



2018 Estate Planning Seminar

Naples and Bonita Springs
Florida

Presented by
CUMMINGS & LOCKWOOD LLC



About Cummings & Lockwood

Overview

Founded in 1909, Cummings & Lockwood provides sophisticated legal counsel to both private clients and commercial enterprises. Our clients include individuals and families with inherited and newly created wealth, as well as emerging, middle market and Fortune 500 companies. With nearly 100 attorneys and accountants located in Stamford, Greenwich and West Hartford, Connecticut, and in Naples, Bonita Springs and Palm Beach Gardens, Florida, the Firm has the experience, technology and resources to provide a broad range of trusts and estates, corporate and finance, litigation and commercial and residential real estate services.

Private Clients Practice

Cummings & Lockwood has one of the largest trusts and estates practices in the United States, with a significant private client base of high net worth individuals and families, closely-held businesses, and national charities and foundations. Our private clients attorneys, many of whom have been elected to the prestigious American College of Trusts and Estate Counsel (ACTEC), are experienced in the areas of estate planning and administration; estate, income and gift tax; trust formation and management; executor and trustee services; charitable giving and foundations; special needs planning; probate law; and residential real estate. Whether dealing with recently acquired assets or family fortunes that span generations, the Firm provides innovative strategies and solutions to preserve, enhance and transition our clients' wealth, as well as meet their varied legal needs and personal goals.

Commercial Practice

Cummings & Lockwood has an elite commercial practice with numerous, professionally-recognized lawyers who are experienced in the areas of litigation and dispute resolution; real estate investment and development; banking, lending and credit transactions; corporate acquisitions and divestitures; and partnership, limited liability company and tax matters. Our clients include entrepreneurs, closely-held companies, regional, national and international corporations, hedge funds, private equity firms, financial institutions and not-for-profit organizations.

In addition, Cummings & Lockwood's commercial and private clients lawyers regularly work together to provide entity planning, business succession planning, tax guidance and litigation to privately-owned businesses of all sizes and industries.



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An Overview of the Tax Cuts and Jobs Act of 2017

Top Eleven Highlights of the New Tax Law

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1. Temporary v. Permanent

- Unless noted, new tax law changes are not permanent, only apply through 12/31/2025
- On 1/01/2026, revert back to 2017 tax law





2. Individual Income Tax Rates Reduced

- Standard Deduction increased
- Child tax credit increased
- BUT Personal Exemption is gone





2018 Income Tax Rates & Standard Deductions

Rate	Individuals	Married Filing Jointly
10%	Up to \$9,525	Up to \$19,050
12%	\$9,526 to \$38,700	\$19,051 to \$77,400
22%	38,701 to \$82,500	\$77,401 to \$165,000
24%	\$82,501 to \$157,500	\$165,001 to \$315,000
32%	\$157,501 to \$200,000	\$315,001 to \$400,000
35%	\$200,001 to \$500,000	\$400,001 to \$600,000
37%	over \$500,000	over \$600,000

Filing Status	Standard Deduction Amount
Single	\$12,000
Married Filing Jointly & Surviving Spouse	\$24,000
Married Filing Separately	\$12,000
Head of Household	\$18,000



3. Many individual income tax deductions limited or gone

- SALT deduction limited to \$10,000; no inflation adjustment
- No deduction for interest on home equity line of credit if “home equity indebtedness”
- Deduction for mortgage interest on newly-acquired property limited to \$750,000
- No more miscellaneous itemized deductions to the extent they exceed 2% of AGI





But, not all bad news on tax deductions . . .

- Increase in percentage limitation for cash contributions to public charities from 50% to 60% of AGI
- Pease provision suspended (reduced deductions for high income taxpayers to 3% of AGI above a certain threshold)



4. After 2018, tax rules on alimony will change

- Effective for divorce separation agreements entered into after 12/31/2018
- Payments not deductible by payer
- Not income to the recipient
- No expiration date



5. Medical and dental expenses still deductible

- Through 2018, medical and dental expenses must exceed 7.5% of AGI for all taxpayers to be deductible
- As of 2019, a 10% threshold will apply to all taxpayers





6. 3.8% Net investment income tax (NIIT) remains

- Applies at a rate of 3.8% (in addition to the capital gain tax rate) to certain net investment income of individuals, estates and trusts that have income above the statutory threshold amounts

Filing Status	Threshold Amount
Married filing jointly	\$250,000
Married filing separately	\$125,000
Single	\$200,000



7. Top Corporate Income Tax drops to 21%

- Cuts Corporate income tax rate permanently from 35% to 21%
- Repeals the Corporate AMT tax





8. Possible 20% deduction for pass through entities

- Subject to complicated limitations
- Entities may take a deduction up to 20% of their “qualified business income”
- Personal service businesses (i.e., law, health care, financial services) subject to income limits that phase out the deduction



9. Federal transfer tax exemptions doubled

- Retains the estate tax but doubles the exemption (to approx. \$11 million per person)
- Gift tax and GST tax exemptions also doubled
- 40% rate on amounts above the threshold stays the same
- Portability of exemption between spouses remains (but not for GST tax)
- Adjusted for inflation going forward, but remember sunset



10. Rule remains that recipient of a lifetime gift takes the donor's basis

- Consider utilizing increased gift and GST exemption amounts
- But consider loss of step-up in basis in asset if gifted during life



11. Gift tax annual exclusion has increased from \$14,000 to \$15,000 per recipient per year





Planning with Beneficiary Designations

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How Assets Pass at Death

- Will or Intestate
 - Generally owned in the decedent's sole name at death
 - Commonly referred to as “probate” estate
- Revocable Trust
 - Replaces a Will as primary dispositive document
- Irrevocable Trust
 - Disposes of lifetime gifts often upon grantor's death
- Joint Tenancy with Right of Survivorship
 - Bypasses probate by operation of law
- Beneficiary Designation...



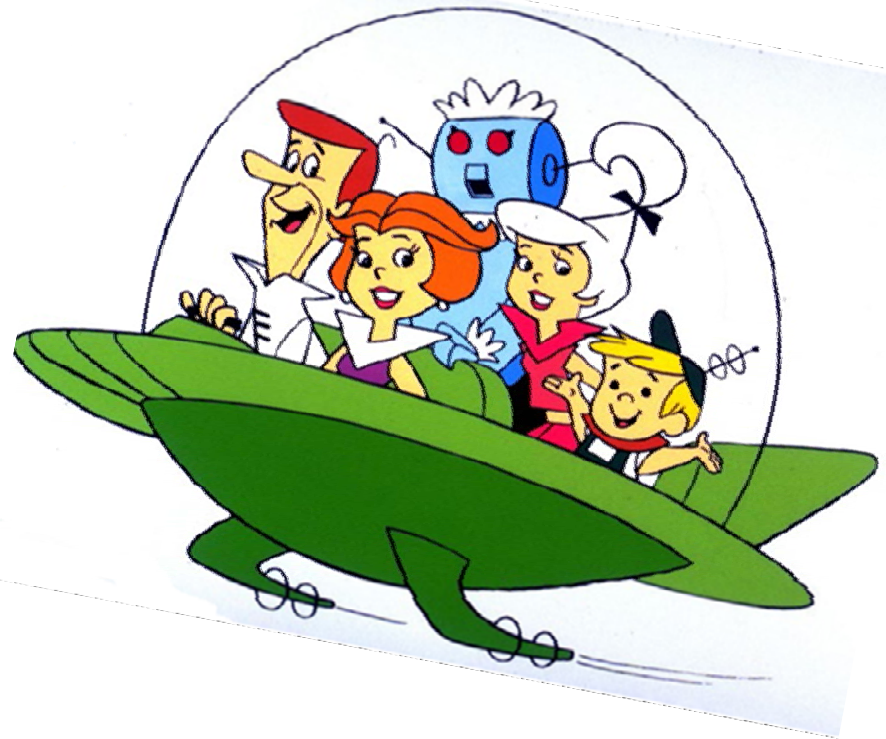
Assets with Beneficiary Designations

- Retirement Accounts
 - Traditional IRA
 - Roth IRA
 - 401(k)
 - 403(b)
- Life Insurance Policies
- Annuities
- Transfer/Pay on Death Accounts



Meet the Jetsons!

- George (age 72) has a large IRA, life insurance policy and a bank account
- Jane, his wife (age 65)
- His boy, Elroy (age 35), makes YouTube videos
- Daughter, Judy (age 42), is a neurosurgeon



IRA Options for Jane, his Wife



- Spousal Rollover

- Jane will likely “roll over” any property she receives from her deceased spouse’s IRA as her own IRA
- No required distributions for 5 years until 70 ½

- Trust for benefit of Jane

- Disclaimer of all or a portion of the IRA to be held in a separate trust for her benefit to preserve tax exemptions
- George could designate directly (e.g., second marriage)

- Keep Inherited IRA (i.e., don’t rollover)

- Consider if Jane under 59 ½ since no 10% penalty



Protecting Retirement Assets

- State law usually determines if protected
- Florida protects tax qualified retirement assets
- Most states do not protect
- ERISA qualified plans are protected, Ex. 401(k)
- Judy has professional liability
- Future spouse
- Name Trust fbo Judy as Beneficiary
- Trust protects even if her resident state does not
- Must be Qualified Trust





Required Minimum Distributions After Owner's Death

Death **Before** Required Beginning Date

- If Designated Beneficiary
 - Spousal rollover
 - Based on life expectancy of oldest beneficiary (i.e., the shortest life expectancy)
 - Life expectancies determined from **Single Life Table**. In year 2 and thereafter, subtract one (1) from initial divisor
- No Designated Beneficiary
 - 5-Year Rule Applies
 - All assets must be withdrawn from the account by December 31 of the 5th anniversary of Owner's death



Required Minimum Distributions After Owner's Death

Death **After** Required Beginning Date

- If Designated Beneficiary
 - Spousal rollover
 - Based on life expectancy of oldest beneficiary or Owner's life expectancy if younger than oldest beneficiary
 - Life expectancies determined from **Single Life Table**. In year 2 and thereafter, subtract one (1) from initial divisor
- No Designated Beneficiary
 - Use Owner's life expectancy
 - Life expectancies determined from **Single Life Table**. In year 2 and thereafter, subtract one (1) from initial divisor



Single Life Table

<u>Age</u>	<u>Life Expectancy</u>	<u>Age</u>	<u>Life Expectancy</u>	<u>Age</u>	<u>Life Expectancy</u>	<u>Age</u>	<u>Life Expectancy</u>
0	82.4	28	55.3	56	28.7	84	8.1
1	81.6	29	54.3	57	27.9	85	7.6
2	80.6	30	53.3	58	27.0	86	7.1
3	79.7	31	52.4	59	26.1	87	6.7
4	78.7	32	51.4	60	25.2	88	6.3
5	77.7	33	50.4	61	24.4	89	5.9
6	76.7	34	49.4	62	23.5	90	5.5
7	75.8	35	48.5	63	22.7	91	5.2
8	74.8	36	47.5	64	21.8	92	4.9
9	73.8	37	46.5	65	21.0	93	4.6
10	72.8	38	45.6	66	20.2	94	4.3
11	71.8	39	44.6	67	19.4	95	4.1
12	70.8	40	43.6	68	18.6	96	3.8
13	69.9	41	42.7	69	17.8	97	3.6
14	68.9	42	41.7	70	17.0	98	3.4
15	67.9	43	40.7	71	16.3	99	3.1
16	66.9	44	39.8	72	15.5	100	2.9
17	66.0	45	38.8	73	14.8	101	2.7
18	65.0	46	37.9	74	14.1	102	2.5
19	64.0	47	37.0	75	13.4	103	2.3
20	63.0	48	36.0	76	12.7	104	2.1
21	62.1	49	35.1	77	12.1	105	1.9
22	61.1	50	34.2	78	11.4	106	1.7
23	60.1	51	33.3	79	10.8	107	1.5
24	59.1	52	32.3	80	10.2	108	1.4
25	58.2	53	31.4	81	9.7	109	1.2
26	57.2	54	30.5	82	9.1	110	1.1
27	56.2	55	29.6	83	8.6	111+	1.0



Multiple Beneficiaries

- If you have multiple beneficiaries, do they qualify for separate account treatment so that each account is treated as separate and distinct beneficiary?
- Improperly crafted beneficiary designation can defeat the “stretch” benefit
- Required distribution based on life expectancy of oldest beneficiary
- Naming Revocable Trust as beneficiary is different than naming specific trusts established under the Revocable Trust



Life Insurance Policy

- If the policy is owned by George:
 - Beneficiary: George's Revocable Trust
 - Family members can be beneficiaries (creditors?)
 - Do **not** name George's Estate (or by default)
- If the policy is owned by an irrevocable life insurance trust ("ILIT") created by George:
 - Beneficiary: The ILIT
 - Minimizes exposure to estate taxation
 - Great leverage for GST exemption



Transfer/Pay on Death Accounts

- Elroy has no creditor concerns
- TOD/POD Account passes automatically to Elroy
- Does not pass through estate and generally is not subject to the decedent's creditors
- May frustrate trust planning
- Unless name Revocable Trust as beneficiary





What Happens When I Die?

Duties and Timelines for Your Personal
Representative or Trustee

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What is a Personal Representative?

- A personal representative is the individual or corporation you place in charge of settling your estate after your death, also sometimes referred to as an executor.
 - Nominated in your Last Will & Testament
 - Must be appointed by the probate court to have authority over your estate
- Florida qualifications
 - The Personal Representative for a Florida decedent must either:
 - Be a Florida resident
 - or
 - A family member of the decedent



What is a Trustee?

- A Trustee is the individual or corporation you name as the administrator of your Trust assets either during your life or at your death
 - Appointed by you in your Trust document
 - Florida probate court has no authority over the Trustee
- Florida qualifications
- None - There are no restrictions on who can act as Trustee of your Trust



Who May Serve as Personal Representative/Trustee?

- Family Members
- Trusted Friends and Advisors
- Corporate Trustees (e.g., Banks or Trust Companies)
- Professional Trustees (e.g., an Attorney or Accountant with experience in administering trusts)



Who should be named as Personal Representative or Trustee?

Often Clients want Spouse and/or Children as Personal Representative/Trustee

Independent Personal Representative/Trustee may be advisable

- Conflicting interests of beneficiaries
 - May not be apparent until after death
- Management of unusual assets - business interests, real estate



Duties of Personal Representative/Trustee

- Ascertain beneficiaries and keep beneficiaries informed
- Locating and safeguarding your assets
- Obtaining date of death values for your assets
- Identifying your creditors and paying off your debts
- Preparing and filing tax returns
- Paying the ongoing expenses of administering your estate
- Distributing the balance of your estate to your beneficiaries



Selection of Personal Representative or Trustee

CONSIDER:

- Family Dynamics
- Talent and Expertise
- Integrity
- Reliability
- Relationships
- Time Commitment
- Potential Liability



Estate and Trust Administration Checklist

<u>Action Item</u>	<u>Deadline</u>
<ul style="list-style-type: none">■ Take precautions against identity theft, including<ul style="list-style-type: none">– Cancel credit and charge accounts– Send copies of death certificate to credit-reporting bureaus– Cancel driver's license■ Notify Social Security<ul style="list-style-type: none">– File for benefits for surviving spouse	<ul style="list-style-type: none">■ Soon after death■ Soon after death



Estate and Trust Administration Checklist

<u>Action Item</u>	<u>Deadline</u>
<ul style="list-style-type: none">■ Determine level of probate needed<ul style="list-style-type: none">– Informational filing of Will only - no probate assets– Short form procedure - probate assets less than \$75,000– Full probate■ File Will with Probate Court<ul style="list-style-type: none">– Out-of-state real estate may require ancillary probate proceeding and estate tax filing in that state	<ul style="list-style-type: none">■ Personal Representatives and attorneys to do soon after death■ Custodian of original Will must file within 10 days of knowledge of death



Estate and Trust Administration Checklist

<u>Action Item</u>	<u>Deadline</u>
<ul style="list-style-type: none">■ Locate and safeguard decedent's assets<ul style="list-style-type: none">– Inventory safe deposit box– Review bank and brokerage statements– Review recently filed income tax returns– Review gift tax returns– Monitor decedent's incoming mail	<ul style="list-style-type: none">■ Ongoing



Estate and Trust Administration Checklist

<u>Action Item</u>	<u>Deadline</u>
<ul style="list-style-type: none">■ Value decedent's assets (probate and non-probate assets)■ Estimate and raise cash requirements to make sure that estate has sufficient cash on hand to pay debts, expenses and estate and income taxes	<ul style="list-style-type: none">■ Ongoing■ Within 60 days of death



Estate and Trust Administration Checklist

<u>Action Item</u>	<u>Deadline</u>
<ul style="list-style-type: none">■ File life insurance claim forms<ul style="list-style-type: none">— Obtain and request IRS Form 712 with the death benefit■ Contact custodians of brokerage accounts to adjust tax cost basis of securities to reflect stepped-up basis	<ul style="list-style-type: none">■ Within 60 days of death■ Within 60 days of death



Estate and Trust Administration Checklist

<u>Action Item</u>	<u>Deadline</u>
<ul style="list-style-type: none">■ Transfer solely owned assets into the name of the estate<ul style="list-style-type: none">— Consolidate and select institution to be used for estate checking account■ Transfer joint accounts into surviving joint owner's name and Social Security Number	<ul style="list-style-type: none">■ Within 60 days of death■ Within 60 days of death



Estate and Trust Administration Checklist

Action Item

- File Inventory listing value of decedent's probate assets on date of death

Deadline

- 60 days after Personal Representative is appointed



Estate and Trust Administration Checklist

Action Item

- Identify creditors and pay debts

Deadline

- Creditors have the later of 3 months from publication of Notice to Creditors or 30 days after receiving Notice to Creditors



Estate and Trust Administration Checklist

<u>Action Item</u>	<u>Deadline</u>
<ul style="list-style-type: none">■ Determine beneficiary of 401(k) and IRA retirement plan accounts<ul style="list-style-type: none">— If spouse is beneficiary, then account can be rolled over to spouse's IRA— If non-spouse is named as a beneficiary, then beneficiary should consider establishing inherited IRA and commencing "stretch" distributions	<ul style="list-style-type: none">■ Election to treat trust as a Designated Beneficiary must be made by September 30th of year following death■ Distributions from inherited IRA must commence by December 31 of year following death



Estate and Trust Administration Checklist

<u>Action Item</u>	<u>Deadline</u>
<ul style="list-style-type: none">■ File Federal Estate Tax Return (Form 706) with IRS, pay taxes (if any)<ul style="list-style-type: none">– If gross estate exceeds \$11,200,000, this must be filed– If estate is less than \$11,200,000 and there is a surviving spouse, consider filing to make “portability” election	<ul style="list-style-type: none">■ 9 months after death



Estate and Trust Administration Checklist

<u>Action Item</u>	<u>Deadline</u>
<ul style="list-style-type: none">■ Audit of Form 706■ Consider interim distribution of estate assets to beneficiaries<ul style="list-style-type: none">— Retain sufficient reserve in estate	



Estate and Trust Administration Checklist

Action Item

- File decedent's final 1040
- File annual Estate/Trust Fiduciary Income Tax Return (Form 1041) reporting income earned by probate assets after decedent's death
 - Develop a post-mortem income tax plan
 - Consider optimal fiscal year selection
 - Consider consolidating 1041 filing with revocable trust filing

Deadline

- April 15 of year following death
- 3½ months after fiscal year end



Estate and Trust Administration Checklist

<u>Action Item</u>	<u>Deadline</u>
<ul style="list-style-type: none">■ File Final Account with court in order to close estate<ul style="list-style-type: none">— Court issues Order of Discharge to Personal Representatives	<ul style="list-style-type: none">■ Within one year of death if possible



Estate and Trust Administration Checklist

<u>Action Item</u>	<u>Deadline</u>
■ Make final distribution of estate assets to beneficiaries	



Typical Professional Fees

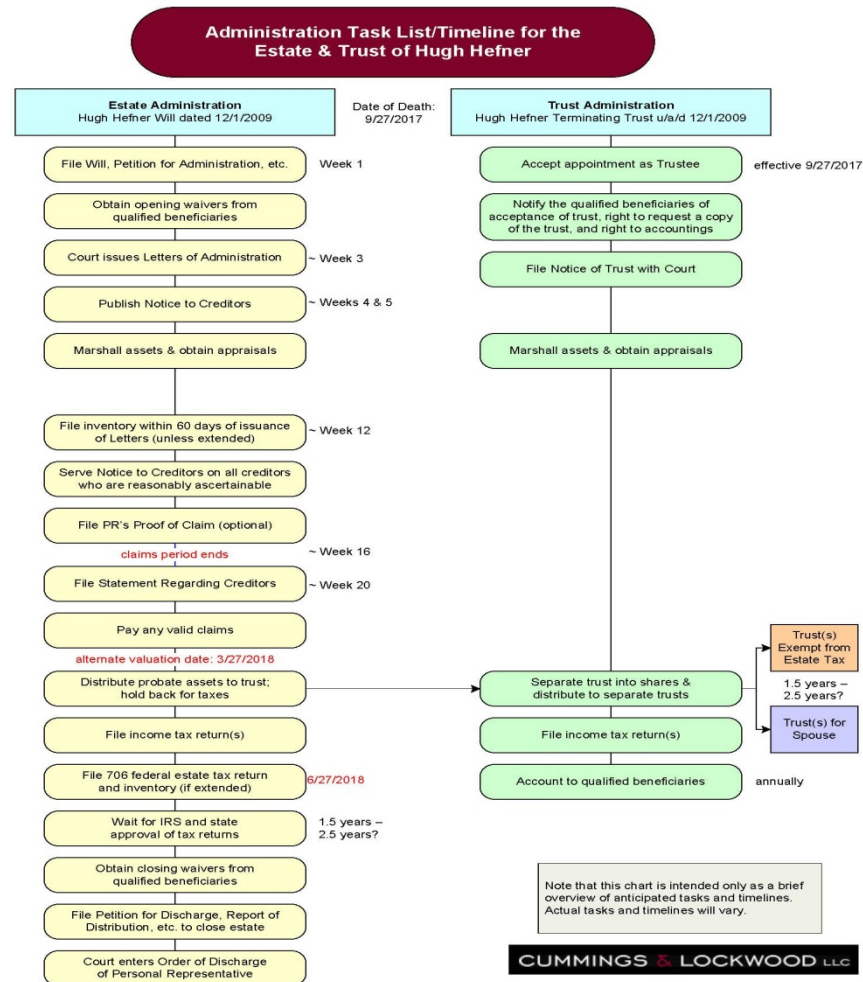
- Appraisers
- Attorneys
- CPAs
- Investment advisors
- Personal Representatives/Trustees



How Long Does It Take?

- Where does Personal Representative/Trustee live?
- How beneficiaries are involved?
- Will the beneficiaries disagree? Is there going to be a Will contest?
- Is the estate taxable?
- How complicated are the assets of the estate?

Estate and Trust Administration Timeline





Incapacity Planning

Powers of Attorney, Advance Directives, HIPAA
Waivers, Preneed Guardians & DNRs

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Overview

- Power of Attorney
- Advance Directives:
 - Living Will
 - Designation of Health Care Surrogate
- Authorization for Use and Disclosure of Protected Information Form (“HIPAA”)
- Declaration of Preneed Guardian
- Do Not Resuscitate Order (“DNR”)



Powers of Attorney

- Legal document allowing a person (the “principal”) to delegate authority to act on his or her behalf to another person (the “agent”)
- The authority granted to the agent depends on the specific language of the Power of Attorney
- The Power of Attorney may be very broad or may be limited to certain specific act



The Act

- The Act became effective October 1, 2011
- Some new requirements under the Act:
 - Principal must sign or initial next to specific estate planning powers granted to the agent
 - Financial institution/broker-dealer must accept or reject POA with the following statements in reasonable time (presumed to be 4 business days):
 - “Authority to conduct banking transactions as provided in section 709.2208(1), Florida Statutes”
 - “Authority to conduct investment transactions as provided in section 709.2208(2), Florida Statutes”





Common Uses of a POA

- Manage the principal's assets and the principal's financial and business affairs in the event of incapacity
- Transfer assets to a principal's Revocable Trust in the event of incapacity (avoids guardianship)





Types of Powers of Attorney

- Limited Power of Attorney
- General Power of Attorney
- Durable v. Non-Durable POA



Suspension / Termination of a POA

- Will be suspended upon the filing of a petition to determine the capacity of the principal
- Will terminate:
 - when the purpose(s) have been accomplished
 - upon a date specified in a POA
 - upon the principal's death
 - upon revocation
 - upon the principal's incapacity (if the POA is non-durable)
 - when the agent's authority terminates and the POA does not provide for a successor





Advance Directive

- Legal document that provides instructions concerning any aspect of his or her health care
- Living Will
 - Provides that certain medical treatment be provided, withheld or withdrawn under certain circumstances
- Designation of Health Care Surrogate
 - Provides for the appointment of a surrogate (e.g., a family member or close friend) to make health care decisions for a patient when he or she is unable to do so
 - Authority commences either immediately or upon incapacity
 - Broader than a living will





Authorization for Use and Disclosure of Protected Information “HIPAA” Waiver

- HIPAA Waiver Allows Disclosure of Protected Health Information to:
 - Patient’s agents and health care surrogates so they can make decisions concerning patient’s health care
 - Trustees of any trust of which the patient is a beneficiary, to a court-appointed attorney and guardian ad litem, and to anyone else the patient designates for purposes of determining capacity



Declaration of Preneed Guardian

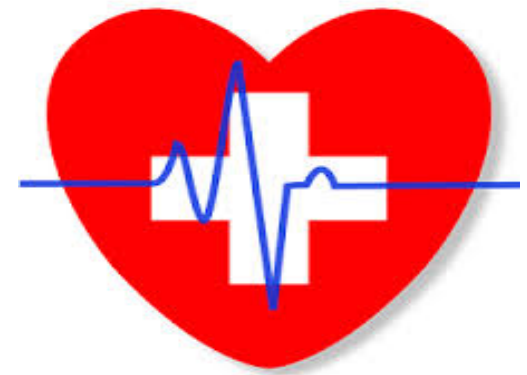
- Provides for the appointment of a preferred guardian of the person and property of an incapacitated person
- Court will appoint designated guardian, unless designated individual is found to be unqualified
- Protects incapacitated person's interests if someone initiates guardianship proceedings to appoint a guardian of such person





Do Not Resuscitate Order (“DNR”)

- Provides that a patient does not wish to be resuscitated in the event of respiratory or cardiac arrest
- Properly completed DNR will be signed by the competent patient (or patient’s representative), signed by a Florida licensed physician, and will be on either the original canary yellow form or copied onto similar colored paper
- DNR can be revoked
- DNR does not expire





Estate Planning and Estate Administration of Digital Assets

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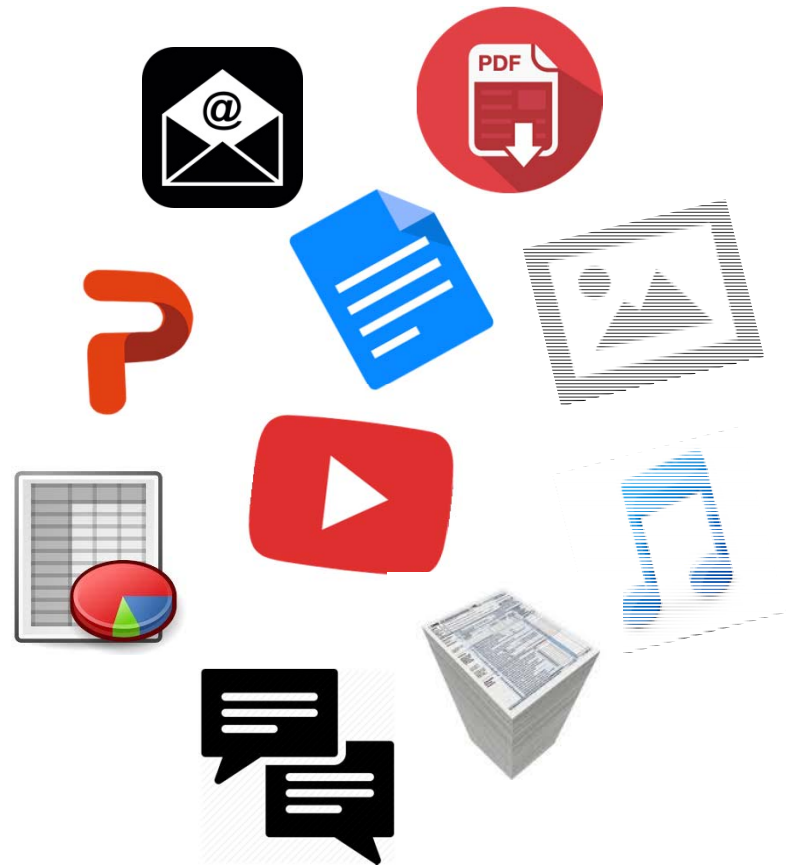


What are “Digital Assets”?

Text, images, multimedia, information or personal property stored in a digital format whether stored on a server, computer or other electronic device which currently exists or may exist as technology develops and regardless of the ownership of the physical device upon which the digital asset is stored. Includes words, characters, codes, etc.

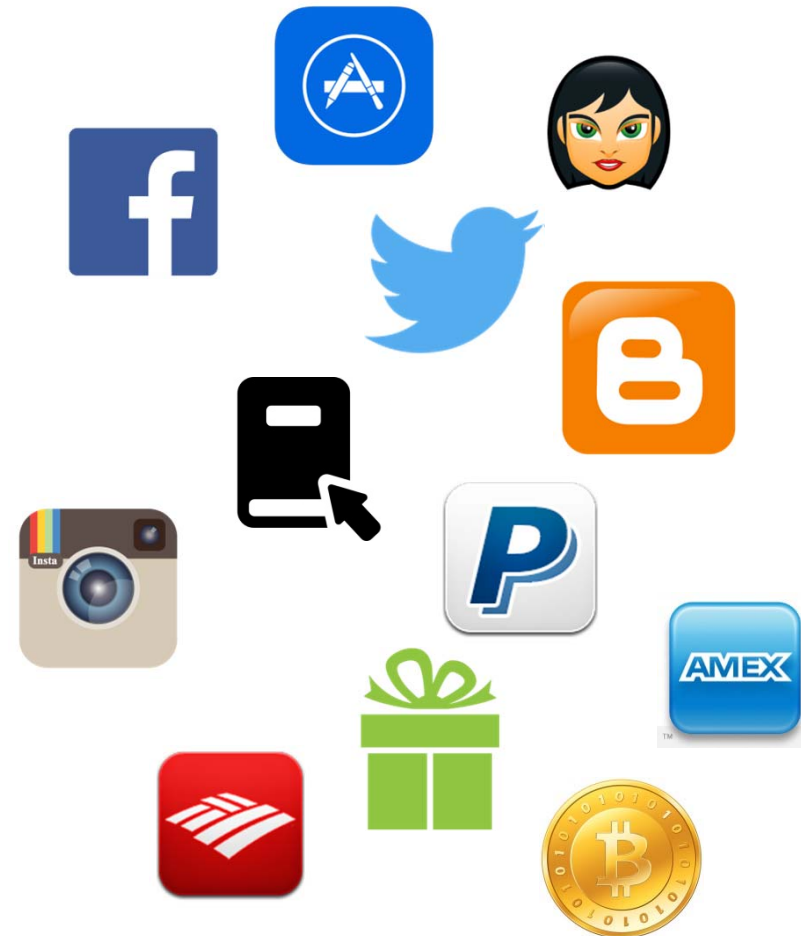
Types of Digital Assets

- Documents
- Photos
- Music
- Videos
- Spreadsheets
- Tax records and returns
- PowerPoint presentations
- E-mails
- Text messages



Types of Digital Assets

- E-books
- Video & gaming accounts
- Social media
- Apps
- Financial accounts
- Business accounts/records
- Domain names and blogs
- Loyalty program benefits
- Virtual property (avatars, etc.)
- Does not include underlying assets, like cash



Where Are Your Digital Assets?



Computers
Servers
Smart Phones
The “Cloud”





Why Plan For Digital Assets

- To give access to your family and fiduciaries upon death or disability
- To prevent identity theft
- To prevent financial loss and preserve valuable digital assets
- To preserve memories and stories
- To protect secrets, maybe even from family members



Planning Ideas

- Prepare inventories of your digital assets, including means for access (digitalpassing.com/digital-audit/)
- Convert digital assets to tangible assets or move digital assets to accessible offline locations for better access, preservation
- Where custodian agreements allow it, give custodian account handling instructions



Planning Ideas

- If allowed, specify third parties who will have authorized access
- Authorize your attorney-in-fact or personal representative to access digital assets
- Designate a special “digital fiduciary” knowledgeable to gather and protect your digital assets
- Transfer ownership of valuable digital assets to an entity



Provider Policies

- Google will work with fiduciaries to close accounts and may provide content. They do not provide login or passwords.
- Google Inactive Account Manager. Allows users to share certain account data or to notify others if the account has been inactive after a period of time.
- Facebook allows you to specify that your account be deleted or memorialized upon death. Someone can also submit a request to remove the account of a family member who is deceased or disabled.
- Facebook Legacy Contact. Allows you to name someone to look after your account after it's memorialized or to download the content you shared.

Digital Afterlife Companies

Online safe deposit boxes that holds passwords, files and instructions for authorized persons who can access your digital assets.





Digital Afterlife Companies

- Posthumous e-mail services that delivers message to designated recipients after your death.

DEAD MAN'S SWITCH

ifidie.org

- Photo, documents, video and social media content preservation

eterniam.



Uniform Fiduciary Access to Digital Assets Act (2015)

A uniform law to extend traditional powers of a fiduciary to manage tangible personal property to include the management of digital assets like computer files, web domains and virtual currency but restricting fiduciary access to electronic communications like e-mail, texts and social media content unless the original user consents to access in estate planning documents or other records.



Florida Fiduciary Access to Digital Assets Act

New Florida Statutes, Chapter 740

- Effective for fiduciaries acting on or after July 1, 2016 for Florida residents
- Does not apply to employer digital assets used by an employee in the ordinary course of the employer's business
- Allows attorneys-in-fact, guardians, trustees and personal representatives access to digital assets and specifies the requirements for obtaining access
- Differentiates electronic communications from other types of digital assets



FFADAA

- Offline digital assets will be managed like tangible personal property
 - Hard drives
 - Flash drives
 - Content on compact discs
- Users can now designate who has access to online digital assets
 - Pursuant to the custodian's own procedure (controls)
 - Via estate planning documents, such as wills, trusts and powers of attorney



FFADAA

- Custodians of online assets have the discretion to choose how they disclose assets and can charge a fee for disclosure
 - Full access
 - Partial access needed to fulfill fiduciary duties
 - Copies of records that would have been accessible by the user
- A user or fiduciary can request partial disclosure but if onerous the custodian can refuse disclosure and request a court order authorizing partial or no disclosure or seeking in camera review.



FFADAA: Electronic Communications

- If a user authorizes it or a court allows it, a fiduciary can access the content of e-communications provided the custodian gets proof of fiduciary's authorization and, if requested by the custodian, information identifying the user's account. Custodian can also request a specific court order.
- Without user authorization or court order, the fiduciary can only get a catalog of electronic communications (except when expressly prohibited by the user or the court).



FFADAA: Other Digital Assets

Without user authorization or court order, the fiduciary can get other digital assets (other than content of electronic communications) upon providing proof of authorization and, if the custodian requests, information identifying the user's account.



FFADAA: Trusts

- The Act acknowledges that digital assets can be owned by trusts and sets forth procedures for access by trustees
 - authorization for access will be subject to court or trust provisions
 - original acquiring trustees have full access
 - upon providing proof of authority, successor trustees can get
 - full access if the trust specifically authorizes the successor trustee to get electronic communications
 - catalog of communications if the trust is silent



Estate Planning Tune-Ups

Presented by

CUMMINGS & LOCKWOOD LLC



Review Current Plan: Married Couples

- Is exemption passing to or for the benefit of someone other than your spouse?
- Many plans can be simplified as a result of increased Federal Tax Exemptions and Portability

Options with \$11,000,000 Estate Tax Exemption

Option One:

Typical plan with Estate Tax Sheltered Trust and a Marital Share:

Assume spouse first to die has a \$12,000,000 estate.

Estate Tax Sheltered Trust

Spouse and Descendants

\$11,000,000

- Allows distributions to spouse, children, and grandchildren
- No estate tax on future appreciation
- No step-up in cost basis on second death
- Requires annual trust income tax return
- Uses GST Exemption of spouse first to die

Marital Trust or Outright

Spouse Only

\$1,000,000





Option Two:

Create Marital Trust Only:

Assume spouse first to die has a \$12,000,000 estate.

Marital Trust One

Spouse Only

\$11,000,000

Marital Trust Two or Outright

Spouse Only

\$1,000,000

- Spouse must receive all of the income of both trusts
- All assets included in the estate of surviving spouse
- All assets can get a second step-up in cost basis
- Uses GST Exemption of spouse first to die
- Requires annual trust income tax return





Considerations for Children and their Families

- Does plan provide for exemptions to pass to someone other than your children? What impact will this have?
- If plan incorporates lifetime trusts for one or more of your children, what should you now consider in light of increased exemptions?
 - Have you granted child power of appointment to direct how assets remaining at death shall pass? Is there desire to include a child's spouse as a future recipient?
 - What are advantages of maintaining lifetime trusts?
 - Are there any disadvantages?



Reasons to Maintain Trusts

- **Generational Wealth Planning**
 - Child accumulating significant personal wealth
- **Asset Protection**
 - Divorce
 - Debt or Bankruptcy
 - Substance Abuse
 - Tort Claims or Business Risk
- **Distribution Limits (timing or amount):**
 - Spendthrift or “soft touch”
 - Incapacity or special needs and qualifying for government benefits
- **Distribution Incentives:**
 - e.g., matching earnings below a stated age or rewarding freedom from substance abuse



Reasons to Forgo Trusts for Children

- Desire for children to have full access to inheritance and no duty to account to or maintain for future benefit of grandchildren
- Will there be enough remaining at child's death to pass on to further generations?
- Costs to maintain outweigh benefits (i.e., annual accountings and tax returns)





Additional Review Items



- Beneficiary Designations for Retirement Plans and Life Insurance
 - Confirm consistent with estate plan and include primary and contingent beneficiaries
 - If estate is taxable, consider Irrevocable Life Insurance Trust for life insurance
- Title to Florida Homestead
 - Limitations when married
 - Transfer to Trust if single
- Title non-retirement assets in Revocable Trust to avoid probate and provide asset management during incapacity

When Should We Review Again?

- Marriage
- Children
- Divorce
- Serious Illness
- Diagnosis of Dementia
- New Tax Laws
- Changes in Wealth



Powers of Appointment

Trust provisions allow someone (e.g., trust beneficiary or trusted friend or advisor) to modify trust terms after trust is established (during power holder's lifetime or at power holder's death)

- Add or eliminate beneficiaries
 - Unlimited (including power holder)
 - or within a defined class (e.g., descendants, spouses, charities, etc.)
- Allows power holder to adapt to future changes in circumstances



Trust Decanting

Trustee pours an existing irrevocable trust (the “old” or the “distributing” trust) into a new/different “receiving” trust using Trustee’s discretion over trust distributions

- Complicated tax and trust law considerations and depends on provisions of old trust and state law governing old trust
- Florida law provides a safe harbor for decanting where trustee has “absolute” discretion
- Why decant?





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Thank You