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Trust UPDATE

CITIZENS BANK
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Family meetings

The overlooked estate planning step

Those who have built significant wealth are rightfully concerned about how best to use that wealth for family financial protection. As often has been noted, the wealthy want their heirs to have enough to be able to do anything, but not so much that they don't have to do something.

Trust planning comes immediately to mind when planning for a child who is a minor. The trust can provide for education funding and getting a good financial start in life. Incentives can be built into the trust for achieving certain milestones, such as reaching a certain age or beginning a professional practice.

But what about when the children are fully grown, established in their careers and financially mature, in their 30s or even 40s? Even then, trust-based planning will be an excellent idea for many affluent families. Trusts may play an important and valuable role in asset protection, in assuring an inheritance for multiple generations, and in providing an avenue of flexible response to future circumstances.

So, you've decided on a trust-based estate plan. What do you tell the kids, and when?

Get on the same page

To get everyone on the same page everyone needs to be in the same room. The meeting should include the nominated fiduciaries and the children, and is typically moderated by the estate planner. A family meeting will be especially important for a second marriage or blended family situation if specific property will go to specific beneficiaries, if assets will be distributed unequally, and if there will be a hierarchy in the nomination of fiduciaries. The goal is to avoid surprises and reduce future conflict after the death of the client.

When the client is quite certain of the plan for disposition of the assets, the family meeting should be scheduled after the documents have been signed. However, if the client is uncertain about the plan or the choice of fiduciaries, it may be better to have the meeting earlier.

Open the family meeting with a discussion of wills,

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trusts, and the respective roles and responsibilities of personal representatives, trustees, attorneys-in-fact, and health care agents. After a summary of the planned distribution of assets, the parent or parents take over. They may explain the thinking behind the distribution plan and the choice of fiduciary or fiduciaries.

Unequal treatment. Heirs have a way of confusing the degree of love during life with the size of an eventual inheritance. Thus, if the shares of siblings will be unequal the potential for conflict and hurt feelings rises. Unequal shares of an estate may be appropriate for many reasons. Some children may have been provided with more during life, almost as an advance on their inheritance. Some children may have achieved such a degree of financial success that the family will be better served by directing the resources to others less well off. Other family members may have demonstrated an incapacity for sound financial management, making special arrangements for their inheritance necessary.

An airing of the motivations behind the plan will usually promote family harmony. But at the same time, heirs needs to understand that estate planning isn't a family-wide project, and the plan itself isn't being put to a vote.

Setting realistic expectations. Some children are hoping for a larger inheritance than they are likely to receive. Others may expect too little. Either misconception can lead to unwise planning choices by the heirs in their personal financial management. A reality check is another benefit of the family conference on inheritance.

A family tradition of philanthropy

Very often parents are as concerned about passing their values to their children as they are about financial security. Family philanthropy can be an excellent mechanism for sharing those values. A variety of strategies are available, from private foundations to charitable trusts to donor-advised funds.

How to handle the nonfinancial assets

Sometimes the nastiest fights among heirs are those over items that have more sentimental than financial value. These problems often can be defused by asking the heirs for their choices and making gifts of specific items during life. But if everyone wants the same things, a plan for rotating choices may be needed. When all else fails, it may be necessary to sell the items and split the proceeds.

May we be of service to you?

Estate settlement and inheritance management are core parts of our daily business. Because we are neutral professionals, we can normally win the confidence of all the heirs for the decisions we make in the course of estate settlement. Over the years, we have worked closely with many successful families on the implementation of their estate plans.

Can we tell you more? We look forward to meeting with you at your earliest convenience to discuss your goals and objectives. ☐

Corporate fiduciaries

Corporate fiduciaries bring experience, expertise, professionalism, and objectivity to the jobs of trusteeship and estate settlement. Continuity of service is another advantage. Although there may be employee turnover, and the banking industry has experienced a series of acquisitions and mergers, a trust division doesn't take vacations, get sick, or move out of state. Corporate fiduciaries are regulated and bonded.

Interview a handful of candidates before deciding upon a corporate fiduciary. Sample questions include:

- **What services will be performed?**
- **What services will *not* be performed?**
- **Are distribution requests handled by an individual or by a committee?**
- **How long does it usually take to decide on a request for a discretionary distribution?**
- **At what asset level would the trustee terminate the trust and distribute the assets outright?**
- **Will specific language need to be included in the trust document?**

If there is trouble deciding between an individual or a corporate trustee, it may be possible to have multiple fiduciaries, a sort of "best of both worlds." However, someone needs to be in charge, and that should be made plain in the estate plan. Don't overlook the importance of planning for the selection of a successor trustee, perhaps through the appointment of a trust protector.

Take your client to lunch

Over the years restrictions have been placed on tax deductions for "perks" that seemed skewed toward the well-off. The deduction for business meals is one such perk.

However, the pandemic has had a severe effect on the financial health of the restaurant industry. To provide a boost for suffering eateries, in the closing days of the Trump administration the "Taxpayer Certainty and Disaster Tax Relief Act of 2020" was enacted as part of the "Consolidated Appropriations Act, 2021." Some meals will be fully deductible in 2021 and 2022. Hopefully restaurants will be back to normal by then.

To be fully deductible as a business expense, the meal must not be extravagant, and business must be discussed. Food that is available to all employees, as at an office party, is also fully deductible. Expenses for entertaining clients, such as tickets to sporting events or expenses for playing golf, remain nondeductible.

The table below provides examples for this tax year.

New IRS guidance

The legislation does not define "restaurant," so in March the IRS provided some clarity on the subject. "For this purpose, the term 'restaurant' means a business that prepares and sells food or beverages to retail customers for immediate consumption, regardless of whether the food or beverages are consumed on the business's premises. However, a restaurant does not include a business that primarily sells pre-packaged food or beverages not for immediate consumption, such as a grocery store."

A company-owned facility that provides meals to employees is not considered a restaurant under this law. However, if the value of employees' meals is included in their W-2, the employer may take a corresponding deduction. ☐

New deductions for restaurant business meals in 2021 and 2022

Type of expense	Amount of deduction
Entertainment	None
Restaurant business meals	100%
Non-restaurant business meals	50%
Company-wide party	100%
Food offered free to the public	100%
Meals included in employee compensation	100%

Source: IRS Notice 2021-25

Ponzi schemer

Bernie Madoff died in prison on April 14, 2021. He had served about 11 years of his 150-year sentence.

Madoff was the mastermind behind the largest Ponzi scheme created to date. In a Ponzi scheme investors are promised outsized returns to attract money into a pool. Early investors are paid their returns from the contributions of the latecomers, because there are no underlying investment assets earning anything. Madoff's genius, and one reason his scam lasted so long, is that the returns he promised were *not* remarkably high. Rather, they were remarkably steady, and so seemed safe to prospective investors.

The seeds of Madoff's fraud apparently were planted after the 1987 market crash, when some of his investors demanded cash. But the scheme really got going, according to Madoff himself, in the early 1990s. As his reputation grew, more and more investors wanted in on his "split-strike conversion" strategy for beating both bull and bear markets. Eventually clients placed some $16 billion with Madoff for investing. Some $14 billion in principal was eventually recovered, but the estimated $50 billion of phantom earnings just evaporated.

A wide range of investors were duped by Madoff, reportedly including Hollywood stars such as Kevin Bacon, Kyra Sedgwick, Jeffrey Katzenberg, John Malkovich, and Larry King. The fact that Madoff had been the chairman of the board of directors of the National Association of Securities Dealers probably aided in his credibility.

The SEC also was tarnished by its failure to detect the massive Madoff fraud earlier. A 500-page report by the agency's Inspector General in 2009 noted that there had been red flags for at least 16 years, but through three examinations and two investigations the SEC never detected the swindle. Madoff was undone by the Great Recession, when too many of his clients demanded cash as the value of their other assets shrank. He confessed his crime to his sons, and they notified the government.

The first line of defense against investment cons needs to be educated and skeptical investors. Investors need to be aggressive in investigating those to whom they plan to entrust their money. For example:

- Don't take promises of extraordinary investment returns at face value. If the promoters knew an easy way to make a fortune, why would they share the secret?
- Don't be hustled by high-pressure tactics. The investment world is not going to run out of good opportunities in the next 20 minutes.
- Beware of those who claim that they're doing you a favor because you're a member of a certain organization, church, or professional group.

Trite but true. ☐