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2019 Oklahoma Estate Planning Symposium

Cosponsored by the Estate Planning & Probate Law Section

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<http://oklahoma.freelegalanswers.org>

Speaker Biographies

STEVEN JUETT

HONORING ORGANIZATIONS SUPPORTING OUR VETS

The many organizations that provide support to our veterans deserve recognition for their service. This month we have chosen to spotlight one a support organization nominated by a reader.

Project Veteran Assistance, Inc.
By Suzanne McDonnell

Project Veteran Assistance was established in 2008 by Steve Juett and his wife, Sue. Steve was born in Durant, Oklahoma and lived many places in Oklahoma as his father was with Lone Star Gas. Steve graduated from Idabel High School and went to live with his grandmother in Durant to attend Southeastern State University. After college, Steve began his career with PSO and lived in both the eastern and western part of the state. After 12 years with PSO, Steve transitioned into insurance and finally into Retirement Planning in 1995. He continued to build his practice around the needs of seniors, and in 2000, Steve became the owner and Manager of Senior Options, LLC.

Sue and Steve were members of a RV group, and during one of the trips, met the head of the VA in Oklahoma. As it turned out, this gentlemen, helped Steve have a clearer understanding of benefits available to veterans, widows of veterans and their families. That relationship provided beneficial to not only his business, but his personal life. Steve's father was a World War II veteran serving in the Army Air Corp in the Philippines. After Steve's father died in 1996, and his mother's health began to fail in 2004, Steve realized it was time to try to get assistance for his mother. His friend in the VA helped Steve with the applications and paperwork to get benefits for his mother. Then he later assisted Steve again to obtain benefits for his mother-in-law.

So when talking to people about retirement, Steve made it his mission to assist as many possible families that he could, making them aware of their eligibility of VA benefits and helping in whatever ways legally possible in obtaining those benefits.

Over time, contacts with the VA were lost, but while attending a conference, he met a gentlemen from St. Louis that was very knowledgeable in veteran benefits. Later in 2008, Steve went to St. Louis and attended training by that gentlemen. After the training, Steve cautiously began helping people and clients with assistance to get the veterans benefits that were available to them. Steve said, "It exploded and became a passion that was not planned. Out of that passion, Project Veteran Assistance was born." Project Veteran Assistance is a state not-for-profit business and is supported entirely by Senior Options, LLC. Steve added, "Senior Options allow us to do Project Veteran Assistance."

Steve attends annual Joint Service Officers Training Seminar (JSOTS) with the State Veterans Organizations' Service Officers in Oklahoma City with training being provided by the Oklahoma Department of Veterans Affairs. The annual training provides updates in benefits He receives a yearly certificate for successfully completing the school and has earned the title of Veteran Advocate from the VFW.

Project Veteran Assistance, Inc. is a public service whose personnel have been trained to seek out veterans and their widows who may be entitled to the Department of Veterans Affairs benefits, particularly, the Non-Service Connected Improved Pension Benefit. There is no cost associated with these services. Steve and Sue will work with any veteran or the widow of a veteran, to help obtain their allowable benefits through the Department of Veteran Affairs. The applications for benefits are sent to the State Service Officer of the Veterans of Foreign Wars, in the Regional Office of U.S. Department of Veterans Affairs in Muskogee, who proof reads the applications and insures that all the information is in good order and accurate, who then forwards the applications to the U.S. Department of Veterans Affairs for processing. The VFW represents the Veteran, their spouse or surviving spouse.

Steve is very passionate about what he does to assist veterans. I was surprised to discover that Steve was not a veteran, as typically many people involved in assistance to veterans are veterans themselves.

Steve finally explained that at 18 years old, he did what most 18 years old of the Vietnam War era did, he went down and registered with the Selective Service System. "I lived in a small town, and when I went to register I was told that they had been waiting for me. They immediately stamped me '4F' due to a birth physical disability," explained Steve. "I immediately said that I could type and file and do office work, but was told I could not make it through boot camp, so I asked if I could be stamped '1Y' not '4F,'" added Steve. After the many years of assisting veterans and their families obtain their benefits, Steve is very happy to assist and take credit for helping. Steve feels strongly the brotherhood of military is strictly for those who have served our country, and to Steve, those are the real heroes.

Steve and Sue have been married 20 years. They have two children, a son and a daughter and five grandchildren. They met through business and have worked together in both businesses through the years. Steve admits, "Sue is the brains behind the business; she is in charge of appointments, follow-ups, etc. She has the system that works for us and our clients."

We encourage veterans and veterans' families needing help to apply for VA benefits to reach out to Project Veteran Assistance. We thank both Steve and Sue for their support to our community and those veterans they assist every day.

Sara Murphy Bondurant, Senior Attorney

RECOGNITION:

Recognized by The Journal Record's 50 Making A Difference, Woman of the Year

Recognized by the Oklahoma Bar Association for the award of Outstanding Pro Bono Service

2018 Mona Salyer Lambird Service to Children Award – Attorney Volunteer of the year

Sara G. Murphy is a Senior Attorney at Graft and Walraven PLLC in Oklahoma City. Her practice includes estate planning, elder law and Medicaid planning, special needs planning, Veterans benefits, tax planning, guardianships, probates, adoptions, real estate, and business matters. Sara regularly speaks to attorneys, CPAs, health care professionals and the public about estate planning and elder law. As a former caregiver herself, Sara is a passionate advocate for her clients.

Sara is a member of the State of Oklahoma, Oklahoma County and American Bar Associations. She is licensed to practice in all district and federal courts in Oklahoma and is a member of the Oklahoma Bar Association Estate Planning and Tax divisions. Sara graduated from East Central University with honors and the University of Oklahoma School of Law. She is a Member of Wealth Counsel, National Association of Elder Law Attorneys, Advisors Forum, and the Oklahoma County Tax, Probate and Estate Planning sections. Sara was the past President to the Board of Areawide Aging Agency for the State of Oklahoma and the Alzheimer's Association Oklahoma/Arkansas Chapter. Sara is a certified FINRA arbitrator helping resolve securities-related disputes.

Sara founded the Oklahoma County Courthouse Access Clinic for guardianships and probates, which provides assistance to those with low income and special needs disadvantages. Sara provides pro bono crisis planning for hospice and end of life patients. She is the President of Oklahoma Puppy Express and an adjunct professor of several college level courses. Sara is the Municipal Judge for the City of Cashion. In addition, she serves as a Reserve Deputy for the Canadian County Sheriff's Department assigned to patrol and investigations divisions. Most importantly Sara is the wife to Michael and mother to Jude, Violet and Tarin.



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About

Ginny Bass Carl, JD, CAP, Founder and CEO of Giving Well LLC, is a 5th generation Oklahoman and a licensed attorney in Oklahoma, Texas and Hawaii. She received her law and accounting degrees from OU, but found her niche in the nonprofit world. Inspiring you to do more, be more, and make a difference, Ginny leads with a servant heart and a lawyer brain.

Giving Well, her nonprofit consulting firm, is the culmination of her years working for and serving on the boards of nonprofits combined with her professional training and passion to change the world. Her quest is to help donors have greater impact by ensuring nonprofits balance mission with business. In 2019, she achieved her Chartered Advisor in Philanthropy (CAP) designation.

Most recently she worked as Senior Director of Development and Gift Planning at OMRF. She also served as CFO and In-House Counsel for the Oklahoma Hall of Fame.

Ginny currently serves on the boards for ReMerge (former chair), Leadership Oklahoma (Adult Program Chair Elect), Potts Family Foundation (former Grants Chair and Treasurer), Oklahoma Planned Giving Council (former president) and Trust Company Oklahoma. Formerly she chaired the boards of OKC Estate Planning Council, Sunbeam Family Services and Friends of the Capitol, served on the board of Leadership Oklahoma City (Secretary) and as co-chair of LOYAL classes IX and X.

Sought after as a speaker and trainer statewide, Ginny presents to professional groups on planned giving, philanthropy and board development for continuing education credit, to nonprofits on board governance and fundraising and to leadership classes on nonprofits, grants and fundraising. As a former consultant for the Oklahoma Center for Nonprofits, she trained nonprofit staff and board on the Standards for Excellence governance best practices and facilitated strategic planning and board training retreats.

She is a graduate of Leadership Oklahoma (Class 30) and Leadership Oklahoma City (Class 28). In 2012 and 2017, Ginny was one of the 50 Women Making a Difference in Oklahoma. She has two children, Collin and Rachael, and is married to Peter, owner of The Well of OKC Wine and Spirits.



Thank you for coming!

Steven M. Juett, Veteran Advocate

Sue Juett, Veteran Advocate

918-523-9933



DISCLAIMER

**Not affiliated with, or a part of the
Department of Veteran Affairs**



TYPES OF BENEFITS

- 1. Non-Service Connected
Disability(Pension), Service
Connected Disability
(Compensation)**
- 2. Health**
- 3. College**
- 4. Housing**
- 5. Death**

Each is independent of the other!



PENSION WITH A&A

Military Qualifications for Veterans & Widows

- (1) **No Dishonorable Discharge**
- (2) **90 days active duty with at least one day served during a declared state of war**
- (3) **Must need assistance with 2 ADL's OR mentally incapacitated**



PENSION WITH A&A

Activities of Daily Living

1. Bathing
2. Dressing
3. Toileting
4. Ambulating
5. Feeding

**Need assistance with at least 2
above or Legally blind or
Dementia**



PENSION WITH A&A

Military Qualifications for Veterans & Widows

- (4) **Income**
- (5) **Assets**
- (6) **Disabled or over Age 65!**



PENSION WITH A&A

Widow	\$1,209/mo
Veteran (single)	\$1,881/mo
Veteran & Spouse	\$2,230/mo
Veteran & Veteran	\$2,984/mo

PS: It's TAX FREE!



PENSION WITH A&A

RECAP

1. 90 DAYS ACTIVE DUTY, 1 DAY DURING DECLARED TIME OF WAR
2. MEDICAL NEED, INCOME, ASSETS
3. DISABLED OR OVER AGE 65
4. NO DISHONORABLE DISCHARGE

DECLARED STATES OF WAR

Mexican Border Period 1916-1917

WWI 1917 - 1921

WWII 1941 - 1946

Korean War 1950 - 1955

Vietnam War 1961 - 1975

Gulf War 1990 - ...





COMPENSATION

- Any Condition that was caused or aggravated by Military service,
- Active or Reserve duty
- War or peace time,
- Rated from 0% to 100%
- Think "Work Comp"



COMPENSATION CONDITIONS TO LOOK FOR

- Hearing
- ALS
- PTSD
- Back, Knees, Headaches
- DMII and residual conditions
- Etc.



TIME OF FILING


How Long Does it Take?

Fully Developed Claim - 90 Days!!!!

ALL required forms and information
MUST be submitted without any
errors.


Traditional - ?

ALL forms and information not
received or are not in good order.



APPEALS

- 30 Days to respond to initial request for info.
- After 30 days, denied and must send in form with supporting info within 1 year
- If denied, new form for next level
- If denied again, goes to highest level BVA, waiting period up to 5 years at this time.



FORMS

- Must keep up with current forms and changes
- Ensure all forms are correct and no missing info
- Must use correct language on forms
- Any questions left blank could cause a delay and not be eligible for FDC
- Use Intent to File (ITF) to save "date"



OKLAHOMA DEPARTMENT OF
VETERANS AFFAIRS

Veterans Services Seminar

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IN COOPERATION WITH
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Steve Juett

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 VETERAN SERVICE VOLUNTEERS
 ON November 7th and 8th, 2018



Joel Kinnel
Deputy Director



Jackie G. Wilson Jr.
Director, Claims & Benefits

JC & ASSOCIATES, LLC

A BLUEPRINT ON HOW TO GET THROUGH THE "MINE FIELD" OF THE VA SYSTEM, TO ASSIST YOUR CLIENTS IN OBTAINING VETERAN BENEFITS THAT THEY, AND THEIR FAMILIES, SO RIGHTFULLY DESERVE.

JC & ASSOCIATES, LLC

How can we be of assistance to your Firm and your clients regarding VA benefits?

Determination of:

Eligibility (Discharge or DD-214)
Benefit(s) available
Financial assessment
Trusts (if needed)

JC & ASSOCIATES, LLC

- Completion of proper and current forms
- Accuracy
- Filing of applications (if requested)
- Assisting in appeals
- We're your "back office" in helping your clients in obtaining VA benefits
- Over 20 years combined experience with the VA

JC & ASSOCIATES, LLC

Thank you for coming!

Steven M. Juett, Veteran Advocate

Sue Juett, Veteran Advocate

918-523-9933

Audience Applause!



POWERS OF APPOINTMENT – An Invaluable Tool

By Sara Murphy Bondurant

The Basics

A power of appointment is the power given to dispose of assets at a later time. The grantor of the power can create a broad or limited powers by giving general powers of appointment or limited powers of appointment. Powers of appointment can also be exercised immediately or upon a specified occurrence or after a condition is met.

According to Black Law's Dictionary (5th Ed.), the definition of a power of appointment is, “ a power or authority conferred upon one person by deed or will upon another (called the “donee”) to appoint....the person or persons who are to receive and enjoy an estate or an income therefrom or from a fund, after the testator's death, or the donee's death, or after the termination of an existing right of interest.”

Title 60 O.S. Sec. 751 defines “donee” as follows: 1. "Beneficiary" means and includes any person entitled, but for his disclaimer, to take an interest, as grantee; as donee; under any assignment or instrument of conveyance or transfer; by succession to a disclaimed interest, other than by will, intestate succession or through the exercise or nonexercise of a testamentary power of appointment; as beneficiary of an inter vivos trust or insurance contract; pursuant to the exercise or nonexercise of a nontestamentary power of appointment; as donee of a power of appointment created by a nontestamentary instrument; or otherwise under any nontestamentary instrument;

Title 60 O.S. Sec. 175.82 (10) defines "Power of appointment" as an inter vivos or testamentary power to direct the disposition of trust property, other than a distribution decision by a trustee to a beneficiary. Powers of appointment are held by donees, not the

settlor. A power of appointment includes any right or power granted by statute to any person other than the settlor;

Title 60 O.S. Sec. 299.3 states “A donee may exercise a power of appointment only by an instrument executed with sufficient formalities to pass title to the property covered by the power. When a power of appointment is exercisable only by will, a donee may not exercise it by deed. When a power of appointment is exercisable by deed, a donee may exercise it by will.

The standard power of appointment is usually for the benefit of a third party. The power is not dependent on incapacity of the Grantor, and has different criteria for creation and enforcement.

Types of Powers of Appointment:

A general power of appointment is one that may be exercised and given to the donee or the donee's estate, or the creditor's of either. This power could also be utilized in favor of other people. A general power of appointment causes inclusion of the assets in the donee's estate for estate tax purposes. A general power of appointment asset inclusion causes the assets subject to the power to get a step up in basis at the death of the donee. This can oftentimes be advantageous in taxable estates that have grown in value during the donee's lifetime.

A limited power of appointment may not be exercised in favor of the donee, donee's estate, or the creditors of either. This limited power will not cause inclusion of the assets into the donee's estate for estate tax purposes.

A power of appointment can be either “presently exercisable” at the time in question to the extent that an irrevocable appointment can be made or it can be “not presently exercisable” if it is postponed.

The donor could limit the scope of the power. For example, the donor could include all assets in the trust or estate, or just a portion of the assets. The power could be limited to whom it may be exercised. In some instances, the donee may only exercise the power in favor of the descendants of the donor's trust or will. In other instances, the power may be exercised to include the donee's spouse or charity.

The power must be in writing and must be *specific* in its terms and description. It is advisable to completely discuss and determine goals before creating such a long-lasting documents. Consider: if the power is contained in a trust and vests in the children or grandchildren of the creator, it could easily only become effective in twenty or thirty years...perhaps more. By that time, the wishes of the donor may no longer be possible to obtain due to death. It is thus vital to word the power with clarity and precision.

Most powers of appointment are contained in Wills or Trusts and allow a person to alter the gifting within a small class of people, taking into account events occurring after the death of the testator. Typically, the power states the person holding the power may adjust what goes to the children or grandchildren taking into account certain subsequent events, but limits the gifting to only the children and grandchildren and often limits the amount of the change allowed, e.g. only half of a person's share may be altered, etc.

Practical Uses:

Let's say a client creates a revocable living trust. The client is unmarried and has two children (both productive citizens). Client Mary leaves 2M worth of assets equally to the two children (George and Nancy) in lifetime trusts to provide protection against a divorce, lawsuit, etc. If George or Nancy then dies with assets still in trust, their individual share is then to be distributed

to their children in equal shares in like-kind trusts. When Mary dies the subtrusts for George and Nancy are created. Nancy dies twenty years later but she had much more information about her own children. Nancy's child - Tanya (Grantor's grandchild) is addicted to heroin. Based on this information, Nancy decided during her lifetime to utilize her limited power of appointment to give all of the trust assets to her non-addicted child and disinherit Tanya due to substance abuse issues. The assets are not includable in Nancy's estate for estate tax purposes.

There can be tax ramifications in the creation of power of appointments, depending on their vesting schedule, the amounts at issue, and the income and estate tax regime that then exists. Just remember that a general power of appointment includes the assets in the donee's estate for estate tax purposes. A limited power of appointment does not. Careful wording must be utilized to comply with the Internal Revenue Service requirements.

Conclusion:

In the arsenal of tools available to the sophisticated person for estate and family care planning, powers of appointment are a relatively simple method to achieve limited but useful flexibility to adjust to events and circumstances altering after the death of the Donor. Giving a person power of appointment abilities implies a great deal of trust in that donee's judgment. As a general power of appointment provides no restrictions, the limited power of appointment is generally more favorable and used more often in the planning process.

Applicable Oklahoma laws:

Title 60

Power of Appointment

§ 299.1. Common Law

§ 299.2. Creation

§ 299.3. Donees - Exercising Power of Appointment

§ 299.4. Insufficient Instruments - Additional Formalities

§ 299.5. Persons Who May Exercise

§ 299.6. Two or More Persons Vested With a Power of Appointment

§ 299.7. Consent of Donor - Writing - Recording

§ 299.8. Appointment of All the Property to One or More of the Objects to the Exclusion of the Others

§ 299.9. Donee Authorized to Appoint Himself - Creditors - Claims - Fraudulent Conveyances

§ 299.10. Transfer by Deed or Will - Property Conveyed

§ 299.11. Conveyances and Devises

§ 299.12. Suspension of Right of Alienation - Computation of Time

§ 299.13. Advancements to Descendants

§ 299.14. Assignment for the Benefit of Creditors

§ 299.15. Power of Revocation - Reservation - Effect

§ 299.16. Absolute Power of Disposition in Grantee or Beneficiary

INCENTIVES – The Holistic Estate Planner

By Sara Murphy Bondurant

What Is an Incentive Trust

Incentive trusts are becoming a very popular tool for encouraging children (or other beneficiaries), addressing behaviors, or promoting a general family philosophy. The incentive for “good behavior” is often a financial reward. If the beneficiary exhibits the desired behavior, he or she typically receives more outright distributions in the trust document. This type of trust creation also is designed to prevent “trust fund baby” syndrome.

Typically, a family will start with a family philosophy outlined in the trust itself. This family statement can be general or specific as it is typically written by the grantors themselves. Warren Buffet said it well, the perfect inheritance is “enough money so that they feel that they could do anything, but not so much that they could do nothing.” In the perfect inheritance, anything over that amount would be given to charity or other beneficiaries.

For most clients, they want their beneficiaries to still be involved in productive employment. How do you draft this into a trust document? Very carefully. There are many considerations. What if the beneficiary is still in school? Disabled? Stay at home parent? A caregiver? Predicting the future is impossible and is typically more difficult to administer if not drafted correctly. Therefore, if this type of incentive trust is used, the Trustee would need *broad* powers to investigate circumstances of the beneficiary and require objective proof thereof.

Do incentive trusts work? Maybe. Maybe not. Telling a drug addicted beneficiary, they won't receive their inheritance unless they stop taking drugs will not likely deter such addiction. However, telling a college student she will receive an outright distribution of \$50,000 if she graduates from college may just give her the extra incentive to finish her degree. Obviously, there are outside factors for each situation, but these incentives are meant to be just that...an incentive.

The Pitfalls

If an incentive trust is to work properly, it must be drafted with a certain sense of specificity. The wording must stand up to changes in the law and social environment for decades typically. Therefore, the language must be flexible. So how to you align flexibility with specificity. Very carefully and with much thought.

One example of a pitfall would be the age-old common incentive of mandating a distribution only upon the child graduating from college. This incentive seems reasonable. However, what happens if the child turns out to be learning disabled or wants to join the military. Does the beneficiary now not inherit because she chose a different path or was incapable of attending college?

Another pitfall is trying to force values on a child e.g. can only marry in a certain religion or no same sex marriage. While we all understand a child is not entitled to an inheritance, attempting to force certain values on a child is disheartening. If a child does not align with the parent's values, the parent should simply disinherit. Attempting to change the behavior of a child from the grave, can cause more damage and harm to that child's well-being than a simple disinheritance. I would suggest as estate planners we not participate in such client's wishes if the client forces such unhappiness (e.g. forcing the child to choose between love and money).

Types

Milestone Funding, Opportunity Funding, and Staggered Funding are some of the types of incentive distributions.

See below Incentive examples:

_____ To remind my children of how important I feel education is for them and to express my respect and appreciation for their work and dedication, my trustee shall make the following distributions to a beneficiary from his/her trust share, free of the trust, for educational achievements all indexed to the cost of living using 2019 as the base year:

Upon graduation from college	\$ _____
With honors:	
Cum Laude, an additional	\$ _____
Magna Cum Laude, an additional	\$ _____
Suma Cum Laude, an additional	\$ _____
Upon receiving a Master's Degree	\$ _____
Upon receiving a PhD or Doctorate	\$ _____

_____ I direct that my trustee make funds available to have my children and guardian to travel to have time with other family members. My trustee shall also make funds available to help defray costs of family vacations or activities for my guardian and my children in which my children are involved.

_____ If a child determines to make his/her life work fulltime Christian service or ministry or in some field of research or work related to conserving or managing our countries forests, wildlife, or oceans my trustee shall distribute an amount from that child's trust share to maintain the son's after tax income of a minimum of \$ _____ annually, indexed to cost of living using _____ as the base year.

_____ If at any time after the age of 18 years old, a child of mine engages in criminal activity, trust funds may only be used for rehabilitation expenses. A beneficiary will not be eligible for any supplemental income until rehabilitation is complete.

_____ In the event a beneficiary wishes to start a business, either alone or in conjunction with one or more partners, my Trustee is authorized to distribute to or as directed by a beneficiary reasonable amounts necessary to assist the beneficiary with start up and initial operating expenses. However, my Trustee may require the beneficiary to prepare and present a formal business plan and may require the beneficiary to obtain a written opinion of a Certified Public Accountant or other licensed business advisor (as selected by agreement

among the beneficiary and my Trustee) certifying that the beneficiary's proposed enterprise is economically advisable prior to making such distributions to the beneficiary.

Purchase and Maintenance of Residence

My Trustee is authorized to purchase and maintain residential real property for a beneficiary. Any residential property purchased for the use of the beneficiary shall remain trust property, and no beneficiary shall be required to pay rent or otherwise financially contribute financially to the use or maintenance of such residential property. This provision shall not be limited to a beneficiary's primary residence; my Trustee's discretion extends to vacation or recreational real property for my beneficiaries as well.

Assisting with Adoption Expenses

If a beneficiary wishes to adopt any child (or children), from the United States or any foreign country, my Trustee is authorized to distribute to or as directed by a beneficiary such amounts from the beneficiary's trust as are reasonably necessary to facilitate such adoption, up to and including the full payment of legal and administrative fees and travel expenses associated with such adoption. If the beneficiary is married at the time, my Trustee is also authorized to pay adoption-related legal, administrative, and travel expenses for the beneficiary's spouse.

Twice a year I direct that my trustee with participation by my children select a community or church related project and shall distribute up to \$1,000.00 per year to be made in two separate distributions during the year. One of the distributions should occur during Thanksgiving or Christmas holidays. My goal is to use these events to help my children develop an interest in honoring and helping others.

Special Instructions for Disability Due to Addictive Situations or Criminal Behavior

Prior to making an initial distribution of income or principal authorized under this Article to any beneficiary, my Trustee shall conduct a diligent and reasonable investigation to determine that for the thirty-six (36) months immediately preceding any proposed distribution, the requesting beneficiary has not been incarcerated for any reason, has not been arrested for any felony or drug-related violation, infraction, misdemeanor or felony (whether or not such arrest resulted in conviction or incarceration), and has not been disabled due to a drug, alcohol, gambling, eating, chemical or other dependency disorder. As a condition for subsequent distributions to a beneficiary, my Trustee may, in its sole discretion, conduct additional investigations if my Trustee has reason to believe that the requesting beneficiary has become involved in any of the above situations.

In helping to determine whether or not a beneficiary has been arrested or incarcerated, has a substance abuse or some other dependency disorder, my Trustee may find it helpful to consult with the beneficiary's employer, physician, family members and others who have a personal relationship with the beneficiary. If the beneficiary wishes to receive a trust distribution, he or she must consent to any of these contacts. If the beneficiary refuses to cooperate, then the

distribution guidelines shall be deemed to have not been met and the distribution will not be made.

Prior to making any distribution authorized under this Section, or as a condition for further distributions, my Trustee shall require that any beneficiary disabled due to a drug, alcohol, gambling, eating, chemical or other dependency disorder, participate in and successfully complete a rehabilitation program aimed at combating the problem involved.

My Trustee, in its sole and absolute discretion, may determine the nature and extent of the rehabilitative program, including follow up requirements. I direct that my Trustee consult with counselors from local rehabilitative programs or similar institutions, in order to best design an individualized program for the affected beneficiary.

I specifically authorize and direct my Trustee to pay the expenses of rehabilitation for the affected beneficiary from that beneficiary's trust property.

If a beneficiary is disabled under this Section, my Trustee shall withhold distributions (other than those distributions for medical care and reasonable living expenses) to that beneficiary for one year after the beneficiary has successfully completed the requisite rehabilitation program. During that year, my Trustee shall require the beneficiary to submit to random drug testing (using currently accepted methods), up to a maximum of four times during the year, and, in my Trustee's sole discretion, up to four times per year every year subsequent, as a condition for further distributions. All such tests shall be performed by a certified laboratory specializing in these procedures. A positive result may be challenged and shall be confirmed by an alternate testing facility using a different testing method. No distributions shall be made (other than those necessary for medical care and living expenses) if any test registers positive for alcohol or other addictive drugs, chemicals or controlled substances. A refusal or failure to provide a sample for testing shall be deemed a positive test and no distributions shall be made.

See below Family Philosophy Examples:

SAMPLE 1:

The core of our lives is our family and the broader circle of families to which we are linked by blood and law and love. This trust document outlines the way in which our financial assets are to be managed, distributed and disposed of under the inevitable changes in life and living. In essence, the trust document and instructions implement our family philosophy.

We believe that the love and help within families must be the first principle of life and living. We expect all parties to this trust to follow this first principle, one which requires loyalty and assistance to any and all within our immediate and broader family. In similar fashion, we hold friendship with those outside of our family, but proven to be sympathetic with our beliefs, to be a part of our family and the structure and processes this trust establishes.

Our trust is designed to provide assistance to our family when needed, with a commitment to continue to build the value of the underlying assets. Our trust is designed to assist our children in securing those building blocks of character and individuality which will assure them success and a good life, without substituting our funds for their effort and hard work. We specifically

desire that our children have all necessary resources to be successful people, but that they be expected to display hard work, honesty, integrity and independence sufficient to establish them as leaders in their family and community.

It is of particular importance to us that all who play a role in the administration of this trust seek to discharge their responsibilities and role in a manner which is consistent with the word and spirit of the conditions we have carefully considered and constructed. Apart from those explicit expressions, we want to make certain that everything is done to promote freedom, independence, learning, and the assumption of responsibility for the welfare of family among, and between those family members who are the beneficiaries of this trust.

Finally, we want to be very clear that we regard our “family” to encompass the Smiths, Garcias, Lees, and Jones families. All who read or discharge all or a part of this trust should know that it is essential that our children and their children understand who they are, where they came from and maintain connections to these lines of blood and culture which have played such a central part of our lives.

SAMPLE 2:

FAMILY PHILOSOPHY

Our trust is a sign of the values we hold dear and have tried to use throughout our lives. Those values are family-first, hard-work, honesty, independence and self-sufficiency, and being loving and thoughtful to our life-long commitment to each other and to our children and grandchildren.

We value family to such an extent that we are compelled, one last time, to express our philosophy on maintaining a strong family unity:

We understand people judge others based on their own experiences and beliefs. We, however, tried to approach the Golden Rule in a slightly different manner and have tried to encourage this practice in our family. That modified Golden Rule is -- don't treat others the way you would like to be treated but learn how they would like to be treated and treat them accordingly. Understand each other's short-comings and do not expect others to always behave how you want them to, but learn how they behave and what you can reasonably expect from them. Most importantly, never assume, attribute a motive to others, and then become angry based on that assumption. Talk to each other and be open to the other person's understanding of the situation. You will not always agree and that's all right. Loving someone doesn't mean they have to always agree with you. Loving someone means you accept each other's differences. We expect our family to continue as a family using this modified Golden Rule.

The love and support we have given to our family is the most important principle we hoped our children would emulate. That, above all else, we wish to be our legacy to them. We expect all

parties to this trust to follow this important and valuable principle. Any monies we may leave to our children and grandchildren are incidental to the gift of a loving and supportive family. Our trust is provided as a sign of our commitment to continuing our strongly held value of assisting our family in times of need and should help each beneficiary become and remain self-sufficient and responsible people. This trust is not meant to replace the values we hope we have given them. Therefore, this trust should not be viewed as providing for anyone in lieu of honest hard work.

It is of great importance to us that all who play a role in the administration of this trust seek to discharge their responsibilities in a manner which is consistent with the word and spirit of the conditions we have carefully considered and constructed. Apart from those explicit expressions, we want to make certain that everything is done to promote the unity and welfare of our family.

Estate Planning for Tribal Members

By: Erica R. Mackey, Esq.

Prior to Oklahoma Statehood

Oklahoma is currently home to 39 federally recognized American Indian Tribes.¹ The Removal Act brought about the forced removal of thousands of American Indians from their land in the Southeastern US to the West to a designated area that eventually became known as Indian Territory.²

Indian Intercourse Act also known as The Nonintercourse Act is the collective name given to six statutes passed by the Congress between 1790 and 1834 which generally created the boundaries of American Indian reservations as well as regulating commerce between the states and the Native American tribes.³ The original Act as well as its successors, invalidated the purchase of lands made by any person, persons or states of Indian Land unless approved by the United States through a treat or convention.⁴

The Oklahoma organic act of 1890 created an organized incorporated territory of the United States of Oklahoma Territory, with the intent of combining the Oklahoma and Indian territories into a single State of Oklahoma.⁵ The citizens of Indian Territory tried, in 1905, to gain admission to the union as the State of Sequoyah, but this ultimately didn't gain enough traction with either Congress or the Roosevelt Administration which did not want two new Western states, Sequoyah and Oklahoma⁷. Theodore Roosevelt then proposed a "compromise" that would join Indian Territory with Oklahoma Territory to form a single state. This resulted in passage of the Oklahoma Enabling Act, which President Roosevelt signed June 16, 1906.⁸

General Allotment Act

Also known as the Dawes Act, named after Senator Henry L. Dawes of Massachusetts.⁹¹⁰ The Act authorized the President of the United States to subdivide Native American tribal land into allotments for Native American heads of families and individuals.¹¹ The Dawes Act was a departure from the reservation system which at the time allowed for the perpetuation of tribal governments' traditional concept of communal land ownership to continue.¹² Instead a government-imposed system of private property with restrictions on alienation¹³. One of the goals of allotment was to open up Indian lands to non-Indian development and settlement.¹⁴

Under the Dawes Act, the head of a family would receive a grant of 160 acres, a single person or orphan over 18 years of age would receive a grant of 80 acres, and persons under the age of 18 would receive 40 acres each.¹⁵ The allotments would be held in trust by the U.S. Government for a period of 25 years.¹⁶ Eligible Native Americans had four years to select their land; afterward the selection would be made for them by the

Secretary of the Interior.¹⁷ The Dawes Act specifically exempted the Five Tribes and the Osage.¹⁸

The Curtis Act

The Curtis Act applied the Dawes Act to the Five Civilized Tribes of Indian Territory which are: the Choctaw, Chickasaw, Muscogee (Creek), Cherokee, and Seminole.¹⁹

The act also transferred the authority to determine members of tribes to the Dawes Commission as part of the registration of members thus created the Dawes Rolls.²⁰ The Dawes Commission had been earlier established under a rider to Indian Office appropriation bill to convince the five tribes to voluntarily agree to adopt the policy of allotments.²¹

Further the Dawes commission focused on strict blood descent rather than community or self-identity standards as to membership.²² This thus introduced the Blood Quantum concept and recorded this percentage of ancestry written as an estimation based on physical appearance and personal opinion.²³

The Burke Act

In 1906 Congress passed the Burke Act. This again amended the Dawes act to provide for the Secretary of the Interior to assess individual Native Americans as 'competent and capable.' before issuing any person receiving a land allotment a patent in fee simple.²⁴ Receiving a fee simple patent meant that the land of the allottee would be removed from federal trust status and made subject to taxation.²⁵

Osage Allotment Act of 1906

This act is specific to the Osage Nation. "Legal membership" of the Osage Tribe was established by Congress to include the persons on the January 1, 1906 roll, and their children.²⁶ Each "member" on that roll is entitled to a headright share in the distribution of funds from the Osage mineral estate and an allotment of the surface lands of the Osage Reservation.²⁷

The law effectively closed the Osage tribal membership Roll on July, 1, 1907.²⁸ Each of the 2,229 Osages on the list, including one born that day, received one allotment -- and a "headright".²⁹ The number of headrights was fixed permanently at 2,229. Allotment was private ownership of 657 acres of reservation land. The Headright was 1/2229 of the tribes bonuses and royalties from the production of oil and natural gas.³⁰

Indian Reorganization Act

The Indian Reorganization Act of June 18, 1934, or the Wheeler-Howard Act act slowed the practice of allotting communal tribal lands to individual tribal members.³¹ It did not restore to Indians land that had already been patented to individuals, but much land

at the time was still unallotted or was allotted to an individual but still held in trust for that individual by the U.S. government.³²

Indian Land Consolidation Act And Amendments

Indian Land Consolidation of 1983 sought to remedy the fractionated ownership problem by. It authorized tribes to develop land consolidation plans, and enact laws which restricted the rights of non-Indians or non-members to inherit trust or restricted lands. Further, it required that land would escheat to the tribe when the interest was 2% or less and earned less than \$100 in the previous year.³³ However, it did not provide for compensation to the heirs.

This Act was challenged in *Hodel v. Irving*.³⁴ The plaintiffs in this case were three enrolled members of the Oglala Sioux tribe who inherited an interest in the land which was less than a 2% interest and thus escheated to the tribe. The plaintiffs filed suit against Donald P. Hodel, in his official capacity as Secretary of the Interior. The Court held that this provision of the act was an unconstitutional taking.³⁵

Congress subsequently altered the act in three aspects. First, it required that DOI looks back five years instead of one to determine the income produced from a small interest.³⁶ Second it created a rebuttable presumption that this income stream will continue.³⁷ Finally, it permitted the devise of otherwise escheatable interests to persons who already owned an interest in the same parcel.³⁸ Nonetheless this act was subsequently held to be an unconstitutional taking.³⁹ Ultimately, congress Amended the Act again in 2000.⁴⁰ This time congress created a fractional interest Acquisition Program which allowed for the acquisition of fractional interests with the consent of the owner for fair market value.⁴¹

American Indian Probate Reform Act

Congress found that the Dawes Act and its amendments were problematic.⁴² Additionally, Congress determined that there was an increasingly fractionated ownership of trust and restricted land as that land is inherited by successive generations.⁴³

Eligible Heir is defined as any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are Indian; or lineal descendants within two degrees of consanguinity of an Indian; or owners of a trust or restricted interest in a parcel of land.⁴⁴

Certain people can purchase an interest in the parcel during probate. A decedent's heirs, other co-owners, and the tribe where the land is located are able to purchase the decedent's interest in the parcel.⁴⁵ The purchase price must equal or exceed the fair market value and the decedent's heirs would receive the money paid for the decedent's interest in the parcel instead of a share of the decedent's interest in the parcel.⁴⁶ If the decedent's heirs are to receive 5% interest or more in the parcel, or if they live on the parcel, their consent to the purchase is required.⁴⁷

Heirs now have some flexibility and can decide how they want the trust estate distributed. Heirs can decide whether they wish to inherit their share or sell it to other co-owners or the tribe where the land is located. Heirs may also give their share to another named Indian person instead of inheriting it.

If a person dies intestate, their trust property will pass under AIPRA or an approved tribal probate code, rather than under the state laws.⁴⁸ If there is a surviving spouse and other eligible heirs, the surviving spouse inherits 1/3 of any money in the decedent's IIM account at the time of death, and all of the money produced from their interest in trust or restricted land during surviving spouse's lifetime.⁴⁹ The other heirs get the remaining 2/3 of any money in the decedent's IIM account at the time of death, and the remaining ownership interest in the trust or restricted land.⁵⁰ The surviving spouse may also continue to live in a family home located on allotted land.⁵¹

If there is a surviving spouse but no other eligible heirs, the spouse gets the entirety of the IIM account, and during the spouse's lifetime, the money produced from the land interest.⁵² The spouse may also continue to live in a family home located on allotted land. The remaining ownership interest in land escheats to the tribe where the land is located.⁵³

If the decedent's ownership interest is less than 5% of the total parcel, a surviving spouse may continue to live in the family home on the parcel and then the inheritance is limited to the oldest eligible child.⁵⁴ Additionally, the Department of the Interior may purchase interests in land that are less than 5% of the total, for fair market value during the probate proceeding without the consent of the heirs.⁵⁵

A person may devise their property in trust to any Indian person, the Tribe, any Indian co-owners, any descendants. They may transfer the property out of trust to anybody. However, once it is out of trust that land is subject to taxation.

Five Tribes Restricted Land

The term Indian of the Five Civilized Tribes means an individual who is either an enrolled member of the Cherokee, Chickasaw, Choctaw, Creek, or Seminole Tribes of Oklahoma, or a descendant of an enrolled member thereof. The term restricted interest is defined as an interest owned in real or personal property subject to restraints upon alienation imposed either by Federal statute or by administrative action authorized by Federal statute.

The Five Tribes Specifically exempted from AIPRA. So Instead the practitioner must look to the Stigler Act and federal regs for guidance. Contrary to AIPRA, the Stigler Act provides the forum for probate is Oklahoma State Courts.⁵⁶

Originally, the Act specified that if land is devised to a person whose blood quantum was less than ½ Indian Blood, the land came out of restricted status automatically.⁵⁷ However, with the 2018 Amendment, if the property is devised to lineal descendants it will no longer be automatically removed from restrictive status.⁵⁸ However,

the act requires that a full-blooded citizen of the five tribes to get their wills approved in court to be valid.

Osage Allotments

When a will has been executed, it must be filed with the superintendent of the Osage Indian Agency during the lifetime of the testator.⁵⁹ The will shall be reviewed and considered by the special attorney for Osage Indians, or other legal officer designated by the Commissioner of Indian Affairs who may endorse on such will as “approved as to form.”⁶⁰ A will shall be held in absolute confidence and its contents shall not be divulged prior to the death of the testator.⁶¹

Conclusion

A practitioner in Oklahoma who is preparing wills and estate plans for tribal members must inquire about whether this individual owns an interest in Indian land or an IIM Account. The practitioner must establish what tribe they belong to and also possibly the blood quantum if they are a member of the five tribes. The practitioner must check the federal regulations that apply to the tribe as well as for individual tribal probate codes.

¹ Mac Bentley, *39 Tribes Call State Home*, Oklahoman, February 16, 2003, <https://oklahoman.com/article/1914848/39-tribes-call-state-home>.

² Ben Kiernan, *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur*, 328 (2007).

³ Carole E. Goldberg, et. Al., *American Indian Law: Native Nations and The Federal System*, 1035 (LexisNexis, 6th ed. 2010).

⁴ 25 U.S.C. § 177 (2019)

⁵ Oklahoma Organic Act of 1890

⁶ Dianna Everett, *Enabling Act (1906)*, Encyclopedia of Oklahoma History & Culture, November 23, 2011

⁷ *The State of “Sequoyah”*, N.Y. Times, October 5, 1905

⁸ Everett, *supra*.

⁹ 25 U.S.C. § 331 (1887).

¹⁰ Goldberg, *supra* at 25.

¹¹ 25 U.S.C. § 331 (1887).

¹² Goldberg, *supra* at 25

¹³ *Id.* at 27

¹⁴ *Id.*

¹⁵ 25 U.S.C. § 331 (1887).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Curtis Act of 1898

²⁰ *Id.*

²¹ *Dawes Commission*, Cherokee Heritage Center, www.cherokeeheritage.org/cherokeeheritagegenealogy-html/dawes-commission/ (last visited October 11, 2019)

²² Kent Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes, 1893-1914*, 37-38, (2009).

²³ *Id.*

²⁴ The Burke Act, 1906.

²⁵ *Id.*

²⁶ Robert Allen Warrior, *The People and The Word: Reading Native Nonfiction*, 80-81, (2005).

²⁷ *Id.*



²⁸ *Id.* at 54.
²⁹ *Id.* at 55.
³⁰ *Id.* at 87
³¹ Goldberg, *supra* at 31
³² *Id.*
³³ Indian Land Consolidation Act of 1983 § 207
³⁴ *Hodel v. Irving*, 481 U.S. 704 (1987).
³⁵ *Id.* at 705.
³⁶ *Babbitt v. Youpee*, 519 U.S. 234 (1997).
³⁷ *Id.*
³⁸ *Id.*
³⁹ *Id.* at 235.
⁴⁰ Indian Land Consolidation Act Amendments of 2000, §101.
⁴¹ *Id.*
⁴² P.L. 108-378, 118 Stat. 1773 (2004)
⁴³ *Id.*
⁴⁴ 25 U.S.C. §2201(9).
⁴⁵ 25 U.S.C. §2204
⁴⁶ *Id.*
⁴⁷ *Id.*
⁴⁸ 25 U.S.C. §2206.
⁴⁹ *Id.*
⁵⁰ *Id.*
⁵¹ *Id.*
⁵² *Id.*
⁵³ *Id.*
⁵⁴ *Id.*
⁵⁵ *Id.*
⁵⁶ 25 CFR §16.1-16.9
⁵⁷ Act of Aug. 4, 1947
⁵⁸ P.L. 115-399, 132 Stat 5331 (2018)
⁵⁹ 25 CFR § 17.11
⁶⁰ *Id.*
⁶¹ *Id.*

ELDER EXPLOITATION: PROTECTING OUR MOST VALUABLE POPULATION


OCTOBER 17 AND 18, 2019
ELAINE DODD
EVP, FRAUD DIVISION
OKLAHOMA BANKERS ASSOCIATION

WHAT ARE WE DOING HERE AT OBA? AND WHY?

- First, and only, association fraud division
- Active since 2003
- Retired law enforcement with strong background in training and networking
- Rapport with law enforcement, seniors, bankers and retailers all critical pieces
- It's great to be old, really

RISK ASSESSMENT BASICS



Probability: High
Severity: Serious

IDENTITY THIEVES NEED PERSONAL IDENTIFYING INFORMATION:

- Bank account numbers
- Credit card account numbers
- Social Security numbers
- Personal identification numbers (PINs)
- Passwords
- Stolen credit cards or checks
- Dates of birth
- Addresses and phone numbers

HOW ID THIEVES OBTAIN PERSONAL INFORMATION:

- Phone and Internet scams
- Stealing mail
- Working with dishonest employees with consumer information
- Searching through trash – dumpster diving



SO. LETS TALK ABOUT THE ELEPHANT IN THE ROOM



EQUIFAX, RIGHT?

- 143 Million Impacted
- Krebsonsecurity.com Multiple blogs on topic, on point
- Oba.com Multiple links
- Consider a credit freeze
- Create your My Social Security account at ssa.gov (before the bad guys do it for you)
- Back to the Big 3

BIG 3 FOR SAFETY:

1. Check credit card statements monthly
2. Check bank statements monthly
3. Review Your Credit Report Each Year

www.annualcreditreport.com

1-877-322-8228



AND, BE SURE BEFORE "BULLING AHEAD"



What Is Elder Financial Exploitation?



Fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual that uses the resources of an older person for personal benefit, profit or gain

Actions that result in depriving an older person of rightful access to, or use of benefits, resources, belongings, or assets

WHY ARE OLDER ADULTS AT RISK?



Some older adults may:

- Have regular income and accumulated assets
- Be trusting and polite
- Be lonely and socially isolated
- Be vulnerable due to grief from a loss
- Be reluctant to report exploitation by a family member, caregiver, or someone they depend on
- Be dependent on support from a family member or caregiver to remain independent

WHY ARE OLDER ADULTS AT RISK? (CONT.)



Some older adults may:

- Be receiving care from a person with financial or other issues
- Fear retaliation by the exploiter
- Be unfamiliar with managing financial matters
- Not have planned for the potential loss of decision-making capacity
- Be cognitively impaired with diminished ability to make financial decisions or detect a fraud or scam
- Be dependent on a family member or another person who may pressure them for money





**July 2019
Midwest City**

Tyler Willett \$260K POA grandmother
3 months bank account from over \$300K
to \$40K
Fast food receipts just not enough

Melodie Ezell long lost daughter
POA
Almost 70K from 80 year old mom
3 months:
\$22K new car, \$13K repairs on
son's truck, \$10K to pay off debts
++++
Bank contacted APS



SO. LET'S TALK ABOUT POAS AND GUARDIANSHIPS.

**EXAMPLES OF
FINANCIAL EXPLOITATION**



Exploitation by
an agent under a
POA or person in
another fiduciary
relationship



Investment fraud
and scams



Theft of money or
property by family
members,
caregivers, or
in-home helpers



Lottery and
sweepstakes
scams

EXAMPLES OF FINANCIAL EXPLOITATION (CONT.)



Grandparent/
Imposter scams



Tax and debt
collection scams



Charity scams



Telemarketer, mail
offer or
salesperson
scams

EXAMPLES OF FINANCIAL EXPLOITATION (CONT.)



Telephone,
computer, and
internet scams



Identity theft



Reverse
mortgage fraud



Contractor fraud
and home
improvement
scams

WHO ARE THE ABUSERS?

People you know

- Family members and caregivers
- Friends, neighbors or acquaintances
- Agents under a power of attorney
- Financial advisers



WHO ARE THE ABUSERS?

Strangers

- Telephone and mail scammers
- Internet scammers
- Home repair contractors
- Medicare scam operators
- Others



WHO CAN HELP?

Adult Protective Services

For elder abuse, contact Adult Protective Services.

Oklahoma: <https://apspublic.okdhs.org/>

1-800-522-3511

US contact information eldercare.gov or
call 1-800-677-1116.



Local Police - 911

If someone is in danger or a crime has been committed, call
the police.

SOCIAL ENGINEERING

Hi,
I'm a gentleman from
Oklahoma, Tulsa!



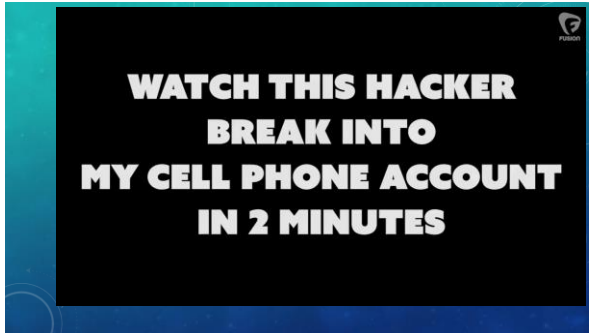
Social Engineering Methods

Mediums / Methods of attack include:

- Telephone (impersonation, pretexting)
- Email (phishing, spearphishing, pharming)
- Internet (fake websites)
- Social Media (FaceBook)
- Mobile Devices (SMSishing, Bluesnarfing)
- Dumpster Diving (low tech, but very effective)
- Malware (jump/flash drive baiting)

We ARE the Weakest Link!






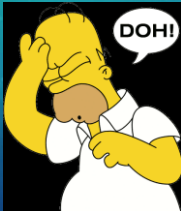
SO HOW DO WE GET TO ERROR STATES?

- Greed
- Emotion
- Fear

• So, are you in your “Planner” mode?



OR, HAVE YOU BEEN NUDGED OVER TO “DOER”?



LOTTERY / SWEEPSTAKES SCAM

- Same old story – Still works
- Congratulations! You have won the "insert foreign country here" lottery!
- Fees and Taxes Required Up Front
- Past = Check
- Today = More ACH
- Stolen funds from hijacked originator accounts
- Or, is your new business deal a lottery scam on steroids
- Now moving from Western Union wires to pre-loaded cards (eg Green Dot and iTunes)



Avoid Tech Support Phone Scams —

Friendly Advice from Microsoft

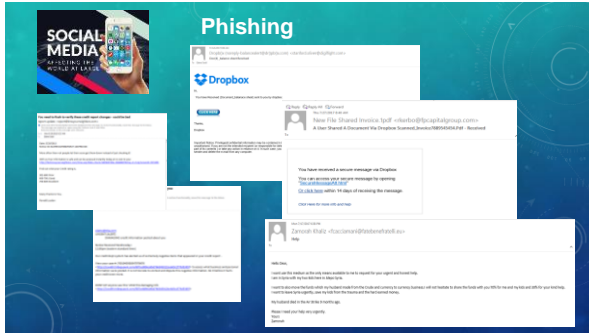
Offer to help solve your computer problems or sell you a software license. Once access to your computer, they can do the following:

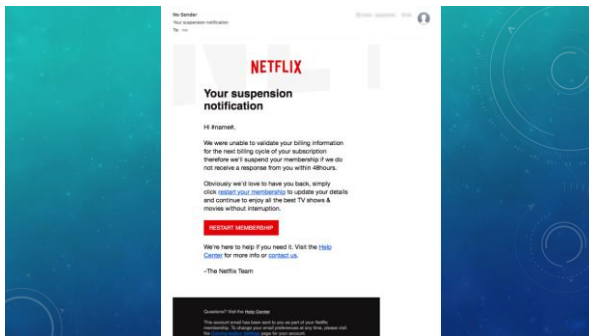
- Trick you into installing **malicious software** and then charge you to remove this software.
- Take control of your computer remotely.
- Request credit card information for phony services.
- Direct you to fraudulent websites and ask you to enter credit card and other personal or financial information there

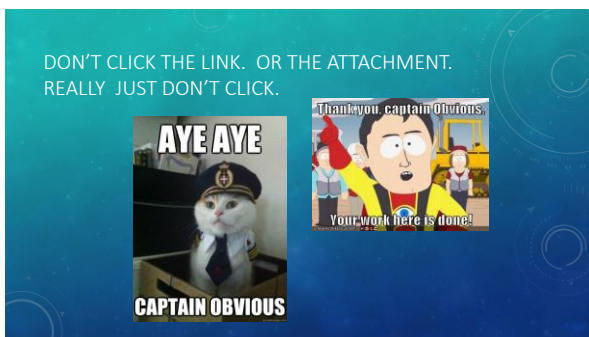


GOT A COMPUTER IN YOUR POCKET?
THEN WE NEED TO TREAT IT LIKE ONE!









PASSWORD "HYGIENE"

Use your passwords like a toothbrush:

- don't let anyone else use it,
- and change it every six months.
- More importantly, have a password for banking and one for investment accounts that are not used anywhere else. Ever.



Passwords and Password Managers

- Post-Its, Really Now?
- Password Safe – yes – and free
- Dashlane Password Changer – works
- LastPass – former recs and story



Longest Password Ever

During a recent password audit by a company, it was found that one employee was using the following password:
"MickeyMinniePlutoHueyLouieDeweyDonaldGoofySacramento"

When asked why she had such a long password, she rolled her eyes and said,
 "Hello! It has to be at least 8 characters and include at least one capital!"

- So, think about passphrases
- Nothing wrong with a good y'all
- Complex Passwords, Updated Regularly



SOCIAL MEDIA A BLESSING OR A CURSE?

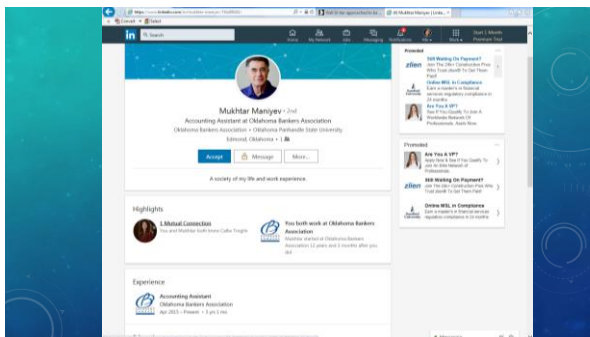
- Thanks to
 - @foruinside
 - @4553
- And, of course,
 - Jason Green!
- Content clear and thought!
- Avoid the highly contentious.

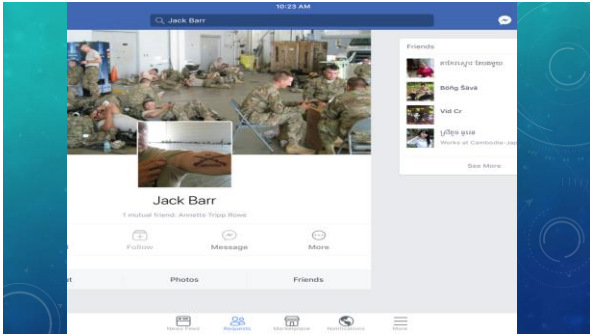


FACEBOOK 101 - INFECTED LINKS?

Security Best Practice







WHAT IS THIS ABOUT HEARTLAND/GLOBAL PAYMENTS, HOME DEPOT, TARGET, NIEMAN, WHITE LODGING ETC, ETC... AND WHAT'S IT MEAN TO YOU? BIG KUDOS AND THANKS TO OUR BUDDY BRIAN KREBS, KREBSONSECURITY.COM



Alberto Gonzalez







WHAT ELSE DO WE KNOW NOW?
(FRIENDLY REMINDER. THIRD PARTY. THIRD PARTY.)



Third Party Vendors
BlackPOS
17 YOA Russian wrote code
Could POS be any funnier?

COUNTERFEIT CREDIT CARDS SKIMMERS (READERS AND WRITERS)



Upsurge in Cryptolocker and Morphed Versions: Continuing Reminder of Importance of Backups

YOUR COMPUTER HAS BEEN LOCKED!

This operating system is locked due to the violation of the federal laws of the United States of America (Article 1, Section 8, Clause 8, Article 2002, Article 210 of the Criminal Code of U.S.A., provides for a deprivation of liberty for four to twelve years.)
Following violations were detected:
Your IP address was used to visit websites containing pornography, child pornography, amphetamine and child abuse. Your computer also contains video files with pornographic content, elements of violence and child pornography! Seven messages with terrorist motives were also sent from your computer.
This computer lock is aimed to stop your illegal activity.

To unlock the computer you are obliged to pay a fine of \$200.

You have 72 hours to pay the fine, otherwise you will be arrested.

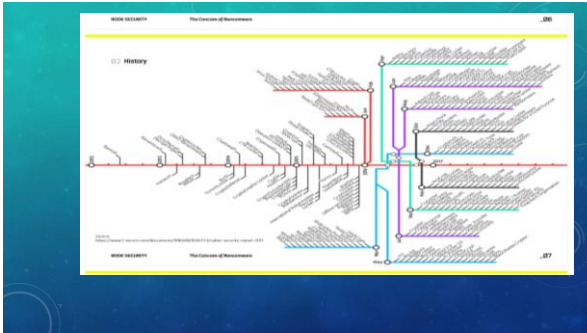
You must pay the fine through [REDACTED]
To pay the fine, you should enter the digits resulting code, which is located on the lock of your [REDACTED] in the payment form and press OK (If you have several codes, enter them one after the other and press OK)



OK

RANSOMWARE





Answer to Ransomware (and a Host of Problems)

Create systems to automatically back up work.
 Some computers will not allow shut down without first backing up the day's work
 Ensure that your backed up data is preserved and covers an adequate history

It's All About Networking
 (and Understanding SAR's)

Infragard – no or low cost training and FBI networking
 OK Chief of Police CLEET Recertification Training
 Adult Protective Services
 Think about groups like our Info Security MAFIA

Topics like Suspicious Activity Report:
 Or, Can You Say,
 "Somethin' Ain't Right"???



AND, IS THE MONEY WIRED INTO AN ACCOUNT
A PRODUCT OF FRAUDULENT WIRES?



UNCLASSIFIED

Money Mules Are A Challenge

UNCLASSIFIED

Money Mules are not routinely held accountable in criminal and/or civil action.

Bank accounts can be closed or flagged, but funds are often returned to the money mules.

Some mules don't realize they are breaking the law.

UNCLASSIFIED

A photograph of two brown mules standing in a field, one slightly behind the other.

MASSACHUSETTS TALES



WWF Words With Friends/FaceBook
Seriously??????

12/18 FBI'S NEW DON'T BE A MULE INITIATIVE



Corporate Account Takeover — Availability Exception Option

Approved September 8, 2011; Effective January 1, 2012

Option for an RDFI to exempt itself from the funds availability requirement for an ACH credit when it reasonably suspects that the ACH credit is not authorized.

Additional time to investigate a suspicious credit prior to making funds available to a Receiver. The additional time might enable ODFIs and RDFIs to identify instances of unauthorized credit entries due to Corporate Account Takeover, and recover funds on behalf of Originators before funds are withdrawn.



www.nacha.org

Craigslist, eBay, Amazon Convergence and "the Need for Speed"



The BobCat loader, a weekend phone call, and help from one really big bank.

COUNTERFEIT CASHIERS CHECKS

- Ensure customers know "funds available" is not the same as "funds collected".
- Consider policies to increase holds, more strict policies on hold releases, *collection not deposit*

COUNTERFEIT CORPORATE CHECKS

No, Dell has not funded a sweepstakes and sent you a check!



And, neither did Pro1 Automotive



COUNTERFEIT BILLS

Or, Seriously?!?!?

This:



Not This:
Old 5 Watermark



Or This!
New 5 Watermark



Tell Me Again Just What Great Folks Our Bankers Are!



Getting a New Wife...From Ghana? Romance Scams Surging for all Ages



SHE MET HIM ONLINE...



**HE SAID HE LIVED
IN A GATED COMMUNITY**

Examples of Tools Offered



Federal Trade Commission
www.ftc.gov

OK Securities Info at www.invested.org
Seniors Tab
Investor Protection Kit
My Money Handbook
EIFFE Info (Including Clinician's
Pocket Guide)





EXAMPLES OF TOOLS OFFERED



Saveandinvest.org



All available at:
<http://promotions.usa.gov/cfpbpubs.html>

CHARITIES AND FUNDRAISING FRAUD

- Advice for senior consumers
 - Donate to recognized charities only
 - No cash gifts
 - Be skeptical
 - Resist high pressure pitches
 - Take time
- Charity evaluators
 - BBB Wise Giving Alliance www.give.org or www.bbb.org/us/charity
 - Charity Navigator www.charitynavigator.org
 - American Institute of Philanthropy www.charitywatch.org

IF YOU ARE AN IDENTITY THEFT VICTIM

- Think like a police officer or lawyer
- www.PrivacyRights.org – summary of how to organize your files.
- Financial fraud is a crime, file a police report – be persistent
- Contact your bank and creditors.
- Contact the credit bureaus and place fraud alert.
- Call the FTC hotline 1.877.ID THEFT or online <https://www.ftc.gov/publications/identity-theft-recovery-plan>.
- Document and organize your case



MANAGING SOMEONE ELSE'S MONEY GUIDES



- To help four types of financial caregivers:
- Agents under a Power of attorney,
 - Guardians and conservators,
 - Trustees,
 - and Social Security and VA representatives
- The guides provide tips on making financial decisions for someone else as well as protecting assets from fraud and scams.
 - Available in Spanish

AND, NEW ON THE BLOCK

Protect Your Identity: What Older Adults Should Know
Contains benefits and limitations - Google title



QUESTIONS???

- Contact Info:
- Elaine Dodd
 - Oklahoma Bankers Association
 - 405.424.5252
 - elaine@oba.com





*Smart planning and inspired giving
for a better world.*

Consulting ♦ Training ♦ Strategizing

Helping you help others make a difference.

Fundamentals of Planned Giving

~Slide 1 - Title~

Develop a better understanding of gift planning vehicles - when and how to use, benefits, and pitfalls; and why charitable intent is an important part of planning.

Speaker: Ginny Bass Carl, JD, CAP, Giving Well LLC, Philanthropy and Planned Giving Advisor
405-250-2087, ginny@givingwellok.com

~Slide 2 - Take Aways~

Learning Objectives (Key Take Aways) - What you will learn about using planned giving to help clients achieve their goals:

1. The **advisor is the guide** who helps the client in the process of discovery - Values Based Planning - and shows her how she can achieve her goals, her vision, especially as concerns charitable intent
2. Understand current versus deferred gifts, including examples of each
3. Appreciate the advantage of giving non-cash assets
4. Learn the advantages of and differences between various planned giving vehicles, including outright and split interest gifts

Presentation:

~Slide 3 - First Fundamental~

I. First Fundamental - You are the Guide; the Client is the Hero

~Slide 4 - Hero~

True success is helping your client become the hero in her own story (estate plan).

~Slide 5 - Guide Yoda~

Donald Miller in *Building a StoryBrand: Clarify Your Message So Customers Will Listen*, HarperCollins Leadership, 2017, lays out the framework that sets you up for this success when you assume the role of guide and you treat your customer, or client, as the hero.

There are Three Crucial Questions you must always be able to answer in a story:

1. What does the hero (client) want? (to matter, to make a difference, to leave a legacy, to pass on her values through her story, to change her part of the world)
2. What is the problem; what is in the way; who or what is the enemy? Try to address the internal problem. You will hear and understand the external problems, but keep asking questions to help define the internal problem (fear of not having enough, lack of knowledge, aversion to focus on death, insecure about ability to make a difference)
3. What does success or failure look like for the hero/client? (Less joy, wrong legacy, more taxes, less fulfillment)

People, ie clients, want to know if you can help them, not what they can do for you. You have the opportunity to guide your clients, helping them be the hero in their stories and estate plans. And when you guide your clients along the path of the hero's journey (the discovery process), they avoid pitfalls and, more importantly, the fears and worries. Then they achieve a resolution that is likely more than they imagined.

The best result is not the perfect set of documents, it's a satisfied client who has discovered her "Why" and understands the values and story she wants to pass on to her family, the legacy she wants to leave, and the difference she wants to make today and tomorrow. To do this, reframe the relationship. Your performance, your products step out of the limelight and take on the supporting role in the discovery of her values and purpose and the plan to implement them (www.wealthmanagement.com/business-planning/why-values-integration-key-practice-management).

~Slide 6 - Second Fundamental~

II. Second Fundamental - Start with "Why"

~Slides 7 - True North~

The second fundamental to learn about planned giving is that the why comes before the how. This is where you find out what your client - the hero - wants. What is her true north?

~Slide 8 - Values~

Specifically for planned giving, find out if your client has charitable intent by asking discerning questions. Then listen, really listen. And ask more questions. "And then?" It's a process that you guide with **values-based questions**. Don't be surprised that it takes a few, or more, meetings.

~Slide 9 - Graduated Coin Jars~

They may not believe they can be philanthropists, but they do want to pass on values. And one of the best ways to pass on values, to matter, to make a difference is to leave a legacy with a planned gift. I've worked on estate gifts from \$40 to \$6,000,000. Each of those donors, and

everyone in between, was a philanthropist. They did what they could to be the change they wanted to see in the world. Think of the impact of the widow's mite.

~Slide 10 - 31% & 94%~

Your willingness to be the guide and engage your client, the hero, can fulfill clients' desire to **include philanthropy in the planning conversation**. The 2013 Study by US Trust and The Philanthropic Initiative found 31% are more likely to choose an advisor who is knowledgeable about charitable giving. Nearly all wealthy donors (94%) would like to be more knowledgeable about at least one aspect of charitable giving. (US Trust 2016 Study of Ultra-High Net Worth Philanthropy by Indiana University Lilly School of Philanthropy)

Another reason it is so important to fully explore your client's why is so you give them the right solution, build the best plan for her. Avoid false starts, abandoned plans, and disappointed clients. Help them avoid failure.

~Slide 11 - Taxes~

Start with what the research tells us about giving, particularly the latest comprehensive study that is oft cited, the 2018 U.S. Trust Study of High Net Worth (HNW) Philanthropy. Breaking that down, we find that why people give, which causes they give to, and even how they give are not inquiries that yield straightforward answers. Many reasons motivate them. Sure, taxes are part of the equation (51% of respondents said taxes were sometimes a reason).

~Slide 12 - Stock Market~

So is the stock market performance. The 2018 Study found a statistically significant correlation between changes in total giving and values on the Standard & Poor's 500 Index. As we know December 2018 saw a sharp decline in the Dow. Something to keep in mind when digesting the reports about a dip in contributions in 2018. That the stock market affects giving is also noted in the *Giving USA 2019: The Annual Report on Philanthropy for the Year 2018*. This study is the longest-running and most comprehensive report of its kind in American. It's published by Giving USA Foundation, a public service initiative of The Giving Institute. It is researched and written by the Indiana University Lilly Family School of Philanthropy at IUPUI.

~Slide 13 - Make a Difference~

A whopping 93% in the HNW Study said they give to make a difference. It's true, self-reported studies are only one frame of reference. But it's always important along the journey to talk about making a difference with clients.

~Slide 14 - Heart Health~

Even if that is not a primary motivator for a particular donor, there is no denying the joy and, even, physical benefits of giving. Several studies (see health.clevelandclinic.org/why-giving-is-good-for-your-health/) have shown the following health and wellness benefits:

- Lower blood pressure
- Increased self-esteem
- Less depression
- Lower stress levels
- Longer life
- Greater happiness

~Slide 15 - Diversity~

In addition to studying giving patterns and behaviors, it's important to look at trends and changes. The world is changing; therefore, giving will change.

The Study's authors pointed out that the continuing good news trends of the year over year studies showing strong giving trends must be held up to the light of powerful undercurrents of social, economic, political, and demographic forces. Forces which compel nonprofit organizations to adopt strategies and business practices that are more inclusive and transparent. I submit this is the trend worth watching; and a trend worth adopting for businesses and nonprofits.

It's never been truer: Giving is being shaped by a diverse donor universe of different ages, ethnic backgrounds and gender identities.

~Slide 16 - Women~

Women are at the forefront of philanthropic engagement and impact. For one reason, women's wealth is on the rise. Today they hold around 40% of global wealth. They are also more likely to give, and give more. And, it's important to realize, women give differently than men whether you look at motivations, causes or behavior.

<https://philanthropy.iupui.edu/institutes/womens-philanthropy-institute/research/index.html>

How well informed the giving decision is varies widely, just as donors and clients vary widely. From differences in age, ethnic backgrounds, cultural practices, and gender identities, these unique factors deeply inform giving decision. This is a wonderful opportunity for you to add value to the client relationship.

~Slide 17 - Why Give Quote~

Another opportunity for nonprofits and advisors (remember - you are Yoda!) lies in the fact that only 49% of donors have a strategy for their giving. To develop a strategy, you must first understand the why, the underlying reasons for giving.

Giving involves both the head and the heart. It's not one size fits all. It's about relationships, so it's a given that it's complicated. Most likely there are multiple reasons for giving. The top motivators for the Ultra High Net Worth (UHNW) distilled from the University of Indiana study for Bank of America and The Philanthropic Initiative study for US Trust ("Insights on Wealth and Worth", 2015):

1. Pass on our "values not just valuables"
2. Pass on "enough," but "not too much" to heirs
3. Prepare heirs for inheritance
4. Achieve social impact
5. Live up to civic responsibilities

P.S. Taxes are #7. Supporting interests, setting an example for children, changing the world and even family tradition are more important than taxes. Advisors are really good at explaining tax consequences and planning to the greatest tax advantage. It's time to flip the discussion on its head and lead with "Above the Line" or values-based questions to explore clients' why, purpose, and values then build a plan to accommodate those. What tax strategy best supports the mission and giving strategy (not the other way around)?

~Slide 18 - Questions Donors Have~

Their concerns may lie in the **unknown**. Many haven't yet dug deep to find out where their passions lie, what matters to them. And they're not convinced they know the right match for their gifts, how much they can afford to give, how to know if they're making an impact (2016 Study of High Net Worth Philanthropy by US Trust with University of Indiana Lilly Family School of Philanthropy). You can help them feel more confident about not only their choice to give but also the choices they make along the journey to understand and become more philanthropic.

~Slide 19 - Strategy Supports Mission~

Advisors are really good at explaining tax consequences and planning to the greatest tax advantage. It's time to flip the discussion on its head and lead with "Above the Line" or values-based questions to explore clients' why, purpose, and values then build a plan to accommodate those. What tax **strategy best supports the mission and giving strategy** (not the other way around)?

~Slide 20 - Questions for Clients~

These strong questions will help you guide your client to success as you work to put together the solution:

- **What** do you want to accomplish? (remember my mom, help find a cure for cancer, increase access to affordable housing, start a foundation, teach my kids about the environment, etc)
- **When** do you want to start this work?

- **How** do you want to fund your goals?
- **Who** do you want to include in the decision, process, and giving?

Their answers will reveal the next question. Remember - keep asking “**and then?**”, “**tell me more**”, “**what if?**”. It’s essential you are open to really hearing their dreams and helping them fulfill those dreams. Do NOT shut them down. Laying out consequences and alternatives is your duty. Judging their dreams and steering them away from possibilities is not.

By thinking creatively, exploring options, and including others (other advisors, family members), you should be able to offer solutions that are expansive rather than restrictive. You want the client to say, “Really, I can do that? I can make that happen? I had no idea.” **You want your client to be the hero, to be a philanthropist.**

~Slide 21 - Death on a Motorcycle~

Sidebar here: It’s natural for humans, when confronted with estate planning immediately see the topic being their **death** – planning for their death. At the most essential level, approaching the donor as the Hero and you as the Guide on this journey to discover their why and live their passion and pass on their values, helps them **reframe** the conversation from planning their death to **planning for their legacy to live on and their family to flourish.**

~Slide 22 - Tributes~

A couple of practical tools here. Talking specifically about charitable gifts in plan can be approached by talking about autobiographical connection. In layman’s terms, these are **tribute** gifts. Remembering or honoring a loved one is an incredibly effective way to move a client to act now on their charitable intent.

As Dr. **Russell James**, renowned professor and researcher of planned giving at Texas Tech, reminds us, **philanthropy** is a **social act** using the mechanisms of **family bonding**. This is why using stories and simple language is most effective. People want to identify with being someone who helps others.

~Slide 23 - Peer Pressure~

The other approach, which has been studied for its effectiveness by Dr. Russell James (*Inside the Mind of the Bequest Donor: a Visual Presentation of the Neuroscience and Psychology of Effective Planned Giving Communication*, 2013), is **social Influence**.

So if you did nothing else than use social influence language to ask about charitable intent, you’d increase gifts by 10%. “Many people like to leave a gift to charity in their will. Are there any causes you would support in this way?” (15.4%) vs. “Would you like to leave any money to charity in your will?” (10.4%) vs. No reference to charity (5.0%)

~Slide 24 - Tool Box~

Let's take a look at specific planned giving tools for you to consider with your client as you guide her on her philanthropic journey.

~Slide 25 - Third Fundamental~

III. Fundamental III: Why, How, and What to Give Outright

~Slide 26 - Outright Gift~

When will the gift be made? Now or later
How will you structure the gift? Outright or split interest
We will begin with outright gifts made both now and later.

~Slide 27 - Cash Not King~

It's time to think outside the box when considering **what** to give. Keep in mind - **Cash is not king**. Dr. James has further proven that true wealth, and, therefore, the best resource for giving, lies in non-cash assets.

- Planned giving is giving from wealth, not spare income
- Only 3% of household wealth is in cash and checking accounts
- **Non-Cash assets** – the best target of planned gifts

The most popular, and the bulk of wealth, lies in securities, retirement assets, real estate, and business interests.

~Slide 28 - Planned vs. Annual~

By definition, a planned gift is any major gift, made in lifetime or at death as part of a donor's overall financial and/or estate planning. These include gifts of equity, life insurance, real estate, personal property, or cash.

By contrast, gifts to the annual fund or for membership dues are made from a donor's discretionary income, and while they may be budgeted for, they are not planned.

~Slide 29 - Rollover~

The solutions we will explore briefly today are for gifts beyond current gifts of cash. One of the best giving vehicles to take advantage of now (since it was made permanent in December, 2017), is the IRA Charitable Rollover. Benefits and requirements:

- Must be 70 ½
- Traditional IRA (not 401k or ROTH)
- Gift is directed by the client from her RMD (Required Minimum Distribution)
- Up to \$100,000

- To qualified charities (must go directly to charity, not to donor first)
- Recent development - IRA checkbooks
- Make sure receive specific IRA Rollover receipt

~Slide 30 - Hand Mailbox~

There are some red flags to note regarding the IRA Charitable Rollover, or perhaps better termed the Qualified Charitable Distribution (QCD):

- IRAs only – not 401k
- Check payable to charity only
- Inherited IRA – must be 70 1/2
- Not to DAFs or PFs, only qualified charities
- Special receipt
- No mail box rule - \$\$ must come out of account before 12/31 to count

~Slide 31 - Beach House & Stocks~

Appreciated assets, in addition to the QCD, make fabulous outright gifts. From real estate to stock, and everything in between.

A warning must be inserted here - Not all assets are appreciated by the charity. Timeshares are top of mind.

~Slide 32 - Gift Acceptance Policy~

When working with a nonprofit, you or the client should ask to see its Gift Acceptance Policy when considering gifts of a more complex nature. Not all nonprofits are equipped to accept all types of complex gifts. Of course, seeking the assistance of the local community foundation is a possible solution.

In addition to asking if the charity has a Gift Acceptance Policy - and they definitely should! - you will want to ascertain if the specific property you are using is accepted. The policy should line out the requirements for accepting different types of gifts. And, frankly, some gifts are a burden and it would behoove the charity to say thank you, but no thank you.

Occasionally, a gift will conflict with the mission. A sober house is not a good recipient for your wine collection.

And, occasionally, there are simply too many restrictions placed on the gift to make the transaction feasible. Keep in mind, all right must be transferred for the transaction to be considered a gift. If your client insists on too many conditions, it's very likely it can no longer be considered a gift.

~Slide 33 - Securities~

When gifting securities, which securities to give determines how to value, ease of transfer, and how much to deduct.

- What is it? Publicly held vs closely held
 - For valuation and ease of transfer
- How did you get it? Gift vs inheritance vs purchase
 - For basis: carry over vs stepped up vs date of purchase
- When did you get it? Short-term vs long term
 - For deduction: basis vs FMV

~Slide 34 - Real Estate~

Real estate makes a fabulous gift to the right charity. The advantages include tax deduction and avoidance of capital gains. The nonprofit should require an appraisal and usually the donor is responsible for the cost. The property should be free and clear of liens. Title is transferred by deed.

We will address split interest gifts later, but while we're talking about real estate, we'll look at life estates. A less common gift of real estate is the retained life estate. The property is given to the charity but carved out is a life estate for the benefit of the donor and/or someone else. The beneficiary of the life estate has responsibility for maintenance, including insurance and taxes. For the charity, periodically checking in as to the life status of the resident is necessary. If it is the donor, of course, there should be ongoing stewardship.

~Slide 35 - Oil and Gas~

It's Oklahoma, so oil and gas is not an uncommon gift to charities. Working interests bring risks and expense that make them much less desirable to give. But royalty interest and mineral ownership can be quite lucrative for nonprofits if they hold the interests. Most nonprofits should hire outside mineral management if they hold onto the interests. Unlike other non-cash gifts, minerals are commonly kept intact in order to reap the benefits in the years to come.

Questions to ask, and information to gather from, clients when considering gifting minerals include:

1. What is the ownership interest?
 - a. Prior or existing leases
 - b. Prior division orders
 - c. Prior transfer orders
 - d. Check stubs from royalty payments
2. How was the Interest acquired?
3. Is the interest under lease?
4. What do you want to gift?

In asking about ownership, remember, if the client owns both the surface and the minerals, she can give an undivided interest (ie the charity gets 20%). But, she cannot, with a lifetime gift,

sever the surface from the minerals and give the minerals while retaining the surface. This severance can occur with an estate or testamentary gift.

~Slide 36 - Personal Property & Collections~

Gifts of personal property run the gamut and include collections. Different types of property invoke different rules regarding valuation and deduction. How the nonprofit organization will use the property also factors in. Whether the property will be used to fulfill the mission or will be sold for the proceeds affects the amount of the deduction.

~Slide 37 - Beneficiary Designations~

One of the easiest ways to give is to use beneficiary designations. Beyond the well-known designation forms for life insurance and retirement assets, there are paid on death (POD) and title on death (TOD) accounts at banks and brokerages. A death certificate and possibly other documentation may be required to assess the count upon the donor's death. Moreover, the charity may not even know about the account. As in all cases, the more notice and information you, if your client permits for lifetime gifts, or your client can share with the nonprofit about a potential gift, then better.

It can be tricky to navigate the loaded feelings when it comes to notifying the organizations. Stress the contingent nature of the gift. There is no requirement to provide gift values or details. For gifts in this category of beneficiary designations, knowledge is power as there are too many instances where the financial institution makes getting the funds due the charity a very long and strenuous process.

~Slide 38 - Life Insurance~

Granted, it's just as easy and flexible to name charities as beneficiaries of **life insurance policies**. But first determine if this is the best solution. Life insurance proceeds pass tax free to persons and entities (trusts, charities - NOT the estate). Especially if your client is concerned about making sure family has enough, suggest naming charities the beneficiary of retirement plans and kids the beneficiary of insurance policies. If that is not a concern, by all means, gift insurance to charity. Note, there are many ways to do this depending on the type of policy - term, whole life, paid up, etc.

Whatever you do, be sure the client's estate is NOT named the beneficiary of either life insurance or retirement plans. You want to avoid probating these assets and paying estate taxes!

~Slide 39 - 401k~

The beauty of gifts in wills and other **deferred** gifts is that the client gets use of the funds during her lifetime. She never has to worry about giving money away she might need. Even easier, and many times more tax advantageous, is to use **retirements plans** - IRAs and 401k - to give to

charity. And you don't even need an attorney! (sorry ☺) This can be the "cheapest" gift to give because income taxes are avoided. Both kids, who could have paid dearly in income tax, and the nonprofits win. It's not all or nothing - divide up among multiple charities or kids and charity. Flexible, easy and smart.

Be sure to inform your clients that their will has no bearing on the who is the beneficiary of their retirement plan. The beneficiary designation rules. If ever there was a situation where donor intent is not fulfilled, it's when the client puts in the will she is disinheriting an heir and that her favorite charity will receive part of her estate, including the proceeds of her IRA. Yet (you guessed it), she was either never advised or simply failed to get around to updating the designation. She passes away and that nephew she no longer trusted ended up receiving the IRA proceeds and the charity missed out on the largest portion of her intended gift. Yet, the charity's hands are tied (notwithstanding any claims of duress or fraud) to honor the donor's intent for that part of her gift.

~Slide 40 - Gift in Will~

The most popular deferred gift is a gift in a will or trust. This gift is flexible, costs nothing during lifetime, and is most familiar to your clients, as well as nonprofits. Gifts can be a sum certain, a percentage of the estate, the residual estate or a portion thereof. Clients can gift specific property. Gifts can be outright or contingent. Starting with the ultimate goal in mind, help your client work through several scenarios to ensure her needs and desires are met.

Most charities prefer receiving proceeds from the sale of non-cash assets, except securities which they're almost always set up to receive. Not all charities have the administrative muscle to deal with the many moving parts of liquidating estates, especially more complex assets. Discuss this possibility with your client as she is selecting the beneficiary(ies). Again, refer to the Gift Acceptance Policy. And, by all means, reach out to the nonprofit. Including the gift officer could save much time and cost down the road. The charity's goal is to honor the donor and see to it that the gift is put to the intended use to fulfill the mission.

A note here about restrictions on gifts. Ideally, gift agreements are used for complex gifts. These cover naming opportunities, pledges, change of purpose, endowments, etc. If in doubt, ask the nonprofit about using a gift agreement to ensure there is clarity of understanding and donor intent is understood and fulfilled.

By the way, did you notice I never used the "B" word? I did not use bequest because people don't like it. It reminds them of their death. It also summons thoughts of complexity and expense.

~Slide 41 - Fourth Fundamental~

IV. Fundamental IV: Give and Get - Split Interest Gifts

~Slide 42 - Advantages~

What about helping a client experience the best of both worlds? They can receive a tax deduction and make a gift that pays her income for life! Please notice the carefully chosen words. Words that did NOT include technical language. Using “Charitable Gift Annuity” or “Charitable Remainder Trust” or, heaven forbid, “CRAT” CRUT”, etc. will make someone LESS likely to make the gift. Talk about a failed plan!

~Slide 43 - Technical Stuff~

A summary of attributes and benefits:

- Give appreciated assets (CGA – stock, CRT – stock, real estate, business interest) to avoid capital gains
- Immediate tax deduction - present value
- CGA – benefit of age is higher rate
- One life or two
- Lifetime fixed income – CGA, CRAT
- Charity(ies) receive remainder after lifetime of income
- CGA – contract
- CRT – trust (need attorney, files tax returns)

Charitable Gift Annuities are so good for folks who like stability, security while doing good in the world. If their charity of choice does not offer CGAs, turn to their local community foundation(s). While you can set up a deferred CGA, this is most appealing for clients over 70, and preferably over 80. You do get a current income tax deduction and a portion of the payments you receive is tax free. The rates are better than CDs! The contract is between the client and the charity, with the assets of the charity guaranteeing it. Minimums could be as low as \$10,000.

~Slide 44 - CRT Benefits~

Charitable Remainder Trusts are more complicated but returns can be quite attractive, at a minimum 5%. A good rule of thumb for a minimum is \$100,000. A separate legal entity is set up, must make regular (at least annual) payments, and files a tax return. There are four tiers of income and each have a different tax consequence for the income beneficiary. The deduction is in the year(s) the trust is funded. The charity receives the trust assets upon the death (or end of term of years) of the donor. The donor can be the beneficiary or name someone else. Like with CGAs, you can also have two life CRTs.

~Slide 45 - CRAT v CRUT~

Two types of Charitable Remainder Trusts are the annuity trust and the unitrust. The key difference is how payments are calculated. The CRAT payments are fixed. The CRUT assets are valued annually for payment calculation. If the client wants to move property at various times into the trust, that can only be accomplished with the CRUT. Knowing the type of property used to fund the trust is critical to selecting the correct structure. For property that is not liquid, such as closely held stock and real estate, you will not want a situation where the trust is funded and

then payouts are required to being but you haven't yet sold the property to generate cash flow or income for the beneficiary payments. In that case, use a FLIP CRUT. Payments are deferred until the specific condition is met - the property is sold.

~Slide 46 - Curtain~

Seriously consider a FLIP CRUT for that entrepreneur who is ready to sell the business and wants to give some or all of the proceeds to make a transformative gift. The key is to transfer the some or all of her business interest BEFORE the sale. The trust then sells the interest and capital gains and income tax on that portion is avoided. More money for impact, less tax burden for the client. Beware of waiting too late to suggest this - cannot have a buyer in the wings.

~Slide 47 - CLT Benefits~

A really cool tool that is slowly gaining traction, but should be employed more, is the **Charitable Lead Trust**. An easy way to think of them is to consider them a trial run or loan. The client transfers the asset (cash or other asset) to the trust. The income is paid to the charity for a term of years. At the end of that term, the principle passes back to the client/grantor (or to heirs). Consider this vehicle when there is a windfall, especially of cash - a bonus, cashing in stock options - that triggers a significant tax burden. Can help reduce estate taxes if that is the need. A CLT would be good for a pledge to a capital campaign or for endowment funding. This tool deserves more attention.

~Slide 48 - What You Do with Money Quote~

With careful planning, a generous spirit, and willingness to explore options, many clients can discover, with your help, that they can give bigger than they dared dream. They truly can become philanthropists.

"A life well-lived shouldn't be viewed through a rearview mirror with the final assessment of accomplishment or regret at the end of the journey. It can and should be carefully plotted and planned for," said Keith Banks, president of U.S. Trust. "The wealthy are driven by a sense of purpose and desire to succeed, but **what makes life fulfilling is not money; it's what they do with it**. As wealth managers, we have the opportunity to not only help our clients grow their wealth, but also to help them plan accordingly."

<https://newsroom.bankofamerica.com/press-releases/global-wealth-and-investment-management/us-trust-study-high-net-worth-investors>, May 28, 2015

~Slide 49 - 5%~

This is about the simplest way I can explain philanthropy. **What if everyone gave 5%** - just 5% - in their will or trust to her favorite cause? Can you imagine the impact on our community?!?! And, people, that is **less than sales tax**.

~Slide 50 - Flower & Churchill Quote~

You have the **opportunity** to better serve your clients, increase client retention, including into future generations, increase the number of estate plans that both are completed and successful, help people pass on more than assets, and serve the greater good. The first step is to shift your thinking and realize **you are the Guide to your client's Hero**. You can provide the **plan** that begins with a discovery process, including exploration of charitable intent, to help them solve their **problem** of the fear of dying without meaning. You can guide them to **success** and avoid **failure**. It's a higher calling and I hope you will begin to accept and embrace it.

"We make a living by what we get. We make a life by what we give." The sage advice of Winston S. Churchill is the perfect prescription for helping your client be a bigger hero than ever imagined.