Montgomery County Estate Planning Council

MCEPC Founded 1962

Charter Member

NEWSLETTER

Fall, 2020, Issue 59

Greetings from our President

Leslie K. Heffernen, Esq., LL.M (tax), CPA

Fellow Members of the Montgomery County Estate Planning Council,

I want to assure you that your Board is hard at work during this 2020-2021 Council year, with a distinct focus on making sure our Council continues to bring you premier estate planning education and networking resources. While our recent meetings certainly look and feel different compared to years past, we are confident that the caliber of speakers and topics will continue to rise to the level of excellence that you have come to expect from your Council. We are working in unchartered waters and with an unclear understanding of what the future may bring as far as rules and requirements for gatherings; however, our goal is to continue to move forward despite the meeting format restrictions. As always, the health and safety of our valued members, guests, speakers, and sponsors will continue to be our priority.

Our meeting calendar is full, and our sponsorship continues to be strong. However, we welcome new sponsorships and meeting ideas. This December will bring with it a Zoom happy hour including a lesson in mixology and trivia. We continue to encourage you to invite other estate planning professionals to join MCEPC and if you have not renewed your membership please do so at www.mcepc-pa.org.

Be well, be safe, and we look forward to “seeing” everyone at our meetings.

Sincerely,

Leslie K. Heffernen

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In This Issue:

WELCOME NEW MEMBERS AND
THANK YOU TO OUR REFERRING MEMBERS!!
Keith Eby—Membership Chair

We extend a warm welcome to our newest members as well as a big THANK YOU to our members who referred them! Please continue to spread the word about the great benefits of MCEPC membership – education, networking, camaraderie!

Eugene N. Cipriani, Esq.

Dean Crouthamel— DRC Financial Services

Ashley C. Froebe, Paralegal - Heckscher, Teillon, Terrill & Sager, P.C.

Patrick Russo, Attorney—Heckscher, Teillon, Terrill & Sager, P.C.

William M. Schultz, CFP® - Wells Fargo Advisors Financial Network

Lee Stiber— Keller Williams Real Estate

Kathrina (Kathy) Yost—Alderfer's

.

New Member Spotlight

Meet new member Eugene N. Cipriani, Esq.

My father, son of Italian Immigrants, was also a lawyer (and later a Family Court Judge) in Philadelphia. When my father died in 2008, Justice Kevin Dougherty, then Administrative Judge of the Family Court of Philadelphia, called my Dad the "Patron Saint of Philadelphia's Children". During the years he practiced (1946 to1969), he instilled in me a love for the Elderly and Vulnerable. I hope to continue my father's work by bringing Ministry to Juveniles in Detention Facilities through Every Youth, Every Facility (www.everyyouth.org), an outreach of Straight Ahead Ministries (www.straightahead.org).

I'd like to be a Professional Executor/Administrator for those who do not have trusted family or friends to serve as that person's Fiduciary. My passion is to help those who are first in their generation to attend college to quickly develop professional and personal contacts that will benefit them. I can't help but think that a candle loses none of its light by lighting another candle.

Since I'm in a third career (this is my 43rd year working), I have gotten involved in reaching out to high school students with STEM programs.

Meet new member Ashley Froebe

Q. As I understand it, you provide Trusts & Estates Paralegal services. What do you like about that role in client relationships?

A. In order to deliver optimal and efficient services to our clients, I find it is imperative to establish a collaborative approach to in gathering the requisite information and tackling complex estate and trust administration issues. I thoroughly enjoy building these relationships with our clients and providing them with thoughtful guidance as they navigate the often difficult circumstances following the loss of a loved one.

Q. Why did you join the MCEPC?

A. Continual growth and education is key to personal and professional development, and directly benefits our clients. I am looking forward to the robust selection of programs with unique and timely topics provided by MCEPC and also getting better acquainted with local estate planning professionals

Musings on a Postpandemic World

Mark McGlone and Michael Moyer

Who Needs Kale During a Pandemic?

Platform shoes. The “Rachel” haircut. Avocado toast. While considered très chic at the time, each ultimately proved to be a passing fad, a sign of their place and time. Will today’s kale smoothie be lobbed into the same bucket as yesterday’s Rachel? During a pandemic, who is thinking about where or how they will get their next kale smoothie?

The COVID-19 pandemic has created a truly unprecedented time, affecting daily lives in myriad ways. We believe it will ultimately effect lasting change in the world and perhaps usher new trends to the fore (and old ones out the door). As far as kale smoothies go, the spread of COVID-19 and ensuing lockdowns caused people to stock up on beans, pasta, flour, and hand sanitizer; here we are nearly seven months into the pandemic and flour mills can’t keep up with demand, but kale is plentiful!

Although it could be argued the term “unprecedented” has been overused of late, we believe its use is justified. Simply consider what’s happened in the economy and financial markets since mid-February: We’ve experienced the fastest bear-market selloff in US history, the fastest recovery into a new bull market in US history, the largest monthly increase in unemployment, and the price of first-month oil contracts even went negative! In periods of such heightened market uncertainty, we feel it is important to take a step back from the day-to-day volatility and focus on the bigger picture — is this a paradigm shift or continuation of preexisting trends? While drinking your leafy greens might be à la mode, perhaps it’s not the time to invest the nest egg in a kale smoothie stand empire. The inevitable passing of fads is analogous to markets that are ever-evolving: investors need to adapt to a changing world or risk getting left behind.

Despite our current peripandemic status, all 50 states now have some form of reopening policies in effect. But that certainly doesn’t mean life is going back to normal — or even a new normal. Indeed, given the recent COVID-19 case load surges in California, Texas, Arizona, and Florida, some states are being forced to reverse their reopenings. So while the market continues to wrestle with properly valuing this kind of an unusual backdrop in the short run, we have to wonder whether COVID-19 has fundamentally and permanently changed the market narrative. In our view, there are five broad categories that appear likely to be meaningfully impacted by COVID-19: consumer behavior, public health response, healthcare, employment trends, and financial technology (fintech) usage. We outline our views on each of these below based on the assumption that there won’t be a vaccine in place and widely distributed through the population in the next year, and some form of social distancing remains in place for the foreseeable future. Of course, any breakthrough therapies to treat the virus, or a vaccine to prevent it, could quickly change the narrative.

Consumer Behavior

Our recent COVID-19-induced recession is the second recession in 10 years and its impact has touched just about everyone — not only here in the United States, but also globally. In our view, the impact of COVID-19 first and foremost is challenging perceptions about how we live, work, and interact, while it’s also changing the interactions among one’s family, social unit, and the community at large. We believe COVID-19 may have substantially disrupted the foundation of our social norms, which will likely translate into changes in consumer behavior.

Routine activities once taken for granted like air travel, automobile purchases, and cruise line vacations are expected to see a growth “bounce”; however, after widespread, mandated economic shutdowns across the globe, any growth rate above zero could be considered a bounce. But for the rest of the economy, COVID-19 will likely leave a lasting impression on Millennials and “Gen-Z” like the Great Depression did for the Greatest Generation. Will the psyche of these younger generations be fundamentally altered and will they eschew certain types of products and experiences? This shift is also occurring at a peculiar time, as social gatherings were already splintering, in our view. With social media, texting, and gaming, society was already shifting away from a focus on real-world, community engagement and toward a more isolated, digital-social construct.

For example, in the olden days you could see a college couple meet at a bar, get married at a lavish wedding with an impossibly large guest list, and then honeymoon at an island resort. In a post-COVID world, many of those activities could look a lot different. Instead of inside at a bar, they meet on an app or outside at the sidewalk outpost of a restaurant. Fewer people will be able to attend that wedding to accommodate social distancing, and as a result, the event could be held in a smaller, more intimate setting. Maybe friends and family even choose to tune in via a livestream on social media.

And that honeymoon to Tahiti will become a road trip to an out-of-state beach. In other words, tourism and social gatherings are likely to remain sidelined until a vaccine, reliable therapeutics, testing, and other healthcare capabilities instill a sense of safety and confidence in consumers to resume long-distance travel and gathering in crowds.

As states reopen, normal activities will be anything but that for some time, and not just experiences that used to be taken for granted like going to restaurants or clothes shopping, but minor daily interactions too. The simple act of shaking hands appears now to be a thing of the past. Giving hugs? Forget about it. Even an elbow bump means you are too close. Meanwhile families still have to keep some sense of normalcy, and parents will continue to promote social programs for their kids

Musings on a Postpandemic World—cont.

(even if digital). From that perspective, we remain confident the global economy will continue to come back online, it just may look different than just a few months ago.

We don't expect economic activity to immediately go back to 100% of the way it was pre-COVID, but could it reach 85-90%? That's a reasonable expectation.

However, that last 10% — largely a function of public transportation and air travel — may never fully recover to its prior form. The good news is that while spending patterns may not fully revert to their pre-COVID norms, it might not automatically translate into meaningfully higher savings rates either. It is possible consumer spending behaviors will evolve into other discretionary items and away from experiences and services, leading to an evolving set of investment opportunities.

Public Health Response

My daughter received her Master's degree in Public Health at a time when graduation ceremonies were in person as opposed to the virtual ceremonies in the current COVID world. The graduation speaker started with the usual thanks to the faculty and staff for the invitation to speak and recognizing the graduates on their accomplishments. The speaker then paused and said, "Congratulations – you have chosen the path of most resistance!" As she went on to explain, public health is often one of the lowest rungs on the government-funding ladder, and most of its work is done in the background. When it is in the foreground, there is often resistance at the individual level and even at the community level. I remember thinking at the time – How could anyone be resistant to public health? Doesn't everyone want to avoid getting sick? What I failed to grasp at the time of the speech, and what we have seen in action over the course of the pandemic, is the combination of a latent distrust in the government or government solutions and what could be labelled "hyper-individualism" in the American psyche.

One of the beauties of our form of government is all power does not rest in a singular central government. The Founders had to pull together different individual states, which could have easily spun into numerous competing separate countries. Instead, the Founders looked to a federal system that focused on those issues the new nation faced together (defense, foreign policy, general trade and commerce) while nearly all the other governmental functions rested with the states and further down into municipalities and counties. Of course, we could debate how far those powers have intermingled and crossed over since that time, but the structure is rooted in federalism.

Public health is an area that is generally local in nature: think of containing an outbreak of meningitis at a college or in terms of required vaccinations before a child enters school. Where we look to both the federal government and the state and local governments to work closely together are in those episodes such as we see now, where there is a new threat that is expanding across the nation. The existential purpose of the Centers for Disease Control is to coordinate the known and incoming information about public health issues and assist local public health authorities with guidelines to contain and quell these outbreaks. Moreover, the buying power of the federal government and/or state purchasing compacts should be used to lower the overall costs of testing, personal protective equipment, treatments, vaccines, and so on.

One of the blessings (and difficulties) of the COVID-19 pandemic has been that it did not hit the nation uniformly nor simultaneously, so the experiences in New York City, Miami, Houston, St. Louis, and Los Angeles (to name a few cities) have been different in timing and severity. As a result, different localities reacted at different speeds and with some greater and some lesser stringencies. Moreover, the guidelines for how to deal with the pandemic evolved as the medical community, public health authorities, and government officials were learning in real time how to slow the disease transmission and treat the sick.

At the same time, the latent distrust of big government and hyper-individualism in parts of the American psyche worked against public health measures, because what may seem sensible to some is considered overreaching by others. (This is the path of most resistance referred to earlier.) Countries that have had more success to date in managing the pandemic have either had more centralized (often autocratic) governments or a higher degree of trust in their respective governments as a protector of the common good, rather than fearing it will act as a potential usurper of individual freedoms.

As we all know, trust is a delicate relationship. Trust often takes years to build and can be wiped away in a matter of moments. Public health measures are often inconvenient in the least and burdensome on the other extreme – especially when someone's livelihood is jeopardized as a result of a shelter-in-place order or a regional lockdown. However, success breeds respect and trust. To the degree that public health directions are followed, transmission rates decrease, cases start to fall, and fatalities diminish, individuals will grudgingly give up some of their resistance and start to trust public health authorities more.

Healthcare

The stress of the COVID-19 pandemic has exposed some issues in how our healthcare system is structured, in how medicines and equipment are sourced, and how care is delivered to the patient. As a result, we believe there are several key areas within healthcare that we expect to draw increased attention in the years to come: inventory and capacity practices, onshoring of medical manufacturing, telemedicine, and electronic health records (EHR).

Inventory and Capacity Practices

From an efficiency standpoint, it may be time to bid farewell to the days of just-in-time inventory, as running with a little bit of excess supply may be preferred over perfect efficiency for our nation's healthcare

Musings on a Postpandemic World—cont.

system.

In the hardest hit areas of the country, face masks and other PPE, ventilators, and intensive care unit hospital bed capacity was severely constrained from the get-go.

In the post-COVID world, it would not be a surprise to see greater investment in hospital surge capacity, healthcare inventory stockpiles, and more specialized healthcare professionals.

Onshoring of Medical Manufacturing

We might also see a small, targeted manufacturing renaissance, particularly for pharmaceutical and emergency medical equipment, due to US' reliance on importing many of these goods from other countries. Case in point: The surprise agreement with the US government and Eastman Kodak to manufacture ingredients for drug vaccines is reflective of this sense of urgency. US foreign dependency is not just limited to China. For example, India produces 90% and 65% of the world's measles and diptheria, tetanus, and pertussis vaccine supplies, respectively. In our view, the days of sourcing these crucial items from abroad are over, as is the practice of relying on just a few suppliers for essential items. However, the onshoring of this manufacturing activity does not appear likely to generate a resurgence in job creation; rather, companies are likely to leverage robotics and automation to fulfill these unique supply needs. The rise of manufacturing automation was already an ongoing trend pre-COVID.

We believe one important component of a successful shift toward onshoring will be properly incenting companies to relocate supply chains from China. Will that come in the form of tax credits to build domestic-based facilities? And will these incentives be enough to offset the likely (negative) profitability impact of bringing production back to the United States? Most important, will the costs of supply chain onshoring be passed through to consumers?

Telemedicine

On March 11, the World Health Organization (WHO) declared COVID-19 a global pandemic, prompting nearly all US hospitals, physicians, and dental offices to close for all but emergency and COVID-19-related visits throughout most of March and April. Given the current pace of state reopenings, the American Hospital Association expects the backlog of postponed procedures to stretch into 2021. Thus the need for prompt, efficient care has shifted towards telemedicine (virtual office visits) as a way of increasing efficiency and lowering costs.

Since the pandemic hit and non-COVID, non-emergency healthcare visits plummeted, telemedicine's adoption rate has jumped markedly. If you can do your checkup or non-emergency visit from home, why go to the doctor's office and risk cross-contamination? If required to come in, either to the office or another healthcare site, conceivably the numbers of patients in the site is diminished, thereby lowering cross-contamination risks. We believe it's possible that telemedicine could increasingly become the standard first-line patient interaction, from basic annual check-ups to previously complex tests for diabetes and certain types of cancer screening.

Electronic Health Records

Coinciding with the rise in telemedicine is the need for EHR. The trend toward EHR isn't new, but it's received renewed urgency as a result of COVID-19. According to the US Department of Health and Human Services, approximately 75% of office- based physicians and 96% of US hospitals use EHR; however, there is still room for significant improvement (akin to the internet in the 1990s versus today). The opportunity to advance EHR has even garnered the unlikely attention of non-healthcare companies, as seen by the collaboration between Amazon.com, Berkshire Hathaway, and JP Morgan.

The three companies announced in late 2018 an ongoing effort to improve digital healthcare records. The rise of EHR, in conjunction with increasing adoption of telemedicine, could also lead to greater amounts of available patient information for "big data" and machine learning analysis, barring privacy concerns. Seeing a leading healthcare specialist via a telemedicine visit, with access to that patient's entire healthcare history — all from the comfort of the patient's home — not only saves time, but keeps costs low in determining the best treatment.

Employment Trends

It's been clear essentially since the start of the pandemic that COVID-19 is forcing companies to rethink how they conduct business and communicate with their employees and clients. The emphasis on phone and email heightened of course, but companies have been rapidly adopting digital and/or web-based communication technologies like Microsoft's Skype, Zoom Video Communications, and others. Using Zoom as a recent anecdote, in 2019 the company was mostly known as one of the year's high-flying initial public offerings; fast forward 12 months and it has become a household brand name for meetings and digital communication. While the need to conduct business in a COVID-endemic world will not diminish, we believe the ease of using digital communication technology could meaningfully impede a recovery in global business travel.

There's also a reckoning taking place in terms of office space, as businesses will likely see significant cost savings as a result of widespread work-from-home policies. Companies may be forced to make hard decisions about physical employment locations, which could mean continued headwinds for the commercial real estate industry, especially in retail and office properties. Social distancing necessities may either dictate a need for smaller office space or a shift in work schedules. Does the concept of rotating teams of employees between a physical office and working from home become a permanent practice? In the

Musings on a Postpandemic World—cont.

absence of a vaccine or other treatment, giving employees a level of comfort on the safety of their working environment may become a new point of differentiation within the labor market.

The retail industry in particular may be especially challenged in this environment, especially brick-and-mortar stores. We continue to see accelerated adoption of e-commerce, including online purchases of basic staples and groceries, which, prior to the pandemic, had seen a stubbornly slow rate of adoption growth. Thus we expect some structural job losses in the traditional retail industry, but they may re-emerge in new job markets, such as gig economy delivery drivers, distribution, and "concierge shoppers" for those willing to pay higher costs.

Fintech Usage

Changes in daily life as a result of the pandemic, combined with the ongoing shift towards e-commerce, will probably cause consumers and businesses alike to increasingly ask, "Can I do this digitally?" We believe the shift toward digital banking and away from transacting in physical currency (i.e., cash) is the natural corollary to this conversation, as digital banking may become the new normal for all transactions.

As we noted, e-commerce trends have accelerated during the pandemic, which has driven a natural shift toward digital payments and cards over cash. However, even now, with the world partially reopening, we are seeing more and more contactless/cashless point-of-sale systems taking the place of cash at the register in physical stores. We are also seeing an acceleration in usage of tap-to-pay cards and phones (e.g., Apple Pay's digital wallet). To put this trend into perspective: Mastercard experienced over 40% year-over-year global growth in contactless payments and Apple Pay saw over 50% year-over-year growth in transactions in their March quarters. As Microsoft's CEO Satya Nadella put it on the company's April 2020 earnings call, "We've seen two years' worth of digital transformation in two months." That's an important point worth reiterating: While these trends were already well in place pre-pandemic, we believe now adoption will be quicker.

We also believe that these are sticky trends. In other words, we expect users that recently adopted contactless and/or digital payment methods will be more likely to continue using them in a post-COVID world. Consider the Apple Wallet or Starbucks app: Once you make the effort to set them up and gain comfort, the odds are high that you continue to use them (especially since they are not only "cleaner" by COVID standards, but they are also in many ways more convenient). This has important implications for the fintech firms driving this change as well as retailers in terms of their willingness (or not) to adapt quickly enough.

Looking beyond payment applications specifically, there are also a few other fintech trends worth noting. Digital financing applications for things like auto loans and home mortgages may become the expectation. Does that lead to new procedures for business transactions (that is, contracts) as well? Money management and wealth management services continue to migrate to digital delivery. Virtual meetings with individual clients and boards has quickly become the norm, with documents viewed on a screen instead of paper. The shift in how technology is used is going to change many of these traditional business models, and companies have had to adapt to changes in client behavior and preferences quickly. Companies with the capital investment wherewithal can stay in the game — others will need to drop from the field.

The Path Forward

The COVID-19 pandemic is a global healthcare emergency that we all face together. Its dramatic shock to the system has exposed weaknesses in our healthcare system, government management capabilities, and economy that need to be strengthened. While we all have had to adapt in some way in the near term, it seems likely the pandemic is going to bring about lasting change as well. Some changes were already underway but are now being accelerated, while others are totally new concepts. Some fads and fashion trends last a few years (or far too long in some cases!), and some traditions, like shaking hands, endure for millennia. At some point they all evolve.

Some industries may be challenged coming out of the COVID-19 pandemic. Small businesses, in particular, face hurdles that may be too high. However, we believe that the same American "can-do" spirit that has propelled the country to overcome previous challenges will be successful in getting us beyond the pandemic and the economy will grow beyond our previous pre-COVID peak.

As we reflect on what's happened and where we might be headed, the concepts depicted on the prior page, catalogue our views on some of the potential winners and losers in the post-COVID world based on what we have observed to date. This is not an exhaustive list, but it is intended to demonstrate the potentially wide-ranging impact of COVID-19 on fiscal and monetary policies, corporations at-large, and markets. Without a doubt, this list will evolve going forward.

Mark McGlone is Chief Investment Officer of PNC Asset Management Group. In this role, he is responsible for overall investment strategy, investment and segment management, investment product, portfolio and risk management, investment solutions, PNC Capital Advisors and PNC Realty Investors. In addition, he is responsible for the development and execution of investment policies, strategies and tactics, serves as chairman of the PNC Investment Policy Committee and is a member of the Risk Management Investment and Fiduciary, Investment Advisor Research and multiple other governance committees.

Michael Moyer is a Senior Vice President and a Senior Wealth Strategist in the Philadelphia market for PNC Wealth Management. Michael leads the deep and dynamic discovery process to achieve a mutual understanding of family, business, and financial goals.

Pennsylvania Enacts the Revised Uniform Fiduciary Access to Digital Assets Act

Jennifer L. Zegel, Esquire and Karen A. Fahrner, Esquire

Technological advancements have dramatically changed consumer habits and how people communicate, store, access, and transfer information, and shop. COVID-19 has further fast-tracked and increased global dependence on digital communications and online activities to conduct personal and business affairs. To address the growing need for guidance surrounding lawful access to digital assets and information by a fiduciary, Pennsylvania enacted Act 72 of 2020 on July 23, 2020 ("Act 72"). The legislation, based on the Revised Uniform Fiduciary Access to Digital Assets Act ("RUFADAA"), took years of perseverance by its sponsor, Senator Tom Killion, and numerous interested parties. Act 72 adds a new Chapter 39 to the Probate Estates and Fiduciaries Code ("PEF Code") and a new "hot power" to Pennsylvania's general power of attorney law under PEF Code §5601.4. This new "hot power" specifies that an agent may access the electronic communications and digital assets of the principal only if the power of attorney clearly grants the agent the authority to do so. Lastly, Act 72 inserts an additional subpart (23) to PEF Code §711 to clarify that all matters pertaining to Chapter 39 are within the jurisdiction of orphans' court. Act 72 is effective 180 days after enactment, or January 19, 2021, and the provisions concerning the additional "hot power" in §5601.4(a)(9) apply to powers of attorney executed on or after January 19, 2021. This article provides a general overview of this new legislation. Except as otherwise indicated, all references are to RUFADAA instead of the corresponding sections of PEF Code Chapter 39.

RUFADAA outlines the legal authority of a fiduciary to access a person's digital assets, including pictures, books, accounts, videos, websites, domain names, loyalty programs, documents, electronic communications, social media accounts, monetized digital assets, digital collectibles, and other digital interests and accounts governed by a Terms of Service Agreement ("TOSA"). Under RUFADAA, digital assets are defined as "an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record." Many digital assets carry sentimental value, monetary value, or personal information. Some digital assets and accounts are not able to be conveyed, such as the iCloud service, as the user only has a lifetime license in the account.

Historically, accessing electronic communications and accounts or information stored digitally was addressed by two federal laws, the Electronic Communications Privacy Act, which incorporates the Stored Communications Act ("SCA") and the Computer Fraud and Abuse Act ("CFA"). The SCA safeguards the privacy of a user and limits accessibility to contents of files stored by service providers and records held about subscribers. The CFA punishes unauthorized entry to computers and data. Neither law addressed access by a fiduciary. RUFADAA sought to clarify resulting uncertainties by providing for access by four different types of fiduciaries: a personal representative of a decedent's estate, an agent under a power of attorney, a trustee of a trust, and a guardian of an incapacitated person's estate.

Access to digital assets that are governed by a TOSA are subject to a three-tiered hierarchy in determining priorities for access by a fiduciary under RUFADAA's default rules. First priority is given to the person named by the user in an online tool (called a "designated recipient"). RUFADAA defines an online tool as an electronic service provided by a custodian that allows the user, in an agreement distinct from the TOSA, to provide for the disclosure or nondisclosure of digital assets to a third person. In some ways an online tool is akin to a beneficiary designation on a conventional asset. Right now, only a few service providers offer the option of an online tool on their platform; however, as this option becomes more available, advisors will need to ensure the use of online tools is cohesive with an individual's estate plan. The next priority is granted to the person authorized by the user in his or her estate planning documents (power of attorney, will, trust, or other record), whereby an individual may choose to either permit or exclude a fiduciary from accessing part or all of the user's digital assets. Finally, if there is no other direction provided, the TOSA will control, unless the TOSA is silent on fiduciary access to digital assets, in which case the default rules under RUFADAA will apply.

It should be noted that a fiduciary accessing the local content of an individual's personal computer or other device is permissible under RUFADAA, provided such entry is not otherwise prohibited. However, an employee's use of an employer's digital assets during the ordinary course of business is not covered under RUFADAA.

In the absence of user direction, a fiduciary might be able to obtain information relating to digital assets by court order directing the service provider to produce such information. However, estate planning incorporating digital asset planning is the best practice to minimize and avoid unnecessary and expensive litigation.

Digital Assets Act– cont.

Section 3908 of the PEF Code, regarding disclosure of a catalogue of the deceased user's electronic communications and digital assets other than the content of such communications, differs from RUFADAA by providing that the issuance of letters testamentary or letters of administration by the register of wills shall have the same force and effect as a finding of the orphans' court, if the personal representative files an affidavit with the register of wills setting forth certain information (for example, identifying the user's email address or account, providing evidence connecting it to the decedent, and a statement that the disclosure of the digital assets is reasonably necessary for the estate's administration). Like RUFADAA, it permits such disclosure unless the user prohibited disclosure of digital assets or the court directs otherwise. By contrast, the provisions of Section 3907 of the PEF Code, regarding disclosure of the content of a deceased person's electronic communications, allow such disclosure only if the deceased user consented to or a court directs such disclosure. The intent behind these provisions in Section 3907 of the PEF Code is to avoid disregarding the deceased user's expectation of privacy relating to the content of electronic communications as provided under the SCA.

Now that Pennsylvania has advanced toward recognizing a more digitalized future, advisors should meet the challenge by informing clients about this new law and planning for the digital present.

Jennifer L. Zegel, Esq., is a partner in Kleinbard LLC. She is the Practice Leader of the Firm's Trusts and Estates Group, a member of the Business and Finance Group, and Chair of the Firm's Blockchain Committee. She focuses her practice in the areas of trusts and estates, business law, and real estate. Jennifer has a special focus in estate and business planning and the estate administration of digital assets, including cryptocurrencies and blockchain technology. Jennifer is a co-creator and co-host of the Digital Planning Podcast and she also launched the Philadelphia Chapter of Diversity in Blockchain (DiB).

Karen A. Fahrner, Esq., is of counsel at Heckscher, Teillon, Terrill & Sager, P.C., and is an avid author, lecturer and course planner for various non-profit and other continuing education programs regarding multiple aspects of trust and estate related topics, including digital assets. In addition, Karen serves as an adjunct professor at Villanova University School of Law and is co-author of Bregy on Selected Provisions of the Pennsylvania Probate, Estates and Fiduciaries Code, (Bisel 2020 ed.).

National Association of Estate Planners & Councils

MCEPC is a member of the National Association of Estate Planning Councils (the "NAEPC") and as a member of MCEPC you are as well. NAEPC serves estate planning councils with goals of excellence in estate planning, education and collaboration.

Among your benefits as a member is access to the NAEPC Journal of Estate & Tax Planning that provides regular updates on important information regarding the ever changing world of estate and tax planning. NAEPC also offers Council of Excellence Awards, professional designations including the Accredited Estate Planner ("AEP") designation, the extensive Robert G. Alexander Webinar Series, LinkedIn social groups, and an outstanding annual conference with national speakers.

How the 2020 and Ongoing Pandemic Can Impact Your Estate Plan

William C. Hussey, II and Franca Tavella

Introduction

With the 2020 Presidential and Congressional elections underway, and the potential tax reform that could ensue if the Democratic Party occupies both the White House and a majority in the House and Senate, it is important for individuals and married couples to consult with estate planning practitioners and other advisors to consider how these changes may impact their overall estate plan. The current federal lifetime exemptions, which are historically high, coupled with the economic malaise precipitated by the COVID-19 pandemic, are not likely to last forever. Accordingly, certain estate planning techniques that would utilize an individual's lifetime exemption or hold in check the size of an individual's federal taxable estate should be implemented sooner rather than later. This article will explore selected gift and estate planning techniques that are likely to gain traction in the coming months, including those that are most beneficial in a low-interest rate environment.

Reduction of Lifetime Exemption Amounts & Other Potential Tax Reform

The current federal estate, gift and generation-skipping transfer ("GST") tax exemption amounts are $11,580,000 per taxpayer (or $23,160,000 for married couples) and will continue to be adjusted annually for inflation under current law. Accordingly, each person may transfer up to that amount before being subject to the federal estate or gift tax, which is currently imposed at a flat rate of 40%. However, the current exemption amounts, which were essentially doubled as a result of the 2017 Tax Cuts and Jobs Act (the "Act"), are scheduled to "sunset" or revert back to the pre-Act amounts on January 1, 2026, unless Congress acts to extend that provision.

Depending on the final outcome of the 2020 Presidential and Congressional elections, reduction of the current exemption amounts may occur much sooner than the sunset date. Specifically, former Vice President Biden has proposed decreasing the current exemption amounts to "historical norms." While it is unclear what the specific exemption amount would be if Mr. Biden were elected, it is anticipated to return to the pre-Act amount of $5,000,000 (adjusted for inflation) at the very least, although a reduction to $3,500,000 is also possible.

In addition to a reduction in the federal estate, gift and GST tax exemption amounts, Mr. Biden has also proposed eliminating the basis adjustment of property transferred upon a taxpayer's death. Currently, the cost basis of such property is adjusted to its fair market value upon death, which minimizes a beneficiary's capital gains tax liability on appreciation in the property's value that may have occurred during the decedent's lifetime. Therefore, elimination of stepped-up basis will result in increased income tax on capital gains for those that inherit appreciated assets and choose to sell the same.

Estate Planning Techniques to Implement Before Year-End

In light of the possible tax reform that the 2020 elections may usher in, and the current economic conditions caused by COVID-19, high net worth individuals and married couples should consider implementing certain estate planning techniques now that can ultimately reduce their taxable estates in the future. Of course, the applicability of certain estate planning techniques will vary depending on an individual's financial situation and overall goals, but perhaps the most immediate and advantageous planning option would be to utilize the historically high federal estate, gift and GST exemptions before they are reduced. Examples of how such exemptions may be used include, but are not limited to, gifting to descendants either outright or via dynasty trusts, forgiving existing intrafamily loans, Spousal Lifetime Access Trusts, and Qualified Personal Residence Trusts.

A Spousal Lifetime Access Trust ("SLAT") is an irrevocable trust that allows a married person to gift assets to his or her spouse and descendants while the grantor-spouse is still alive. The beneficiary-spouse could receive distributions of income and principal from those assets, in the trustee's discretion. Implementing a SLAT is advantageous because it removes the assets from the grantor's estate, but still allows access to the gifted assets through the beneficiary-spouse as long as the parties are married and the beneficiary-spouse is living. Thus, this potential access offers an incentive to spouses wishing to utilize the current exemption amount before year-end but who may be slightly uncomfortable with making a large gift that depletes assets that might (however unlikely) be needed in the future for the care of the grantor and his or her spouse.

Similarly, a Qualified Personal Residence Trust ("QPRT") is another estate planning technique that can help individuals or married couples utilize the current exemption amount and reduce the size of their overall taxable estates. With a QPRT, the

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grantor transfers his or her primary or vacation residence into a trust while retaining the right to live in the home for a term of years; at the end of the term, the home passes to the remainder beneficiaries (often the grantor's descendants) free from gift and estate tax liability. It is important to note, QPRTs lose some of their tax advantages in low interest rate environments such as we have now since the present value of the beneficiaries' remainder interest is determined by the rate prescribed by Section 7520 of the Internal Revenue Code (the "Section 7520 rate").

High net worth clients with large estates may also want to consider implementing estate planning techniques before year-end that are especially effective in a low interest rate environment like that which has resulted from the current pandemic. Unlike QPRTs, intrafamily loans, gifts or sales of interests in a family limited partnership or other family business to defective grantor trusts, Grantor Retained Annuity Trusts and Charitable Lead Trusts are more attractive options at this time.

A Grantor Retained Annuity Trust ("GRAT") is an estate planning technique that allows a grantor to "freeze" the value of appreciating assets and transfer future appreciation on those assets to children and more remote descendants. Essentially, with a GRAT, a grantor contributes assets to an irrevocable trust but retains a right to receive an annuity for a specified term, while earning a rate of return as specified by the Section 7520 rate. Thus, if the contributed property appreciates or produces income that outperforms the Section 7520 rate, which is more likely when interest rates are low, and the grantor survives the GRAT term, then the remaining assets are distributed to the trust's beneficiaries with little to no estate and gift tax liability upon expiration of the GRAT term. In the event the contributed assets do not appreciate as anticipated, then the annuity payments to the grantor will exhaust the GRAT assets and nothing will pass to the remainder beneficiaries; however, there are generally no adverse effects to a grantor's taxable estate in this scenario as minimal gift or use of the grantor's lifetime exemption is made.

Finally, for those individuals who are philanthropically inclined, creating a Charitable Lead Trust ("CLT") may be beneficial. A CLT is an irrevocable trust that pays an annuity to a specified charitable organization for a set term during the grantor's lifetime, and upon expiration of that term, the balance of the trust is available to the trust's beneficiaries. CLTs work best in a low-interest rate environment because a lower interest rate reduces the taxable portion of the grantor's gift to the remainder beneficiaries, and the assets in the CLT may appreciate at a higher rate.

Conclusion

Although the outcome of the 2020 Presidential and Congressional elections is uncertain, the estate planning techniques available now to take advantage of the current exemption amounts and low interest rates are clear. Further, any reduction in the current exemption amounts that could occur as a result of the elections, even if passed during the latter part of 2021, could be made effective as of January 1, 2021. Therefore, individuals should plan accordingly and consider implementing one or more of the above-mentioned strategies before year-end, even if the trusts are not fully funded at that time. This "wait and see" approach will be particularly helpful to individuals after the election because if it becomes necessary to make significant gifts, then the vehicle to do so is already in place and transfers may be properly completed before year-end.

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The Impact of COVID-19 on the Life Insurance Industry

Michael C. DeFillipo, CLU, ChFC

Seven months ago, the lives of millions of Americans were jolted into a new reality because of the global pandemic ("COVID-19"). The effects of COVID-19 continue to ripple through virtually every part of our lives: the health and welfare of family and friends, job security, market volatility, racial inequality, and at home work and learning are just the start of life in the "new normal." Similarly, the impact of COVID-19 on the life insurance industry was rapid, severe, and disruptive. While some of the immediate effects are dissipating, there will be longer term implications to insureds and insurers.

Before delving into some of the specific areas of change, it is important to note that the U.S. life insurance industry is well capitalized and heavily regulated. In pre-pandemic times, updates to underwriting requirements and product pricing changes were announced weeks or months before the changes were set to take place. Clear transition guidelines were published and a runway was established for life insurance professionals and clients to take action in measured but timely fashion.

The marketplace's reaction earlier this year was nearly immediate – several of the largest insurance carriers announced new underwriting guidelines or product restrictions that would take effect almost immediately. The designing, qualifying and implementation of a life insurance strategy is a multi-step process coordinated between various entities. Clients and their advisors adapted to changing conditions as well as possible, understanding that plans either had to be accelerated and/or postponed.

Through this difficult time, life insurance has continued to be an essential planning tool that brings emotional and economic security to individuals, families, and businesses. A review of long existing procedures and requirements and the necessity of change will lead to positive changes and push innovation in the marketplace. The steps taken by the insurance providers were intended to minimize their exposure to known (and uncertain) risks to protect existing and future consumers.

The balance of this article will highlight the key changes and collateral effects caused by COVID-19 on the life insurance marketplace and discuss the longer-term ramifications on the industry and the people it serves.

Medical Qualification and Underwriting Requirements

COVID-19 is a health crisis. Unlike other assets, life insurance is a financial instrument that is based upon the mortality of an individual and therefore requires medical qualification to be acquired. Early in the crisis, the life insurance industry placed significant "blanket" underwriting parameters based on the reasoning that, if infected with the virus, certain classes of individuals would be more susceptible to negative outcomes.

Most carriers (as directed by their reinsurance partners) postponed applications for clients over a certain age threshold, as young as age 70. These postponements took effect immediately regardless of where the potential insured was in the process and their health status. While some carriers have maintained those limitations, many have relaxed the limit to age 80 (and issued coverages to insureds ages 70-79 that were temporarily postponed).

Similarly, "rated" or "sub-standard" insureds, individuals with pre-existing medical impairments that would require additional premiums for coverage to be written, were also immediately postponed.

Subsequently, the guidelines were relaxed to varying degrees. Individuals with specific underlying medical conditions such as heart disease, diabetes, and autoimmune disorders are now being evaluated on a case-by-case basis. As well, carriers that offer underwriting enhancement or bonus programs that improve rate class based on product selection or a crediting system for positive health attributes suspended these advantageous programs and have been slow to reinstate them.

From a procedural standpoint, COVID-19 greatly affected the way in which an individual completed the medical exam and fluid testing requirement. Historically, most situations required a person to have an examiner come to their home or place of business to conduct a limited physical and to take blood and urine samples. Along with the safety concerns of the proposed insured, exam services limited appointments in certain regions to protect their employees.

Insurance companies that were positioned to utilize technology and accelerated underwriting programs, such as John Hancock and Penn Mutual, were able to continue to process applications much more efficiently. The life insurance industry has as a whole has been slow to embrace technological innovation. Penn Mutual's Accelerated Client Experience (ACE) was piloted in 2017 and has gained traction over the past three years. For healthy insureds under the age of 65, for up to $5,000,000 of coverage, it is possible to complete an online application and have an actionable underwriting offer without the need for an

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exam in a matter of moments. The policy can be electronically delivered and payment made through a secure portal. The completely electronic process can be completed in a matter of days. Several carriers are now expanding or improving their online or tele-app capabilities while phasing out the need for an insurance-specific exam if the proposed insured completed a full "executive" physical over the last 12 to 18 months. These streamlined underwriting improvements will continue to make the qualification and purchasing process more client-friendly.

In addition to medical underwriting changes, COVID-19 caused increased restrictions on foreign travel leading to postponements for individuals visiting China or Europe. The postponement periods ranged from 14 to 90 days depending upon the country visited, and then some providers required a doctor visit to confirm no symptoms or active virus.

An individual with a positive COVID-19 diagnosis may acquire coverage after 30 days from full recovery, and with medical records confirming no evidence of current infection and the return of health status to pre-COVID-19 levels. Individuals with known exposure to the virus are also postponed for 30 days. Several companies have added a requirement, after approval but before a policy has been issued, that the insured has not contracted or been exposed to the virus.

After a significant and immediate response to the virus, medical underwriting guidelines and the process for qualifying for insurance has begun to relax back to previous levels. The need for streamlined requirements and reliance on electronic procedures may prove to be a beneficial catalyst going forward. The requirements and procedures of each individual insurance company underscores the need for any potential buyer and their advisors to review not only the features of a policy and its price, but also what qualifying requirements and limitations are in place.

Low Interest Rate Impact Product Pricing and Availability

The economic impact of COVID-19 has been felt across nearly all industries, including the life insurance marketplace. The decision to lower the Federal Funds Rate to near zero has significantly influenced changes to insurance product pricing and availability as well as negatively impacted existing policy performance.

As a highly regulated industry, insurance companies invest their General Account primarily in high-quality bonds and other fixed income-like investments, such as commercial mortgages. The yield earned on this General Account is passed back to consumers (minus spread for profitability) through interest crediting rates or dividends – in this way, the flow of money for an insurance company is very similar to a bank. The historically low interest rates prior to COVID-19 was already asserting negative pressure on General Account yields, which will be amplified by the further reduction of ambient interest rates and increased reinvestment risk.

The industry response to the economic factors - the initial market volatility and interest rate reduction – coupled with uncertainty of the long-term morbidity and mortality effects of the virus was again rapid. Almost immediately, carriers announced reductions in interest crediting rates, dividend rates and index caps for existing and new policies. Below is a brief summary of how the three primary General Account supported policies are linked to interest rates.

- <u>Participating Whole Life</u>: Policies are credited dividends based on the overall profitability of the issuing company, including the return on the General Account and mortality risk. Historically, dividend rates are correlated to the interest rate environment. Mutual companies tend to be the only providers of participating whole life. We expect to see a continuing trend of decreased dividend rates.
- <u>Current Assumption Universal Life</u>: Policies are credited interest based on the investment earnings of the General Account. The "costs" of the policy are the underlying Cost of Insurance charges that are deducted from the cash value. While companies can adjust the cost of insurance charges (up to a contractually guaranteed maximum), a reduction of interest crediting rates is most likely to occur first.
- <u>Indexed Universal Life</u>: Policies are credited an interest rate based upon the performance of a widely available Index over a segment of time (generally 12 months). While the crediting rate is reflective of the Index used, the cash value is part of the General Account and not directly invested in the Index. These policies feature a guaranteed floor (0% or 1%) and have a non-guaranteed cap. The floor and cap are funded by the insurance carrier buying equity call options. The primary funding source for this hedging strategy is the General Account investment return.

Unlike the direct association of the medical impact of COVID-19 (again noting that we do not know the long-term effects on mortality and the subsequent changes to profitability), these crediting factors directly affect existing policies. In-force policy

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performance is and will continue to be negatively affected due to the low interest crediting rate environment. For policy owners and their advisors, policy reviews should be conducted at regular intervals and especially so in the current environment. In addition to running in-force illustrations (projections of policy performance) at current rates, it is advisable to run accompanying illustrations at reduced crediting rates to analyze the potential of further performance erosion.

The type of life insurance that has been most impacted by the low interest rate environment is Guaranteed Universal Life. Unlike the previously detailed policy types, Guaranteed Universal Life provides a contractual guarantee between the premiums paid and a death benefit; policy performance does not adjust over time due to non-guaranteed factors such as crediting rate or cost of insurance charges. This type of policy requires significant reserve requirements from insurance carriers and is, by design, inflexible for both the policy owner and the issuing company. In the environment exacerbated by COVID-19, many carriers have either dramatically increased pricing for new policies (as much as 20% per year) or have decided to discontinue the product line all together. In many cases, insurance carriers are adding shorter duration secondary guarantees to the General Account policies and Variable Universal Life policies discussed below.

These changes to General Account policies have caused an increased use of Variable Universal Life policies. Variable Universal Life cash values are not invested in a company's General Account, but in a Separate Account. The investment risk is borne by the policy owner who selects from a menu of available equity and fixed income mutual fund analogues (Insurance Dedicated Funds). Other than potential changes to the underlying Cost of Insurance Charges, the low interest rate environment has less of a direct impact on policy performance. However, these policies are subject to daily market volatility.

An additional action many insurance carriers have adopted is to limit either the amount of coverage or implement initial premium threshold limitations. Though at first it seems counterintuitive to limit the amount of premium received, these limitations protect the insurance company from having to immediately invest large amounts of money at low interest rates. This size restrictions applies to external 1035 Exchanges, where the cash value from one policy under Insurer A can be transferred, tax-free, directly to Insurer B. This is particularly important at a time when existing policies may be underperforming due to the crediting rate or insurance charges in the current environment.

We do not know the full consequences of COVID-19 and what lasting changes will come to the life insurance marketplace. The life insurance industry has provided death benefit protection for over 200 years and will continue to meet its obligations. With uncertainty about interest rates and market volatility, along with potential changes in tax law, life insurance will remain a vital asset class that provides individuals with more than just death benefit protection. The enormous shockwaves caused by the pandemic reinforce the need and benefits of a well-designed and monitored insurance portfolio.

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November 23, 2020…...Using LinkedIn and Social Media Effectively in your Practice, Bill McCormick

December 3, 2020….Holiday Networking Event

January 25, 2021…. Economic/Market Update, Ed Boehne, Haverford Trust

February 22, 2021... The SECURE Act, Richard Greenberg

March 22, 2021….Hot Topics with the Montgomery County Orphans' Court Judges

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