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Starting Soon....

16th ANNUAL INTERGENERATIONAL ESTATE PLANNING CONFERENCE

November 11, 2021

Welcome! Housekeeping:

1. **Conference materials** can be found at: www.pierrolaw.com/resources

2. **Accountants:** fill out application for four free CPE's. Thanks to Raich Ende Malter & Co. for sponsoring these credits!

3. **Fill out Survey** in your materials after the program - we value your feedback. If you are joining via Zoom, survey will be sent via email.

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PIERRO, CONNOR & STRAUSS, LLC
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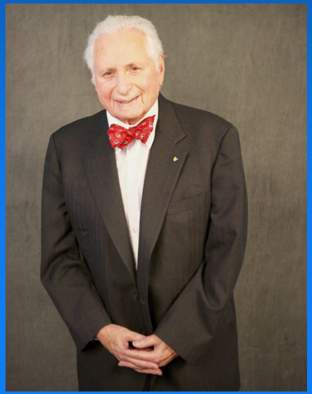
Our Attorneys


Louis W. Pierro


Aaron E. Connor


Peter J. Strauss


Caryn B. Keppler


Harvey Schneider


Victor Oberting


Anthony Khatchoui


Frank Hemming


Lorese Phillips


Theresa Skaine


Hanna Dameron


Kristin Peck

Speakers

Tax Planning - Mitchell Sorkin, Raich Ende Malter & Co.

Estate Planning - Caryn Keppler, Pierro, Connor & Strauss, LLC.

Corporate Strategies – Theresa Skaine, Pierro, Connor & Strauss, LLC.

Wealth Management – Mark Hasenauer, TD Private Client Group

Insurance Planning - Lee Slavutin, Stern Slavutin - 2 Inc.

Business Valuation – Daniel Cooper, Empire Valuation Consultants

Elder Law – Peter J. Strauss, Pierro, Connor & Strauss, LLC.

Meet Greg and Naomi

- Live in Bedford home owned by Naomi
- Met through a Dating App 10 years ago. **Unmarried.**
- Both divorced with four children between them, ages 20-27
- No estate, financial or retirement plan. Outdated wills. Very little insurance.

Naomi, 59 and Greg, 56

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Careers: A Financial Disparity

GREG

- Greg is a civil engineer, NYS Department of Transportation
- Steady income
- Deferred comp retirement plan

NEW YORK STATE OF OPPORTUNITY. | Department of Transportation

INTERGEN

Careers: A Financial Disparity

NAOMI

- Naomi has considerable assets
- BS in Computer Science from NYU and MS in Computer Engineering at Rensselaer.
- Runs a thriving Internet-based company

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Naomi's Business

PHANTOM'S NEST

- Founded 6 years ago
- Minority and Women-Owned Business Enterprise grant (MWBE)
- Sells online games
- PPP Loan taken in 2020 – $1 million

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Business Growth Potential

PHANTOM'S NEST

- Naomi has been approached by two private equity firms in the past six months
- Received indication of interest letters from both
- No intent to sell the business in the near future

The "Kids"

- Naomi has a son Jason, 27, and daughter Julie, 25
- Greg has a son Thomas, 22 and Daughter Sara, 20

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Greg's Son, Thomas (22)

- Thomas attended a "Bring Your Son (stepson) to Work Day" at age 12 and became enthralled with video gaming
- Thomas has interest in the business and has management potential (None of the other children have expressed interest)

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Naomi's Son, Jason (27)

- Jason is on the autism spectrum and receives SSI and Medicaid which pays for the group home in which he resides

Greg & Naomi's Parents

Naomi's Father, George

- 84 Years Old
- Excellent Health
- Successful Engineer Career
- Net Worth $4.5 Million

Greg's Mother, Mavis

- 86 Years Old
- Declining Health
- In Need of Home Aides
- Home Valued $225,000
- Other Assets: $175,000
- Income: $1,250/month

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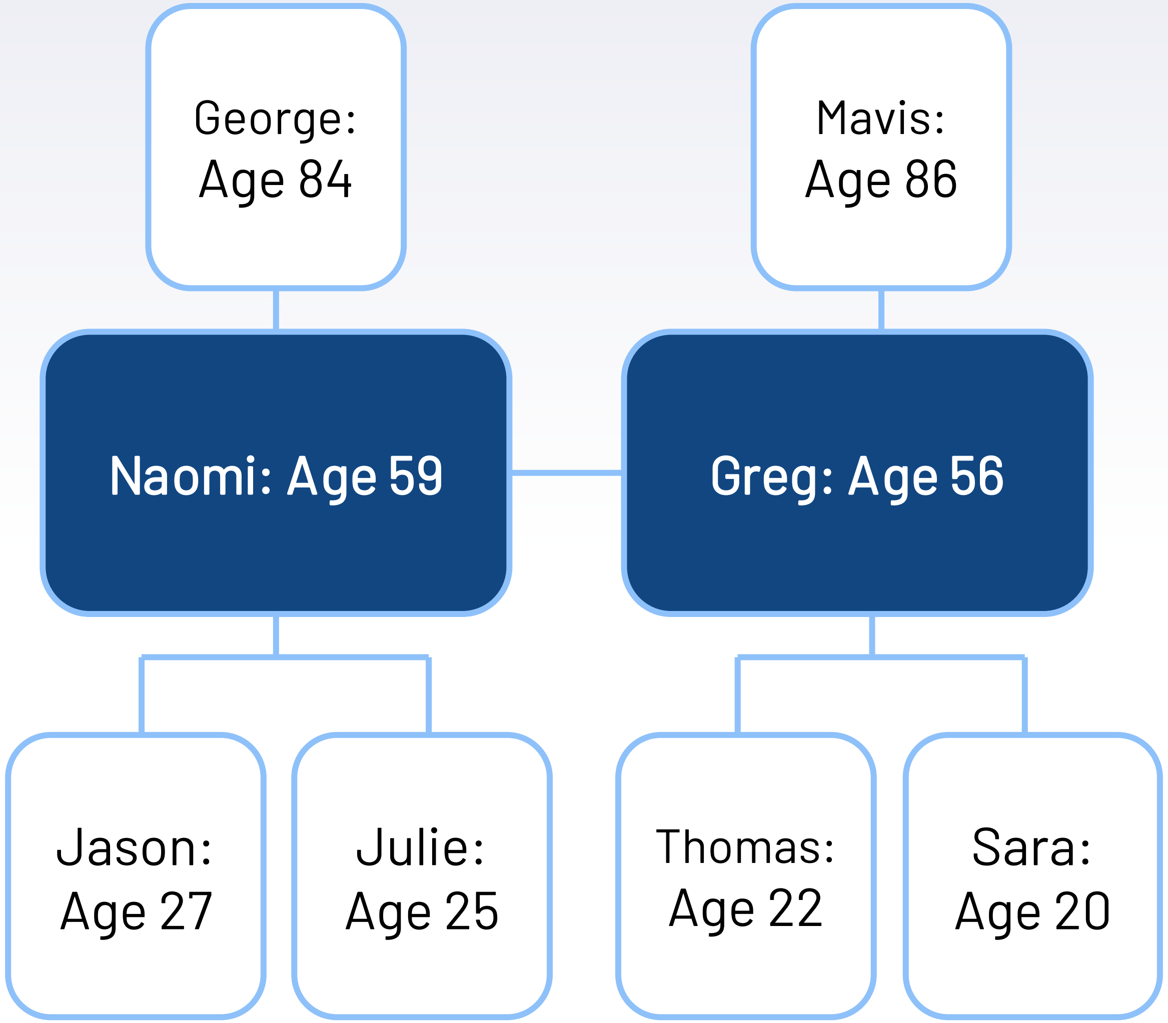
George:
Age 84
Mavis:
Age 86
Naomi: Age 59
Greg: Age 56
Jason:
Age 27
Julie:
Age 25
Thomas:
Age 22
Sara:
Age 20

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Asset Overview: Naomi/Greg

INCOME

Naomi	$1 Million
Greg	$120,000

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Asset Overview

NAOMI

Bedford Home	6MM (Mortgage $1.5MM)
Phantom's Nest LLC (Sole Owner)	18MM (2019 value)
Liquid Assets (Investments/Cash)	800K
Life Ins. (Whole Life)	500K (Cash Val. $80K)
Life Ins. (20 yr. term, 2015 purchase)	1MM
401K (Managed by TD Wealth)	2.5MM

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Asset Overview

GREG

▸ Deferred Comp	2MM
▸ Condo in VT Near Stratton	$475,000
▸ Liquid Assets (Investments/Cash)	150K

Greg & Naomi Planning Concerns:

- Unsure of how much Naomi's business is worth
- Worried about the economy and pandemic impact
- Worried about expected tax changes under a Biden Administration
- Concerned about their lack of retirement and estate plan

Naomi & Greg's Goals

- Come up with a Plan and build a team to carry it out
- Maximize wealth, minimize tax and risk
- Secure financial future
- Create business succession plan for Naomi
- Provide for Mavis and Jason
- Create a legacy for future generations

INTERGEN

Greg & Naomi Have Hired Our Team Of Advisors

- What are the planning considerations for the Greg and Naomi?
- How will our team meet these goals and provide for multi-generations of the family?

AND IN VIEW OF ALL OPPORTUNITIES AT HAND, THIS COUPLE ALSO WANTS TO KNOW: **SHOULD THEY GET MARRIED?**

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16th Annual

INTERGENERATIONAL ESTATE PLANNING CONFERENCE

Tax Planning For Individuals & Businesses for 2021 and 2022

Mitchell Sorkin, CPA, MBA, PFS
Raich Ende Malter & Co. LLP

November 11, 2021

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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

2021 WHAT HAPPENED?

- Democrats take control of Congress and the Presidency
- 1. Proposed Increase in Taxes to pay for social programs and infrastructure. Waterdown in the Build Back Better Act
- 2. 21 States follow IRS Notice 2000-75 and adopt
- entity level state taxes
- 3. PPP 2^{nd} Draw and Forgiveness
- 4. Employee retention Credit "ERC" expanded
- 5. Hurricane Ida Federal and NYS extensions

Planning for Phantom’s Nest LLC

PPP loan- The Company received a PPP loan and has applied and received Forgiveness. Not taxable for federal or NYS purposes. Some States don’t follow this treatment. Phantom didn’t qualify for the second draw because their revenues were up.

ERC (Employee Retention Credit)- Upon review it appears the Company is eligible to file refund claims for 2020 because they were not able to operate in the same capacity after March 13, 2020 in the same way as in 2019. This credit was expanded for 2021 but they did not qualify because their receipts increased.

Accrual to Cash basis- Since Phantom’s sales are under $26 million they may consider switching from accrual to cash basis.

Transfer of ownership to children- Before the Company increases in value it may be a good time to transfer some ownership to children. Would need to address Thomas (stepson) who is involved in the business and Jason (would not be wise to have him as an owner) and Julie who has no interest in the business.

Additional considerations for Phantom's Nest LLC

Retirement Plan- To attract employees, provide for retirement income for Naomi and reduce taxes, Phantom should consider a retirement plan.

Research and Development credits- Would need to evaluate taking the R & D tax credit not only for this year but could file amended returns for prior years. The deduction for R and D expenses will now need to be capitalized and amortized over 5 years starting in 2022. This may be deferred!!!!!

NYS Passthrough Entity Tax "PTE"- Effective 1/1/2021 NYS passed its version of the PTE tax with the election to be made by 10/15/2021 for 2021. Thereafter the election to be made annually by March 15. Does not apply to Single Member LLCS or sole proprietorships. Would need to convert to a partnership by giving an interest to Thomas 1/1/22. This would allow Phantom to effectively pay the owner's personal NYS taxes at the Company level and obtain a tax deduction for federal purposes and avoid the SALT limitation. This may open the door for investment partnerships.

NYS Mandate for NYC Employers. Many states are requiring employers to adopt and maintain retirement plans for their employees. NYS adopted this provision for NYC employers of 5 or more employees. Needs to be in place by 1/1/23, but it is effective immediately. Waiting for further guidance and how it applies to NYS employers other than NYC employers

Sales Tax issues. As the result of the Wayfair case, state tax law changes and economic nexus rules, the Company needs to determine any exposure for sales taxes relating to sales to any state. In addition, in some states \that have business privilege taxes, companies are not protected. The sale of software applications, even delivered by electronic media, is always a challenge whether it would be subject to sales taxes

Qualified Business Activity Income ("QBAI"). The sale of the software products will qualify Phantom to take advantage of the QBAI deduction, which reduces income by 20% and taken on the individual owner's personal return

Business income not subject to the Net Investment Income Tax

Employees Working From Home

- **Telecommuting employees-** Many of the Company's employees have been working from their home in different States. The Company is concerned whether they will be treated as doing business in those States. Each State has an economic nexus provision. Just having an employee work in different States may not raise it to the level of having Phantom being considered doing business in that State. However, it may still be subject to minimum taxes. The good news is that New Jersey will not treat the Company as doing business in New Jersey. The bad news is that New York will treat those employees as working from home for the convenience of the employer and still treat them as if they are working in New York.

The 1202 Deduction????

Since Naomi does not want to sell the business until she retires, we may want to suggest having the LLC become a C corporation. If the business is considered a small business and she holds on to the stock for five years, she can avoid paying tax on the higher of 10 times her investment or $10 million. **Hold that thought!!!!**

Individual Planning for the Naomi and Greg

Consider paying down the mortgage to $1 million. Only the interest on the first $1 million is deductible. The maximum mortgage interest deduction is now on the first $750,000 for mortgages first taken out in 2018.

Consider changing domicile to Vermont? As the result of technology and company's management Naomi can work from the Vermont home. If they spend more than 183 days out of NYS and can endure the colder winter, they could save taxes on their non-NYS source income.

Income shifting to family members. Need to explore shifting income to children to take advantage of their lower brackets. However, this is tempered by Social Security taxes

Individual Planning for Naomi and Greg

- Should Naomi and Greg get married- Considerations
  - When one spouse makes a lot more money than the other spouse, they can take advantage of the lower brackets.
  - If they are married for 10 years the lower income spouse could collect one half of the other spouse’s social security benefits.
  - When one spouse dies the other spouse could collect the other spouse’s Social Security if it is higher.
  - Divorced spouses could collect from their previous spouse social security if they were married for 10 years.
  - Estate and gift tax considerations

Coop Taxes throw in The TCJA of 2017 reduced the real estate and income tax deduction to $10K. However, there was an issue whether the real estate taxes passing through to individuals under IRC 216 were also limited. Commentators felt that this had to be addressed via a technical correction, but the IRS has privately indicated that the limitation applies. First taxpayer in our firm is now being audited. The Build Back Better Act specifically treats COOP real estate taxes as part of the limitation effective 1/1/21 but it still leaves open whether the prior years are covered or not!!! Stay tune!!!

What's In The Bill Now - Tax the Rich!!!!

15% minimum corporate tax on very large Corporations.(Over $1 billion in income)

1% surcharge on corporate buybacks for public companies

Global minimum tax of 15%.

Tax surcharge 5% rate above $10 million in AGI and 3% surtax on income above $25 million. Thresholds for trusts $200,000 and $500,000.

Apply the 3.8% Net investment income tax on income from business income on taxpayers earning over $400K (single) and $500K (joint)

Continue limitation on excess business losses.

IRC 1202 limitation back to 50% for taxpayer's with AGI more than $400K.

R & D capitalization rules deferred one year.

Excess business loss limitations would be permanent

SALT limitation increased and extended. Coop real estates included.

Why is Everyone Running to Their Estate Tax Attorneys And Accountants?

- 1. Increase individual rates back to 39.6%
- 2. Remove preferential long term capital gains rates of high income taxpayers
- 3. Reduce ability to fund retirement plans and rollover to Roth Iras
- 4. Insurance in insurance trust may be taxed based on premiums paid after enactment
- 5. Family transfers will trigger tax on unrealized gains. GRATS, QPRTS and defective trusts affected
- 6. 1202 deductions removed
- 7. Like kind exchanges limited
- 8. Potential tax free conversion of S corporations into LLCs (this is good)
- 9. Reversal of current estate and gift tax exemption of $11.7 million back to $5 million.
- 10. Phase out of the QBAI deduction early
- 11. Curtail retirement planning for high net worth individuals

UPDATE ON THE TCJA FOR 2021 AND 2022

Individual

Federal top tax rate still at 37% (For 2021 and 2022 over $523,600 and 539,900 for single and over $628,300 and $647,850 for joint filers).

No more exemptions for yourself or dependents.

Higher standard deduction (For 2021; $25,100 joint $12,550 single plus $1,350 if over 65 for married and $1,700 unmarried).

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)

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UPDATE ON THE TCJA FOR 2021 AND 2022

Individual

20% of Qualified Business Activity Income deduction allowed as a miscellaneous deduction.

Business loss limitation deferred until 2021.

Kiddie Tax based on parent's income (unearned income of $2,200)

Charitable deduction increased to 60% of Adjusted Gross income deferred to 2021 can now use 100% but for Cash only donations.

For 2021 on itemizes can deduct $300 (single) and $600 (joint)

Elimination of alimony and moving deductions.(NYS decoupled)

The Secure Act made major changes to the RMD rules. If you reach age 70 ½ in 2020 or later you must take your first RMD by April 1 of the year after you reach 72. The Secured Act also eliminated the stretch IRA with some exceptions. Beneficiaries have to take distributions within 10 years.

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UPDATE ON THE TCJA FOR 2021 AND 2022

Businesses

Passthrough entities allowed a 20% deduction with limitations

Lower corporate rate for C Corporations to 21% and elimination of corporate AMT. (This is permanent). 15% minimum tax on the table.

Transportation fringe of $270 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.

Special 100% deduction in 2021 for meals from restaurants.

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UPDATE ON THE TCJA FOR 2021 AND 2022

Businesses

Employer provided parking not deductible (get rid of the reserve spots)

100% section 179 depreciation for fixed assets and 100% expense allowance for qualified assets up to $1,050,000 for 2021.

Small business are defined as under $26MM 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 2021 from $142,800 to $147,000.

401K contribution limits $19,500 and up to $26,000 if over 50 years old in 2021 will increase to $20,500 and $27,000 for 2022

IRAs at $6,000 and $7,000 for 50 and over.

Defined contribution plans (profit sharing plans) for 2021 is $58,000 ($61,000 for 2022) and compensation limitation is $290,000.

IRC 163(j) limitation will exclude add back for depreciation and amortization

INDIVIDUAL INCOME TAX PLANNING

Transfers to Grantor type trusts can transfer growth to beneficiaries but still have the income taxed to Naomi resulting in a non- taxable gift on the taxes paid by Naomi.

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

BUSINESS INCOME TAX PLANNING

Should a Company revoke it's S election and become a C corporation or go from an LLC to 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%. Here's the deal- Would want to reduce the salary to the shareholders or in Naomi's situation reduce her guaranteed payment to increase the income of the business and increase the 20% deduction. What is reasonable salary.

Maximize retirement plan benefits- Having the Company set up a defined benefit plan still affords the company with a tax deduction and as long as the employee owners receive more than an 80% tax benefit it still makes sense. 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 or in Naomi's situation transfer LLC interest.

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.

Thomas can set up his own company and eventually take over the operations of the existing company by directing new business to his company. This will decrease the value of Naomi's existing company and increase the value of the new company.

BUSINESS INCOME TAX PLANNING

The Company's cost of doing business will increase because of the social security wage increase on employees who earn more than $147,000

Manufacturing Companies 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..

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 an 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).

Custom duty planning for online retailers- How to take advantage of the $800 exemption.

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 Naomi is a material participant she will not be subject to the 3.8% Medicare tax
- Prepaying state taxes no longer results in a tax benefit however IRS just approved Entity level State taxes as deductible (IRS notice 2020-75). NY, CT, NJ along with 18 other States now have passthrough entity taxes that are creditable against partners and S corporation shareholders State taxes.
- 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

16th Annual

INTERGENERATIONAL ESTATE PLANNING CONFERENCE

Questions?

Corporate Planning for Phantom's Nest

Theresa M. Skaine, Esq.
Pierro, Connor & Strauss, LLC

Phantom's Nest LLC

- Wholly owned LLC taxed as a disregarded entity
- WBE Certification from NYS ESD
  - Navy contract early in Company history
  - Commercial gaming contracts are now larger part of Company revenue
    - Allows for consideration of larger pool of potential buyers

Potential Buyers

- Private Equity Firms
  - Naomi wants to retain value and continue working
- Thomas (Step-Son)
  - On management track
  - Recapitalize LLC to allow for purchase of small portion of Company by Thomas

Reorganization of Phantom's Nest LLC

- Recapitalization of LLC Units
  - Change capital structure of an entity to separate incidents of ownership (i.e. voting rights)
  - Operating Agreement is amended to include 2% voting and 98% non-voting interests
  - Possible amendment to Articles of Organization to create manager managed LLC and appoint Naomi manager until retirement

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New LLC Interests

- Naomi owns 100% of Phantom's Nest so 100% of new interests will be initially owned by Naomi
- Naomi continues to hold 2% voting interest
- Create Equity Appreciation Rights Plan
  - Thomas is a participant in the EAR plan
  - Upon a future trigger date (i.e. 10 years, sale of Company, etc.) Thomas can use credit in EAR plan to purchase a portion of the voting units of Phantom's Nest
  - Can include other management employees in the EAR if desired

Operating Agreement and EAR

- At the time of purchase of Units by Thomas
- Include buy-sell provisions to ensure no one outside family or employees can own units
- Preserve wealth transfer to children

98% Non-Voting Interests

- Non-voting interests are sold or gifted to Naomi's BDIT
  - BDIT is a grantor trust which preserves WBE status
  - Holding non-voting interests in trust allows for value transfer to children
  - Future sale from BDIT can occur with profit paid to Trust – eventually benefits children of Naomi

INTERGEN

Estate Planning for Phantom's Nest

Caryn B. Keppler, Esq.
Partner, Pierro, Connor & Strauss, LLC

2021 Estate and Gift Tax

- Federal 2021 Gift, Estate and GST Tax Exemption
  - $11,700,000 per person
  - Sunset 12/31/25 > reduction to $5,000,000)

- NYS Estate Tax Exemption = $5.93 MM
  - No Gift or GST Tax in NY – opportunity for large gifts
  - However, gifts made within 3 years of death are included. Strong motive to gift early, but how?
  - No State Portability

State Tax Law

- A “Cliff” applies at 1.05% of New York’s $5.93mil. exemption - entire value of the estate is subject to tax
  - Tax on $5,930,000 = $0.00
  - Tax on $6,226,500 = $538,992!!!
  - Use marital, charitable deductions in drafting to avoid the cliff
- 3 – Year throwback rule – gifts within 3 years of death are included in estate

Combined Federal & New York State Income Taxes

Maximum Income Tax Rate

- Federal: 37%
- NYS: 9.65 – 10.90% (2021)
- NYC: 3.6%
- Net Investment Inc. Tax: 3.8%
- Combined: 55.3%

Federal Sunset 12/31/25 = 39.6%

Maximum Capital Gains Tax Rate

- Federal: 20% (28% on collectibles)
- NYS: 9.65%-10.90% (2021)
- NYC: 3.6%
- Net Investment Inc. Tax: 3.8%
- Combined: 38.3%

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$11.70 Million Gift and Estate Tax Exemption
$23.40 Million for Married Couples

REASONS TO USE IT NOW:

1. Reduction to $5 mil. (adjusted) in 2025 or before
2. Remove future appreciation
3. Utilize Grantor Trust "Burn"
4. Historically low interest rates (GRAT's, Note Sales)
5. FLP/LLC Discounts may be disallowed
6. No portability of GST Exemption
7. No NYS Gift Tax, and 3-year clawback

Interest Rate Arbitrage

November 2021 Interest Rates

- Short Term AFR = .22%
- Mid Term AFR = 1.08%
- Long Term AFR = 1.85%
- 7520 Rate = 1.4%

Tax Planning & Interest Rates

Lower Rates Favor

- GRATs
- Sales to IDGT
- CLATs
- Private Annuities
- Split-Dollar Life Insurance
- SLATs
- BDITs

Higher Rates Favor

- QPRTs
- GRITs
- CRATs
- Graegin Loans
- Farmland Alternative Valuation

Generally Neutral

- CRUTs
- CLUTs

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Build Back Better Act

- Original bill would have eliminated many of the tools available to our clients
- Current version does not include the IRS “Green Book” provisions
- The Legislation is not final – and the provisions could be added back
- Trump Tax Cuts sunset **December 31, 2025**

Intentionally Defective Grantor Trust (IDGT) Sale

- An IDGT uses is a transaction whereby a grantor gifts or sells a highly-appreciating asset to the Trust. (Sale is in exchange for a note)
- Trust as Obligor - Seed trust w/ 10% or Personal Guarantees from beneficiaries
- Growth on the assets gifted or sold at discounted rates to the IDGT pass on to the trust beneficiaries free of any gift, estate and/or GST tax.

Intentionally Defective Grantor Trust (IDGT) Sale

- No capital gains tax is due on the sale to the trust because the trust is "defective" for income tax purposes.
- Interest income on installment note is not taxable to the grantor because the trust is "defective" for income tax purposes.
- The "**Burn**" occurs because the Grantor continues to pay tax on any income or gains from assets growing inside the IDGT.

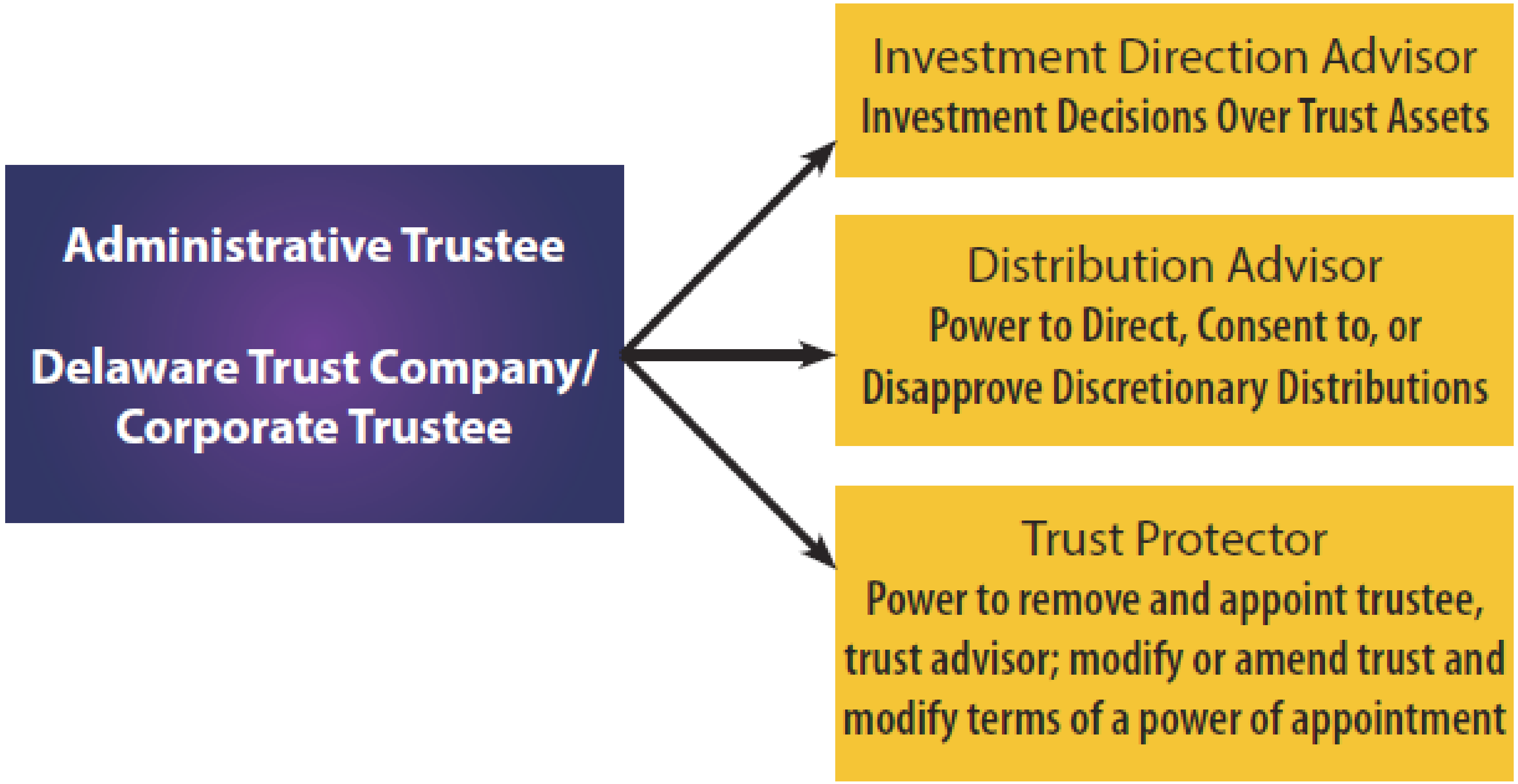
INTERGEN

Structuring the Trust

The Delaware Self-Settled Directed Trust

- Current asset protection
- Multi-Generational Estate Tax Protection – Dynasty Provisions
- Client can be added as beneficiary if necessary
- Client can continue to manage assets through an LLC
- Retain family control

Delaware Directed Trust



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Trust Protectors

- Increasing Acceptance of Trust Protectors
- Irrevocable isn't so irrevocable anymore
- Avoid trust company interference in family business
- Adjust for future tax law changes
- Avoid loss of basis step-up
- Reduces Restrictions on Plan

Spousal Lifetime Access Trust (SLAT's)
(same rules as IDGT's)

- If Naomi and Greg get married – she can gift a portion of the business to him
- Greg and Naomi could then create IDGT's, and name each other as beneficiaries – i.e. SLAT's
- All the same benefits as an IDGT, but access to trust income and principal by each spouse.

Spousal Lifetime Access Trust (SLAT's)

- Use current $11.7 million Gift and GST exemptions of each spouse
- Remove assets for NYS estate tax (3-year rule)
- Gift & note sale to IDGT
- Family "Dynasty" Trusts- In perpetuity
- FULL CONTROL AND ACCESS TO FUNDS DURING SPOUSE'S LIFETIME

INTERGEN

Beneficiary Defective Inheritor's Trust ("BDIT")

- Leverages the benefits of an Irrevocable Delaware Trust while maintaining control and access for Naomi
- BDIT assets are protected from creditors and are not subject to estate, gift or generation-skipping transfer taxes for any future generations while the assets remain in trust
- Major difference – Naomi is a Trustee and Beneficiary

INTERGEN

BDIT – Structure

- BDIT is established by a parent, grandparent, friend (any third party) with a $5,000 gift to the trust
- No other gifts are made to the BDIT after this initial contribution
- Primary beneficiary is the business owner (Naomi) who is given the power to withdraw initial $5,000 contribution
- Existence of withdrawal power causes BDIT income to be taxed to Naomi (grantor for income tax purposes). IRC 678.

Unique Advantages of a BDIT

- Feel the "Burn" – Income taxed to beneficiary business owner (Naomi) rather than the trust, reducing her taxable estate
- Naomi can utilize trust assets and <u>control investments</u> as **Investment Adviser** (excluding life insurance)
- Naomi can <u>control distributions</u> of trust assets as **Distribution Adviser** if limited to an ascertainable (HEMS) standard (not cash value of life insurance)
- An Independent Trustee provides continuity and full administrative support – can distribute for any purpose.

Unique Advantages of BDIT

- Naomi can have a limited power of appointment over trust assets (not life insurance) to name the ultimate beneficiaries
- Interest payments to Naomi on promissory note from sale of business are not taxable because Naomi is considered the grantor of BDIT for tax purposes

INTERGEN

Unique Advantages of BDIT **(continued)**

- BDIT can pay for multiple life insurance policies because the trust owns a business generating significant cash flow
- No annual gifts to BDIT = no need to file annual gift tax returns or send Crummey letters (as required for typical ILIT)
- Naomi can <u>indirectly</u> access cash value of life insurance policy through an independent Delaware Trustee

INTERGEN

Unique Advantages of BDIT (continued)

- Estate Tax "Freeze" – Sale of business removes all future appreciation of the business from Naomi's estate and for all future generations
- Does not require use of Naomi's GST exemption – business was sold not gifted to BDIT

Results

- Retain Control and Use of Assets
- Enhanced Asset Protection
- All Future Growth protected from Estate Tax, Creditors
- Tax on trust income paid by the Grantor – the Burn
- Multi-generational Tax, Divorce and Lawsuit Protection for Children & Grandchildren

Question – What happens to the Promissory Note?

THANK YOU!

PIERRO, CONNOR & STRAUSS, LLC
Trusted Counsel

Louis W. Pierro, Esq.

lpierro@pierrolaw.com

Peter J. Strauss, Esq.

pstrauss@pierrolaw.com

Caryn B. Keppler, Esq.

ckeppler@pierrolaw.com

260 Madison Avenue

New York, NY 10016

(212) 661-2480

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Mark Hasenauer, Wealth Strategist

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Establishing Priorities

- Maintain current lifestyle.
- Wealth transfer to younger generations.
- Tax savings.
- Simplify the family's financial situation.
- Create a legacy.

Liquidity Considerations

- What do Naomi and Greg want or need in terms of liquidity and cash flow during life?
  – What does life look like after selling Phantom's Nest, LLC?
- What are the long-term plans/needs for Jason?
  – Should he remain in the existing group home?
  – What are the current and future costs that need to be planned for?
- What liquidity is needed for their respective/combined family?
  – Are there specific needs/wants for the other children?
  – What is expected in terms of long-term care costs of Mavis?
- What liquidity is needed to continue to run the business?
  – Would the business suffer from business interruption or loss of value?

This document does not provide legal, tax or accounting advice.

Capabilities of Using Trusts

- Family goals/vision for the trust (i.e., letter of wishes).
- Beneficial to create separate trusts for each child and his/her family.
- Centralized investment management.
- Protection of funds from beneficiary’s creditors (including divorce).
- Potential to maintain beneficiary’s qualification for government assistance and benefits.
- Potential exclusion of funds from beneficiary's taxable estate.
- Efficient use of GST tax exemption.

Capabilities 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.

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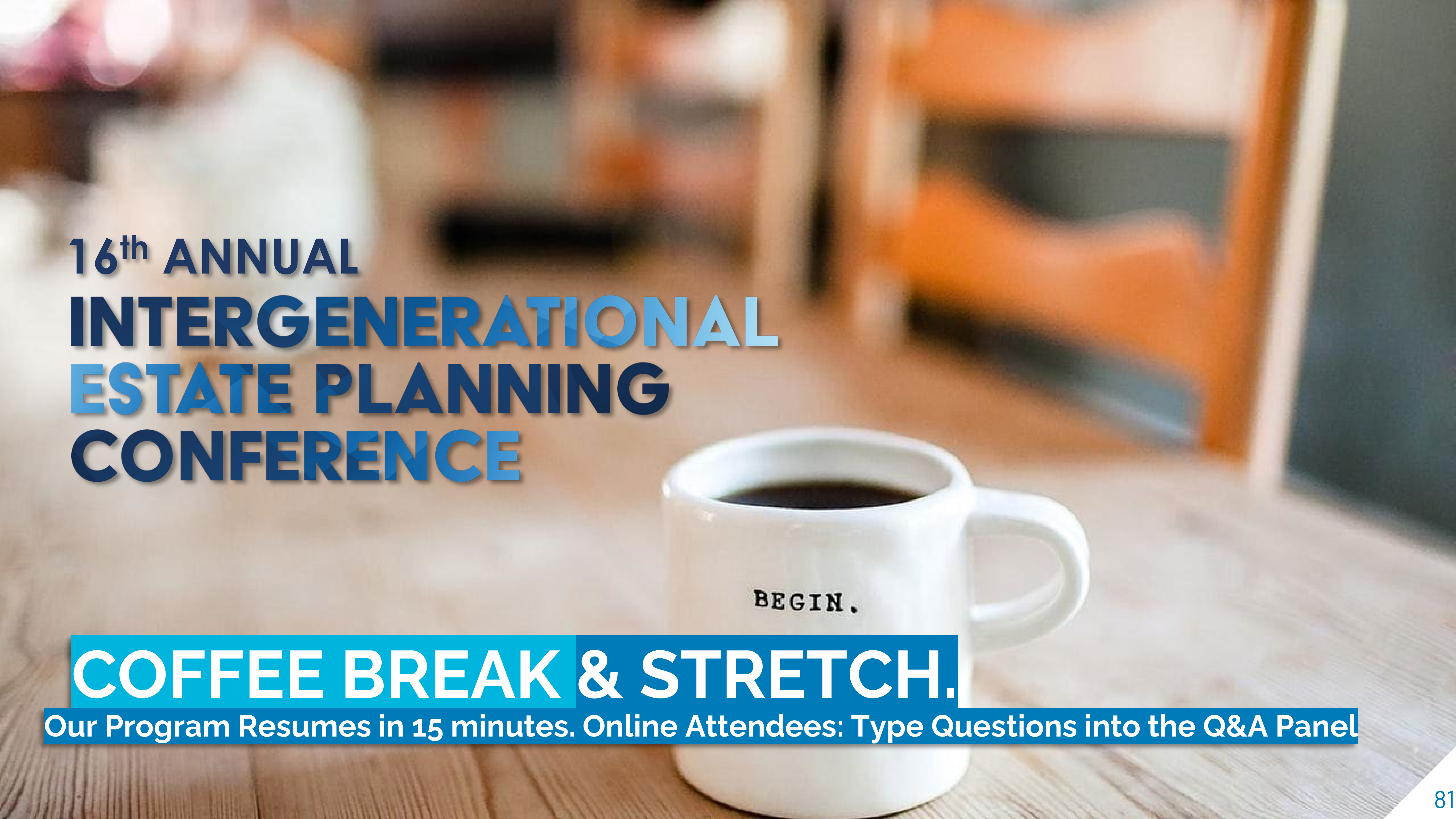
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CRN202410-1133376.

Access to cash values through borrowing or partial surrenders will reduce the policy's cash value and death benefit, increase the chance the policy will lapse and may result in a tax liability if the policy terminates before the death of the insured.

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Buying Life Insurance: The Process

- Identify need, insured and owner of policy
- Determine amount
- Choose suitable product
- Choose financially strong insurance company – Comdex score 90+

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Possible Insurance Needs for Naomi and Greg – Overview

- Naomi's estate plan
  - Illiquid estate
  - Valuable business
  - Autistic son, Jason
  - Daughter, Julie, not interested in business
  - Stepson, Thomas, active in business
  - Partner, Greg – protect (?)
  - Employees – key person, deferred compensation

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Possible Insurance Needs for Naomi and Greg – Overview

- Greg's estate plan
  - Children – Thomas (in Nancy's business) and Sara
  - Mother, Mavis 86
  - Deferred compensation $2 million – life annuity or J&S?
    - Life insurance if life annuity chosen

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Impact of Tax Reform

- Proposed Section 2901 – Grantor Trusts
  - If enacted, will dramatically alter insurance planning
  - Existing grantor trusts grandfathered, but future contributions are not
  - Possible strategies:
    - Prefund trust
    - Loans
    - Use non-grantor trust or LLC to own policy

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Naomi's Estate Plan: Life Insurance Ideas

- Estate value about $26 million (not including increase in business value after 2019)
  - Estate tax liability
    - $7 million tax if exemption is $12 million
    - $10 million tax if exemption is $6 million
  - Immediate liquidity needs
    - Term insurance
    - $10-15 million
    - 10–20-year term
    - Check conversion option

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Naomi's Estate Plan: Life Insurance Ideas

- Permanent life insurance needs
  - Fund special needs trust for Jason
  - Protection for Julie and Greg
  - Buyout agreement for Thomas (?) – he purchases an interest in the LLC when Naomi dies
  - Use whole life and guaranteed universal life
  - Ownership of policy – will depend on enactment of IRC 2901 or not
    - IRC 2901 may eliminate new grantor trusts
    - Split dollar and premium financing may work under 2901 if loans are not "contributions"
  - Fund premiums with gift of LLC interest to ILIT

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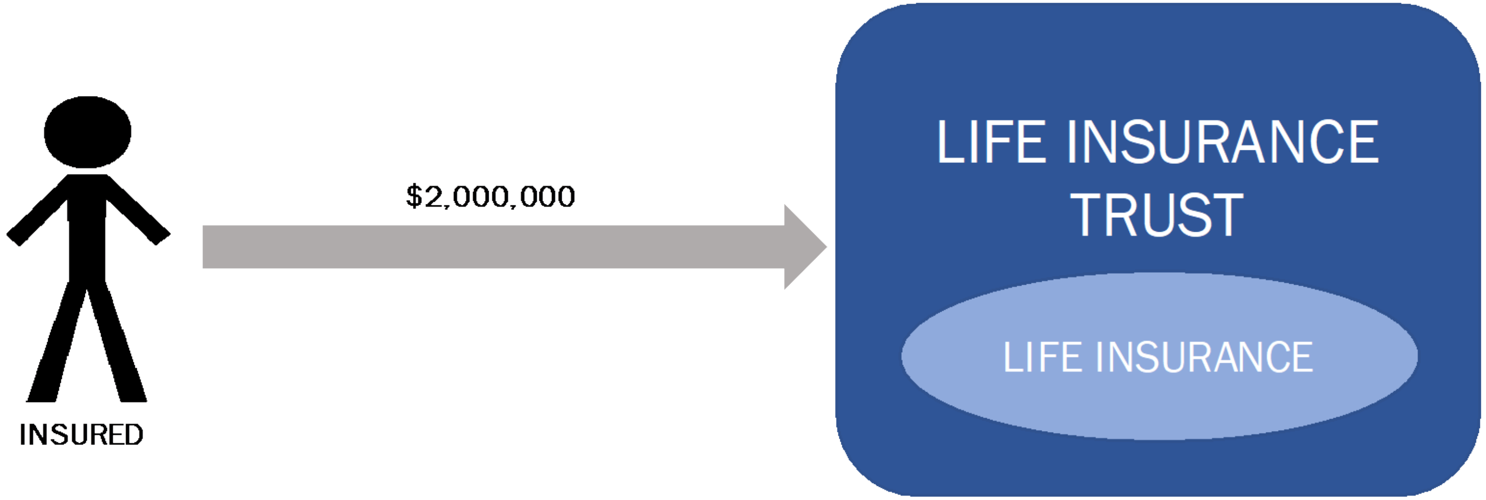
Gifts: Pre-fund Life Insurance



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Avoiding MEC Rules

- When funding insurance policy premiums upfront, planners should be aware of the modified endowment contract (MEC) rules.
  - A MEC can have adverse tax consequences when taking money out of the policy's cash value.

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Split Dollar Plan

- In split-dollar, a donor funds premiums into a trust; upon termination of the arrangement, the donor is repaid premium amounts or the cash value.
- Split dollar plans can be structured as an economic benefit plan or a loan. In today's low interest rate environment, loan arrangements are becoming more popular.
- Employment split-dollar agreements may have income tax ramifications as well.

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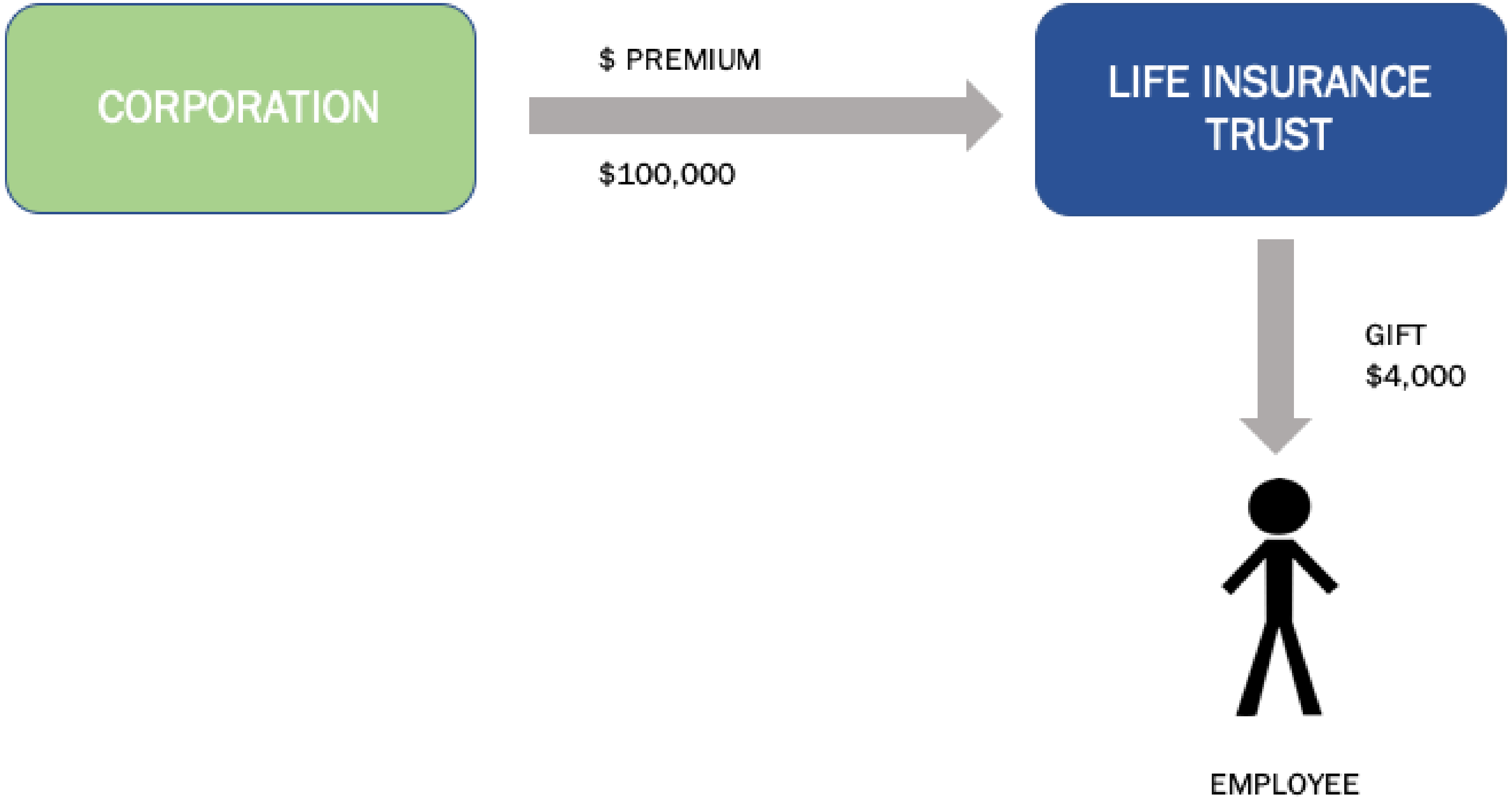
Split Dollar Plan



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Split Dollar Plan

Practical Takeaway:

- Life insurance premiums are generally not deductible by the corporation for income tax purposes.
  - There are three situations where life insurance premiums may be included in a deductible business expense:
    - Retirement plan contributions
    - Group term life insurance
    - Employee bonus/compensation

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Premium Finance Plan

- In premium financing arrangements, a trust owns the policy and borrows money from a bank.
- Each year the premiums are funded by a loan, and loan interest has to be paid and increases annually.
- In today's low interest rate environment, premium financing has become more popular.

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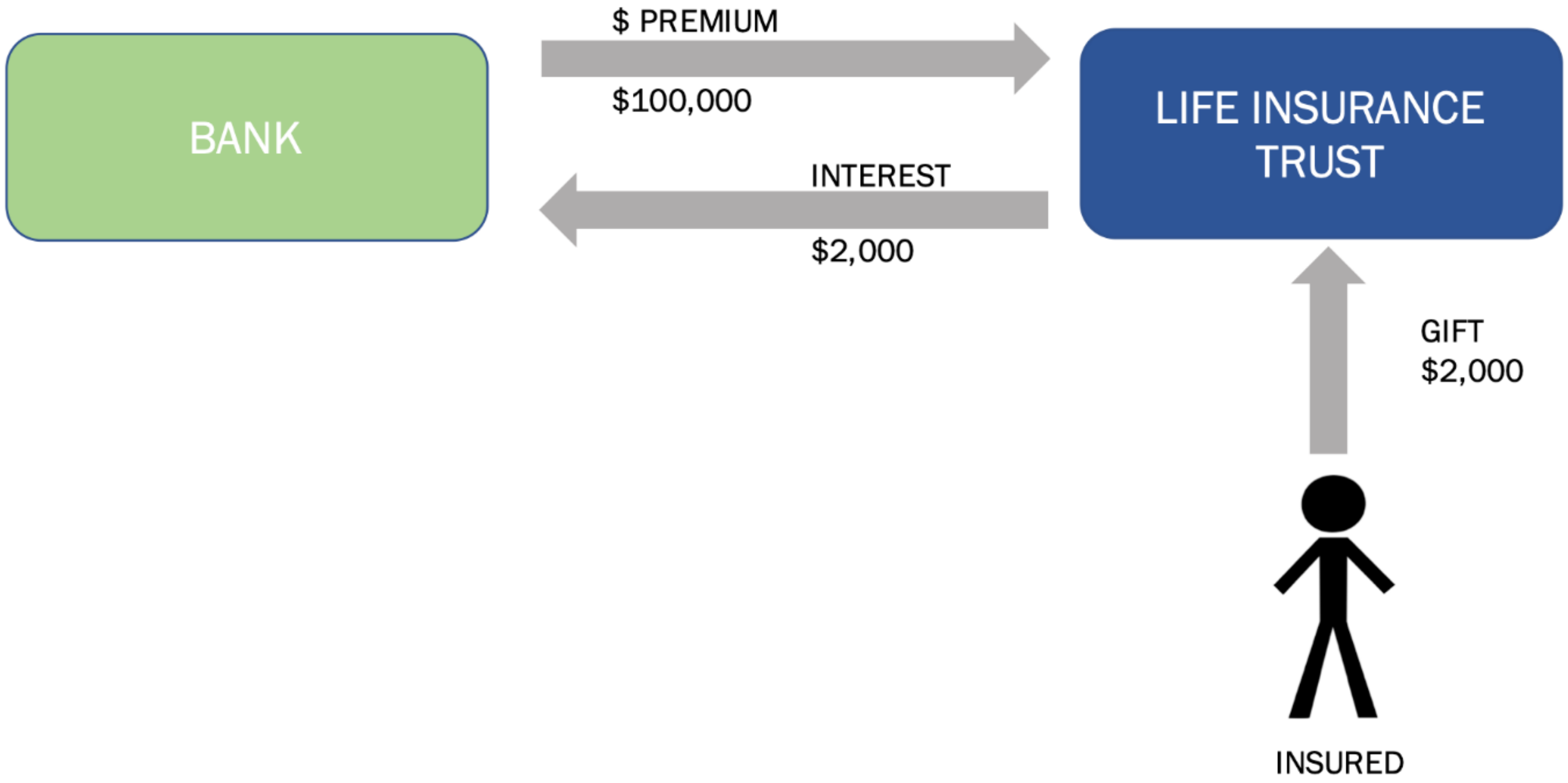
Premium Finance Plan



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Long Term Care Insurance

- Standalone policies almost nonexistent
- Use life insurance with a LTC rider or a hybrid policy

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Long Term Care Insurance

- **Example:** Male, age 49
  - Single premium payment = $50,000
  - Monthly long term care benefit = $3,562
  - Long term care benefit period = 6 years
  - Inflation protection = 3% simple
  - Cash value in year 10 = $40,000

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Recent Life Insurance Developments

- Morrissette decision in Tax Court – Intergenerational split dollar – victory for IRS
  - Estate of Marion Levine pending
- Captive insurance companies – premium deduction disallowed, and penalty imposed
  - Caylor Land & Development Inc. v. Commissioner, T.C. Memo. 2021-30

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Recent Life Insurance Developments

- Buy-sell agreement – insurance included in estate
  - Thomas A. Connelly et al. v. United States et al. U.S. District Court, Eastern District of Missouri, September 21, 2021
- IRC 7702 amended – lower guaranteed interest rates

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Stern Slavutin—2 Inc.

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Lee Slavutin MD, CLU, AEP (distinguished)

Stern Slavutin–2 Inc.

212-536-6062

LS@sternslavutin.com

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Business Valuation for Phantom's Nest

Daniel Cooper,
CFA, Senior Manager, Empire Valuation Consultants

INTERGEN

Phantom's Nest ("PN")

- Given her wishes, what are Naomi's options?

- Strong options:
  - #1| Sell the 98 non-voting units to the trust, now!
  - #2| Recapitalize units (voting and non-voting)
  - #3| Distribute excess cash to herself (more later..)

- #1| Why now to get a valuation for sale to the trust?
  - a. PN is still relatively small
  - b. The "payday" can wait as Naomi to retain PN for 5 years, then exit (sell to PE, employees, or "step" son).

  Valuing now allows lower firm value & higher discount for lack of marketability ("DLOM"), which help as sale locks in the value (any appreciation outside her estate).

How to arrive at PN's firm value?

- Income approach (MORE LIKELY)

  - Outlining appropriate cash flows to discount (based upon projected income statements and balance sheets for PN). Note, PN's forecast would show lots of growth.

  - This followed by selecting an appropriate discount rate for projections. Likely to be a high discount rate given "early-stage" risks of PN.

- Market approach (LESS LIKELY)

  - Select guideline companies (or transactions). More relevant would be transactions (PN is smaller than most public firms).

  - Prior proposed transaction (e.g., indication of interest) would have less weight if buyers were strategic in nature.

Factors that drive the DLOM

- PN is currently small:
  - All else equal, a minority stake in PN with \$18 million in sales supports a DLOM 5% higher than bigger firms (based on medians from study data).

- PN is not being sold soon:
  - PN has a bigger DLOM now given Naomi's plan to wait for her exit (and potential third party/external sale) until 2025 (when she is 64 or 65).

  Bottom line PN is growing. Good time to sell the non-voting units to the trust before firm value skyrockets.

Recapitalizing Units – ins & outs

- What does this mean?
  - Set up two classes of units
  - Typically 98% non-voting and 2% voting
  - The 2% can vote (e.g., ability to control management)

- Voting and non-voting - summary for valuation:
  - Allows an incremental discount (for non-vote status)
  - This discount is 5% +/- (a premium for voting)
  - Allows the bulk of PN's economic value to go to the trust and still have this interest that is sold benefit from valuation discounts.

Distributing the $1 million

- Why is this a option worth considering?

  - Removes a non-operating asset before the valuation (will reduce the value of PN in the appraisal).

  - Allows for other wealth transfer strategies (ones that benefit from valuation discounts).

- What would happen to Naomi's personal balance sheet?

  - Currently $800k in discretionary/liquid.

  - Once PN's cash is out, Naomi will have $1,800k liquid.

Naomi’s personal assets

- With Naomi’s wishes, what are potential options for her?
- Place some of her $1,800k liquid to an LLC*
- Use the LLC as a wealth transfer vehicle to benefit Jason and Julie.

* Investment holding company that is an LLC (could also be family limited partnership). This vehicle would likely be separate from the trust, which is to hold the 98 non-voting units in PN.

How to arrive at the LLC's firm value?

- Asset approach (MOST LIKELY)

  -Adjusted Book Value Method focuses on individual asset values (e.g., potentially $700k in stocks & $700k in bonds).

  - Assuming stocks & bonds in LLC, these would be at fair market values in the statements provided by the wealth manager.

- Discounts by asset class - other items held by Naomi:

  - Bonds or dividend paying preferred – lower

  - Public Equities – potentially larger discounts

  - Private equity LP interests – higher discounts. May be an option to invest into with the $1 million paid out.

All-in LLC Discounts – Empire's view

- Discounts (both asset and the entity level DLOM):
  - Discounts combined (lack of control & marketability) are often 25% to 35% (even if/after latest HR 5376).

  - Again, type of assets put into the LLC impact the discounts supportable.

- Higher discounts at entity level are driven by:
  - Less likelihood of distributions.

  - ownership rights, including information access.

  - ease or difficulty of sale/transfer.

LLC Discounts – what could change?

- Nonbusiness assets eliminating valuation discounts:

  - The Ways and Means Committee's September 13 press release (Subtitle I) proposed amending Section 2031 to clarify *"that when a tax payer transfers nonbusiness assets, those assets should not be afforded a valuation discount for transfer tax purposes."*

  - The October 3, 2021 version of HR 5376 retained this quote but by the 28^{th} it had GONE AWAY!

  - If this item comes back in…. the big impact is that all the discounts discussed for LLC disappear.

Questions ???

Presenter & Empire

- Daniel Cooper, CFA – Snr. Manager

- 15 years at Empire.

- Gift tax appraisals of up to a billion (e.g., GRAT work for Forbes Top 100 member).

- Empire is over 30 years old and one of the largest independent business valuation consulting firms in the U.S. – staff of over 80 people.

- 6 offices: NYC, Rochester, Boston, San Francisco, Long Island & West Hartford.

Elder Law & Special Needs Planning Considerations

Peter J. Strauss, Esq.
Senior Partner, Pierro, Connor & Strauss, LLC

Implementing the Business Plan and the Estate Plan

What If Naomi Becomes Seriously Ill or Incapacitated?

- Corporate governance structure must provide for appropriate succession and persons of authority
- Naomi needs properly drafted Advance Directives
  - Power of Attorney
  - Health Care Proxy
  - Health Care Declaration (“Living Will”)
- Greg also needs these Advance Directives

INTERGEN

Caring for the Older Generation

- Mavis is in failing health
- Financial and health care decision-making is needed
- Paying for her long-term care costs

INTERGEN

Can a Person with Diminished Capacity Engage in Advance Planning?

- Traditionally, physicians have tended to construe capacity as either present or absent
- Today, physicians use a decision-specific approach, whereby the measure of capacity is a person's understanding of a specific decision or task
- The level of capacity needed to perform a task or make a decision will vary depending on its complexity

INTERGEN

Evaluting Capacity

- Can Mavis participate and execute planning?
  - Consider having a physician or psychologist do a capacity test since there is some doubt about whether Mavis can engage in advance planning

- If Naomi were to become ill, can she proceed her planning

- Consider the following guidelines developed by Peter J. Strauss based on current thinking, the rules of professional conduct for attorneys promulgated by the American Bar Association and the State of New York

Guidelines to Determine Who Can Execute Advance Directives

A person would be determined to have sufficient capacity to engage in advance planning or for management decisions if she or he:

- Is aware that she has difficulty with decision making for health care or managing day-to-day decisions at the present time or in the future
- The choice of a fiduciary to assist is reasonable

INTERGEN

Capacity Test (cont.)

- The choice is consistent with the history of prior choices and lifetime decisions
- Can articulate the reason underlying the need to establish a particular legal document
- Can appreciate the consequences of the execution of the legal document
- Important: the difference between Memory and Judgment

Failure to Plan

- Without proper planning, decisions will need to be made by a court appointed guardian under Art. 17A or 81
- Upon the death of parent or family member, assets may pass outright to an individual with a disability and disrupt benefits
- If person with disability is designated as beneficiary of non-probate assets, government benefits (and the assets) may be lost due to restrictive Medicaid laws
- Control by a guardian of assets earmarked for an individual with disabilities may not be immediately available to pay for needed care
- Mavis' money might run out

INTERGEN

Options for Greg & Naomi to Cover LTC Costs

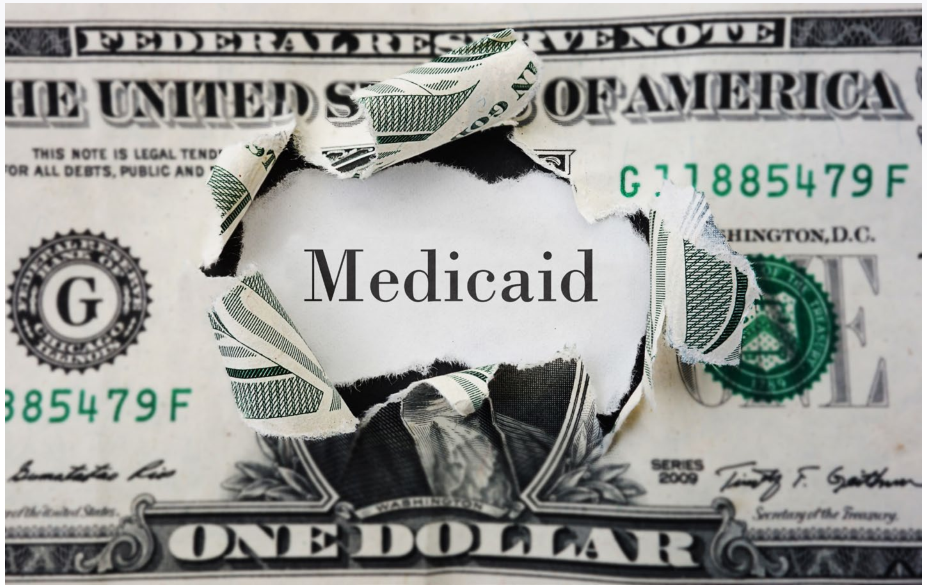
- Private Pay
- Long-Term Care Insurance purchased by Greg or Naomi (when Mavis was younger)
- Supplemental Needs Trust for Mavis, set up by Greg

INTERGEN

Options for Mavis to Cover Her Own Care

- Reverse Mortgage on her Schenectady Home
  - Equity $225,000

- Obtain Medicaid Eligibility
- Create a Medicaid Asset Protection Trust
- Outright gifting to Greg?



How soon could Mavis be eligible for Medicaid?
December 1, 2021!

INTERGEN

2021 Medicaid Eligibility Numbers

Monthly Income	
Individual (at home)	$884 (+$20)[1]
Couple (both at home)	$1,300 (+$20)[1]
Minimum Monthly Maintenance Needs Allowance (MMMNA)[2]	$3,259.50
Resources	
Individual	$15,900
Couple (both at home)	$23,400
Comm. Spouse ResourceAllowance	$74,820 (or the spousal share of 1/2 combined resources up to a maximum of $130,380)

1-The first $20 of monthly income per household will not be counted when determining the eligibility of those Medicaid applicants who are aged, blind, or disabled. Income includes monies coming in each month such as Social Security, pension, rent payments, and disability payments

2 – If Community Spouse makes less than $3,259.50 of their own income, they will receive a portion of their spouse's to reach $3,259.50

INTERGEN

Mavis' Legal Planning for Medicaid

- Income $1,250/ Month
- Assets
  - Home $225,000
  - Other Assets: $175K
  - IRA
  - Stock
  - Savings & Checking

Medicaid Home Care Example

- Step 1 – Mavis creates and funds a Medicaid Asset Protection Trust with her home, stock and a portion of her cash assets
  - IRA is an exempt resource when in pay out status

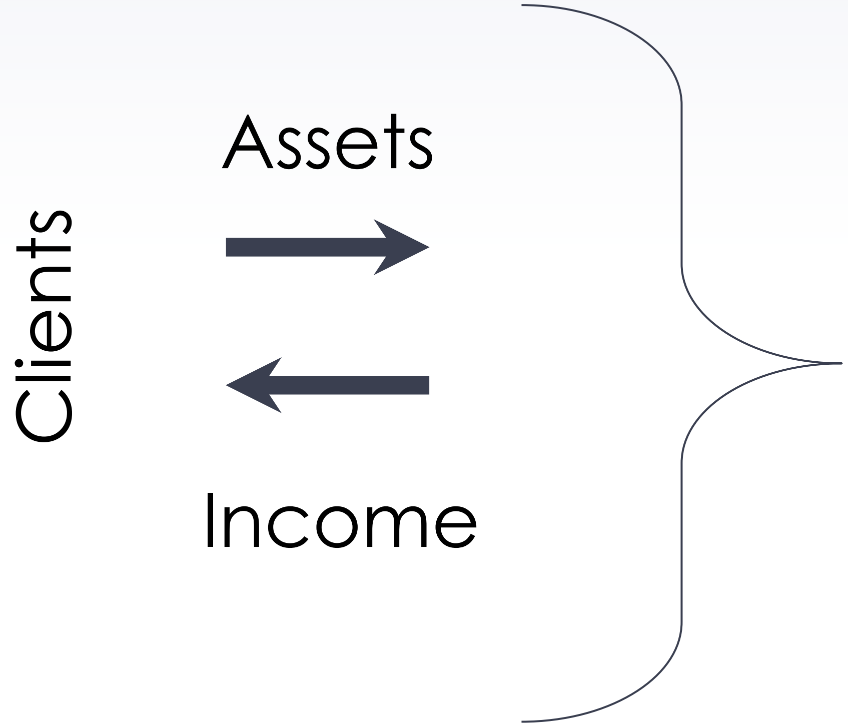
- Step 2 – Mavis creates a Pooled Trust and assigns $346 of income per month ($1,250 - $904 allowed)

INTERGEN

Medicaid Home Care Example

- Step 3 – Mavis applies for Medicaid – What is exempt?
  - IRA in payout status
  - Assets = $15,900
  - Home (transferred to her trust)
  - Allowable Income = $904
- Medicaid Trust and Pooled Trust funded- income and asset protected
- No Waiting Period Under Current Rules
  - New Transfer of Asset Penalty Rules for Community Medicaid in 2022

Medicaid Asset Protection Trust (MAPT)



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

MAPT

- Home
- Bank Accounts
- Stocks & Bonds
- Annuities
- Life Insurance
- Business
- Real Estate

Medicaid Asset Protection Trust

- Income is yours if you want it
- Principal can NOT be given back to you directly, but
- Principal can be given to children or other beneficiaries

INTERGEN

MAPT

KEEP OUT

Cash

Bank Acct.

IRA, 401(k)

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"

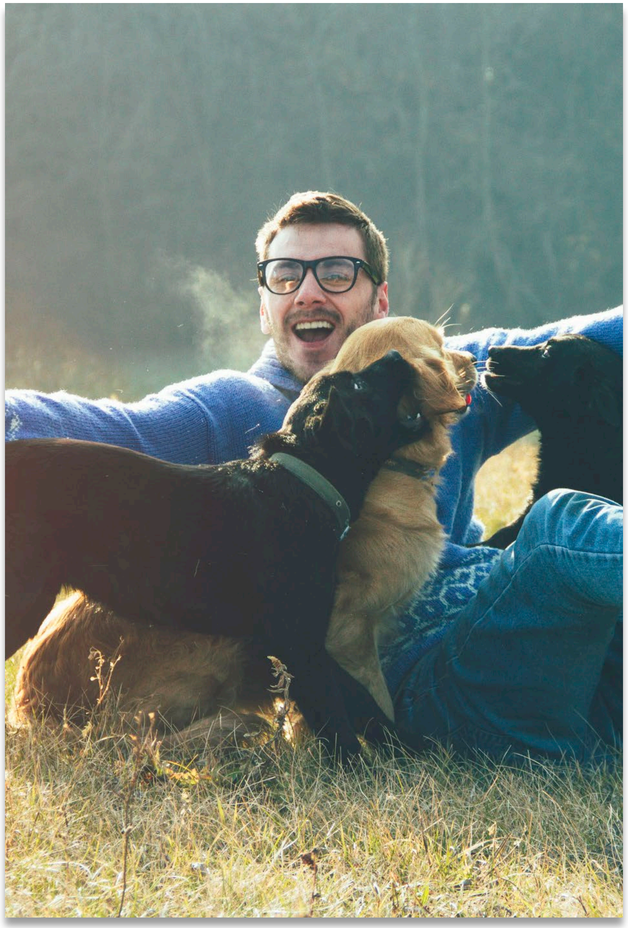
INTERGEN

Providing for Jason’s Needs with a Supplemental Needs Trust

- Jason is on the autism spectrum

- Purpose: support and enhance his quality of life by providing a supplemental source of funds

- Because of certain legal benefits of these trusts, Jason can remain eligible for government benefits that have income and resource tests such as his SSI and Medicaid



Solution:
Naomi Establishes a Third Party SNT

- Created for the benefit of Jason and funded by Naomi
- Properly drafted, the trust will not be considered an asset to Jason which would make him ineligible for Medicaid
- Trust assets may be used as the trust directs at the discretion of the trustee – flexible, easy to administer
- Must be a discretionary trust, not a support trust

Advantages of Third-Party SNT

- NO PAYBACK REQUIREMENT
- Less stringent distribution rules than First-Party SNTs (such as the MAPT)
- Can be incorporated easily into existing planning
- Other relatives or friends may also want to contribute to the trust
- In such case, the creator may wish to establish the SNT during her or his lifetime
- It may be wise for divorced parents to set up the SNT during lifetime

INTERGEN

Special Needs Persons and Sibling

- Jason's future needs may be unclear
- Determining what percentage of Naomi's assets Jason and his sibling will inherit is difficult
- Flexibility is necessary
- Who makes the decision?
- Can the allocation decisions be defended?
- How is the decision made (guidelines)?
- Consider purchasing life insurance to fund share of Jason's needs

INTERGEN

THANK YOU

PIERRO, CONNOR & STRAUSS, LLC
Trusted Counsel

Peter J. Strauss, Senior Partner

pstrauss@pierrolaw.com

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Wrap Up and Questions

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