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14th ANNUAL INTERGENERATIONAL ESTATE PLANNING CONFERENCE

November 20, 2019 | The Princeton Club

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Agenda

▪ 8:00 - 8:30 AM	BREAKFAST AND NETWORKING
▪ 8:30 - 8:45 AM	**WELCOME FROM LOUIS PIERRO, ESQ.**
	PRESENTATION OF CASE STUDY FACT PATTERN
▪ 8:45 – 10:30 AM	TAX PLANNING
	ESTATE PLANNING, WEALTH MANAGEMENT
	BUSINESS VALUATION
▪ 10:30 -11:00 AM	**COFFEE BREAK AND NETWORKING**
▪ 11:05 – 11:05 AM	A WORD FROM OUR SPONSOR, QUONTIC BANK
▪ 11:05 – 12:15 PM	INSURANCE PLANNING
	ELDER LAW
▪ 12:15 – 12:30PM	**Q & A, WRAP UP**

Housekeeping

1. Accountants: fill out applications at registration for **four free CPEs**. Thanks to Raich Ende Malter for sponsoring these credits!

2. Conference materials can be found at: **www.pierrolaw.com/2019-resources** under the section Professional

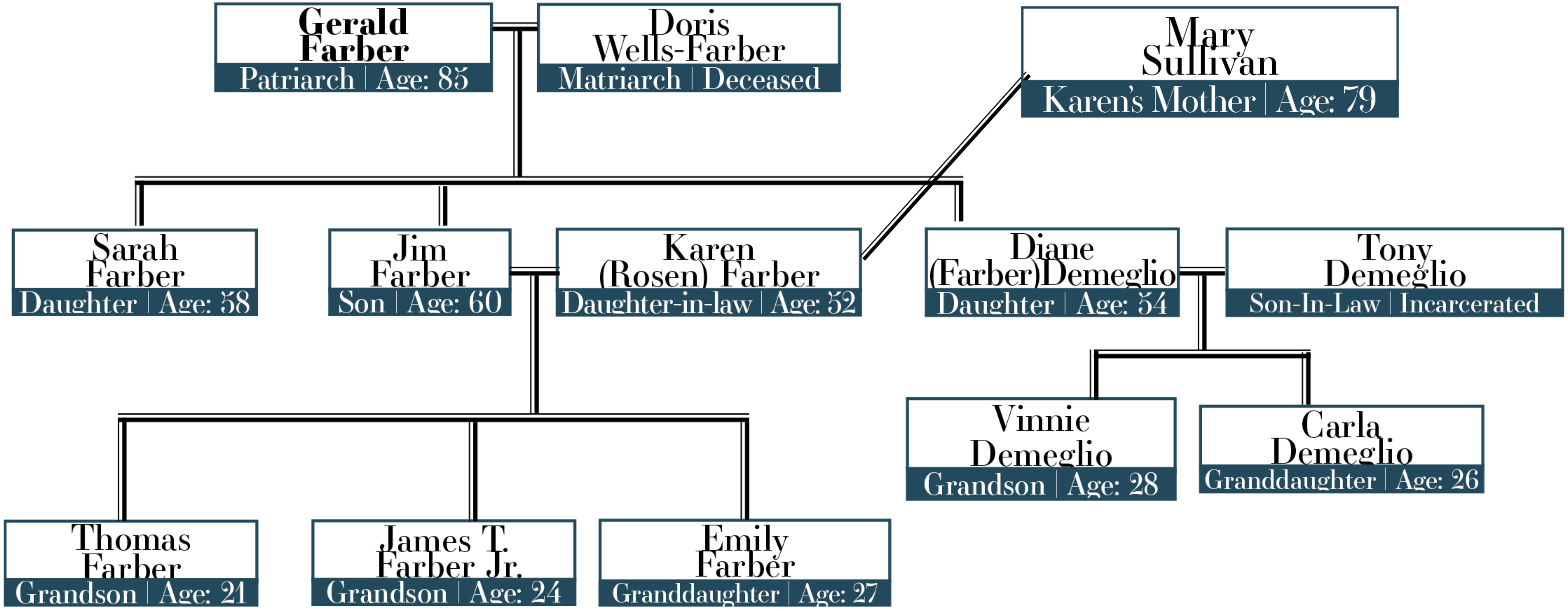
3. **There's** note paper in your Program to jot down questions for our Speakers

4. **Blue Form**: we value your feedback

Speakers

- **Mitchell Sorkin**, Partner in Charge of Federal Taxation, Raich Ende Malter & Co.
- **Jaclyn Feffer**, Fiduciary Counsel, Bessemer Trust
- **Chuck Coyne**, Managing Director, Empire Valuation Consultants
- **Jim Kaplan**, CEO and **Steven Zeiger**, Managing Director, KB Financial Companies
- **Peter Strauss**, Senior Partner, Pierro, Connor & Strauss
- **Louis Pierro**, Founding Partner, Pierro, Connor & Strauss, Moderator

Meet The Farbers



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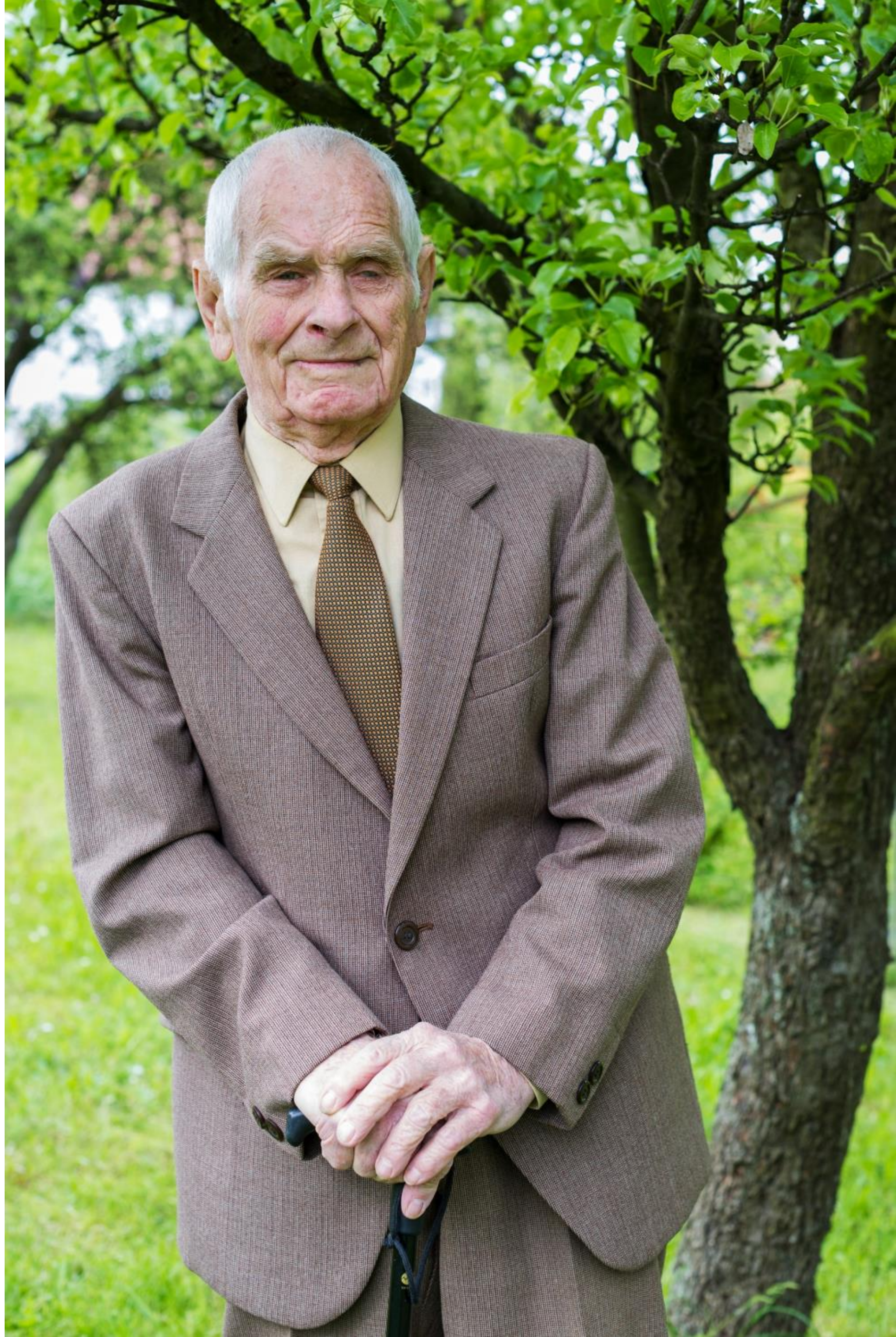
FARBER TOOL CO.

- Founded in 1967 as an S-Corp
- 80 Employees- four Key Managers
- Business has shown recent growth, and has more potential
- Supply chain is affected by recent tariffs on China, which supplies several components

INTERGEN

Gerald Farber

- Successful entrepreneur and member of the community
- Founded Farber Tool Company (FTC) in Manhattan in 1967
- He worked hard his entire life for his wife and their three children, Jim, now 60, Sarah, 58, and Diane, 54.
- Gerald, now 85 and a widower, loves spending time with his five grandchildren, playing golf and wintering in Florida



Jim and Karen Farber

- **Jim and Karen Farber**, ages 60 and 52 live in a Co-Op, Brooklyn
- Jim is the President & CEO of Farber Tool Company
- Three children:
  - **Thomas** Farber, 19- Asperger's Syndrome, lives at home
  - **James** T. Farber Jr., 21- College student
  - **Emily** Farber, 27- Local musician

INTERGEN

Karen's Mother, Mary Sullivan

- Widow, age 79
- Lives in Nassau County, Garden City Co-Op
- Modest income and assets
- "Losing it" according to her daughter

10 YEARS AGO: FIRST TO SECOND GENERATION INTRA-FAMILY TRANSFER

- Gerald retired at age 75 to spend time with his five grandchildren.
- Farber Tool Co. was valued at $20 M in 2009.
- He transferred 95% of the company value via gifts and notes to Jim, who has been running the company.
- Jim's sisters were gifted 2.5% each of the business and additional assets.

Gerald Farber, 85

ASSETS	
▪ Promissory Note from Jim	**$1.2 million**
▪ Stock Portfolio	**$1 million**
▪ Brooklyn Condo	**$850,000**
▪ SEP IRA	**$3 million**
▪ Life Insurance	**$5 million**
▪ Gerald Farber Realty, LLC	**$2.5 million**
INCOME	
▪ Income from Promissory Note	**$100 K/yr**
▪ Income from lease	**$300 K/yr**
▪ RMD	**$202 K/yr**
▪ Social Security	**$30,000 /yr**
▪ **TOTAL ASSETS**	**$13.5 M**
▪ **TOTAL INCOME**	**$632,000/yr**

Jim and Karen Farber

ASSETS	
Farber Tool Co.	**$80,750,000**
Co-Op, Brooklyn	**$2 million**
Martha's Vineyard Condo	**$1.5 million**
Brokerage Account	**$7 million**
Life Insurance	**$8 million**
Total	**$99,250,000**

Jim's Sisters

Sarah Farber

Farber Tool Co.	$2,125,000
Residence, Huntington, LI	$ 750,000
Savings & Checking (distributions from business)	$ 300,000
IRA	$ 120,000

Diane DiMeglio

Farber Tool Co.	$2,125,000
Residence, Chappaqua – Jt.	$1,200,000
Savings & Checking	$ 45,000

Husband Tony is in jail!

NEW DEVELOPMENT:A Buyer Emerges

- A National Private Equity Firm is rolling up strategic tool companies and approaches Jim Farber with a takeover offer
- Despite Gerald's concerns, Jim is considering the offer
- The timing of the sale and Jim's planning opportunities are uncertair

THE CHALLENGE

- What are the planning considerations for the Farber Family?
- How will our team prepare the Company for Sale and provide for three generations of this family?

TAX PLANNING

Mitch Sorkin, CPA, MBA, PFS, CEA

Partner in Charge of Federal Taxation

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Goal of Intergeneration Planning

- Minimize current income taxes through individual and business planning
- Accumulate wealth at the lowest tax cost and smart investing
- Transfer wealth to younger generations while minimizing gift, estate and income taxes
- Safeguarding of family assets

2018- What Changed

Individual

- Lower federal top tax rate to 37% (For 2019 over $510,300 single and over $612,350 joint) and brackets widened
- No more exemptions for yourself or dependents
- Higher standard deduction (For 2019; $24,400k joint $12,200K single plus $1,300 if over 65)
- State and local tax deduction limited to $10K. Eliminates need to prepay state taxes. (Coop exception?)
- Alternative Minimum Tax “AMT” exemption increased with higher phase out thresholds
- Elimination of miscellaneous itemized deductions but elimination of 3% phase out (NY decoupled)

2018- What Changed

Individual

- 20% of Qualified Business Activity Income deduction allowed as a miscellaneous deduction
- Business losses limited in 2019 to Business income plus $255,000 single and $510,000 joint No more carryback
- No more Kiddie Tax based on parent's income (unearned income of $2,100) now use trust tax rates
- Charitable deduction increased to 60% of Adjusted Gross Income "AGI" from 50% (Easement deductions)
- Elimination of alimony and moving deductions

2018- What Changed

Individual

- 529 Tuition plans can now be used to pay for pre college schools up to $10K a year. (NYS tuition plans have not adopted this provision yet)

- Mortgage interest limited to interest on $750,000 of qualified debt and elimination of interest expense on home equity loans of $100,000 that is not qualified mortgage debt.

- Casualty losses now only pertains to qualified disasters

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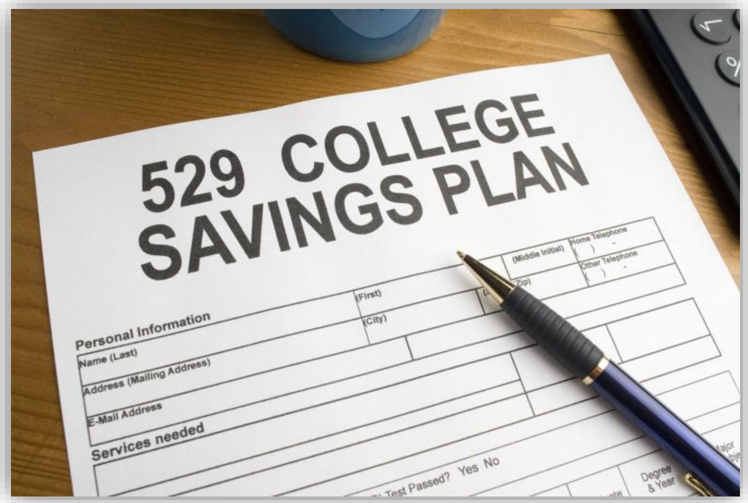
Individual Income Tax Planning

- Take advantage of the lower tax rates by putting two older children on the books. College kid James then gets to take himself as his own dependent and eligible for full federal $2,500 tuition credit as well as a $400 NYS credit. Can have own IRA or be covered by he Company's retirement plan. Also opens the possibility of deducting their family travel for business (airplane story).
- Jim and Karen Farber can open up a NYS 529 tuition plan and contribute $10K a year and take a $10K NYS deduction.



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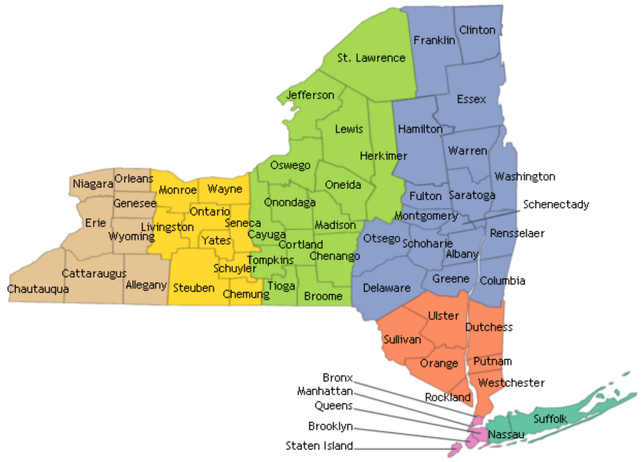
Individual Income Tax Planning

- If children own part of the business any income passing through to them gets taxed at their lower tax brackets.
- However cost of employment is the social security taxes and other payroll related costs. Need to compute sweet spot.
- Explore change of residence from New York State to Florida to save income and future estate taxes.



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Individual Income Tax Planning

- Transfers to Grantor type trusts can transfer growth to beneficiaries but still have the income taxed to Jim Farber resulting in a non taxable gift.
- Take advantage of the lower 15% and 20% capital gains rates by holding stock for more then one year, and invest in qualified dividend paying stock companies
- Invest in Real estate investment trust "REITs" and get a 20% deduction
- Purchase life insurance on kids lives so the income grows tax free, pay low premiums and avoid insurability issues later on
- Tell broker to add their fees to the sale and purchase of securities to capture the deduction or purchase mutual funds where fees are already deducted

2018- What Changed

Business

- Passthrough entities allowed a 20% deduction with limitations
- Lower corporate rate for C Corporations to 21% and elimination of corporate AMT. (This is permanent)
- Transportation fringe of $260 per month is allowed for employee commutation and parking but not for reimbursement for bicyclists.
- Entertainment expenses no longer deductible- Goodbye to theater tickets and sporting events
- Meals still 50% deduction but now employee meals for the convenience of the employer will go from 100% deductible to 50% unless covering more than 50% of the employees which will make it 100% deductible.

2018- What Changed

Businesses

- Employer provided parking not deductible (get rid of the reserve spots)
- 100% bonus depreciation for fixed assets and 100% expense allowance for qualified assets up to $1,020,000 for 2019.
- Small business are defined as under $25MM in sales for purposes of accounting methods for cash and accrual, completed contracts and inventory methods.
- Qualified Opportunity Zones to defer capital gains
- Social security wage base going up in to 2020 from $132,900 to $137,700.
- 401K increases in 2020 to $19,500 and to $26,000 if over 50 years old

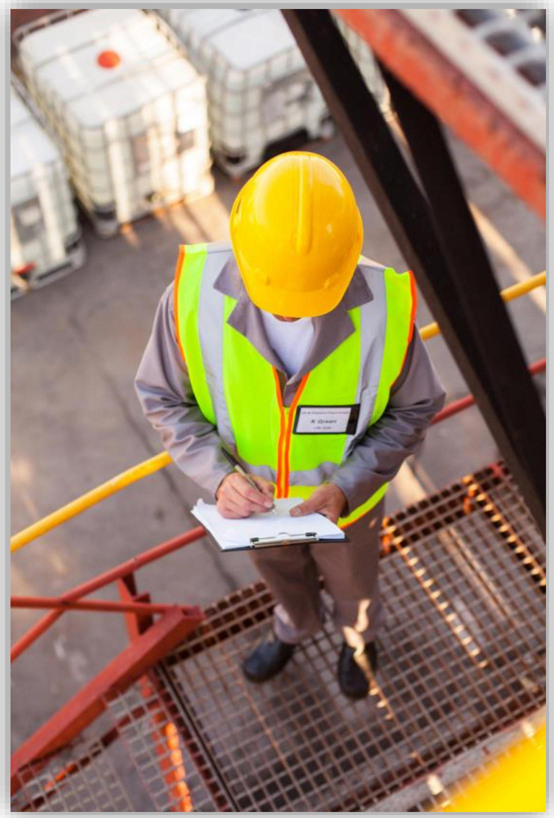
Business Income Tax Planning

Should Company revoke it's S election and become a C corporation? Unless the shareholders will sell their stock any asset sale would result in a double tax and any savings would be lost.

Want to maximize the 20% pass through deduction. Taking the 20% deduction actually reduces the effective federal income tax rate from 37% to 29.6%.

Business Income Tax Planning

Here's the deal- Would want to reduce the salary to the Farbers to increase the income of the business and increase the 20% deduction. What is reasonable salary. See example slide.



Business Income Tax Planning

Maximize retirement plan benefits- Having the Company set up a **defined benefit plan** still affords the company with a tax deduction.

Can also **purchase life insurance** through the retirement plan and the cost of the insurance would be part of the pension contribution. However the employee is charged **additional income (PS 58**) as additional income equal to the term life insurance cost which is relatively small.

Also need to take into consideration the **costs of maintaining the plan** and ability to fund it. Can explore setting up an ESOP which Chuck will speak about.

Business Income Tax Planning

Company can also transfer ownership to family employees or key employees in the form of stock or stock options or have them buy in at a discount. i.e. incentive stock options

If the company manufactures in the US and sells abroad may be able to take advantage of setting up an interest charge domestic international sales company "IC DISC" to pay commissions and convert ordinary income into qualified dividend income. However, the current benefit is only 5.8% on any commission.

Business Income Tax Planning

Gerald Faber’s grandchildren who want to go into the business can set up their own company and eventually take over the operations of the existing company by directing new business to their company. This will decrease the value of Jim Farber’s existing company and increase the value of the new company for the grandchildren.

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Business Income Tax Planning

The Company cost of doing business will increase because of the social security wage increase on employees who earn more than $137,700.

The Company may be eligible to a 4% investment tax credit for NYS on any machinery and equipment it purchases for its manufacturing operations. If it increases the number of employees it can receive additional incentive credits.

Business Income Tax Planning

May want to set up a C corporation to receive commissions and use that company to pay for sporting events and other non deductible expenses. There is a potential savings of 8.6% (29.6%-21%). In addition, it may be eligible for a IRC 1202 deduction in the event of sale or redemption of its stock if the stock is held for 5 years.

Need to be careful that the Company's debt does not result in a disallowance of the interest expense under IRC 163(j)

Planning for Tax on Gain

- Long term capital gains subject to 15% or 20% rates based on the amount of adjusted gross income
- Toll charge if the total of all installment obligations outstanding are more than $5MM
- Because the Farbers are material participants they will not be subject to the 3.8% Medicare tax
- Prepaying State taxes no longer results in a tax benefit
- Can rollover the capital gain component into a Qualified Opportunity Fund
  - This will defer the taxes until 12/31/26
  - If investment is held for 10 years any appreciation would be tax-free
  - If held for 7 years and before 12/31/26 would receive a 15% step up on basis

20% Deduction Example

Applying 20% pass-through deduction

New law provides for a 20% deduction based on the S Corporation's net income. If the Farber Tools Company had income of $3.7MM the deduction would be 20% of $3.7M or $740,000 all flowing through to the owners, effectively reducing their federal tax rate from 37% to 29.6%. To take advantage of the total deduction, the corporation must have total salaries in excess of 50% of the deduction or $1.48MM.

Family Savings Plan. If Jim's salary is reduced it would increase this deduction by 20% for each dollar reduced. Provided the business does not do business in NYC or has a low allocation to NYC, there is a benefit plus a reduction in the Medicare tax of 2.9%.

Estate Planning & Wealth Management

Jaclyn Feffer
Fiduciary Counsel

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Disclaimer

- This presentation is an overview of the topics covered and is for your general information. Although members of Bessemer Trust's Estate Planning team are attorneys by training, they do not practice law and you should not rely on the views and strategies expressed or implied in this presentation as legal advice. You are encouraged to consult with your attorney and tax advisor on these matters.

Essential Questions

- What are the family's priorities?
  - Maintaining current lifestyle
  - Wealth transfer to younger generations
  - Tax savings
  - Simplifying the family's financial situation
  - Creating a legacy
- For various planning strategies, what is the family's tolerance for risk and complexity?
- What degree of control would the family expect to retain?

Basic Assumptions

- Under current tax law, Jim's and Karen's projected estate tax liability (combined Federal and NY State) would exceed $33MM
- Jim and Karen may continue to want/need access to the assets
- Jim and Karen are likely to live to January 2026 when the tax law changes
- If Karen predeceases Jim, she would forfeit a portion of her lifetime exemption from generation-skipping transfer ("GST") taxes
- Unlike the lifetime credit against estate/gift taxes, the exemption from GST taxes is not "portable" between spouses (i.e., may not be used by the surviving spouse)

Common Client Objectives

- Maintain sufficient assets (and liquidity) to support a comfortable lifestyle; simplify matters where possible
- Reduce tax liabilities
  - Transfer wealth to children and grandchildren
  - Maintain control over access to funds
  - Incentivize productivity and community engagement
  - Teach younger beneficiaries about wealth management
  - Provide resources to supplement lifestyle needs
- Create a family legacy and succession plan
  - Protect family wealth from creditors/predators
  - Engage in philanthropy

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Short-Term Gifting Strategies

- Annual exclusion gifts to children, grandchildren, spouses and parents
- In 2019, Jim and Karen can each gift $15,000 (thus, $30,000 from both of them) to any number of individuals or trusts for their benefit
- Results in significant wealth transfer over a period of time without reducing available lifetime credit against estate/gift taxes

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Short-Term Gifting Strategies

- Direct payment of medical and educational expenses
- For qualifying expenses, no limit on the amount of transfer
- GRATs, CRUTs, loans and other strategies that provide a stream of payments to the grantor

Long-Term Gifting Strategies

- Long-term GST-exempt (“dynasty trusts”) for children and more remote descendants
- Family goals/vision for the trust (i.e., letter of wishes)
- Beneficial to create separate trusts for each child and his/her family
- Advantages of using trusts:
  - Centralized investment management
  - Protection of funds from beneficiary’s creditors (including divorcing spouses)
  - Potential to maintain beneficiary’s qualification for government assistance and benefits
  - Potential exclusion of funds from beneficiary's taxable estate
  - Use of GST tax exemption

Long-Term Gifting Strategies (cont'd)

- Spousal Lifetime Access Trusts ("SLATs")
  - Allows Jim and Karen to "lock in" exemption amount before it decreases in January 2026 but potentially still have access to the funds
  - Discuss use of Trust Protector who has ability to appoint assets to grantor
- Additional considerations
  - Using LLCs for discount planning
  - Consider note/sale given low interest rate environment
  - Ensure any trust that is created is proper S Corp shareholder
  - Beware of 3-year claw back of gifts in New York
  - Special needs trust for son

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Delaware Trusts

- Advantages of Delaware Trusts
  - No rules against perpetuities (except for real estate)
  - Directed trusts for flexibility and control (for investments and/or distributions)
  - Confidentiality via quiet trusts
  - Potential for state income tax savings
  - Trust-friendly and experienced court system
  - Trust protectors

Delaware Trusts

- Advantages of Delaware corporate trustees
- Continuity in managing long-term trusts
- Professional trust services and experience in trust administration
  - Preparation of fiduciary tax returns
  - Bookkeeping
  - Communication with beneficiaries
  - Distribution of funds to beneficiaries
  - Objective solutions to sensitive situations
- Separation of difficult conversations from family relationships
- Expertise in managing non-traditional assets

Creating a Family Legacy

- Communicate the wealth transfer philosophy to the next generation
- Communicate and manage expectations
  - Ongoing involvement in the family business
  - Allocation of value passing to children (whether equal or unequal)
  - Control over family trusts and other entities
- Share the family's history and values
- Invest in financial education
- Hold regular family meetings

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Maximizing Leverage

- Federal Exemption = $11.58 M for 2020
- Jim and Karen = $23,160,000 (Gift + GST)
- Discounts – Marketability + Control
- Farber Tool Co. – S Corp
- Re-Cap to Voting + Nonvoting

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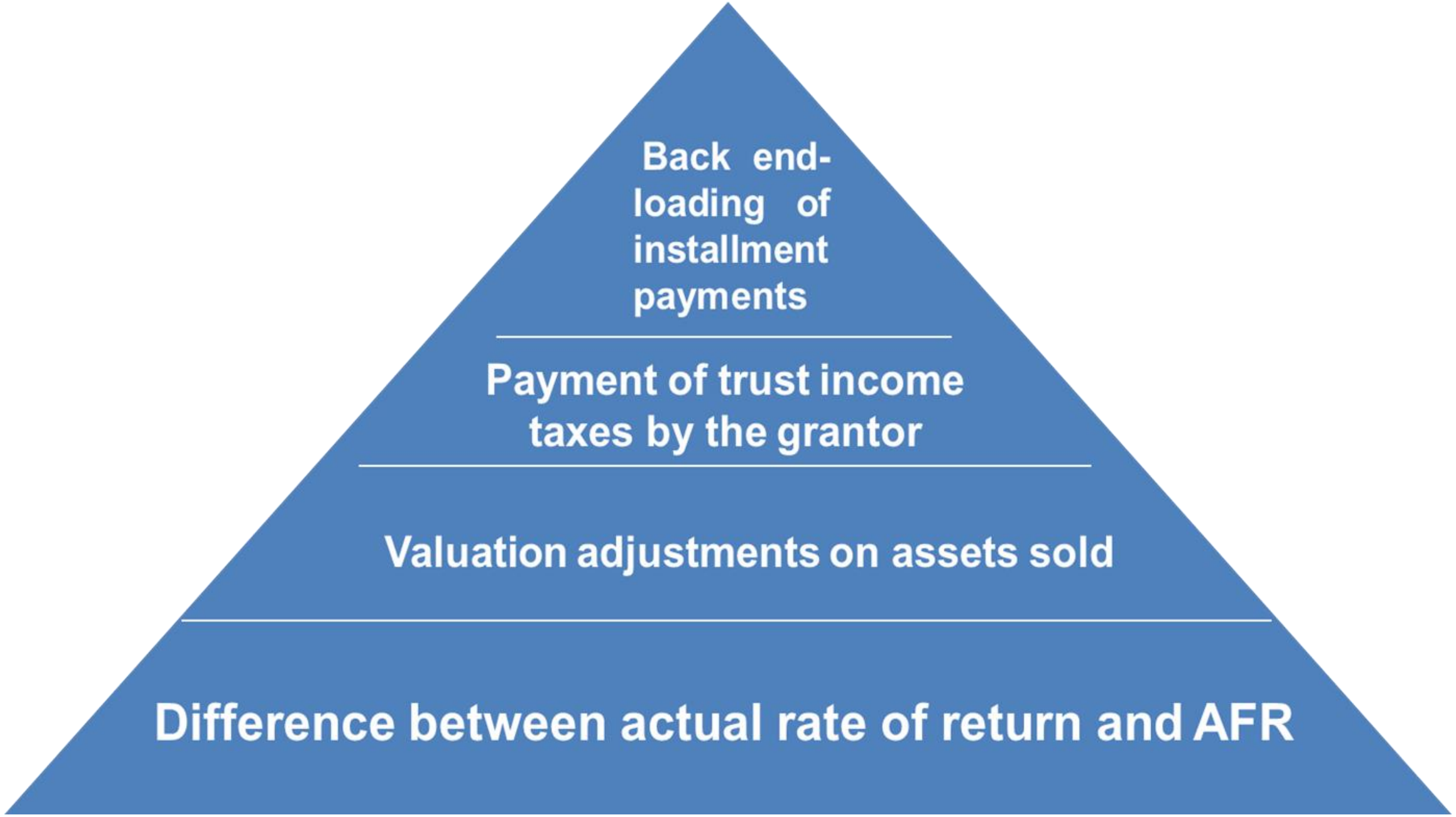
Interest Rate Arbitrage

November 2019 Interest Rates

▪ Short Term AFR =	1.68%
▪ Mid Term AFR =	1.59%
▪ Long Term AFR =	1.94%
▪ 7520 Rate =	2.0%

Why an IDGT Gift Sale Works - Summary



Business Valuation Planning

Chuck Coyne
Empire Valuation Consultants

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Standard of Value

- **Fair Market Value**

  "The Price at Which Property Would Change Hands Between a Willing Buyer and a Willing Seller, Neither Being Under Any Compulsion to Buy or Sell and Both Having Reasonable Knowledge of the Relevant Facts."

Regulation § 20.2031-1 (b).

Business Value – What Is It?

- **Valuation Basics**

  Approaches ► Methods ► Procedures

  Risk (expressed as a rate of return) and growth are the core valuation elements used to convert future cash flows into today's expression of value

Income Approach

- **Capitalization of Income Method**
  a) Truncation of the DCF Method
  b) Capitalization using adjusted historical income as reasonable, objective estimate of future income, most often on debt-free basis
  c) Subjective component are the adjustments for non-recurring, non-operating and discretionary expenses and income
  d) Single period adjusted income measure may be net income, operating cash flow, free cash flow most often debt-free
  e) Method most commonly used in valuations of private business interests

Income Approach

- **Discounted Cash Flow ("DCF") Method**

  a) Based on the theory that the current value of an investment is based on the expected future economic benefits

  b) Incorporate management projections of future income statements, balance sheets and cash flow statements

  c) Discount cash flows (after-tax & debt-free) for discrete period plus horizon value to the present at an appropriate discount rate

Income Approach

- **Discounted Cash Flow ("DCF") Method**

    d) Horizon (terminal) Value - capitalization of Income (Cash Flow) at the end of the projection period assuming a perpetual long-term growth rate

    e) DCF analysis incorporates economic, industry & company- specific factors

Market Approach

- **Guideline Public Company Method**

  a) Relative analysis of financial performance, qualitative characteristics and capitalization multiples of public companies similar to the subject company

  b) Consider consistency of performance, growth, margins, returns and risk

  c) Size, trading liquidity, and analyst coverage may have an impact on capitalization multiples

Market Approach

- **Guideline Transaction Method**

  a) Relative analysis of financial performance, qualitative characteristics and acquisition multiples of comparable company acquisition transactions

- **Prior Transactions in the stock of the subject company**

  b) Relative analysis of financial performance and qualitative characteristics at different points in time

Cost Approach

- **Adjusted Net Asset Method**
  - Determine the fair market value of the company's assets and liabilities to arrive at net value
    a) Replacement cost
    b) Value in use
    c) Orderly liquidation value
- Not typical in most operating company appraisals although may have applicability in certain situations
  - Asset intensive industries such as real estate, shipping, trucking, equipment rental, auto dealerships, etc.
  - Distressed situations where earnings are negative and/or negligible
  - Method often applied to separately to value segregated non-operating assets & liabilities when applying Income and/or Market Method

Levels of Value

Controlling Interest/Enterprise Value

Less: Discount for Lack of Control

Marketable Minority - Voting

Less: Discount for Non-Voting Interest

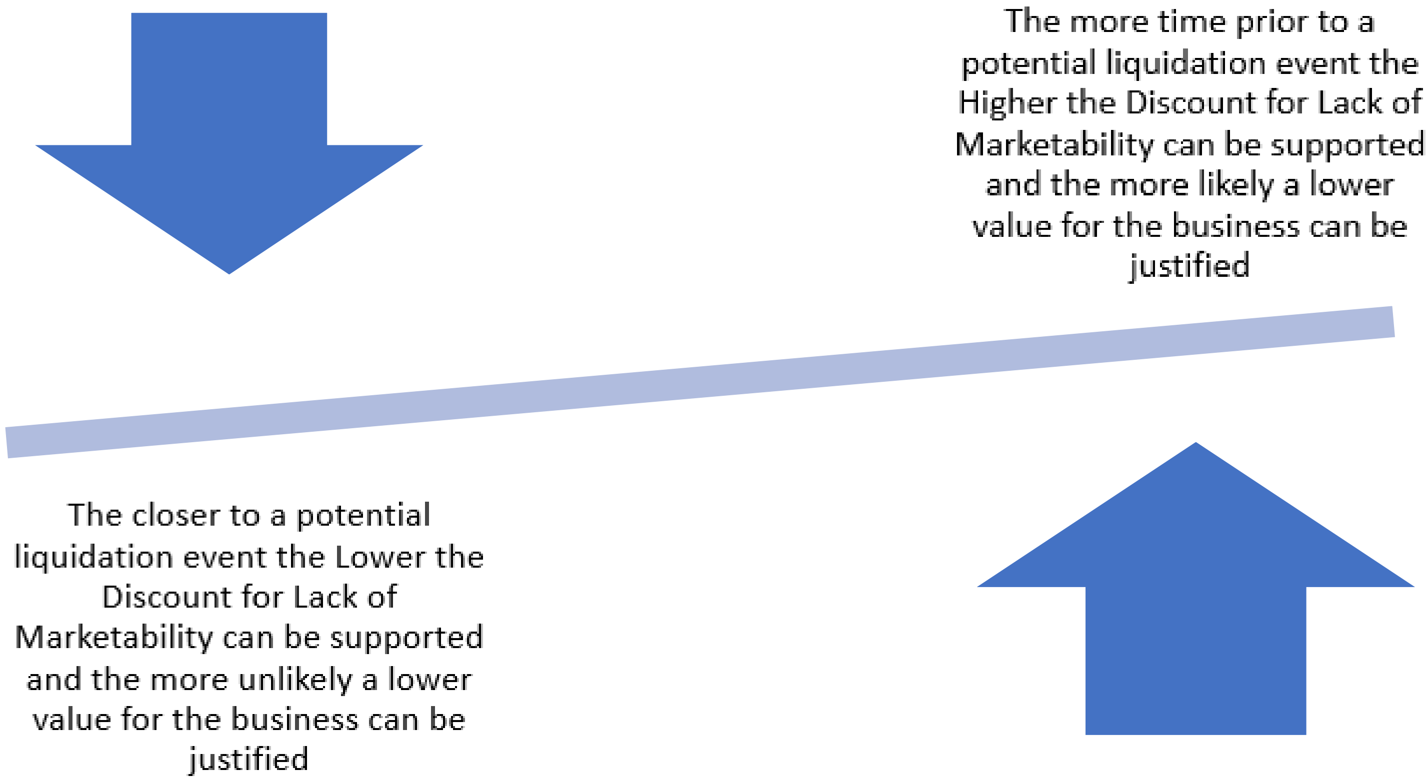
Marketable Minority – Non-Voting

Less: Discount for Lack of Marketability

Non-Marketable Minority – Non-Voting

What Unique Factors Can Impact Our Valuation of Farber Tool Company?

- **Timing of third-party offers may impact the value of the business and the level of supportable discounts**



Additional Valuation Considerations

- Quality of projections
- Products and operations
- Strategic initiatives
- Customer and/or geographic concentrations
- Financial outlook
- History of company and markets (e.g. volatility)
- Offers to buy/sell

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Additional Valuation Considerations

- Management composition, depth and changes
- Litigation or risk thereof
- Liquidity and banking relationships
- Executive compensation
- Adjustments and non-operating assets and non- operating liabilities
- Impact of the 2017 TCJA

Valuation of Farber Tool Company

Conclusion of Enterprise Equity Values:

▪ Discounted Debt-Free Cash Flow (DCF)	$85,750,000
▪ Guideline Public Company Method	$86,500,000
▪ Guideline Transaction Method	$84,300,000
▪ Final Enterprise Equity Value (rounded)	$85,000,000

Conclusion of Values (cont.)

Enterprise Equity Value (control interest)		$ 85,000,000	
Less: Jim's 10% Voting Interest		$ 8,500,000	
Aggregate Non-Controlling Interest		$ 76,500,000	
Less: Discount for Lack of Control	12%	$ 9,180,000	
Aggregate Marketable Non-Controlling Interests		$ 67,320,000	
Less: Discount for Non-Voting Interest	3%	$ 2,019,600	
Aggregate Marketable Non-Voting Non-Controlling Interests		$ 65,300,400	
Discount for Lack of Marketability	35%	$ 22,855,140	
Aggregate Non-Marketable Non-Voting Non-Controlling Interests		$ 42,400,000	(rounded)
Value of Sarah's Non-Voting Interest	2.5%	$ 1,060,000.00	
Value of Diane's Non-Voting Interest	2.5%	$ 1,060,000.00	
Total Value of the daughters Non-Voting Interests		$ 2,120,000.00	
Value of Jim's Non-Voting Interests		$ 40,280,000.00	

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Some Important Recent Developments in the Valuation of S-Corporations

- Tax Court History -
- The IRS has aggressively and successfully asserted for the last 20 years that tax-effecting a pass-through entity's income stream was an unacceptable valuation procedure, citing the following seven cases:
- Walter Gross, Jr. and Barbara Gross v. Commissioner, T.C. Memo 199-254, affd. 2001 FED App. 0405P (6th Cir.)
- John E. Wall and Joanne Wall v. Commissioner, T.C. Memo 2002-80
- Estate of Richie C. Heck v. Commissioner, T.C. Memo2002-34
- Estate of William G. Adams, Jr. v. Commissioner, T.C. Memo 2002-80
- Robert Dallas v. Commissioner, TCM 2006-212
- Estate of Louise Paxton Gallagher v. Commissioner, T.C. Memo 2011-148
- Estate of Natale B. Giustina v. Commissioner, T.C. Memo 2016-114

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Some Important Recent Developments in the Valuation of S-Corporations

- Good News for Tax-Payers and the Appraisal Community

- Two recent cases have allowed the tax-affecting of S-Corp. earnings. In both cases the IRS's Valuation Expert tax-affected the earnings of an S-Corporation.

1) James F. Kress and Julie Ann Kress, Plaintiffs, v. United States of America, Defendant, Case No. 16-C-795, United States District Court Eastern District of Wisconsin, March 25, 2019

2) Estate of Aaron U. Jones v. Commissioner, T.C. Memo 2019-101

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Coffee Break & Networking

Remarks from our Breakfast Sponsor

Frank Melia, CMPS
Vice President,
Lending/Reverse Manager

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Insurance Planning

Jim Kaplan
Chief Executive Officer
Steven Zeiger
Managing Director

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Assumptions

- Gerald founded the business and believed it to be worth approximately $12M -$15M
- His planning revolved around this belief and thus the disparity between ownership percentages for Jim and his sisters, Sarah and Diane
  - In addition, neither Sarah or Diane worked in the business and Jim was the primary driver of the growth over the last 10 years
- Planning needed to be flexible as Jim's intention was to be either the acquirer or to be acquired in order to access capital and/or expertise to grow
  - Jim and Karen's children Thomas and Emily are not involved in the family business. James has worked at Farber Tools Company for many summers and has a working knowledge of how his father likes to do things.
- Jim has always been concerned that some of his father Gerald's health issues were genetic and could someday effect his insurability

Key Family Goals

- Provide the liquidity needed to ensure both the preservation and operation of the company at Jim's death
- Provide liquidity to offset some of the estate tax liability on either Jim or Karen's death
- Warehouse Term Insurance to preserve Jim's insurability at current underwriting offers
- Since none of Jim and Karen's children are interested in the business, an alternate succession plan needs to be examined
- Spend more family time

Strategy Used

- **Restrictive Endorsement Split Dollar Insurance** - fund one-way Buy-Sell Agreement between Jim and James
- **Survivorship Life Insurance** - to fund some of the estate tax liability on either Jim and Karen's death
- **Warehouse Term** - Insurance to preserve Jim's insurability at current underwriting offers

Endorsement Split Dollar Insurance

- **Restrictive Endorsement Split Dollar Insurance** to fund one-way Buy-Sell Agreement between Jim and James
  - Provide the liquidity needed to ensure both the preservation and operation of the company at Jim's death
  - Transfer **10%** of company to James
  - Preserve at least 51% ownership for Karen and immediate family
  - Provide a portion of the liquidity needed for projected estate tax liability
  - Flexible structure upon change of control

Endorsement Split Dollar Insurance

- **Insurance Policy Details**
- Pacific Life M Proprietary Universal Life
- $8M Death Benefit / Premium - $220K / yr
- Initial Owner – Farber Tools Company
- Ultimate Disposition – @ Jim's retirement transfer policy to new insurance trust FBO Karen and Thomas, James, and Emily
- Jim's trust will either purchase the policy from Farber Tools Company or will recognize ordinary income equal to the FMV at time of transfer and will be making a gift to the trust

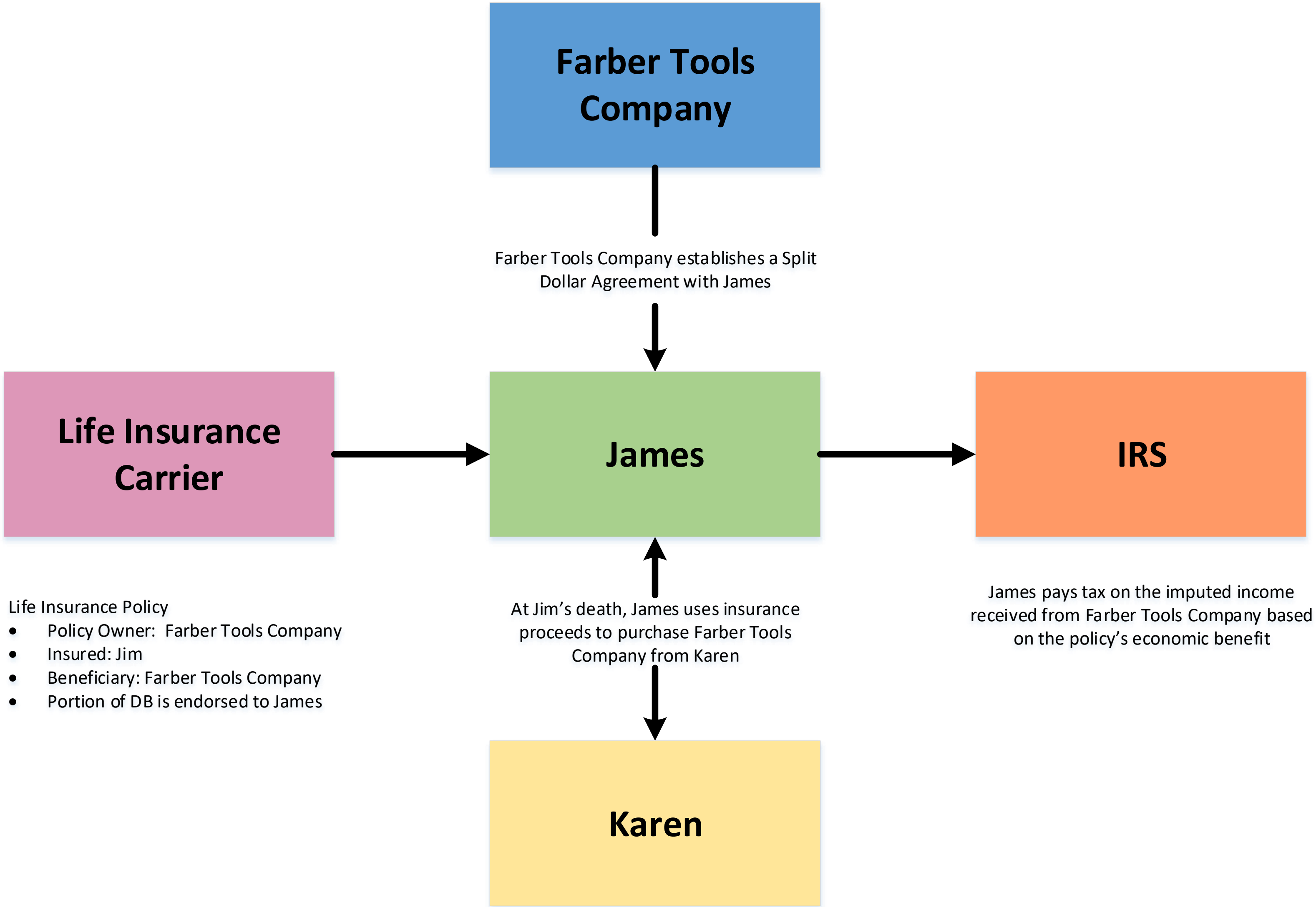
Endorsement Split Dollar

- Farber Tools Company enters into a Restrictive Endorsement Split Dollar arrangement with James
  - Farber Tools Company would be the owner of the policy and pay the premiums
  - Cash value of the policy would be an asset on Farber Tools Company’s books
  - At Jim’s death Farber Tools Company would be entitled to the recovery of the greater of cumulative premiums paid or the policy’s cash value
  - The remaining death benefit would be endorsed to James, which would provide the funds to purchase the share of the company being transferred
  - James would pay an annual amount equal to the economic benefit of the net life insurance protection on Jim

Endorsement Split Dollar

- Farber Tools Company enters into a Restrictive Endorsement Split Dollar arrangement with James (cont.)
- At Jim's retirement, Farber Tools Company would have to:
    - Transfer ownership of the policy to Jim and terminate the split dollar agreement
    - Surrender the policy for its cash value and terminate the split dollar agreement
    - Since Jim and James are partners in one of Farber Tools Company's buildings, we feel this is adequate to avoid transfer for value issues

Endorsement Split Dollar



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Final SD Plan

			Employer						Executive			
Yr	Age	Total Premium Outlay* (1)	Premium Outlay* (2)	Bonus Paid (3)	Tax Savings (4)	After-Tax Annual Outlay (5)	Net Cash Surrender Value (6)	Death Benefit[1] (7)	Reportable Economic Benefit (8)	After-Tax Annual Outlay (9)	Net Cash Surrender Value (10)	Death Benefit[1] (11)
1	60	220,211	220,211	6,470	1,294	225,387	214,313	220,211	14,400	0	0	8,000,000
2	61	220,211	220,211	6,865	1,373	225,703	382,763	440,422	15,280	0	0	8,000,000
3	62	220,211	220,211	7,332	1,466	226,077	530,856	660,633	16,320	0	0	8,000,000
4	63	220,211	220,211	7,979	1,596	226,594	686,222	880,844	17,760	0	0	8,000,000
5	64	220,211	220,211	8,878	1,776	227,313	848,784	1,101,055	19,760	0	0	8,000,000
6	65	220,211	220,211	10,064	2,013	228,262	1,018,219	1,321,266	22,400	0	0	8,000,000
7	66	220,211	220,211	11,178	2,236	229,153	1,195,472	1,541,477	24,880	0	0	8,000,000
8	67	220,211	220,211	12,328	2,466	230,073	1,382,188	1,761,688	27,440	0	0	8,000,000
9	68	220,211	220,211	13,514	2,703	231,022	1,579,838	1,981,899	30,080	0	0	8,000,000
10	69	220,211	220,211	14,880	2,976	232,115	1,788,913	2,202,110	33,120	0	0	8,000,000
Total		**2,202,110**	**2,202,110**	**99,488**	**19,898**	**2,281,700**				**0**		
11	70	220,211	220,211	16,354	3,271	233,294	2,095,030	2,422,321	36,400	0	0	8,000,000
12	71	220,211	220,211	18,187	3,637	234,760	2,415,724	2,642,532	40,480	0	0	8,000,000
13	72	0	0	20,199	4,040	16,160	2,528,180	2,642,532	44,960	0	0	8,000,000
14	73	0	0	22,428	4,486	17,942	2,640,934	2,642,532	49,920	0	0	8,000,000
15	74	0	0	0	0	0	2,775,802	8,007,532	0	0	0	0
16	75	0	0	0	0	0	2,914,747	8,007,532	0	0	0	0
17	76	0	0	0	0	0	3,057,223	8,007,532	0	0	0	0
18	77	0	0	0	0	0	3,202,728	8,007,532	0	0	0	0
19	78	0	0	0	0	0	3,351,620	8,007,532	0	0	0	0
20	79	0	0	0	0	0	3,504,115	8,007,532	0	0	0	0
Total		**2,642,532**	**2,642,532**	**176,655**	**35,331**	**2,783,856**				**0**		

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Survivorship Life Insurance

- **Recommended Survivorship Life Insurance** to fund remaining estate tax liability on either Jim or Karen's death
  - Liability estimated at $15M (based on $45M valuation)
    - Liability estimated at $20M (based on $60M valuation)
  - This liability should be funded with **$7M** of additional permanent life insurance (after accounting for $8M of endorsement split dollar)
- Insurance Policy Details
  - Nationwide No Lapse Guarantee Universal Life
  - $7M Death Benefit / Premium - $44K / yr
  - Initial Owner – New insurance trust
  - Premiums funded thru annual exclusion gifts, lifetime exemption, loans, or some other techniques such as GRAT planning

Warehouse Term

- **Recommended Warehouse Term Insurance**
  - Preserve Jim's insurability at current underwriting offers
  - Replace some or all existing term insurance
  - Insure against the drop in value at Jim's death and provide additional liquidity
  - Policy convertible to permanent insurance without evidence of insurability for the full 20 year level term, however the available products are restricted starting in year 8.
  - **$10M (20 yr) to be owned by new insurance trust**
  - **Premiums funded thru annual exclusion gifts - $28,300 per year (Lincoln)**
  - **$3M (20 yr) to be owned by Farber Tools Company as additional key man insurance**
  - **Premium paid by Farber Tools Company - $8,605 per year (Protective)**

James Farber - Level Term Pricing			
Term Period	$10M[1]	$15M[2]	$20M[3]
10 Year	$16,530	$25,035	$33,485
15 Year	$21,530	$32,585	$43,585
20 Year	$28,300	$42,605	$56,855

[1] Pricing based on using Lincoln National for the full face amount
[2] Pricing based on using Lincoln National for $10M face and Protective for $5M face
[3] Pricing based on using Lincoln National for $10M face and Protective for $10M face

New York Best Interest Regulation 187 for Life Insurance

New Requirements for Producers
New Business Opportunity and Ethical Considerations for Attorneys, CPAs and RIAs

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NY DFS Best Interest Rule (Reg 187)

Redefines "Clients' Best Interest" for product recommendations for…

- Residents of New York (even if advisors are in another State)
- Former residents of New York but with ILIT(s) domiciled in New York
- ILIT Trustees in New York (even if ILIT is domiciled elsewhere)
- Financial Advisors in New York or with clients in New York

NY DFS Best Interest Rule (Reg 187)

Redefines "Clients' Best Interest" for product recommendations similar to other fiduciary rules

- Considering only the interests of the consumer in making recommendations
- Reflecting the care, skill, prudence and diligence [of] a prudent person
- Prominently disclos[ing] in writing limit[ations in] the range of policies recommended

NY DFS Best Interest Rule (Reg 187)

Redefines "Clients' Best Interest" for product recommendations based on evaluation of…

- All Products, Services & Transactions Available
- Relevant Suitability Information
- Justifiable Costs, Reasonable Performance & Appropriate Risk

Ethical Alternatives to Illustration Comparisons

- NO illustration comparisons in trust/client file
- Insist on Detailed Expense Pages (see handout)
- At a MINIMUM, compare costs & performance SEPARATELY
- Benchmarking is well-established & common in the financial services industry

Are Internal Costs/Expenses Important?

- UPIA Section 7 requires cost examination, investigation
- FINRA Rule IM 2210(d) requires cost, expense disclosure
- NYS DFS Reg 187 requires justification of costs

What Does Morningstar have to say about expenses?

- "How often did it pay to heed expense ratios? Every time."
- "The expense ratio is the most proven predictor of future fund returns."
- "If there's anything in the whole world ……. that you can take to the bank, it's that expense ratios help you make a better decision. In every single time period and data point tested, low-cost funds beat high-cost funds."
- "Morningstar Overhauls Influential Ratings System-- Investment research firm will put bigger focus on investors' costs"

- **Do you think costs/expenses are equally important in life insurance?**

Ethical Alternatives to Illustration Comparisons

- Define(d) Illustration comparisons inconsistent with duty to exercise care, skill, prudence and diligence
- Benchmarking costs SEPARATE from performance is …
  - Well-established, common & proven
  - Consistent with NY DFS Reg 187
  - FINRA Reviewed

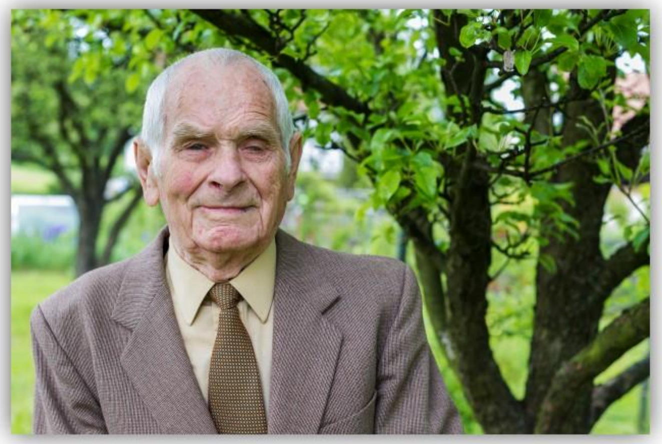
Elder Law Planning

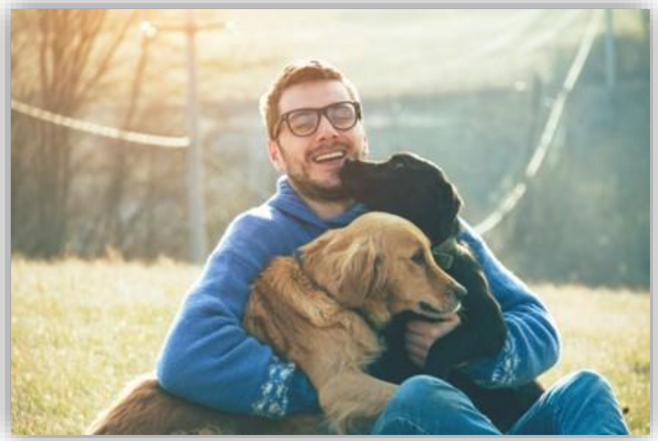
Peter Strauss
Senior Partner

PIERRO, CONNOR & STRAUSS, LLC
Trusted Counsel

Let's Not Forget About The Generations Above And Below Jim & Karen

- Jim's father: Gerald, age 85, widower
- Karen's mother: Mary, age 79, widow
- Jim's special needs son: Thomas, age 21





The Case Of Karen's Mother Mary

- Your materials contain facts about Karen's mother Mary, age 79.

- Mary is "losing it," according to her daughter.

- On advice of counsel and a care manager, and because of Mary's resources, it is advisable to seek Medicaid.

- Home care aides could run from $75,000- $100,000 a year.

Mary's Income and Assets

ASSETS	
Co-Op- Nassau County, Garden City	$600,000
CDs	$120,000
Checking/Savings	$ 30,000
IRA	$125,000
Total	**$875,000**
Income	
Investment Income- CDs	$960/ month
Interest Savings	$160/ month
Social Security	$1,800/ month
Min required Distribution- (MRD)	$704
TOTAL:	**$3,624**

Jim and Karen's Options For Assisting Mary

- To what extent are Jim and Karen willing and able to provide financial assistance to her mom?
- What kind of care should Karen obtain for her mother now and in the foreseeable future?
  - Medicaid Home Care or private pay care?
  - Assisted Living?
  - Nursing Home down the road?
- Should Karen have purchased long-term care insurance for her mother?
- Should Karen create a supplemental needs trust for her mother?
- Can Karen achieve any tax savings for her support of Mary?

Medicaid- The Payor of Last Resort

- "Medicaid" was created in 1965 by the same legislation that created the Medicare program. Medicaid is a health insurance program for the poor.
- To be eligible:
  - You can own no more than $15,450 of "countable" assets (In most states only $2,000)
  - Be a resident
  - Be "medically needy"

- Certain property is exempt (not countable) in determining an individual's eligibility including
  - Your home – subject to cap on the value of the equity of $878,000.
  - An automobile
  - Essential personal property
  - Funds in qualified deferred compensation plans if you are in payout status

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Gifting Assets to Qualify for Medicaid

- Since Medicaid is a "means tested" entitlement program, there will usually be a period of ineligibility (the "penalty period") if the applicant "transfers" assets (i.e., give away without receiving something of equivalent value

- Transfer of Asset Rules on or after February 8, 2006 (effective date of Deficit Reduction Act of 2005 – "DRA") provide:
  - 60 month look-back period
  - Must be in a nursing home, otherwise eligible and file an application

Creating Medicaid Eligibility For Mary

Is Medicaid for Mary appropriate?

- Restructuring assets so Mary is financially eligible - $15,450 total asset allowance
- Using a Medicaid Asset Protection Trust
- Dealing with her co-op, stock account and IRA
- Protecting Mary's income using a Pooled Trust
  - Total income $3,624
  - Mary is allowed to retain $879/month
  - Excess income, $2,745
    - Transfer to pooled trust on a monthly basis

Medicaid Asset Protection Trust

Mary

Assets

Income

- Karen is Trustee – manages trust assets
- Beneficiaries
  - Mary – income for life and right to use real property
  - Karen = Remaindermen -inherit when trust ends

Medicaid Asset Protection Trust

Co-Op $600K
Bank Accounts $120K

MAPT

- Income is Mary's if she wants it
- Principal can NOT be given back to her directly, but
- Principal can be given to children or other beneficiaries

Medicaid Asset Protection Trust

KEEP OUT

Exempt Amount-$15,450

Retirement plans in payout status
IRA $125,000

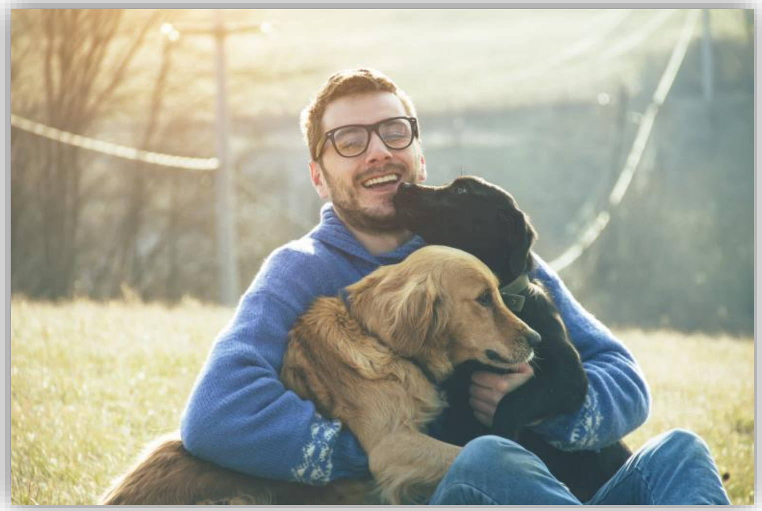
SECURITY FEATURES

- Choose initial Trustee, and change at any time
- Choose initial beneficiaries, and change at any time
- With the consent of all beneficiaries, in some jurisdictions the trust can be "amended or revoked"

Planning for Future Care of Thomas

Age 19, Special Needs

- Thomas, who lives at home with Jim and Karen, has no assets of his own
- Consideration should be to whether supplemental security income (SSI) can be obtained
- Jim and Karen's plan must ensure that any portion of their estates to be left for Richard (including assets set aside for Thomas as part of the business restructuring) are protected in a Supplemental Needs Trust
- Make sure Thomas is not the beneficiary of any non-probate assets



Planning for Future Care of Thomas

Age 19, Special Needs

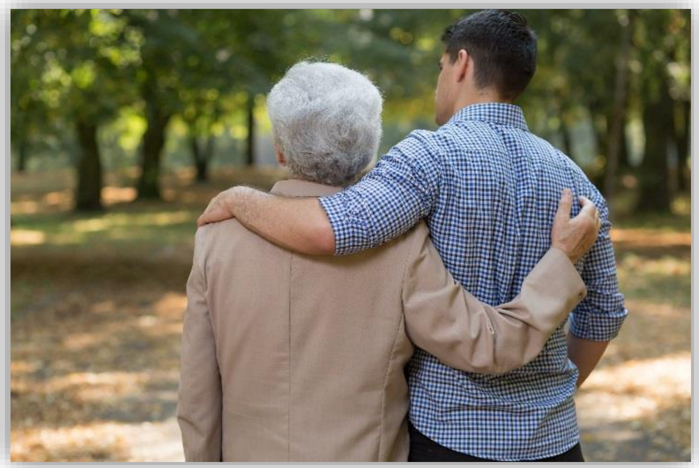
- Does Thomas – now over age 18 – need a **Guardian**?
  - Does Thomas have the **capacity** to execute a Power of Attorney and a Health Care Proxy/Living Will
- The structure to provide for Thomas; the **Special Needs Trust**
- The "Third Party" vs. the "First Party" Special Needs Trust
- **Funding the Trust** – dependent on Thomas' lifelong needs: education, healthcare, shelter

Disabilities Affect One-Fifth Of The Population

- 49 million – 1 in 5 have a disability
- 43% (21 million) are between 18 and 64 years of age
- 54% (27 million) are over 65 years of age
- 1 in 10 have severe disabilities
- 9 million persons have disabilities so severe they require personal assistance to perform the activities of daily living

Good News, Bad News

- While the **increases in life expectancy** and the growth of our older population are positive, there is a negative side. 50% of persons over age 85 need significant assistance in daily functioning.
- **Chronic disease** such as arthritis, hearing impairment, hypertension, heart disease and stroke become more prevalent as persons age.
- The increasing **prevalence of dementia** among older Americans is a major factor; it is estimated that Alzheimer's disease is the cause of 70% of all dementia.



The Failure of Medicare

- MEDICARE is America’s health care program for persons over 65 younger persons with disabilities who are not covered by an employer health insurance plan.

When Medicare was enacted in 1965, President Lyndon B. Johnson stated the following prediction of Medicare's benefits for the elderly:

- *"Every citizen will be able, in his productive years when he is earning, to insure himself against the ravages of illness in his old age. No longer will illness crush and destroy the savings that they have so carefully put away over a lifetime so that they might enjoy dignity in their later years."*

Planning Ahead: Take Control!

THE FAILURE TO EXECUTE ADVANCE DIRECTIVES FOR *HEALTH CARE DECISION-MAKING* AND *PROPERTY MANAGEMENT* WILL RESULT IN LOSS OF

INDIVIDUAL CONTROL AND AUTONOMY

- Persons with **little knowledge of a patient's wishes** may become the decision maker
- A court **appointed guardian** may obtain the right to make end of life decisions
- The person who may be **appointed guardian** or be recognized as the **"surrogate"** may not be the person the incapacitated person would choose
- A partner in a **non-traditional, loving relationship** may have no authority to make health decisions
- These concerns apply for both health care decisions and financial affairs

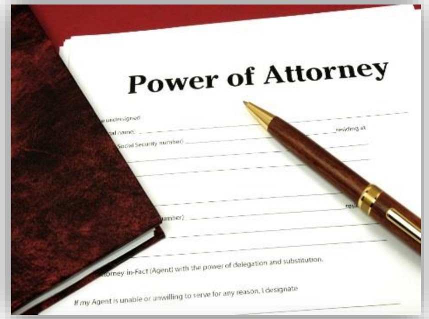
Keep Control By Planning Ahead

Property Management:

- Power of Attorney

- Trusts

-Joint ownership
(usually not a good idea)



Making Decisions At The End Of Life - Advance Directives- The Health Care Proxy

- Allows a person to designate a surrogate - the health care agent - by executing a health care proxy.
- Sometimes called a “Durable Power of Attorney for Health Care”
- A competent adult may appoint a health care agent. (Note the use of the word “competency” rather than “capacity.”)

Advance Directives- The Living Will

- Perhaps better called a "Health Care Declaration."
  - *A document which expresses a person's wishes about the type of care and treatment she or he would want or refuse*
- The Health Care Declaration must be honored by the healthcare agent and health care providers, but compliance is spotty
- **Non-compliance with patient advance directives is a serious issue**
- Clients should sign both a health care proxy and a living will (or a combined document)

A Major Issue

Pierro, Connor & Strauss, LLC has added the following language to our Health Care Declaration ("Living Will") form:

- Compliance with My Wishes
- It is my intention that my wishes, as evidenced by this document and my Agent's instructions, be honored by everyone, including my family, friends, courts, physicians and all others concerned with my care. I expect all such persons to be legally and morally bound to act in accord with my wishes, as expressed on my behalf by my Agent. If any hospital or other institution or any physician, nurse or other health care personnel refuses to obey my wishes as set forth herein, I hereby direct my Agent to take one or more of the following actions: (1) commence suit against such institution and/or personnel for all hospital costs, drugs, medical expenses and all other damages flowing from such refusal, including my pain and suffering, (2) not to pay bills for unwanted services from any such health care provider, (3) file objections with Medicare, Medicaid and any private insurance company for payment of such charges and (4) file complaints against such providers with appropriate state regulatory agencies and licensing and professional associations. Assault and battery charges should also be seriously considered.

A Major Issue

Pierro, Connor & Strauss, LLC has added the following language to our Health Care Declaration

(“Living Will”) form:

- I request, but do not direct, my Agent acting from time to time to consult with the persons I have nominated as successor Agents to advise and support the acting Agent in his or her responsibilities and decision making.
- It is my wish that my Agent receive reasonable compensation for the time and effort expended in services provided in connection with enforcement of my wishes as expressed in this Health Care Declaration and the actions described in this paragraph (G).

(Pierro, Connor & Strauss also adds a provision in our Power of Attorney form directing the agent to pay for the expenses of the health care agent to enforce the client’s wishes)

Using Your Life Insurance To Pay For Long-term Care Costs

Accelerated Benefits

- You may be able to draw down the face value of your life insurance policy on a discounted basis to pay for long term care.
- Many insurance companies provide riders allowing for withdrawal of the face value of a policy in the event you:
- Are terminally ill
- Need permanent institutionalization or
- Need ongoing care at home

Life Settlements

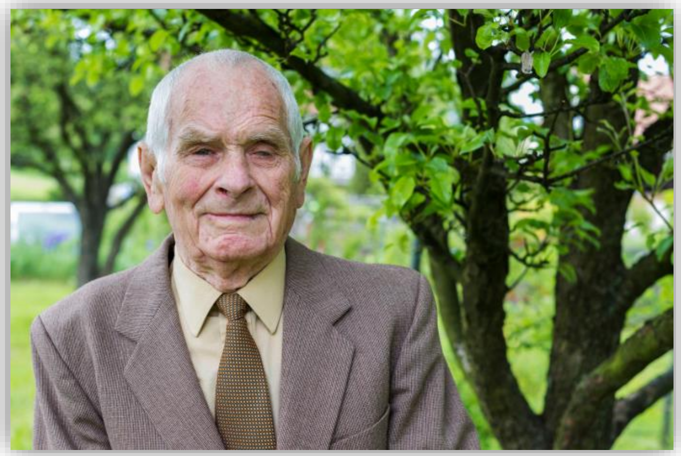
- It may be possible for you to sell your life insurance policy to a private company which will buy the death benefit on a discounted basis

Reverse Mortgages

- If you are over age 62 you may be able to borrow on the equity in your home without having to repay the loan until you sell your home or die.
- Interest accumulates.
- The older you are the more you can borrow.
- Leading program is HUD's Home Equity Conversion Program ("HECM"). Loan can be obtained based home values capped at $679,659. The borrower can obtain a loan based on a percentage of the home's value (no more that $679,659).
- HUD does not permit reverse mortgages on cooperative apartments

Wrap Up: What Did We Learn?

Question & Answer



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Thank You!

Please Fill Out Your Feedback Form

See you at the 2020

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