of Directors

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2013-2014 Board of Directors



2014 Annual Meeting Sponsors

Mark Your Calendar

2014-2015 Luncheon Programs – 11:45 – 1:45 p.m.
All luncheon programs are held at The Union League,
140 South Broad Street, Philadelphia.

Register at www.philaepc.org



September 16, 2014

Topic: ATRA and Estate Planning for the Moderately Wealthy: A Consideration of Transfer and Income Tax

Speaker: Beth D. Tractenberg

Katten Muchin Rosenman, LLP, New York, NY

Sponsor: Value Management, Inc.

October 21, 2014

Topic: Some Things You Should Know if There is Something Or Someone Foreign in Your Estate Plan

Speaker: Ellen Harrison

Pillsbury Winthrop Shaw Pittman, LLP

Washington, DC

Sponsor: Citi Private Bank

November 18, 2014

Topic: Economic Matters

Speaker: Anirban Basu

Sage Policy Group, Inc., Baltimore, MD

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January 20, 2015

Topic: Charitable Planning

Speaker: Brian Wodar

Bernstein Global Wealth Management

West Palm Beach, FL

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February 17, 2015

Topic: Asset Protection

Speaker: Gideon Rothschild

Moses & Singer, LLP, New York, NY

Sponsor: Capital One

March 17, 2015

Topic: Trust Modifications

Speaker: Amy E. Heller

McDermott Will & Emery, LLP

New York, NY

Sponsor: The Law Offices of Peter L. Klenk & Associates



Sign Up for a PEPC Committee

The Philadelphia Estate Planning Council offers many opportunities for member involvement. One of the most rewarding ways to get involved is through our many committees.

The committees encompass all activities of the council including planning our social events, publishing our highly informative newsletter, enhancing our website and developing our education programs.

All members are encouraged to actively participate on a committee. Committee participation provides the opportunity to expand your professional relationships and increase your leadership skills.

To sign up, please contact the PEPC Office at staff@philaepc.org.