# Client Update and wealth advisor

FALL 2022

KEMPE

Law | Estates | Tax | Wealth

Offices in Jupiter, Stuart & Vero Beach

## IN THIS ISSUE



*The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you select an attorney, ask them to send you free written information about their qualifications and experience.*

## Florida Trust Law Changes

**- All encourage use of Florida laws in estate planning -**

This Client Update separately addresses four changes to Florida law with which clients should make themselves aware: (1) enactment of community-property trust law that provides spouses with significant federal capital gain tax savings; (2) directed trustee law that can be used to avoid state income tax on Florida trusts and provide family control of professional trustees; (3) extension of the rule against perpetual trusts from 360 to 1,000 years; and (4) changes in law that permit assets transferred by one spouse to a trust for another to be available to the donor spouse, without causing estate tax inclusion. This last change affects, and potentially benefits, many clients who have undertaken fiscal cliff and tax reform planning since 2012.

## Trusts for Spouses and Getting It Back

**- Florida codifies law that helps avoid a federal tax issue -**

Since 2012, clients have been undertaking trust and estate planning to confront tax reform and potential reduction of their estate, gift, and generation skipping tax exemptions (currently $12.06 million and increasing through 2025, after which they are essentially cut in half under current law). As a result, tremendous amounts of wealth (in the trillions) have been shifted in what we call "the Great Generational Shift of Wealth." Often these shifts involve gifts by one spouse to a trust, not only for the benefit of their descendants, but also for the benefit of their spouse. A spouse is typically added in order to retain access to the income and the property that was gifted for purposes of cash flow and financial security. Such a trust is often

*Continued on page 8*

## Florida Enacts Community Property Law

**- Aim is to permit greater capital gain tax avoidance on death -**

Florida has recently enacted legislation in an attempt to gain the tax advantages of "community property," which is a form of ownership between spouses common in states from Texas and further West. The tax advantage relates to securing a 100% cost basis increase in assets owned by spouses upon the death of the first, which eliminates any inherent capital gain. For example, if a married couple owns $10 million dollars of community property, with a cost basis of $2 million, they are deemed to own those assets 50%-50%, much like joint property. However, unlike community property

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## Florida Enacts Directed Trust Law

**- A tool to address the family dynamic that furthers the use of Florida trustees -**

There are various reasons clients choose professional trustees or don't want them at all. It often boils down to who has control and who has the burdens and responsibilities for proper trust administration. Most clients choose to have family members serve as trustee, but some desire more professional trustees who are entrusted with responsibilities to properly manage the trust. A directed trust is a hybrid, where a professional trustee holds responsibilities for proactive management and proper administration but are subject to

*Continued on page 14*


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Vice Chair, Family Businesses
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Board Certified, Tax Law
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Historically, administrative agencies of the federal government have been used against political adversaries and to foster political gain. The most often used agency is the IRS. In 1930, President Roosevelt used the IRS to harass newspaper publishers who opposed the New Deal. As recent as 2021's legislative cycle, a "trove of data" on some of America's wealthiest individuals was leaked by the IRS to support Democrat Party initiatives to tax the wealthy. See, *Are We Really in a New Gilded Age?*, in our Winter 2022 Client Update. https://kempelaw.com/wp-content/uploads/2022/01/Newsletter-Winter-2022.pdf "Nixon's Enemies List" was made public in 1973 where, in communicating it amongst Nixon's inner circle, a memo characterized it as follows:

> *This memorandum addresses the matter of how we can maximize the fact of our incumbency in dealing with persons known to be active in their opposition to our Administration; stated a bit more bluntly—how we can use the available federal machinery to screw our political enemies.*

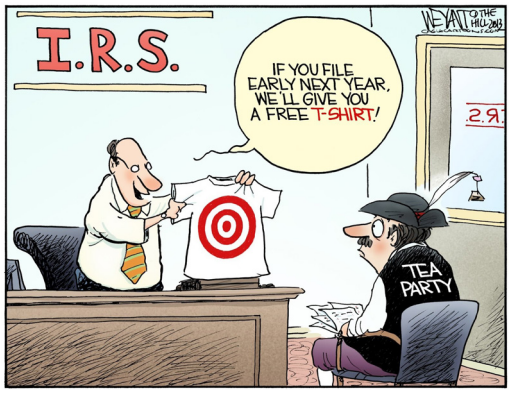
News journalist Daniel Schorr and actor Paul Newman stated that "inclusion on the list was their greatest accomplishment." American billionaire Elon Musk, in reaction to the IRS release of his data in 2021 stated: "Eventually, they run out of other people's money and then they come for you" and then he paid the largest single tax bill in American history- $18 billion, just to make his point. Initiatives to protect American taxpayers against IRS abuses started in the late 1970s with the creation of the Office of Taxpayer Ombudsman and evolved into a taxpayer bill of rights and the Office of Taxpayer Advocate in 2000, but abuses continue.

More recently, a series of IRS scandals have renewed the concerns and placed administrative agencies in the spotlight. During the Clinton administration the targeting of his perceived enemies and eventual embarrassment resulted in his signing of the Taxpayer Bill of Rights in 2000. It was aimed at preventing the agency from treating citizens arbitrarily or unfairly, and was only signed after public outrage of the abuses. During the 2012 and 2016 election cycle, scores of Conservatives were targeted by the IRS, lead by staunch Clinton supporters leading administrative agencies. The IRS abuse was investigated by a Department of Justice attorney, who contributed the maximum to the Obama campaign. No prosecutions occurred. Conservative groups that were targeted along the way sued the United States, and in 2017 the IRS was forced to admit their unlawful targeting and abuse in settlement. Then attorney general, Jeff Session's, statement read: "We hope that today's settlement makes clear that this abuse of power will not be tolerated." An undisclosed sum was paid.

This background thus brings us to the concerns over the $80 billion of funding for the IRS under Biden's Inflation Reduction Act. Statistically and historically, tax deficiencies occur more commonly by those who can be characterized as the non-wealthy. IRS examiners can, however, be trained to look at more wealthy taxpayers as the place to spend more of their time, even though they may face more professional adversaries. Under the new principles of wokeness, it could be viewed as unfair for some to have wealth beyond certain levels deemed unjust by the examiner- to hell with the law, it's unjust!

Administrative agencies implement and regulate federal laws enacted by Congress. Executive Department agencies are headed by the President's cabinet, and include the Department of the Treasury and Department of Justice. The IRS is the largest bureau under the Department of the Treasury and the FBI is a bureau of the Department of Justice. As a result, these agencies receive a tremendous amount of influence and ostensible control by the President, though Nixon appointee as IRS Commissioner, Donald C. Alexander, refused to launch audits of those on Nixon's Enemies List. Periodically in our history at local and national levels, political appointees refuse to follow the direction of Presidential orders and initiatives if they believe they are not supported by law. The polarity of our two party system at this time in our history and the introduction of wokeness, however, is resulting in fewer bureaucrats who are willing to recognize law.

*Continued on page 7*



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## WILL YOUR PRIOR GIFTS SURVIVE 2026?

### - UNDERSTANDING THE EFFECT OF CLAWBACK RULES AND OTHER NUANCES -

Since 2012, a tremendous amount of wealth has been removed from the taxable estates of senior family members as a result of gifts and gifting strategies. These gifts have taken many forms, and a question had existed over how the sunsetting of current law reducing exemptions in 2026 would affect prior gifts. For example, if a person in 2022 were to use their entire $12.06 million estate, gift, and generation skipping tax exemptions, would the IRS seek to recover the gifts and tax them at time of death if the tax exemptions were reduced by 50%. In this example and the further examples below, assume $7 million will be the 2026 estate, gift, and generation skipping tax exemption as a result of sunsetting. Though not likely an issue in the minds of laypersons, to estate planners it becomes an issue as a result of the mechanics involved in determining the taxable estate. Recent regulations have caused this issue to resolve in some circumstances, but increases complexity in others.

The estate and gift tax exemption is statutorily referred to as the "basic exclusion amount" or the "BEA." In 2022, the BEA and the generation skipping tax exemption are both $12.06 million. The BEA is commonly referred to as an exemption, but is actually an exclusion from the gross taxable estate, within the mechanics of the estate and gift tax laws. Those mechanics are where the fun begins and recent "Final" regulations have eliminated the risk of clawback, but recent "Proposed" regulations have made some exceptions to what is excluded. To understand the distinctions, one must understand a little estate and gift tax law, as some gifts are excluded from a decedents gross estate, while some gifts are included.

Generally, a gift is a gift only if "Completed," and some gifts can be viewed as "Incomplete" until a later date or death- they are said to be "Incomplete" or testamentary. A testamentary or Incomplete gift may be included in the gross taxable estate of the decedent, even though use of all or part of the gift tax exemption occurred many years prior to death. A Completed gift too becomes a part of the taxable estate, but in a somewhat different way. All Completed gifts made during life are brought back into the taxable estate as "adjusted taxable gifts," but solely for purposes of calculating the estate tax. For example, if a person made a Completed gift of $12.06 million in 2022 and died in 2023 owning assets having a value of $10 million, the decedent's gross taxable estate would be $22.06 million. The $12.06 gift tax exclusion ("BEA") is subtracted, leaving a taxable estate of $10 million.

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## EXEMPTIONS SET TO SOAR: DON'T WASTE OR WAIT FOR THEM!

### - USE IT OR LOSE IT, BUT THE DSUE GOES FIRST! -

Inflation is bad, except when it increases tax exemptions. The current environment of high inflation and elevated estate, gift, and generation skipping exemptions ("basic exclusion amount" or "BEA" of $12.06 million in 2022) are projected to dramatically increase the BEA, under some estimates by $860,000 in 2023, $900,000 in 2024, and $860,000 in 2025. Thereafter, the exemption or BEA is set to reset or sunset to pre-2017 levels, which will cause them to reduce by approximately 50% (the "BEA Sunset Amount," which is estimated to be approximately $7 million in 2026). Recognizing the tremendous tax savings of using these exemptions is motivating clients to pursue more advanced estate planning. Coupled with the current depressed stock market, now is a good time to gift, and there are a variety of planning alternatives within the arsenal of techniques available for client consideration. For these reasons, the elections in November are also important, as the taxation of wealth and shifts of wealth are at the forefront of Democrat Party tax policy. See, *Are We Really in a New Gilded Age?, How Many Generations Between (Rolled-Up) Shirt Sleeves, Should Taxation Shorten It?* https://kempelaw.com/wp-content/uploads/2022/01/Newsletter-Winter-2022.pdf As a result, what is set to occur in 2026, could be accelerated with a Democrat Party controlled government or postponed with Republican Party control.

Not everyone can gift millions of dollars and suffer the loss of income from that wealth. When spouses are involved, they often can solve that dilemma by creating SLATs or other trusts for each other and their family. See, *Back to Square One!, Sigh of Relief, But Now What?*, in our Winter 2022 Client Update. https://kempelaw.com/wp-content/uploads/2022/01/Newsletter-Winter-2022.pdf For others, family planning may involve multigenerational sales and financial arrangements that resolve any concerns.

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**Remarkable New Brain Studies -Encourage Revisiting Advance Health Care Directives –**

As many of our clients have experienced the last few years, drafting health care advance directives has included a discussion on new brain research successfully restoring memory capacity or providing comfort care to an incapacitated patient.

The July issue of Frontiers in Human Neuroscience Journal just reported some "amazing" success with a prosthesis brain implant of a single electrode in the brain. In another Boston University study, individuals who received electric stimulation at different frequencies improved both short and longer term memory. People who received electrical stimulation recalled four to six more words, compared to the placebo group — a 50% to 65% boost in recall. The historic reluctance to authorize experimental treatment in advance care directives has waned over the years and delightfully reiterates the need for such discussion when drafting health care advance directive documents.


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**registered nurse and lawyer**

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Supervisor, PBC Bioethics Law Project
Task Force on Crimes Against Elderly
Multiple Hospice Ethics Committees
Hero in Medicine Award
F. D. Roosevelt Humanitarian Award

Health Care Advocacy
Bioethics Law
Death With Dignity
Guardianship Proceedings

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# A Family Patient Advocate

## - Necessary if the Patient Can't Do It! -

When confronting a serious health concern, our office is often asked by a client or family members for guidance to assist with the challenging task of navigating through the often bewildering maze of health care services.

There are two common entry points for the healthcare advocate: the beginning of the journey or, more often than not, the mid-point when the client or patient is becoming overwhelmed by difficulties inherent in the process and no longer chooses to conduct the visits and scheduling alone.

The first task of any advocate is to secure a full HIPAA consent from the patient, (whom we are going to call "Alice"for this article), so as to be able to communicate with any service provider at anytime with or without Alice being present.

Because the mission of the patient advocate is to facilitate and improve communication, the second task (best if done by Alice) is to inform all treaters that she now has an advocate who is to be included in the plan of care, whether it is scheduling appointments, referral to another treater or facility, and any changes in medications.

When visiting a new treating practice, it is necessary to have all medical records, x-rays and scans for the office to copy (always maintain and continuously update a complete set of your own records and test results). An accurate and complete patient history is extremely important and should never be taken for granted. Quality healthcare is the result of a collaborative effort with the patient and patient advocate playing an essential role in the team effort. Carefully review patient history information. Document all correction requests in contemporaneous written or electronic communications.

Have a notebook and pen to take contemporaneous notes or (with permission) use your phone to record the conversation.

As an advocate, you need not necessarily speak as long as Alice is capable of communicating on her own, but do not hesitate to assure that all potentially relevant information is accurately conveyed. During Alice's healthcare visits, listen to the interaction between Alice and the service providers. Note each and every question asked by either party and the answer given.

If no plan is established, help to create one, for example:

* You recommend Alice take the following medication which is new to her. You have told us that the medication should be taken ___and that Alice can expect ___.

* You are changing the dosage of the following medication to: _____. The medication times are the following:_____.

* You would like Alice to undergo the following additional tests _____and consult Dr. _____.

* Would your office please make the appointment and let us know. (Physician offices have better chances of getting timely appointments).

* You would like Alice to follow this regimen:_____.

* You have asked Alice to alert you to any of the following changes _____.

* Would you like Alice to keep a journal of food intake and elimination habits?

<u>In summary</u>:

You think Alice has _____and she is going to _____in the short term.

Her long term prognosis is_____. You would like to see her again on_____; or sooner if _____.

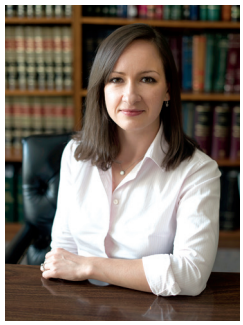
Remember, you are there to help facilitate and improve communications between both Alice and the treating physician. Helping Alice understand her situation can take some of the anxiety out of an otherwise potentially stressful time in her life. We find that physicians are often very open to this type of advocacy and encourage it in the best interest of their patient.

We are also available to assist in acting as an advocate if children or spouses are logistically unable to do so. Feel free to contact the office should you desire to discuss this.

## 7520 Rate History

| | 2022 | 2021 | 2020 | 2019 | 2018 |
|---|---|---|---|---|---|
| Jan | 1.6 | 0.6 | 2.0 | 3.4 | 2.6 |
| Feb | 1.6 | 0.6 | 2.2 | 3.2 | 2.8 |
| Mar | 2.0 | 0.8 | 1.8 | 3.2 | 3.0 |
| Apr | 2.2 | 1.0 | 1.2 | 3.0 | 3.2 |
| May | 3.0 | 1.2 | 0.8 | 2.8 | 3.2 |
| June | 3.6 | 1.2 | 0.6 | 2.8 | 3.4 |
| July | 3.6 | 1.2 | 0.6 | 2.6 | 3.4 |
| Aug | 3.8 | 1.2 | 0.4 | 2.2 | 3.4 |
| Sept | 3.6 | 1.0 | 0.4 | 2.2 | 3.4 |
| Oct | 4.0 | 1.4 | 0.4 | 1.8 | 3.4 |
| Nov | | 1.4 | 0.4 | 2.0 | 3.6 |
| Dec | | 1.6 | 0.6 | 2.0 | 3.6 |

Use of the 7520 rate is required in many estate tax planning strategies, including GRATs. Generally, the lower the rate the better. Those that acted since the second half of 2020, and who act before rates significantly rise further, have or will benefit.

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# Who Custodies Your Investments Can Matter?

## - Understanding Risk and Why They Wanted Certificates! -

It wasn't so long ago that most investors demanded paper certificates for their shares, that they held in their possession, and would never dream of holding them in "street name." Whether they knew it or not, "street name" meant that a broker-dealer ("Broker") pooled customer securities as their own and that ownership was reflected on the Broker's balance sheet, thus susceptible to reach by the Broker's creditors. The risk of creditor reach became apparent during a financial crisis over 50 years ago when many Brokers were forced to merge, sell, or close their doors. Investors suffered major losses during this 1968-1970 economic crisis. Thereafter, Congress reacted with the Securities and Investment Protection Act and created the Securities Investor Protection Corporation ("SIPC"). Securities held in bank and trust company custody, on the other hand, are kept separate and apart from a bank's balance sheet and are not subject to the claims of a bank's creditors. In both cases, paper certificates have become rare and most ownership of shares is now electronic, which facilitates ease of transfer.

SIPC is designed to protect against the loss of cash and most securities held at Brokers. SIPC covers the first $500,000 of a customer's portfolio, with a $250,000 limit on cash. Any excess over these thresholds are at risk. Additional protections therefore may be provided. Many brokerage firms maintain excess insurance for customers, often referred to as "excess SIPC coverage." In addition to SIPC and excess coverage, Brokers must also satisfy certain capital requirements. An important one involves the so-called "Customer Protection" rules under § 240.15c3-3 of the U.S. Code of Federal Regulations. Among other protections, the rules require segregation of customer securities from their own when reporting and also require the posting of collateral when they use customer securities in dealer activities. Broker custody agreements generally provide permission to lend, pledge, or otherwise use customer securities. When assets are held in street name, they are used in a variety of dealer activities, such as margin lending and option trading. When they use customer securities, the Customer Protection rules require that they post collateral in the form of what are intended to be cash equivalents- but are they really?

During times of stress, we focus on risks to our clients. The mortgage crisis of 2008 and the Covid pandemic of 2020 are examples of times where global risks stress our financial existence. Government decisions can exacerbate these problems, and too many people still fail to recognize how close to the brink we were in 2007-2008 when the government housing program and push for minority ownership of homes, without maintaining creditable underwriting policies, created risks to all of us that were not readily apparent. As part of the push, Securities and Exchange Commission regulations

*Continued on page 12*

# How We View Client Portfolios in Morningstar to Assess Risk

## - Just One Lense That We Use To See -

**John Doe : Account Aggregate**

Portfolio Snapshot

| Portfolio Value | Benchmark | Account Number | Report Currency |
|---|---|---|---|
| 44,675,668.48 | S&P 500 - MSCI ACWI ex US 85-15 | | USD |

**Analysis**

**Asset Allocation**

| | Portfolio Long | Portfolio Short | Portfolio Net | Bmark Net |
|---|---|---|---|---|
| Cash | 0.42 | 0.13 | 0.29 | 0.00 |
| US Stock | 83.11 | 0.00 | 83.11 | 84.26 |
| Non US Stock | 14.68 | 0.00 | 14.68 | 15.74 |
| Bond | 0.72 | 0.00 | 0.72 | 0.00 |
| Other | 0.07 | 0.00 | 0.07 | 0.00 |
| Not Classified | 0.00 | 0.00 | 1.13 | 0.00 |
| Total | 99.00 | 0.13 | 100.00 | 100.00 |

**Equity Investment Style %**

| | Value | Core | Growth |
|---|---|---|---|
| Large | 27 | 41 | 18 |
| Mid | 2 | 5 | 1 |
| Small | 2 | 3 | 1 |

Total Stock Holdings 8750
Not Classified % 0.00

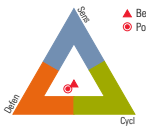
**Fixed-Income Investment Style %**

| | Ltd | Mod | Ext |
|---|---|---|---|
| High | 43 | 0 | 0 |
| Mid | 10 | 47 | 0 |
| Low | 0 | 0 | 0 |

Total Bond Holdings 16599
Not Classified % 0.00

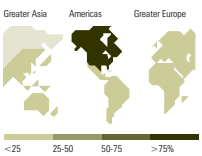
**Stock Analysis**

**Stock Sectors**




| | Portfolio % | Bmark % |
|---|---|---|
| **Defen** | **31.10** | **22.02** |
| Cons Defensive | 13.51 | 6.61 |
| Healthcare | 15.86 | 12.83 |
| Utilities | 1.73 | 2.58 |
| **Sens** | **39.93** | **46.16** |
| Comm Svcs | 4.77 | 9.65 |
| Energy | 3.07 | 3.02 |
| Industrials | 11.46 | 8.75 |
| Technology | 20.63 | 24.74 |
| **Cycl** | **28.97** | **31.81** |
| Basic Matls | 9.01 | 3.14 |
| Cons Cyclical | 5.46 | 12.11 |
| Financial Svcs | 13.27 | 13.85 |
| Real Estate | 1.23 | 2.71 |
| Not Classified | 0.00 | 0.01 |

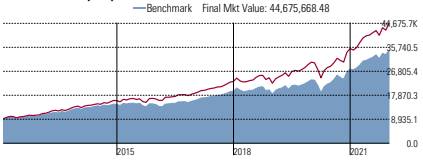
**Stock Regions**




| | Portfolio % | Bmark % |
|---|---|---|
| **Americas** | **86.04** | **85.68** |
| North America | 85.68 | 85.38 |
| Central/Latin | 0.36 | 0.30 |
| **Greater Asia** | **7.50** | **6.80** |
| Japan | 1.17 | 2.15 |
| Australasia | 0.40 | 0.67 |
| Asia Developed | 2.42 | 1.69 |
| Asia Emerging | 3.51 | 2.29 |
| **Greater Europe** | **6.45** | **7.52** |
| United Kingdom | 1.39 | 1.77 |
| Europe Developed | 3.94 | 5.08 |
| Europe Emerging | 0.30 | 0.22 |
| Africa/Middle East | 0.82 | 0.45 |
| Not Classified | 0.00 | 0.00 |

**Performance (Return as of date 12/31/2021)**

**Investment Activity Graph**




| Trailing Returns | 3 Mo | 1 Yr | 3 Yr | 5 Yr | 10 Yr |
|---|---|---|---|---|---|
| Portfolio Return | 11.06 | 26.70 | 25.95 | 19.17 | 17.77 |
| Benchmark Return | 9.57 | 24.99 | 23.65 | 16.71 | 14.71 |
| +/- Benchmark Return | 1.50 | 1.71 | 2.30 | 2.46 | 3.05 |

| Time Period Return | Best % | Worst % |
|---|---|---|
| 3 Months | 17.65 (04/20-06/20) | -19.26 (01/20-03/20) |
| 1 Year | 54.07 (04/20-03/21) | -3.71 (04/19-03/20) |
| 3 Years | 25.95 (01/19-12/21) | 7.35 (04/17-03/20) |

| Portfolio Yield | Yield % |
|---|---|
| Trailing 12 Month | 1.86 |

***Performance Disclosure***

*The performance data quoted represents past performance and does not guarantee future results. The investment return and principal value of an investment will fluctuate thus an investor's shares, when redeemed, may be worth more or less than their original cost. Current performance may be lower or higher than return data quoted herein. For information current to the most recent month-end, please visit https://advtools.morningstar.com/advisor/login/FamilyInfocontents.asp*

## Cryptocurrency Trivia and Facts

-It Remains in its Infancy -

-There are over 2,000 crypto projects that were started to create and monetize unique digital currencies, that have become worthless. That number continues to grow. Be careful!

-An individual bought two Papa John's pizzas for 10,000 bitcoin in 2010, worth 40 dollars. In hindsight, this was the most expensive pizza purchase in history (worth approximately $200 million today).

-A Welschman is currently in negotiations with his municipal council to recover his computer hard-drive (holding 7,500 bitcoin) from a local landfill. He threw the computer away in 2013. At current prices, those bitcoin are worth approximately $150 million.

-Only 21 million bitcoin will ever exist, with only an estimated 17 million currently in existence due to lost digital wallets or forgotten pass keys. As such, it is imperative to properly manage crypto wallets and integrate them within estate plans and chains of ownership.

-El Salvador and the Central African Republic are the first two countries to allow bitcoin and other crypto currencies as legal tender- after a year, they are not claiming success. In January 2022, the IMF urged El Salvador to reverse bitcoin's legal tender status because of the "large risks for financial and market integrity, financial stability and consumer protection." Bitcoin is notorious for its use in scams and other illegal activities, as well as its volatility.

- Kim Kardashian agreed to pay $1.26 million to settle SEC charges for failing to disclose a payment she received for touting a crypto asset on Instagram, viewing it as promoting a security without full disclosure of material information.

*Conner R. Kempe, Esq., LL.M, received course completion certificates from MIT's Sloan School of Management, on Blockchain Technologies: Business Innovation and Application, and the Saïd Business School, University of Oxford, England, on How are Cryptocurrencies Driving Innovation during 2021 and 2022.*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# Regulation of Digital Assets and Crypto Currencies

## - The Aims of Forthcoming Regulation -

During September, 2022 the Biden administration released the Comprehensive Framework for Responsible Development of Digital Assets ("Framework"). Digital Assets refer to cryptocurrencies, cryptokens, Non-Fungible Tokens ("NFTs"), products built on blockchains, and others. Their goal are to provide consumer and investor protection; financial stability; counter illicit finance; U.S. leadership in the global financial system and economic competitiveness; financial inclusion; and responsible innovation. This Framework addressed various issues, however this article will focus only on stablecoins, the environmental impact of blockchain technology, fighting illicit finance, and the implementation of a U.S. Central Bank Digital Currency and Central Bank Digital Currencies ("CBDCs"). Congress has recently been urged to speed-up legislation.

**Stablecoins -**
The Framework stresses the necessity for regulation in the area of stablecoins. Stablecoins are a type of cryptocurrency that strives to remain equal, or "pegged" to a specific currency; e.g., the dollar. They do so either manually or algorithmically. Either method performs a balancing of supply of the stablecoin against the collateralized asset. The Framework uses the example of the most recent terraUSD "de-pegging" from the dollar as an example of why regulation is needed. However, one flaw with the terraUSD structure was apparent; the majority of the collateral backing terraUSD (Bitcoin) was extremely volatile and already overleveraged. It is counterintuitive to collaterialize a supposed stable coin with one of the most volatile assets in our current markets. Therefore, regulation is needed and it is foreseeable that the collateral backing a stablecoin is in the crosshairs of such regulation.

**Environmental Impact -**
The environmental impact of cryptocurrencies and blockchains has been a common counterargument against crypto technology. There are generally two main ways crypto technology functions: proof of work or proof of stake. These were explained more in our Winter 2022 Client Update. However and as an overview, "proof of work" ("POW") refers to specialized computer modems solving complex cryptographic equations to validate transactions. Proof of stake ("POS") refers to owners of these coins "staking" their coins on a blockchain to be randomly chosen to validate transactions the fastest. This process is called "mining." The environmental concern relates to POW, because it is very energy intensive. POS is not since the speed of validation is not a factor. While this is true, some argue that the energy consumption needed by POW will lead toward the next innovations in the "green energy" sector, based on traditional principles of economics. As of May 31, 2022, green energy accounts for 40% of the power utilized by mining of cryptocurrencies, with this number increasing month after month. Most of these large crypto mines are currently utilizing renewable sources of energy, including solar, water, and wind turbines. Further, there has been a recent push to harboring the methane burn-off of natural gas plants in order to utilize this wasted resource to power crypto mines.

**Illicit Finance -**
Warnings are mentioned throughout the Framework due to cryptocurrencies inherent and historic volatility as well the fraud and scams that have troubled the area. Many argue that this technology needs to mature before going mainstream and will only strengthen the technology for the future. The current era of cryptocurrencies and blockchain technology is akin to the early years of the Internet. There were countless numbers of hacks, frauds, and scams during this time frame, and they continue to exist today. Consumer complaints, including those filed with the Consumer Financial Protection Bureau, are on the rise, demonstrating the increase in use of cryptocurrencies; their volatility; and their illicit use. As a result, regulation is increasing.

**Central Bank Digital Currency -**
A Central Bank Digital Currency ("CBDC") is a government issued cryptocurrency that is equal to one "dollar" of a given currency. Just as any other cryptocurrency, a ledger of all your transactions is kept. The Framework argues this is more efficient, facilitates fast cross-border transactions, and is environmentally sustainable. Further, Fed Chairman, Jerome Powell, has stated that with the implementation of a CBDC "you wouldn't need (any other) cryptocurrencies." This statement has made the majority of individuals that understand digital assets uneasy, as this could lead to something similar to a social credit score. In an extreme example, the government can limit the number and type of asset you purchase if you, for example, post a comment that is against the current political parties' agenda on a social media outlet, or even place a quota of a given criteria before

*Continued on page 13*

## A Historical Perspective of the Estate and Gift Tax Exemptions and Rates

The original estate tax was enacted in 1916, with an exemption of $50,000 and a rate of 10%. The highest the rate has been is 77%, which was in the 1960s. The current exemption is reduced under current law in 2026 to $5 million (indexed from 2007).

**Historical Gift Tax Exemption Amounts (Per Person)**

| | | |
|---|---|---|
| 1997 | $600,000 | 55% |
| 1988 | $625,000 | 55% |
| 1999 | $650,000 | 55% |
| 2000 | $675,000 | 55% |
| 2001 | $675,000 | 55% |
| 2002 | $1,000,000 | 50% |
| 2003 | $1,000,000 | 49% |
| 2004 | $1,500,000 | 48% |
| 2005 | $1,500,000 | 47% |
| 2006 | $2,000,000 | 46% |
| 2007 | $2,000,000 | 45% |
| 2008 | $2,000,000 | 45% |
| 2009 | $3,500,000 | 45% |
| 2010 | $5,000,000 or 0% | 35% or 0% |
| 2011 | $5,000,000 | 35% |
| 2012 | $5,120,000 | 35% |
| 2013 | $5,250,000 | 40% |
| 2014 | $5,340,000 | 40% |
| 2015 | $5,430,000 | 40% |
| 2016 | $5,450,000 | 40% |
| 2017 | $5,490,000 | 40% |
| 2018 | $11,180,000 | 40% |
| 2019 | $11,400,000 | 40% |
| 2020 | $11,580,000 | 40% |
| 2021 | $11,700,000 | 40% |
| 2022 | $12,060,000 | 40% |
| *2023 | $12,920,000 | 40% |

**The Tax Cut and Jobs Act Expires 2025**
***Projected**

Note: The generation skipping tax rate and exemption is the same as the highest estate and gift tax rate and the exemption threshold has historically been the same as that of the estate and gift tax.


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## *Weaponizing the IRS and other Agencies*

*(continued from page 2)*

During 2022, the Supreme Court of the United States ("SCOTUS") reigned in what is known as "judicial deference" to administrative agencies. These agencies are suppose to implement and regulate laws enacted by Congress and are not empowered to create law. Neither can the President. In a series of three cases during 2022, SCOTUS illustrates its increased skepticism of the latitude (sometimes called "Chevron Deference," based upon a 1984 SCOTUS decision) that had been given to agencies over the years in interpreting statutes. These cases signal that going forward federal courts will more closely scrutinize the interpretations of statutes by agencies. In historical context, this means that the law is reverting to pre-1984 law where taxpayers, for example, have the ability to argue IRS regulations are not supported by law and therefore cannot be imposed against them. Similarly, businesses currently restrained by agency interpretations which were shown deference by courts may now have an opening to challenge those interpretations.

In the end, laws are created to be followed and not dismissed in fleeting political winds. The problem is that many suffer through the abuse. As can be seen above, more laws are then created to address and cure the abuse, but political bias allows those laws to be ignored as unjust- that's how socialism and fascism can creep into our institutions. The Supreme Court has seen the creeping movement away from law to politically biased administrative agency whim, and for now establishes a bulkhead to political agenda through agencies. Thank God!

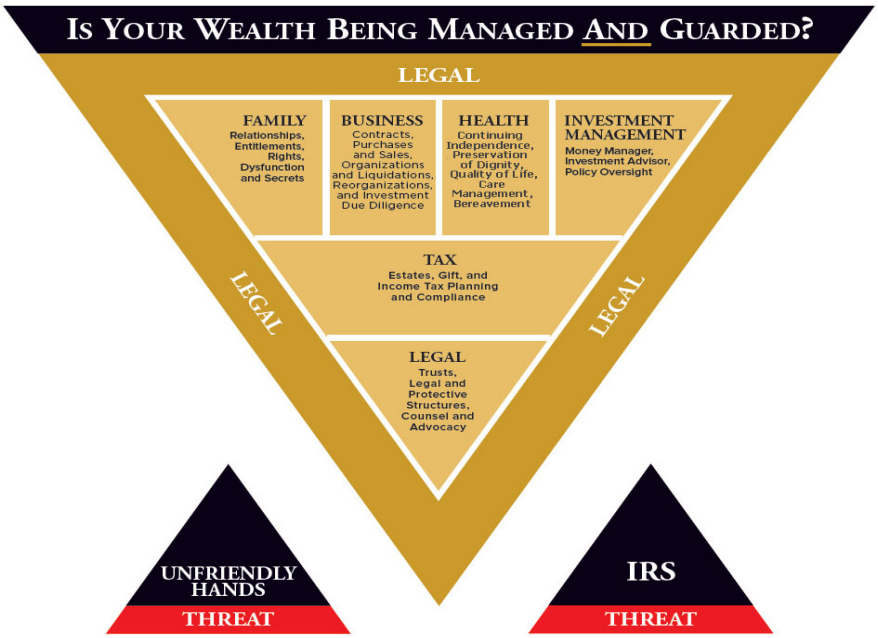
### On Wokeness

Throughout history there has been social injustice, and in democratic civilized societies laws have evolved to address it. Most educated unbiased individuals recognize injustice and have been sensitized to various forms. Suggesting that one political party is more woke than another, and instilling that into institutions, is itself injustice and unwoke and dangerous.


**"Before I tell you what you've done wrong, can you tell me what you think you've done wrong?"**

## What Wealth Management Should Look Like But Popularly Doesn't!

**- Don't Confuse Investment Management with Wealth Management -**



## Cyber Security Safeguards
-Money Transfers and Account Hacking Are A Problem-

The Securities and Exchange Commission has made it a priority to create new regulations concerning cybersecurity and safeguarding customer information. Chairman Gary Gensler has indicated that the agency is also working on an overhaul of Regulation S-P, a 22-year-old rule stipulating customer data must be protected. He believes the rule, which was last amended in 2004, needs to be updated. Gensler positioned the overhaul of Regulation S-P as a companion initiative to the cybersecurity rule, which is focused on the policies and procedures companies have in place to prevent, detect, and respond to data breaches. "We've had that rule—Rule S-P—for 20 years, we're also looking to update that." The rule remains a significant area of focus for regulators and the SEC announced a $35 million settlement with Morgan Stanley over what the commission described as "extensive failures" to protect client information. "In terms of cybersecurity, what we've found is this is a growing risk in our economy, and everybody knows that," he said. "I think cybersecurity is a key risk, and it's one of the risks that I'm really proud that we're updating."

"The other thing that we're looking at is [protecting] the investor themselves," Gensler said. This recognition is important, because individuals are increasingly being attacked and defrauded through internet transactions and attacks on the end-user's computer, which is typically lacking the robust safeguards found with financial institution cybersecurity.

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## Treasury Rule Forces Companies to Disclose Beneficial Owners

**- The Administrative Cost Will Be Significant -**

The Treasury Department has finalized and published new disclosure rules which will prevent the owners of businesses from maintaining their anonymity. Though a worthy goal in attempting to root out corruption and terrorism, drug trafficking, and other crimes, these rules will burden what are in reality many small businesses. Under the new rule (RIN 1506-AB49), companies will have to disclose the identities of and other information about their "beneficial owners"—anyone who owns at least 25% of the company or exerts significant authority over it. The new disclosure requirements were mandated under the 2021 Corporate Transparency Act. Businesses operated through entities will have to provide Treasury's Financial Crimes Enforcement Network, or FinCEN, with the beneficial owners' names, addresses, dates of birth, and "unique identifying numbers" from an ID document, like a passport or driver's license. That information will be held in a registry that will then be available to federal agencies and law-enforcement officials at other levels of government. The registry will not be public.

The new filings will have obvious increased compliance burdens on companies. As a result, there will be obvious increased costs to secure compliance. In announcing the new rule, Treasury and FinCEN indicated they were mindful of the potential compliance load on companies. FinCEN plans to issue a compliance guide to help small businesses with the rule, and it estimated that companies with simple management and ownership structures—the majority of those who will have to report, FinCEN says—"will have to pay only about $85 each for their initial disclosure reports."

The new rule takes effect Jan. 1, 2024. Companies created before that date will then have a year to file their initial disclosure reports, while companies that are formed after then would have 30 days.

## Florida Expands Duration of Trusts

**- The Rule Against Perpetuities -**

Many clients create multigenerational trusts that are protected from taxation and third-party reach, through lawsuits, divorce, and other rights. Historically, most states and countries limited trust duration to 21 years after lives in being on the establishment of the trust. Many have changed their rules because of the trend in creating long lasting trusts for family protections. Florida had a 360 year duration for many years, but this year extended the rule to 1,000 years. Few clients will need to update their trusts for this reason, except to the extent they hold a desire to allow their wealth to extend in what amounts to unlimited duration.

## *Trusts for Spouses and Getting It Back*

*(continued from cover)*

referred to as a "SLAT" or "spousal lifetime access trust." But what if that spouse who is a beneficiary of the trust predeceases the donor spouse? Can the donor get it back?

The answer is it depends on how access is structured and achieved. In general, the Internal Revenue Code is designed to prohibit the creator of a trust from completing a gift for estate tax purposes while being a beneficiary of that trust. The "retention" of rights causes the gifted property to be included in the estate of the donor, at date of death value. The beneficiary spouse may hold a power to add or convey the trust property to the donor spouse in the future, but this type of planning raises various issues that must be confronted to assure the property is not included in the donor's taxable estate. Furthermore, the donor must rely on the beneficiary spouse to exercise the power and not change her mind in the future.

New Florida trust law now allows the donor spouse to be a beneficiary of the trust from inception and resolves various issues associated with rights that cause or threaten to cause estate tax inclusion. There are various conditions to secure this benefit, but a donor spouse may now be assured that if their spouse predeceases them they can retain access to the property they previously gifted without loss of the estate, gift, and generation skipping tax benefits they achieved. There are many complex legal issues associated with this type of planning, and caution is required.

## What Does Stagflation Look Like?
### - A Look Back in Time -

A recession is said to be a normal part of an economic cycle and is painful as the economy slows and unemployment rises. But it historically lasts a year or so and isn't marked by inflated prices for everything. Stagflation is prolonged slow economic growth, with ongoing layoffs and high inflation.

Presently, by some definitions, we are not in a period of high unemployment, but layoffs by businesses are increasing. Because of the shortage of wage earners, some believe that businesses will hold onto workers longer. The result will be an added hit to earnings, reducing the market values of businesses.

During 1970s, policies to confront stagflation centered on increasing government spending and lowering interest rates which can counter downturns in aggregate demand. This belief rested on the *Phillips Curve*, which describes the typically inverse relationship between inflation and unemployment. Critics of these policies noted that the Fed, in accepting higher inflation as its preferred alternative to a rise in unemployment, fostered damagingly high inflation expectations.

It took approximately 8 years for the 70s cycle to reverse. Nevertheless, though some worry about stagflation, we have only recent signs of slowing demand and weakening employment. Taxpayers have been flush with cash, based upon historical standards. The Fed is working on a fine balancing act, and only time will tell whether it is successful. Some investment policies are built for times like this, where they capture lower values when markets swing. Calling bottoms arbitrarily, however, is more dangerous. Studies suggest that successful timing of market swings cannot be routinely done to produce positive results.

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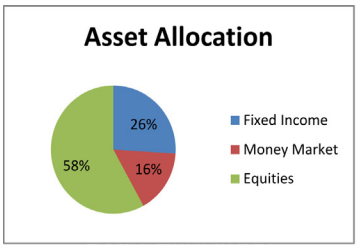
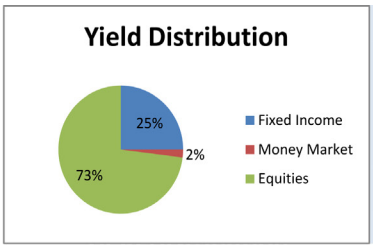
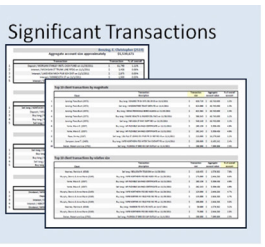
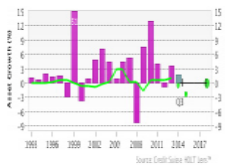
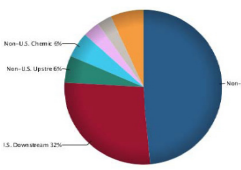
# Wealth Monitoring Services
## - Our Proprietary and Copyrighted Monthly Client Snapshot -

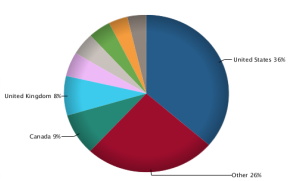


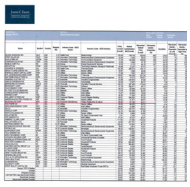





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## Client Snapshot

| | |
|---|---|
| Client Name: | John Doe |
| Client #: | 999.281 |
| Date: | 12/17/21 |
| Reporting Period: | November 2021 |
| Legal Assistant: | Sonya Mochegova |
| CPA: | Ben Devlen |
| Advent Analyst: | Aaron Flood |
| Lawyer: | Joseph C. Kempe |

### CURRENT

| | |
|---|---|
| Total Family Wealth: | $103,688,000 |
| *Tax Exempt Trusts & Entities* | 72,561,000 |
| Husband's Estate Size: | - |
| Wife Estate Size: | 31,127,000 |
| Joint Estate Size: | - |
| Current Estate Tax: | 10,528,000 |
| Percent of Current Estate: | 10% |
| *Projected Gross Estate: | 123,079,000 |
| *Projected Estate Tax: | 13,679,000 |
| Percent of Projected Estate: | 9% |
| Estate Tax Bracket: | 40% |
| IRA Portfolio: | 435,000 |
| *Total Family Partnership | 33,952,000 |

•Based upon a 3% return, net of expenses over life expectancy and no valuation discounts.
•The current Estate Tax estimate assumes a $11,700,000 exemption and 40% tax through 2025, reverting to the 2017 exemption of $5.49M indexed for inflation in later years. We are assuming an inflation rate of 2.5%.

### YTD Investment Performance

| | |
|---|---|
| Portfolio: | 15.07% |
| S&P 500: | 23.18% |
| Barclays Agg: | -1.29% |

### Performance Since 2011

| | |
|---|---|
| Portfolio: | 9.03% |
| S&P 500: | 16.19% |
| Barclays Agg: | 2.95% |

### Current Year Realized Gains and Estimated Tax Status

| | |
|---|---|
| 2021 Gains/(Losses): | $560,306 |
| Protected Tax Status: | N/A |

(Performance and Realized Gains are through November 30, 2021 on monitored investment accounts. The IRR for periods over a year are annualized as per GIPS recommendation.)

### Income for the Period Ending 2020

| | |
|---|---|
| Total Income: | $459,294 |
| Tax Free Income: | 158,675 |
| Adjusted Gross Income: | 300,619 |
| Taxable Income: | 285,619 |
| Marginal Tax Bracket: | 15% |

### Gift & GST Exemption Used

| | |
|---|---|
| Husband Gift: | N/A |
| Wife Gift: | $9,641,913 |
| Husband GST: | N/A |
| Wife GST: | $11,247,255 |
| DSUE Available: | N/A |

### Capital Loss Carryover

| | |
|---|---|
| Short-Term Cap. Loss CO. | $1,255,646 |
| Long-Term Cap. Loss CO. | $892,417 |

## Estate Planning Developments

| Reviewed & Current | YES | NO |
|---|---|---|
| Will: | X | |
| Trust: | X | |
| DPOA: | X | |
| HCP: | X | |
| Living Will: | X | |
| IRA Integration: | X | |
| Recommendations: | Update LP agreement | |
| Document Code: | Single 80/20 mod. | |

| Miscellaneous | |
|---|---|
| Promissory Notes Current: | Yes |
| QPRT Lease Dates: | FL - June MI - December |
| Crummey notices verified: | N/A |
| Family LP Records Current? | In progress |
| Family Office Review Date: | May 1, 2022 |
| RBD Date: H/W | - 12/05 |
| RBD Compliance: | - Yes |
| RMD Compliance: | Yes |

### Legal Developments

The Senate is debating the Build Back Better tax and spending bill promoted by President Biden, with any changes necessitating that the Bill will be referred back to the House for a new vote. As proposed, the Bill does not contain any estate and gift tax increases, though they could be added by the Senate. There are some increases in tax rates on high income earners and trusts, which will have some impact on estate planning. Democrat members of Congress desire to push the Bill through, though it will need to wait until 2022. Then the question will be the consequences of any new rules and whether they will be retroactive.

## Economic Developments

### PPI


Source: https://fred.stlouisfed.org

### Observations

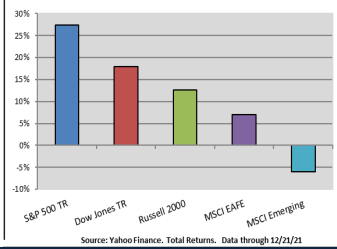
Threats of inflation have created market volatility, as investors digest the data and readjust valuations with higher discount rates- which lower present values. Wholesale prices, seen through the producer price index ("PPI"), rose in November more than was projected. This was not good news, as the PPI is the wholesale price index, which is a leading indicator for future consumer inflation. This acceleration in wholesale prices forecasts a rise in inflationary pressures which forced the Fed to accelerate its bond sales and tapering, pulling money out of the economy. During December meeting, the Fed also signaled rate rises could occur earlier in 2022. At the same time, politically it provides Republicans and Democrats, like Manchin, a context in which to argue against the Build Back Better tax and spending bill.

### Economic Statistics

| | Reported | SGS |
|---|---|---|
| Consumer Inflation | 6.81% | 14.91% |
| Unemployment | 4.24% | 24.80% |
| GDP | 1.39% | -2.17% |

*Source: BLS, ShadowGovernmentStatistics*

### Benchmark Returns YTD




Source: Yahoo Finance. Total Returns. Data through 12/21/21

## IRS Budget and Armed Agents
## - Don't Believe Much of What You Read or Hear! -

Much has been written on how the IRS will spend its new $80 billion budget and whether they are hiring 87,000 armed agents to audit taxpayers. The budget and hiring number is correct, but all staff won't be auditors or examiners and only a few will be armed. Of the 81,600 IRS employees in 2021, only 3,000 are in the Criminal Investigation Unit or "CI." Only special agents in CI are armed and there are 2,100 special agents in CI. The majority of IRS's tax administration is done by civilian auditors and revenue collectors. In fiscal year 2021, the efforts of the CI unit resulted in the identification of more than $10 billion in tax fraud and other financial crimes. The budget will be spent over 10 years, and the 87,000 employees sought will involve both some new and replacements for retiring workers. CI hopes to be able to hire 300-350 special agents during the course of an entire fiscal year, and they lose between 150-175 agents every year to retirement and attrition.

**Dawn Chadwick, LA**
Health Care Litigation

**Amelia Dietl**
Estate Planning and Tax Department Asst.

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## *Florida enacts community property law*
*(continued from cover)*

on the death of one of those spouses, joint property would receive only a 50% basis increase. In this example, the surviving spouse would receive a basis increase of $4 million (50% of the $8 million spread between cost and value). If the property were community property, pursuant to a unique Internal Revenue Code ("IRC") statute, the increase would be the entire $8 million, or a potential difference of over $1 million in potential capital gains tax savings if the property were sold with a 20% capital gains tax rate. If the surviving spouse owned those assets on her subsequent death and they were worth $15 million, a second 100% basis increase could occur, potentially without estate tax exposure.

IRC § 1014(b)(6) provides for the result in the above example, by deeming the one-half interest owned by the surviving spouse to pass with the decedent's half (combined as one) to the surviving spouse. This occurs whether or not the decedent's half actually passes to the surviving spouse. As such, securing community property status does not negate estate tax planning, because the decedent may still pass the decedent's 50% to estate tax exempt trusts for the benefit of the surviving spouse.

Florida Statutes §§ 736.1501-1512 provide the Florida law associated with establishing community property in Florida. In order to distinguish community property from joint property between spouses, various rules apply. A trust must be used, and each spouse is considered to independently own and control their 50%, which they can dispose of separately or as they agree at death. As a result, a couple with a taxable estate can implement traditional base estate planning, using their respective estate and generation skipping tax exemptions. Doing so may sometimes result in forfeiting the second basis step-up on the surviving spouse's estate, in order to preserve the estate, gift, and generation skipping tax exemptions of the first spouse to die. Clients who have used their estate and gift tax exemptions in tax reform planning may benefit from securing community property status, by swapping assets with large gains out of irrevocable trusts that were created to utilize exemptions.

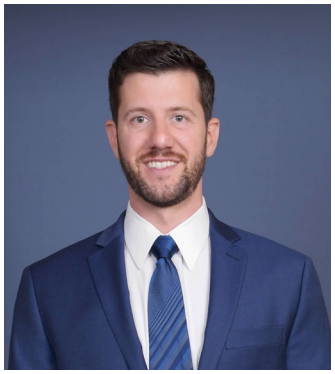
Use of a community property trust may not be appropriate in second marriages or where one spouse has significant liabilities or liability exposures. Various considerations are involved in this type of planning, as not only tax law is involved. The property rights and objectives of each spouse must be considered.

## *Will Your Prior Gifts Survive 2026?*
*(continued from page 3)*

This mechanic is built into the Internal Revenue Code in order to push estates into higher tax brackets, by counting all transfers of wealth by the decedent during life and at death. An Incomplete gift, however, may not be viewed as complete until death, and under various Internal Revenue Code ("IRC") rules is made part of the gross taxable estate and not as an adjusted taxable gift. A qualified personal residence trust ("QPRT") and grantor retained annuity trust ("GRAT"), among other arrangements, are examples of what are considered Incomplete gifts because the settlor of the trust must survive a stated term of years fixed in the trust for the assets to be removed from their gross taxable estate. If they die before the term expires, the value of the trust at time of death will generally be included in their gross taxable estate. For example, if a person transfers their home to a QPRT at a time when it was worth $15 million with a 10 year retained term of use, they may have made a $1 million gift. If they die in the 9th year when the home is worth $25 million, the $25 million home is included within their gross taxable estate because the gift had not yet become Completed, for these purposes.

Essentially, the Final Regulations eliminate the risk that Completed gifts will somehow become taxable in the estate. Therefore, in the example in the first paragraph of this note, there is no risk that the $12.06 million gift in 2022 will not be respected and will become a part of the gross taxable estate. The Proposed Regulation, on the other hand, will treat the gift of the $15 million home in the third paragraph as Incomplete and will cause the entire $25 million value at time of death to be taxed in the decedent's estate, and only a $7 million exemption or BEA will be available. As a result, the home will increase the taxable estate by what is effectively $18 million.

A further important nuance is to recognize that if the full BEA is not used before 2026, any residual amount may be lost. For example, if a person through 2022 has total adjusted taxable gifts of $8 million, they will lose the remainder of the BEA in 2026, under current law, unless they gift more. The loss would be $4.06 million of exemption or BEA as of 2022, but the BEA will continue to grow through 2025. Given our current inflationary cycle, that growth will likely be considerable- some estimate by as much as $2 million more (or $14 to $15 million in 2026 as a result of indexed inflation.)



**Alexander "Alex" Goussis, CPA**

We are pleased to announce that Alexander "Alex" Goussis, CPA, has joined the Firm. Mr. Goussis comes to us from the international accounting firm, Deloitte Tax, LLP's New York, NY office, where he served as a senior tax accountant in their Business Tax Services and Hedge Funds department. He graduated from Hofstra University with a Bachelor's of Business Administration in Accounting, and Minor in Finance. Coincidentally, he was a graduate of St. Anthony's High School where he was classmates with several Dartmouth teammates of firm attorney, Conner R. Kempe.

For the past eight years, Mr. Goussis has been involved with accounting and tax compliance for high wealth individuals, partnerships, and corporations, including private equity, venture capital, and real estate funds. He has supervised diverse teams of individuals focusing on partnership allocations and waterfalls; calculating and planning for profit carry allocations; and collaborating with internal and external sources of financial information in order to account for or reclassify transactions.

Mr. Goussis is joining our Wealth Management, Fiduciary Services and Reporting, and Tax and Estate Planning Departments, where he will continue to expand and add depth to the Firm's client services and capabilities.

# Our Tax Compliance and Planning Accounting Team

What makes us somewhat unique is the synergies we create by having two groups of professionals collaborate on client projects. Most business and estate planning we do is done by a team of lawyers, CPAs, and paralegals. Several of the lawyers have post doctorates in tax law. These teams that collaborate provide a more robust service for our clients, where planning, implementation, and tax reporting is done by the same team. A higher quality product is often produced and more accurate and proper tax reporting occurs. Because it is done routinely by us, it often reduces the cost that would otherwise occur from two or more professional service organizations.

**Benjamin Devlen, CPA**
Tax Accountant and
Wealth Management
f/w WTAS LLC (Arthur Andersen)
Notre Dame, Masters of Accounting

**Chris Bourdeau, CPA**
Tax Accountant and
Wealth Management
Operation Desert Shield
USS Independence

**Owen Bradley, CPA**
Tax Accountant and
Wealth Management
f/w Deloitte Tax, LLP
Combat Infantry,
Afghanistan

**Denise Alpert, CPA**
Tax Accountant and
Wealth Management
f/w LKD CPAs & Consultants
and Deloitte Tax, LLP
Barry U, Masters of Accounting

**Dorian Dortch, CPA**
Tax Accountant and
Wealth Management
f/w Daszkal Bolton, LLP

**Aaron M. Flood**
Economic Analyst
Wealth Management
Advent® Axys Analyst

**Maureen Lloyd Rigaudon**
Tax Accountant
Bookkeeper
Wealth Management
Advent® Axys Analyst

**Michael Kramer**
Tax Accountant
Bookkeeper
Wealth Management
Advent® Axys Analyst

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Supreme Court Justice
Louis E. Brandeis

**Tax Evasion vs. Avoidance**

"I live in Alexandria, Virginia. Near the Supreme Court chambers is a toll bridge across the Potomac. When in a rush, I pay the dollar toll and get home early. However, I usually drive outside the downtown section of the city and cross the Potomac on a free bridge. This bridge was placed outside the downtown Washington, DC area to serve a useful social service, getting drivers to drive the extra mile and help alleviate congestion during the rush hour. If I went over the toll bridge and through the barrier without paying the toll, I would be committing tax evasion ... If, however, I drive the extra mile and drive outside the city of Washington to the free bridge, I am using a legitimate, logical and suitable method of tax avoidance, and am performing a useful social service by doing so. For my tax evasion, I should be punished. For my tax avoidance, I should be commended. The tragedy of life today is that so few people know that the free bridge even exists."

**Carolyn Engvalson**
Estate Administration
Fiduciary Services
Wealth Management

**Donna Baummier, LA**
Estate Administration
Fiduciary Services
Wealth Management

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## *Exemptions Set To Soar: Don't Waste or Wait for Them*

*(continued from page 3)*

What is important to recognize is that any amount of exemption that is in excess of the BEA Sunset Amount (estimated at $7 million) will be lost if not used. This result is exacerbated by the so called "portability rule," where the unused exemption or BEA of a predeceased spouse can be ported or transferred to the surviving spouse. Any amount of BEA ported to a surviving spouse is reduced and used first to absorb gifts by the surviving spouse, leaving the surviving spouse's own BEA vulnerable to reduction. A couple of examples will simplify an understanding of these rules:

- If a person (husband) makes taxable gifts of $8 million over their lifetime and dies in 2026, any unused BEA is lost. If the BEA in 2025 were $14 million, $6 million of exemption would be lost.

- If this person were married, and died in 2023 having made $8 million in taxable gifts when the BEA were $13 million, the unused amount ($5 million) would be ported to their spouse (wife). Thus, the $5 million unused BEA (called a "deceased spouse's unused exclusion amount" or "DSUE") of the husband would increase the surviving wife's BEA to $19 million in 2025 ($5 million DSUE plus $14 million BEA in 2025).

- If the surviving wife gifts $10 million to their children in 2025 and dies in 2026, the available BEA against her residual estate and estate tax would be only $2 million. She would have first exhausted the DSUE from her husband of $5 million and the $5 million remaining gift amount would reduce her 2025 BEA of $14 million to $9 million. However, if the BEA Sunset Amount of $7 million occurs in 2026, it would be reduced by the $5 million she used of it in 2025. She lost $7 million over night causing a potential $2.8 million increase in estate taxes.

As a result, a surviving spouse must use not only any DSUE amount, but all of their own BEA to avoid loss of present exemptions. If the DSUE were preserved and the surviving spouse's exemption used first, it would be far easier to avoid loss of estate and gift tax exemptions in 2026. However, that is not the law!

Note: For some amusement on the DSUE enhancing the value of widows, you might enjoy reading this article Joe Kempe wrote when portability was enacted: Joe Kempe, *Leaving Your Spouse (or Not) a DSUE or Other Forms of Augmentation, The Evils Portability Has Brought,* Linkedin.Com, 12/08/2014. https://www.linkedin.com/pulse/20141208144906-52057142-leaving-your-spouse-or-not-a-dsue-or-other-forms-of-augmentation?trk=pub-lic_profile_article_view

## *Who Custodies Your Investments Can Matter*

*(continued from page 5)*

expanded those securities that could be considered cash equivalents under the Customer Protection rule. Not only are government securities and various sovereign bank and and foreign country development obligations qualified to secure customer securities that are borrowed by Brokers, but mortgaged backed securities also qualified. The collapse of the housing market at this time dramatically reduced the value of these securities, and thus the financial protection and backing for loans of customer securities to Brokers. One study suggests nearly 20 percent of mortgaged backed securities lost more than 95 percent of their value, potentially causing Broker's to become insolvent and unable to repay their customers. It is in these times that many clients moved their investments to bank and trust company custody and out of Broker custody.

In 2010, The Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law and addressed a variety of issues related to trading of mortgaged backed securities and the "systemic fragility revealed by the crisis." Since then, stress testing of our financial institutions occurs annually and assesses the impact on capital levels that would result from immediate financial shocks and nine quarters of severely adverse economic conditions.

Note: For background on the 2008 crisis, see *Hey, Barney Frank: The Government Did Cause the Housing Crisis,* The Atlantic, 12/13/2011.

## Projected Increases in Estate, Gift, and GST Exemptions and Exclusions for 2023

Thomson-Reuters Checkpoint issued a newsletter in which it estimated, based upon the Consumer Price Index published for August 2022, how inflation will impact the existing exemptions and exclusions for estate, gift, and GST tax as follows:

- The estate and gift exemption amount (currently $12.06 million) will increase to $12.92 million for 2023. The GST exemption will likewise increase by the same amount.

- The annual gift tax exclusion will increase from the current $16,000 up to $17,000 in 2023.

- The gift tax exclusion amount that can be given annually to a non-citizen spouse is increasing from $164,000 up to $175,000 next year.

It is important to note that in its newsletter, Thomson-Reuters Checkpoint provides that "The IRS has not officially issued these figures, but generally speaking, these estimates are fairly accurate."

**Alexandra Cormier, LA**
Estate Administration

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## *Regulation of Digital Assets and Crypto Currencies*

*(continued from page 6)*

you are able to utilize your digital currency. In a world of ever-growing privacy concerns, this should give you pause, as the government would now have a complete ledger of all your purchases, sales, and gifts at their disposal. Something similar is currently happening by credit card companies tracking firearm purchases.

**Tax and SEC Regulations** -
Finally, for tax and other regulatory purposes, the Framework still left a main question unanswered: "What makes a digital asset a "security" versus a "commodity." Proposed regulations released in 2022 under the Responsible Financial Innovation Act ("Regulations") attempted to address this dilemma by expanding the definitions of a security, first articulated by the Supreme Court in *SEC vs. W.J. Howey Co*. In short, the Court defined a security as "an investment in a common enterprise where profit is expected from the efforts of a promoter or third party." There are many different business models associated with cryptocurrency investment, so this debate will not end with them as either solely a security or a commodity. As such, the Regulations start by defining a digital asset as a commodity and provide rules and exceptions to the contrary, that are outside the scope of this article. As such, the final Regulations will provide future guidance, but for now you should rely on your professional legal advisors for proper treatment under state and federal regulations, including those associated with tax compliance.

## Finding Treasure is Taxable, but Baking a Cake and Gold Mining Isn't!

### - Reporting to the IRS Increases But the Law Remains Unclear -

Tax law students generally start there training with a basic income tax concept under IRC § 61, that gross income means "all income from whatever source derived. " In 1969, a United States Federal Court ruled that treasure is taxable the year that it is discovered. "If you find and keep property that does not belong to you that has been lost or abandoned (treasure-trove), it is taxable to you at its fair market value in the first year it is in your undisputed possession." *Cesarini v. U.S. (N.D. Ohio 1969).* The current IRS position on finding crypto by mining is similar and requires recognition of the income as taxable, but this differs markedly from discoveries through mining of gold and other natural resources. In one of the only tax cases on the topic, a taxpayer is demanding to know why by arguing it is no different than baking a cake. See *Jarrett v. U.S. of America,* where this tiny Tennessee court case may shape the future of the taxation of digital assets.

Although the arguments for how digital assets should be taxed are beyond the scope of this note, it is important to recognize the IRS position and manage the accounting and reporting in a manner that conforms with law and the required reporting that has recently been enacted. There is consensus that digital assets are property, just like gold, oil, and treasure. Why is there a difference? In the Jarrett case the taxpayer did not settle with the IRS, who was willing to dismiss the action in order to avoid having to publicly address the issue. The Jarrett's were not willing to accept their refund, because they felt the issue could be brought-up again. The Jarett's want to know, and perhaps the courts will allow them to find out. Nevertheless, and until we have clarity, like in any for profit endeavor, expenses are generally incurred and are deductible, provided that the activity is not viewed as a hobby. As such, mining and other crypto activities that are not pure passive speculation should be seriously pursued in a businesslike manner. The form of entity chosen to pursue the activity can also matter. For example, the IRS view is that members of limited liability companies are generally active participants and subject to employment taxes. As a result, if the production of digital assets is taxable income upon "undisputed possession," self-employment taxes would also be due.

That takes us to recent 2021 and 2022 legislative initiatives, which greatly increase mandatory taxpayer disclosure of receipt or use. This rule applies to all taxpayers, and for these purposes receipt includes possession through mining activities. Failure to comply with these rules can result in significant fines, penalties, and prison of up to five years. The 2021 Infrastructure Act further requires businesses to report the names, addresses, and social security or other numbers of those paying them in digital assets on transactions occurring on or after January 1, 2024. Reporting must occur within 15 days. Furthermore, to illustrate the seriousness of the government, within the "enforcement" section of the 2022 Inflation Reduction Act explaining the purposes and use of the $80 billion allocated to the IRS, the Act provides, in part, "For necessary expenses for tax enforcement…. to…. collect owed taxes…. [and] to provide digital asset monitoring and compliance activities…".

As discussed elsewhere in this Client Update, the regulation of digital assets is at its infancy and the area is developing. Proper legal counsel is imperative in addressing any business or mining activities associated with their receipt or use. Caution and prudence should be exercised.

**Sector Performances as of December 31, 2021**

**Source: Morningstar**

| Sector | 1Yr | 3Yr | 5Yr |
|---|---|---|---|
| Basic Materials | 28.20 | 22.92 | 12.63 |
| Communication Services | 13.55 | 22.58 | 11.14 |
| Consumer Cyclical | 22.69 | 31.51 | 22.48 |
| Consumer Defensive | 15.04 | 16.75 | 9.36 |
| Energy | 49.33 | 0.65 | -5.18 |
| Financial Services | 25.37 | 18.63 | 12.27 |
| Healthcare | 19.38 | 18.24 | 15.80 |
| Industrials | 20.08 | 19.30 | 12.05 |
| Real Estate | 34.43 | 14.92 | 7.34 |
| Technology | 33.36 | 41.45 | 30.16 |
| Utilities | 13.67 | 9.82 | 7.85 |

## *Florida enacts directed trust law*

*(continued from cover)*

control and direction by family members or other trusted advisors or friends who direct them. Furthermore, the demand for administration and trust situs in Florida to avoid becoming a resident trust of a state that imposes income taxes has encouraged administration in Florida, when family members who become beneficiaries of trusts created by Florida residents are not Florida resident. Doing so can avoid income taxes on trust accumulations, allowing the trust to grow tax sheltered and further faster. This latter reason has caused a marked increase in the use of Florida administrative and directed trustees. There can also be situations where required expertise are needed in managing unique assets, such as real property or family businesses, where most professional trustees may be reluctant to accept responsibility without being directed. In such situations, a directed trust provides a statutory solution with clear guidance and protections.

A trustee typically has three overriding responsibilities: (1) to invest and manage the property comprising the trust; (2) to make distributions to beneficiaries in accordance with the wishes of the settlor or creator of the trust; and (3) to report and account to beneficiaries and state and federal governments (paying taxes, for example). The latter accounting and reporting responsibilities are typically described as administrative, and one of the necessary responsibilities fulfilled by a professional trustee. Investing can either be directed by a person appointed by the trustee or delegated by a direction advisor (family member, professional investment advisor, or friend) or as the settlor directs. Similarly, distributions can be subject to direction to the trustee by a person, or "distribution committee" of persons, appointed by the settlor or creator of the trust. For example, an administrative trustee residing in Florida may serve as trustee, while an investment advisor is chosen to make investment decisions and hold custody of trust assets (trust or broker-dealer custody). The trustee may also be subject to direction by a committee of family members chosen by the settlor to achieve his or her wishes for their family, who direct the trustee on what distributions to make to beneficiaries, perhaps using a "letter of wishes" published by the settlor. Once those selected understand their role, protocols are established for management and administration in the most efficient manner possible.

There are a variety of solutions to the control versus responsibility dichotomy, and a directed trust provides a basis for resolving the competing objectives of senior family members seeking solutions within their family dynamic.

## Jackie Jernigan and Stacie Draper Join the Firm

Mrs. Jernigan joins us as a member of our Estate Planning and Wealth Management team. She has spent in excess of 38 years in the estate planning, estate and trust administration, and wealth management field, with the last 32 at a firm in Palm Beach where she was the sole trust and estate administration paralegal.

She is active with Bar and Paralegal Committees for the Florida and Palm Beach Bars; Veterans Charities; and Animal Rescue Organizations.

Mrs. Draper also joins us as a member of our Estate Planning and Wealth Management departments. She spent 12 years in the trust company and banking industries, having spent the majority of her career with Northern Trust, as a Senior Wealth Strategist and Client Support Service provider. She holds an Associate and Bachelor's degrees in Business Administration, having graduated from Warner University. She also graduated from the Florida Trust & Wealth Management School and the Northern Trust Trust School. Prior to her tenure with Northern Trust, she worked for Citizens Bank and Trust and Riverside Bank/TD Bank.

**Katherine Bergel**
Administration
Property Management

**Sandy Parrish**
Administration
Receptionist

**Allison Judkins**
Fiduciary
Administration

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## SEC Focused on Conflicts of Interest

- Can Conflicts of Interest be Best Interests? -

In recent years, the SEC has imposed regulations requiring investment advisors to hold themselves-out as "fiduciaries," subject to a duty of loyalty that places their clients' interests superior to their own. In 2020, the SEC announced Regulation Best Interest ("Reg. BI") and the SEC is on a campaign to support the rules, but brokers are demanding more guidance. Historically, brokers could recommend investments that were merely "suitable," which in practice was amorphous. Reg. BI requires not just that they are suitable, but that they are in the client's best interest. Within this standard, however, a broker may continue to have conflicts of interest in selling one investment over another. Perhaps the investment suggested is suitable and in the clients best interest, but the one offered carries higher commissions than others. These conflicts must be disclosed, but a recent SEC bulletin warns brokers to reign in persisting conflicts of interest, as disclosure may no longer be sufficient.

**Alison Overton, LA**
Estate Planning

**Grace Legner**
Estate Planning

**Laura Urbina**
Estate Planning

**Pamela Bruchal**
Tax Department Assistant

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## Bookkeeping Services Now Offered

- Helping Our Clients Maintain Independence -

As our clients have aged, the services they need to maintain independence has caused the Firm to grow to meet those needs. A common need is bookkeeping and bill payment assistance. Related to this is reporting of financial and medical oversight to family members in distant states. A summary of the level of personal bookkeeping services we offer and customary pricing is provided below:

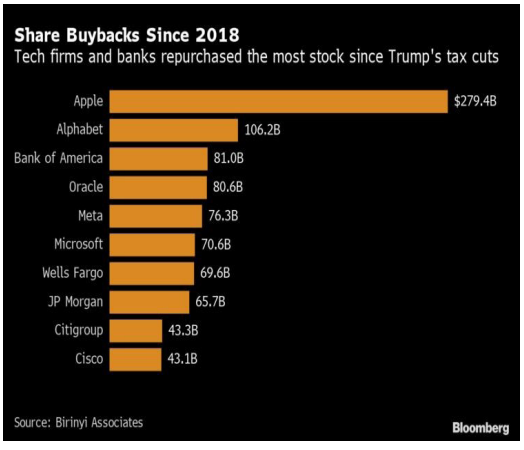
| Estimated Fees | Description of Options |
|---|---|
| No bill paying. Review of bank activity only.<br><br>**$250/mo. ($3,000/yr), per account** | **Option 1: Viewing/Monitoring Account Only**<br>• Obtain online login and password bank information from client;<br>• Monitoring of bank activity including checks and automatic payments such as utilities, caregiver/household employee, and independent contractors; and<br>• Immediately notify client if any inconsistencies or fraud like activity. |
| Less than 15 checks a month. Bill Paying and Bookkeeping services.<br><br>**$416.67/mo. ($5,000/yr), per account** | **Option 2: Limited Bill Paying/Bookkeeping Services**<br>• We provide limited bill paying services;<br>• Set up and manage QuickBooks Account;<br>• Obtain online login and password banking information from client<br>• Travel to/from client home for signature of checks on a biweekly basis;<br>• Collect and gather bills from client;<br>• Download or Manual input of bank activity into QuickBooks account and perform monthly bank reconciliation;<br>• Provide monthly bank register; and<br>• Provide Quarterly limited financial statements, ex. Profit and Loss and Transaction List by Vendor Report. |
| The same as above but with 15 checks or more a month<br><br>**$625/mo. ($7,500/yr), per account** | **Option 3: Full Bill Paying/Bookkeeping Services**<br>• We provide full bill paying services;<br>• Set up and manage QuickBooks Account;<br>• Obtain online login and password bank information from client;<br>• We prepare checks with any 3 Firm members sign checks after client's approval;<br>• Collect and gather bills after change of billing address to the firm. Provide client Weekly Unpaid Bills Report for approval:<br>• Download or Manual input of bank activity into QuickBooks account and perform monthly bank reconciliation;<br>• Provide Weekly accounts payable reports;<br>• Provide Monthly bank register;<br>• Provide Quarterly Transaction by Vendor Reports; and<br>• Provide annual Balance Sheet and Profit and Loss Statement, General Ledger, ex. Profit and loss, and detailed expense breakdown. |

These services are often combined with reporting services and financial oversight, such as are illustrated by examples of some reports used on pages 5 and 9 of this Client Update. Reports are shared with other family members as directed.

## Stock Buyback Tax Not Seen as Working

- Too Small and Viewed as a Tax on Retirees and Savers -

On August 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022, that establishes a new 1% excise tax on certain stock buybacks by domestic public companies (the "Excise Tax"). The Excise Tax has a broad reach that could unexpectedly affect a range of capital markets, but as of now a record pace of stock buybacks indicates that corporate executives have largely shrugged off the levy as a minor cost of doing business. Representative Kevin Brady, the top Republican on the House Ways and Means Committee, said members of his party will push to repeal the buyback tax when the GOP regains control of Congress. "At the end of the day this is really a tax on savers and retirees," he said.



# Fraudulent Closings and Wire Transfers

## - All the More Reason to Use Attorneys and Cautious Title Companies -


**David C. Tassell, Esq.**

Real Estate Attorney

Counselors Title Company, LLC - president

Real Estate Sales and Purchases

Commercial Transactions



**Jessica Leonard**

Real Estate Paralegal

Counselors Title Company, LLC



**Terri Rodgers, LA**

Real Estate Legal Assistant

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**Affiliated Personal Service Organizations**

Counselors Title Company, LLC

•

Counselors Realty, LLC d/b/a Coastal Estates

Closing on a home is both exciting and stressful, but most people do not have much experience with the process on closing a real estate transaction. Fraudsters exploit this inexperience to scam unsuspecting homebuyers by providing the buyer with fraudulent wire instructions. How does this type of wire fraud work? Read on to find out!

Wire fraud involves tricking a buyer into sending closing funds or costs to a fraudulent account. The scammer will generally hack the buyer's email account, see internet communications between the parties, and pretend to be the transaction's escrow officer or title representative. During the email communication, they will provide phony wire instructions and when the buyer sends the funds for the closing costs or the balance of the funds to close, it is to the hacker's account.

There are common factors that run through most of these scams.

The victims are usually in the process of buying a house. When they are ready to close, they will receive an email or other communication about where to send the closing proceeds. The message will appear to be from the title company or real estate agent, but the email will differ slightly from the closing agent's actual email address and the body of the email will also be slightly different. It will likely have a different phone number than the party with whom the buyer had been communicating. The recipient name that the buyer is being asked to send the funds to will also differ from the proper name of the escrow agent or title company that the buyer has been dealing with.

These scams work because buyers do not pay close attention to the emails from the scammer. Once a scammer hacks the buyer's email, they look for emails relating to upcoming real estate closings or wire transfers. They then gather information about the buyer and the sale to make the message seem legitimate. The scammer then creates an email address that looks like the one your real estate agent or title company uses. Some scammers even use software that can make it look like they are calling or texting from the agent's phone.

Once the buyer sends the money, the scam is complete. The instructions often have the buyer send the money to an untraceable offshore account. It is usually too late to do anything when the buyer recognizes the fraudulent behavior occurred; however, if detected immediately there are potential steps that can be taken to attempt to avoid the loss, but those steps are beyond the scope of this article. The best course of action is to avoid being a victim.

With that said, there are steps you can take to protect yourself.

The best defense to avoid being a victim of this scam is to ALWAYS call the company you have been working with to confirm that the email or call you received was legitimate before wiring any money. NEVER rely solely on email instructions. Often a title company will send you the wire instructions via the US Mail or Federal Express. Compare those instructions to the wire instructions you received in the email and pick up the phone and verbally confirm them with the title company. If an email states that the wire instructions have changed from what you may have previously received, that is a red flag. **DO NOT WIRE FUNDS BASED ON CHANGED INSTRUCTIONS WITHOUT VERBALLY CONFIRMING THE ACCURACY OF THEM WITH THE CLOSING AGENT. WIRE INSTRUCTIONS ALMOST NEVER CHANGE.**

We are here to help and advise in all phases of your transaction. Please contact our office and we would be glad to assist.

Above All - Be Careful!


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