



President's Message

Rebecca Rosenberger Smolen, Esq.

At the moment, as I am writing this, the holiday season has just begun, and most of us are busy juggling our year end work activities with the fun family and social gatherings of the season. Of course, by the time you are reading this, that season will be behind us and we will all be working on a fresh slate for the New Year. I hope you all had a wonderful holiday season and wish each of you the best of luck for the coming year.

Doug Simon and I attended the annual conference of the National Association of Estate Planners and Councils in San Antonio, Texas at the beginning of November. Our Council remains the largest in the nation. Although our numbers have been marginally declining over the last few years (from over 1000 about 10 years ago, to a bit over 800 now) the same has been true for other Councils across the country. It appears to me that this is attributable to a number of factors: the sluggish (but now rebounding) economy; the significantly increased federal estate tax exemption and uncertain future for the federal transfer tax system while it remains a political football; the increased longevity of many of our clients; the shrinking trusts & estates departments in large law firms nationwide; and I strongly suspect, the increased efficiency technology has brought to our work, requiring fewer "hands on deck" than in the past to handle a given matter.

With the improved economy and recent strong stock market returns over the last year, I have noticed an uptick in basic estate planning activity. I expect that as the economy continues to improve, and the Baby Boomer generation begins retiring en masse, irrespective of potential future changes to the federal estate tax laws, there will be a further increase in estate planning activity and a consequential increase in our Council's membership ranks. While it is true that fewer clients will need to prepare for a hefty federal estate tax burden than in the past unless the exemption is

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Aunt Sarah's New POA: A Fictional and Cautionary Tale

Karl Prior, Esq.

In July 2014, Pennsylvania enacted revisions to the Commonwealth's statute governing Powers of Attorney, 20 Pa. C.S.A. § 5601 et seq. The changes implicate the day-to-day duties and activities of persons who, under authority of a Power of Attorney, serve as "agents" on behalf of "principals" and the entities with whom such agents interact. This story highlights several of the modifications.

To be blunt, if not trite, Aunt Sarah was starting to lose it.

My father's sister, Sarah O'Malley Bridgewater Davis, is 95 years old and twice widowed. She has led an active life, engaging in local politics and world travel. She has mastered bridge such that opponents who were decades younger than her politely declined her invitations to play. But, the lioness was starting to wane.

A casual observer would not have detected the decline. Sarah accurately and in appropriate context recalled historic and current persons and events. She maintained herself in a deceptively modest and impeccably furnished home. Nonetheless, I worried. She had stopped driving (actually, that was a wonderful decision), started to misplace her checkbook, and occasionally referred to her current bank by the name of its predecessor's predecessor. Moreover, in a recent meeting

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Coming
Events

2015

Luncheon Programs

The Union League – 2nd floor
11:45 – 1:45 p.m.

Tuesday, January 20, 2015

Tuesday, February 17, 2015

Tuesday, March 17, 2015

(see back page for programs.)

Personalized Speed Networking and Cocktail Reception

The Union League

Thursday, February 5, 2015

5:30 – 8:30 p.m.

Annual Meeting/Seminar/ Reception at Philadelphia Museum of Art

Thursday, May 7, 2015

3:00- 3:30 p.m. Registration

3:30 – 6:00 p.m. Program

6:00 – 7:30 p.m. Reception &

Gallery Access

Annual Golf/Tennis Outing

Wednesday, June 10, 2015

Golf – Sunnybrook Golf Club

398 Stenton Avenue

Plymouth Meeting, PA 19462

12:30 p.m. Golf Tee Time

Tennis – Philadelphia Cricket Club

St. Martins Clubhouse

415 W. Willow Grove Avenue

Philadelphia, PA 19118

2:30 p.m. Round Robin

Register online at www.philaepc.org

President's Message continued

significantly reduced (which while possible, appears very unlikely), there are still important issues to carefully plan for (beyond simply helping implement a client's decision as to "who gets what") including state inheritance taxes, properly integrating beneficiary designations with estate plans, developing appropriate trust structures, and selecting the proper fiduciaries. Also, currently for many clients, income taxes can cause as much, if not more, of a burden than estate taxes so we can help our clients manage some planning opportunities on that front as well.

Clients will continue to need our help, and we will all continue to benefit from membership in the Council to help us stay on top of important planning issues and manage and develop relationships with our colleagues in the estate planning community. I hope many of you who have not yet taken the opportunity to make more of your membership by participating on one or more of our committees will step up to the plate in the coming year to do so to help make sure the Council activities are as robust as possible in meeting our collective professional needs and goals. Please also consider one of our many sponsorship opportunities to help the Council stay strong, while offering your organization heightened exposure to Council members.

I am happy to report that our new Outreach Committee has had two very productive meetings this Fall. Stay tuned for the opportunity to volunteer for one or more Community Service events in the Spring and Summer, and a community-facing educational program in October that we expect to coincide with National Estate Planning Awareness Week.

We have a number of other great events planned for the second half of our core programming year. The topics for the three remaining luncheons in January, February, and March will be: charitable planning, asset protection, and trust modifications. All are key topics we need to be well-versed on to properly address our clients' needs.

At the beginning of February, all members are invited to another "Speed Networking" event organized by our Women's Initiative Committee. This event started many years ago as an all-female event but it evolved to a co-ed program several years ago and has consistently received positive reviews from attendees. In May, for the first time at the fabulous Philadelphia Museum of Art, we will have our Annual Meeting at which new Board Members and Officers are voted into office by the attending Council members. Two nationally-renowned speakers will join us to address some important estate planning issues for closely-held business owners, including the particularly tricky issues inherent in charitable planning with S Corp & LLC (or partnership) interests.

Our final currently-planned event, for the Council year ending in August, will be our popular Golf & Tennis Outing to be held in June.

Keep an eye out for a few not-yet-scheduled Roundtable programs with local speakers to address topics of interest to many of us, including one in the works to address the new Pennsylvania law on Powers of Attorney which is currently scheduled to be in effect as of January 1, 2015. Also, we expect to announce down the road a few more "drop-in" events for our members to mix & mingle at local restaurants. We borrowed this concept from the Boston Council and it appears to have been well-received by our members.

I will look forward to seeing and talking with as many of you as possible in the coming year. Please do not hesitate to reach out to me or my fellow board members and committee chairs with feedback about our events or ideas for new events down the road. Together, we can make this year the Council's best yet!



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Aunt Sarah continued

with her new financial advisor, Dennis Pleasant, who by virtue of Phil Boggs' retirement had inherited Sarah's account, she was not herself. Although she annually subjected Phil to a financial lobotomy, questioning every aspect of her portfolio including commissions, her tone with Mr. Pleasant, who I surmised to be in his late 30s, was different. She bordered on flirtatious and asked more about his personal life than her portfolio.

I should note that I am not interested in my Aunt's money. I am partially retired from my own CPA firm, Kevin O'Malley Associates. I have paid several college tuitions, satisfied the mortgage, my IRA and other retirement planning devices are in good health, and my wife, Tess, and I just welcomed our first grandchild. Further, I believed (and have since confirmed) that in her Will, my Aunt provided generously for various charitable organizations and for my deceased sister's children. I am not interested in her assets; I am interested in her economic security and personal dignity.

I was not certain that Mr. Pleasant shared my interests. Perhaps it was because he garnered some of the affection Sarah historically had given me. Or, it might have been his enthusiasm and his facility with market analysis. Or, I must admit, it could be that I was just getting older and crankier and he had the new car aroma.

Regardless, my unease with Mr. Pleasant led me to ask Sarah when she had last seen our and her longtime lawyer, Max Venerable. When she told me that she had not met with Max in several years and that she was considering a younger attorney whom 'Dennis' had recommended, I felt I had to act. I suggested she meet with Max first, and she agreed.

One morning a week later, I drove her to Max's office. Max Venerable seems an anachronism. His office décor and personal attire are mid 20th century at the latest. Max's appearance deceives. He has always been aware, if not the author of, changes in the tax code. He also has a keen instinct for family dynamics. At 80 years of age, he is as facile with a smart phone as a teenager.

Max greeted us with his usual warmth. His demeanor turned steely within minutes, however, when he politely and firmly asked me to remain in his sitting area while he met with Sarah alone. Two hours later, Max invited me to join him and Sarah in a conference room.

"Kevin, your Aunt's estate planning documents need updating. I'm recommending at a minimum that Sarah execute a new Power of Attorney."

"Okay, you're the lawyer, but why? I thought she already had a POA."

"She does. But it names your sister Nancy as her agent. That was a wonderful choice when made, but ..." I finished his thought "... but Nancy is no longer with us."

"Correct. Nancy is no longer with us. You, however, are Sarah's successor agent."

"I wasn't aware of that. If I'm the successor, why do we need a new POA?"

"Because," Max began "POA law in Pennsylvania has changed a lot in the last 10 years and is about to change more. Enough people have been hurt that the courts – and to be honest a lot of my colleagues and folks in the financial planning business – seem to appreciate the POA is not a routine document. Indeed, our state legislature has enacted major revisions to the POA Act. So Sarah's existing POA probably doesn't provide the flexibility that you will need to protect her and to address these changes. Plus, Sarah did not name a successor to you, Kevin. None of us, except perhaps Sarah, is going to live forever and we need to think about what happens should something happen to you."

"Alright Max and Aunt Sarah. I'm honored, but Max can I talk to you alone for a minute?"

Max paused, then told me "I can't do that Kevin. Not if it's about Sarah. She's my client, not you. If it has to do with your personal affairs, we can schedule something. But if you have something to say relevant to the POA, you ought to say it in front of Sarah."

I was not expecting that response. I had thought Max to be our family lawyer. But I also knew that if my son had questions about me, I'd want to know it. So, despite my discomfort at Sarah's presence, I shared my concerns.

Max smiled for a minute and addressed Sarah "And that is why your choice of Kevin as agent reflects your good judgment." Turning to me, he said "I'm not particularly concerned about the occasional misremembered name or lost checkbook. We all get older and the connections are not as pristine as they were in our youth. Sarah, did you have a youth? I'm kidding. Kevin, what time of day did you and Sarah meet with this Dennis?"

"We met late in the day, after I had done a few tax returns for some friends, why?"

"Well, Sarah is 95. Sometimes we more senior citizens can get a little tired later in the day. But if you get us early enough – during our more lucid periods – we present fairly well and can speak in detail about important things like friends, family, finances, and the perils of a raised curb. For example, this

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Aunt Sarah continued

morning Sarah could identify for me where and how her assets are held and to whom she wanted to leave those.”

“Respectfully, Max, that doesn’t sound like much of a test.”

“You’re right, Kevin. But there is more – and the Courts actually require more – before someone can execute a POA, and Sarah has it. She understands the nature of the authority that she is granting to you. That’s legalese for ‘she appreciates that you can use the POA to dramatically alter her financial picture, even doing things without her knowledge or agreement.’ I walked her through the new Notice¹ that the legislature is going to require and asked her open-ended questions on the document and she capably answered every question.”

“I’m not sure I know what that means – open ended?”

“It means I didn’t suggest the answer. For example, I read her this:

The law permits you, if you choose, to delegate broad authority to an agent under power of attorney, including the ability to give away all your property while you are alive or to substantially change how your property is distributed at your death.²

Then I asked her, ‘what does that mean?’”

“It means Kevin could really do some damage to me and mangle my estate plan,” Sarah offered. I had almost forgot she was in the room. “But you won’t do that. I’m giving you a lot of authority because I trust you. I don’t like to admit this, but it is getting a little harder for me to stay on top of things, and I’d really appreciate your help.”

“Okay ... you had me at ‘I could do some damage,’” I jested. She wasn’t smiling.

“I’m not kidding Kevin. I need your help.”

It’s hard to disagree with someone who recognizes her shortcomings and asks for help. I agreed to serve as her agent. One week later we returned to Max’s office to review a final POA and to sign the document. Max presented me with an Acknowledgment. More confusion on my part:

“Wait, Max. Listen to this:

I shall act in accordance with the principal’s reasonable expectations to the extent actually known by me and, otherwise, in the principal’s best interest, act in good faith and act only within the the scope of authority granted to

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Aunt Sarah continued

me by the principal in the power of attorney.³

What does that even mean? How am I supposed to know what her expectations are or what is 'reasonable' in Sarah's mind? Isn't 'reasonable' the lawyer's catch-all? Doesn't it mean whatever you argue it means on a given day instead of some objective standard?"

I think Max was amused. He came as close to a laugh as I have seen in 30 years of working with him. "You're right. But with Sarah's permission, I can help you out a little bit on that, particularly when it comes to her estate planning goals or expectations. Sarah's authorized me to tell you that for the last three years, she has made substantial gifts to Nancy's children. Those gifts have been above the annual exclusion amount. In the new POA, Sarah gives you "unlimited" gifting authority. You could continue those gifts and that would be consistent with her expectations. And I can tell you that her current Will has the primary goal of avoiding inheritance taxes. You know her. She's an O'Malley. If she can avoid paying a dime to the federal government or to the Commonwealth, she will."

With that, Max summoned his assistant, a paralegal, and a notary into the room.

"Wow. This is a little heavy-handed for a POA, isn't it?" I

wondered (to myself I had thought).

"Not really, Kevin. The new law requires two adult witnesses and a notarization. Some of my colleagues think it's excessive, but I like the idea of bringing home the serious implications of this document to the principal – here, that's Sarah – and to you as her agent."⁴

I signed the Acknowledgment while Sarah signed the Notice.

"Okay, but what do we do about our friend Mr. Pleasant?"

"He's with a good firm. I'll make some phone calls and see what I can learn about him. Take the new POA to his office and tell him to add your name to all of Sarah's accounts. That should ensure that you get copies of her brokerage statements. You'll also want to verify the beneficiary designations on those accounts to make sure they are consistent with what Sarah wants. And Sarah ... lay off the young men. They only lead to trouble."

Two days later I presented the POA to Dennis. "Sarah wants me added to the accounts so that I can receive monthly statements and buy or sell when necessary."

"Excellent. Do you have an opinion of counsel?"

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Aunt Sarah continued

"A what?"

"Opinion of counsel. We have the right to ask for an opinion of counsel to make sure you are acting within the scope of your authority under the POA. Also, we'll need to talk to your Aunt to make sure she understands the authority granted and she and you will need to sign our firm's form POA before we send you anything."

I was piqued. I texted Max: "Plsnt isn't being very nice. Sez I need atty opinion, wants to eval Sarah, wants their form PAO signed."

Max responded: "Call me."

As usual, Max was immediately available:⁵ "What's going on?"

"Pleasant won't accept the new POA. He's asking for an attorney's opinion, claiming he has the right to evaluate her ability to understand what she is doing, and insisting she sign their firm form."

"That is one confused investment adviser, but I don't blame him. The law is a bit uncertain right now. Having said that, I like that he is asking the right questions. It tells me that youth, not dishonesty, may be his biggest flaw."

"Here is what he probably is thinking: Under the revisions to the POA law, a firm can verify that an agent has the authority to do what it is that the agent wants to do – in your case, having your name added to the account and ultimately buying and selling investments. The new law gives the firm the ability to seek an opinion of counsel as to your authority. But he has to put that request in writing or some other record and state why he wants the opinion.⁶ Tell him to email me his request and I'll respond right away."

"What about his request to evaluate her for capacity?"

"What about it? Is he an attorney? A doctor? He and his firm are being a bit overcautious based on a case called *Vine* decision.⁷ In *Vine*, the State Employees' Retirement Board was held liable for honoring a Power of Attorney that the principal executed while she was incapacitated even though the Board did not know of the principal's incapacity. The legislature has acted to reverse *Vine*. But again, even if they had not, you are not changing beneficiary designations. You are simply seeking to have your authority under the POA recognized for buy and sell purposes. Tell him that you'd be willing to certify or provide an Affidavit that Sarah understands the authority she has granted you. That Affidavit should satisfy his concerns and the law."⁸

"Well, what about his request that she sign their form?"

"Interestingly, he may be on more solid ground here. But I

don't like the idea of any of my clients signing a standard form when it comes to delegating authority over their finances. Brokers and investment advisers are not attorneys or doctors. I don't think the financial guys ought to be in the business of practicing law any more than I should be in the investment allocation business. Have the form scanned and sent to me and I'll make sure it is limited to just this account."

I relayed Max's requests and offers to Dennis. He disappeared behind a marble column and returned 30 minutes later. "Our general counsel agrees with Sarah's attorney that this area is a mess and even more complicated because further revisions to the law are pending. But she likes the idea of an Affidavit and appreciates your willingness to provide an opinion. We can get this done. She does have a question about a beneficiary designation. Your sister Nancy is the beneficiary of the first \$500,000 of Sarah's IRA. Do you want to change that?"

"Can I?"

"We think you can, but as you might have guessed, we can't and won't give legal advice. Maybe you should call Mr. Venerable."

I appreciated his suggestion. Maybe I had Dennis wrong. I called Max, who paused and then opined "naming Nancy's children as the beneficiaries of the first \$500,000 of the IRA would not be inconsistent with Sarah's estate plan and I will leave it at that."

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September Luncheon Program



Susan Wilusz Marano (sponsor), Rebecca Rosenberger Smolen (president), Andrew Wilusz and Edward Wilusz (sponsors), Beth Tractenberg (speaker) and Kaitlin Wilusz (sponsor) of Value Management.

Aunt Sarah continued

I reported the conversation to Dennis, who again disappeared behind the marble column, returned and asked “would you be willing to give us an Affidavit to that effect?” I agreed to do so. The firm made the beneficiary change and I signed off on the same.

Dennis thanked me for my efforts. He added “you know, Kevin, I didn’t have a great feeling about you when we last met with Sarah. I’ve had accounts where the loving nephew ends up being not so loving or caring. But I’m glad you are protecting Sarah.”

I appreciate irony. Rather than take offense, I appreciated even more that Dennis and his firm were protecting Sarah as well as themselves. Still, I could not resist a gentle gibe: “We’ll meet in a few weeks to review the portfolio. You can expect the Boggs treatment.”

“I would expect no less from an O’Malley.”

Conclusions

In enacting the new Power of Attorney law, our Legislature recognized that Powers of Attorney are powerful documents and can be integral tools in safeguarding a principal’s assets and estate plan. The pole star for any actions which the agent takes inevitably is the principal’s reasonable expectations of the agent and that the agent act for the principal’s benefit.

The new POA law also is designed to maintain the flow of the stream of commerce by allowing financial institutions and other third parties to insist on certain protections or “proofs” before honoring a Power of Attorney.

Karl Prior is a partner in the law firm Mannion Prior, LLP in King of Prussia, PA. The firm and Mr. Prior litigate power of attorney, trust, estate, and guardianship matters throughout Pennsylvania. www.mannionprior.com

1 20 Pa. C.S.A. § 5601 et seq. as amended by 2014 Act No. 95 (House Bill No. 1429) as approved by Governor on July 2, 2014. Despite the Governor’s signature, the Act 95 revisions to the Power of Attorney Act were not enacted before the end of the 2014 legislative session. As a result, the Act 95 revisions will be delayed until 2015 at the earliest.

2 Id. at § 5601(c).

3 Id. at § 5601(d).

4 Id. at § 5601(b)(3).

5 As noted above, this essay is fictional.

6 Id. at § 5608(3).

7 Teresa M. Vine v. Commonwealth of Pennsylvania, State Employees’ Retirement Board, 9 A.3d 1150 (Pa. 2010).

8 Id. at §5608 (1).

Exit Planning

Frank A. Spezzano, CLU, ChFC, MSFS

Intro

In today’s current industry publications and marketing, one is seeing a plethora of articles and advertisement focused on Exit Planning. A critical mass of interest from practitioners and marketers has been steadily forming and coalescing around this newly emerging topic. Some as practitioners are interested in the topic as a discipline unto itself. Some as marketers are interested in the topic strictly as a means to a one time profitable transaction. Why such emphasized interest now? What is driving this interest and where is this interest going? How will this interest drive the evolution of this topic to assist and serve the client? How will the seemingly opposites of academia and covering overhead join together to enable advisors to create, convey, and implement workable manageable life improving solutions for clients?

Why Now

The Baby Boomers are now moving into their retirement years. Those who own closely held business entities are faced with the realization that they will need more money than previously imagined and planned for to continue their business supported lifestyle.

Once they wind down their business and professional lives, they are also realizing, however reluctantly, that mortality is inevitable. If children or key people are to continue the business, plans will need to be made. Boomers also are discovering that the energy and the interest necessary

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October Luncheon Program



PEPC President Rebecca Rosenberger Smolen with speaker Ellen Harrison and sponsor Barbara McCollum of CitiPrivate Bank.

Exit Planning continued

to build and grow a business is often times waning with age. Less energy cannot be ignored and the pull of other interests outside the business becomes stronger. Lastly, the economy appears to be bouncing back from doldrums. With an improved economic business climate, owners and management can redirect some of the focus and energy needed on a day-to-day basis to continue to remain a viable enterprise to more future oriented considerations. Additionally, the improving economy creates more improved opportunities for higher business valuations and resultant sales. These are the drivers that are moving today's business owners to begin to explore and handle exit and succession planning in earnest.

The Process

Those owners beginning to embark on this exiting and succession journey for the most part are simply feeling their way along. There is no real text book methodology that is widely employed or even known. For most owners, this endeavor is really a Do It Yourself project. Typically, the owner elicits pieces and nuggets of information from the various advisors and people who are familiar and close. Having gathered this information the owner may typically cherry pick and select those tidbits of advice and wisdom to put together a roughed out hoped for scenario of the intended results. Most typically there is nothing written down or

documented. The task is approached the same way most entrepreneurs begin to build their business. That is by feeling one's way through with sheer force of will and determination. Along the way, the owner may have had some discussions with the attorney, the accountant, the investment manager, the financial planner, possibly a real estate broker, and a business broker. The conversations usually begins with the hypothetical, "What if I..." The answers received are mentally filed to be weighed and measured against new pieces of incoming information. There needs to be a better way and there is.

Some of the pieces the owner has gathered may be

- A rough estimated value for the sales price of the business from the CPA
- An idea of the documents needed to be drafted by the attorneys
- A sense of the transaction costs if a business broker or mergers and acquisition firm is involved
- A proposal on how to invest the sale proceeds
- Which of the children, if any, might be involved as successors

All this information is necessary and appropriate. However there lacks a process.

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Exit Planning continued

Exit and Succession planning is a process. It is a series of steps and actions taken to provide an orderly transition over a period of time to allow the owner to successfully and advantageously transfer the necessary daily involvement in the running of the business to family or some third party and to extract and transfer back to him or herself the value and equity embedded in the business in the most tax favorable manner.

The ideal process would be a well thought through orderly plan and process addressing the following.

- The financial readiness and capability of the owner to disengage from the business.
This would entail a gap analysis comparing what monies and investments the owner has accumulated against what total monies are needed to continue the desired lifestyle after separating from the business. The gap analysis may find that the owner may or may not be able to exit the business when desired due to the probable net after tax value to be received if the business is sold or transferred to family. This may necessitate continuing to grow the entity and to save, and then exiting at a later date.
- The emotional readiness and capability of the owner to disengage.
For most closely held business owners, the running of the day to day business has consumed their lives. Their life may be strictly defined by the business. Some thought and time may be needed to help visualize and create a life after the owner disengages.
- The positioning of the business to be a transferable entity. This includes all the following items in place so that the business might be able to run on auto pilot without the owner.
 - Tight financial reports and a good financial reporting system for both tax and management purposes.
 - Up to date documents for loans, corporate books and records, non compete agreements, compensation agreements, and so on.
 - Documented procedures and processes ala Michael Gerber's Book entitled E-Myth which stresses that all procedures and policies be written so that others can easily pick up and continue functions.
 - Reliable crossed trained management, staff and employees.
 - Employee manuals including manuals for human resources and benefits.
- The positioning of the business in the most favorable tax entity.

- The appropriate updating or creation of estate planning documents.
- A clean idea of the value of the business. Possibly a formal valuation.
- An investment policy to address how the resulting sale proceeds will be allocated and positioned.
- A clear enumeration and listing of add backs to enhance EBIDTA (earnings before interest, depreciation, taxes and amortization).
- The coordination by a key advisor of the professional and necessary expertise to effectuate a transfer.

This coordination would include most if not all of the following.

- The accountant, possibly a valuation expert
- The attorney, possibly a specialist in business transactions and tax law
- A business broker or merger and acquisition specialist
- A real estate broker if a real estate sales is involved in the transaction
- An insurance agent charged with assisting the estate planning attorney with estate tax needs and short term family income needs.
- A P&C insurance agent who would reevaluate liability coverage needs
- A financial planner to assure that the numerical planning and gap analysis is sound.
- An investment manager and advisor whose role is to make sure the money is appropriately positioned and allocated

The Steps

These pieces of the process can be utilized and combined into a Six Step Process as developed by John Leonetti of Pinnacle Equity solutions.

These steps are:

1. Set the Exit Goals
2. Determine the Degree of Readiness for both financial and emotional/mental
3. Identify the Type of Exiting Owner you resemble
4. Choose the most favorable Exit Option and Method
5. Understand the Value of the Option Chosen
6. Execute the Exit Strategy

Questions and insights embedded in these steps are:

1. Set the Exit Goals:
 - What is most important and list priorities?
 - Get the most money?
 - Freedom of time and money?

continued on page 12



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Exit Planning continued

- Continue running the business for some time and diversify estate assets while doing so?
- Maintain family harmony, consider your legacy?
- Minimize taxes?
- Pass the business to employees?

2. Degree of Readiness

If I do sell, will I have enough money?

The gap analysis mentioned earlier will help answer if one is ready to sell and for what net minimum dollar amount. If there is no gap, one can continue the process to sell. If there is a gap, then a plan must be developed to grow the value of the business and also to increase the savings of the owner.

Am I emotionally and mentally ready to sell?
If one has a full life outside the business, readiness may not be an issue. However if the business has been all consuming, then some thoughts needs to be given to the days after the business is sold. What does one do with time? Where, when and how will you be involved in other interests and activities?

3. Identify The Type of Exiting Owner you resemble

Which description fits?

- Sell now at the highest price
- Financially well off and want to continue working
- Still need to stay and grow the business
- Financially well off and ready to let go and exit

4. Choose the Favorable Exit Option and Method

Which is the best fit for the goals?

- Sale of the business
- Recapitalization via a private equity infusion
- ESOP
- Management Buy Out
- Gifting program, to family or charities

5. Understanding the Value of the Option Chosen

The options in Step 4 all have different value to the seller by virtue of the nature of the buyer.

- Is the buyer motivated to do a synergistic acquisition to combine and reduce some fixed overhead, reduce competition, and eliminate a competitor?
- Is the buyer motivated to allocate capital to an attractive investment?
- Is the buyer motivated to acquire the business and retain it while earning a living?
- All the buyers will come with varying dollars offered and deal structures. It is important to be clear on the actual goals for the exit.

6. Execute the Exit Strategy

- What is the realistic time frame - start to finish?
- When might be the best economic time to actually sell or transfer the business?
- Who in the business needs to be involved?
- Which advisors need to be involved? The Team?
- Who will be the Key Advisor to coordinate the process?

Having made it this far through this article, you have now probably developed the sense that on the surface, Exit Planning is similar to other planning methodologies but in actuality the process is very different. Typically, for most planning within a 6 month time period, a workable plan may possibly be developed which addresses most, if not all, of the major concerns.

Once that planning is completed, implementation of the plan can be handled, documents signed, insurance placed, and business plan developed. The entire process can be brought to a conclusion with the desired results in a relatively short period of time. This planning is narrowly focused on one particular topic with some overlap into other disciplines. Exit Planning is very much the opposite.

An Exit Plan may be developed within a similar time frame. However bringing the Exit Planning to its final implementation stage and achieving the desired result may be a lengthy process, perhaps several years. Additionally, an Exit Plan requires the input of many disciplines as identified in our aforementioned processes. The interaction of these disciplines, in a sense mini plans within the larger contextual plan, is time consuming. Coordination of the involved professionals, over lapping data and input requires skill, patience, and an ability to handle strong intelligent individuals who are not necessarily groomed to be team players. Additionally most clients will become bogged down in step 3 often identifying the type of business owner they happen to be. Most will identify with the category "stay and need to grow the business". Here will come the real test of the advisor who can handle an Exit Plan. At this point the engagement and the immediate task moves beyond creating the Exit Plan. The task now becomes one of creating a transferable business as described by John Leonetti.

This creation process is comprised of 5 major steps.

1. Adopt an Exit Process and Mindset
This harkens back to Covey's directive, begin with the End in Mind.
2. Measure and Manage the Dependence of the Company on the Owner

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Exit Planning continued

Create a turnkey business if possible. Have the business run on a day-to-day basis without the owner's daily involvement. In essence, elevate the owner to the board level and strive to keep him there.

3. Assess the Management Team
Make sure the right people are in the right places with not only the responsibility but also the authority to handle their operations and deliver results.
4. Understand Your Industry Transfer Viability
Make sure that the company is in an industry or niche that is desirable for future buyers.
5. Review and Monitor Your Company Performance
Obviously the company has to be profitable and competitively profitable compared to its peers.

These steps to grow and position the company take time, possibly several years.

Other more specific advisors and consultants may have to be engaged. In essence the company will have to be groomed to be a transferable and saleable asset.

Exit Planning, as a comprehensive topic is relatively new, emerging as a process requiring a specific expertise. This

expertise is underpinned by not only a sound general and sometimes specific understanding and facileness with various technical topics but also by the ability to coordinate the advisors and experts necessary to create and structure a plan.

Overall what is clear is that although this is a process that may begin as a rough sketch on a cocktail napkin, the plan's creation and implementation will require much thought. The plan needs to include the values, beliefs and life goals of the owners, and address its impact on the families, employees and other interested parties.

The Exit Plan will need to be created by a team of advisors coordinated by someone highly trusted by all the team members and principals. The team members will need to be skilled and some ready and available for a long term implementation.

A process with a high level of expertise, superb coordination and a foundation of the client's values and goals will result in a well-constructed Exit Plan and an effective implementation.

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Welcome Back Party

The Racquet Club was the setting of the October 2 Welcome Back Party. Members and prospective members enjoyed heavy hors d'oeuvres and cocktails while learning about the Council's working committees. PEPC members approved for

membership from September 1, 2013 through August 31, 2014 were invited to attend at no charge. Members were also encouraged to bring a prospective member with them at no charge. This event was sponsored by AIG.



Laura Weiner, President Rebecca Rosenberger Smolen and Director Huldah Robertson



Mary Lefever, Director John Hook, new member Sandy Silbiger, Graham Carter and Lori Craig, AIG Sponsor



Director Andrew Haas with new members William Cotter and Eric Hildenbrand



Tessa Laney, Director Sam Freeman, new member Michael Breslow and Sheila Gorman



New members Stephanie McCullough and Beverly Bernstein Joie



Event sponsor Lori Craig with new member Jeannine Webber and Rick Davis

Let's Keep Talking: Managing End-Of-Life Issues

Sheila Weiner, MSW, LCSW

The November 5th program, Managing End-of-Life Issues, held at the Union League stimulated a provocative dialogue, echoing the energy of the Women's Initiative Committee planning discussions. In planning, the committee deliberated our role as professionals delivering vital services to help clients plan for the end of their lives. However, more often we shared stories of our experiences as family members and friends who have confronted these issues up close. We recognized that all of us struggle to make sense of the confusion when faced with the complex emotions of losing a loved one.

After members and guests had an opportunity to socialize and enjoy the evening's cocktails and snacks, Beverly Bernstein Joie, MS, CMC of Complete Care Strategies, kicked off the program. She introduced the three panelists: Dana Breslin, Certified Elder Law Attorney; Dr. Karl M. Ahlswede, Medical Director of Palliative Care at Bryn Mawr Hospital since 2011, and Main Line Health Medical Director of Palliative Medicine since June 2014; and David Casarett M.D., M.A. Director of Hospice and Palliative Care for the University of Pennsylvania. Panel members spoke articulately about the multifaceted end-of-life issues associated with the case presentation. This sparked a passionate response, and audience participants waved their hands in the air seeking answers to difficult questions. They posed both ethical and substantive questions to the panelists. Very early on, it became evident this was a burning topic – the energy in the room was palpable.

One aspect of the case study i.e., the difficulty of the equal role of Susan's three children as durable power of attorney, requiring that all act unanimously was explored in greater depth. This does not work in many cases, as the family may not agree about their mom's care. The following persons, in this order, can act as health care representatives for individuals:

- a. A person chosen by the individual (in a signed writing or by informing the individual's attending physician) while the individual was of sound mind.
- b. The individual's spouse (unless a divorce action is pending).
- c. The individual's adult child.
- d. The individual's parent.
- e. The individual's adult brother or sister.
- f. The individual's adult grandchild.

Panelists and participants dissected the many complications

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Talking continued

that arise when family members disagree about caring for a parent at the end of his or her life. When even just one adult child disagrees with the rest of the family about life-saving measures, such as inserting a feeding tube or intubation – the placement of a flexible plastic tube into the trachea (windpipe) to maintain an open airway – the physician is likely to take the most conservative approach. Physicians worry not only about liability, but also about making tough decisions, such as when the end of life truly occurs. It's crucial that physicians act in context.

When exactly does the living will become operative? The language included in most Pennsylvania advance directives muddies matters for physicians and other health care providers. One widely used end-of-life document states that, "Your living will goes into effect when your doctor determines that you are no longer able to make or communicate your health care decisions, and you are permanently unconscious or have an end-stage medical condition". According to PA law, "...the attending physician determines whether an individual has an end stage medical condition or is permanently unconscious".

An audience participant claimed there should be no confusion if the patient has an advance directive. He argued that the role of the health care agent should supersede any family discussion about end-of-life decisions, even in the face of a family dispute. In fact, the role of the agent is defined as exactly that – to communicate an individual's intentions when the patient is not able to advocate for his or her position previously verbalized and documented in a discussion about end-of-life matters.

While the POLST (Pennsylvania Orders for Life-Sustaining Treatment) document may be more reliably enforced in hospitals since it is signed by a physician, the majority of physicians are unfamiliar with it. The overall conclusion was that there is no one legal document that is legally accepted and followed, as intended. While this is in part due to ambiguous language, the reality is such that there are many unknowns inherent at end of life that cannot be anticipated. No single document can convey all the scenarios that play out.

The panel discussion concluded, yet participants lingered. With many unanswered questions, they stayed eager to catch the attention of the panelists, and to continue the discussion with colleagues. Undoubtedly, we need solutions to the dilemma we all face. Panelists and participants strongly agreed about the need for regular and ongoing dialogue, in families, and amongst the legal and medical communities. One discussion at a given point in time is not enough. Some felt it is essential to get our legislators on board to review the language in end-

of-life care planning documents in order for the system to improve. Changes are sorely needed for more unambiguous language to help bring clarity to end-of-life decision-making for health care providers, attorneys and families.

One participant with whom I spoke following the program had this reaction; "The program was very interesting and engaging. It was amazing to see the participation level and energy in the dialogue. End-of-life issues touch on everything – practical considerations, emotional, cultural, family dynamics, ethical considerations, legal, systems and policy issues." She added, "It would be interesting to think of how to take this discussion to the next level."

The following day, the Women's Initiative Committee assembled to process the night's events. The benefit of continuing the discussion with colleagues was undisputed. An ongoing discussion should comprise other experts who can speak to the psychosocial and psychological issues, as well as to the disconnect that exists between the health care and legal communities. The 19 survey respondents validated our sense of the pertinence of the topic, and one respondent went further to say, "The discussion needs to be continued!" Your comments will guide our planning for the next level of the discussion on end-of-life issues. Stay tuned!!

Check out our End-of-Life Care Resource list on the PEPC website: <https://s3.amazonaws.com/sparecyclesclients/pepc/assets/articles/25/original.doc?1418049819>

Sheila Weiner, MSW, LCSW
Executive Director
Intervention Associates
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November Luncheon Program



PEPC President Rebecca Rosenberger Smolen with Sponsor Maurice Offit, Speaker Anirban Basu and Sponsor Herb Fineburg

NAEPC® Notes

M. Eileen Dougherty, CTFA, CFP®, AEP®, ChFC®

The National Association of Estate Planners & Councils (NAEPC®) held their 51st conference from November 5 to November 7, 2014. This conference is open to all members of our council as we are all members of NAEPC®. PEPC leaders Rebecca Rosenberger Smolen and Doug Simon were in attendance for all three days, including the first day known as Council Leadership Day. This is a unique opportunity for our executive members, who have the responsibility of leading the largest Estate Planning Council in the USA (yes, Philly is still #1!) to meet with similar leaders of councils and to compare notes, gather new ideas and see what is working and what is not across the country. On Council Leadership Day we also held the annual Election of Officers to the Board of Directors and to the Executive Committee of NAEPC®. The new Executive Committee, effective 12/1/14, is as follows;

Greg Sellers, CPA, AEP®
Immediate Past President

Jordon Rosen, CPA, MST, AEP®
President

Larry Lehman, JD, AEP®
President-Elect

Paul Viren, CLU, ChFC®, AEP®
Treasurer

M. Eileen Dougherty, CTFA, CFP®, AEP®, ChFC®
Secretary

You may recall that Jordan Rosen spoke to our council before the start of the October meeting. Additional officers were elected to the Board of Directors and all information is available on the website.

The second and third days of the conference included continuing education presentations made by nationally renowned speakers and featured many break-out sessions where guests could select topics of particular interest to them. Professor Gerry Beyer conducted a special AEP® only session, the fourth session of its kind at the conference.

The Awards Presentation was at the start of day three, led by the inductions into the NAEPC Hall of Fame®, each as Accredited Estate Planner® (Distinguished). In 2013, this honor was bestowed on our own PEPC Past-President Al Gibbons and was awarded in 2005 to our own Tom Forrest!



Pictured at the November NAEPC conference in San Antonio, Texas, current and past leaders from the Philadelphia & Delaware Councils had the opportunity to catch up and compare notes over dinner, from left to right: Thomas M. Forrest, Douglas M. Simon, Rebecca Rosenberger Smolen and William F. Denney.

This year the awards were presented to the following deserving group;

Alexander A. Bove, Jr., JD, LL.M., PhD, AEP® (Distinguished)

Arthur J. Dixon, CPA, JD, LL.M. (taxation), AEP® (Distinguished)-Posthumous

Bernard A. Krooks, JD, CPA, LL.M., CELA, AEP® (Distinguished)

Paul S. Lee, JD, LL.M., (taxation), AEP® (Distinguished)

Lee J. Slavutin, MD, CLU®, AEP® (Distinguished)

John A. Wallace, JD, AEP® (Distinguished)

Randy L. Zipse, CPA, JD, AEP® (Distinguished)

The Hartman Axley Award was given on behalf of Robert A Alexander, JD –Posthumous

Please consider joining us November 18-20, 2015 when the conference will be held on Amelia Island, FL at the recently renovated Omni Resort.

To learn more about the many benefits available to you as a member of NAEPC® or to learn more about the AEP® Designation visit www.NAEPC.org or speak with M. Eileen Dougherty, CTFA, CFP®, AEP®, ChFC®

2014 PEPC Distinguished Estate Planner



Past President Alan Mittelman presents the 2014 Distinguished Estate Planner Award to Daniel Evans.

The Philadelphia Estate Planning Council presented its 2014 Distinguished Estate Planner Award to Daniel B. Evans at the October 21, 2014 luncheon meeting at The Union League. The purpose of this annual award is to honor an individual for outstanding contributions in the field of estate planning.

Daniel B. Evans is a practicing attorney focusing on estate tax, personal income tax, and related corporate and partnership tax planning; preparation of wills, trusts, shareholder agreements, partnership agreements, and compensation agreements; exempt organizations; and estate and trust administration. In addition, he serves as a consultant to Leimberg & LeClair, Inc. where he is responsible for updates, enhancements, and technical assistance for NumberCruncher and other programs for income tax, estate tax, gift tax, charitable, business, personal financial, and other related calculations and planning.

Mr. Evans serves on the State Law Committee and the Automation Committee of the American College of Trust and Estate Counsel. He is a past chair of the Pennsylvania Bar Association Probate and Trust Law Section, a member of the Philadelphia Bar Association, Probate Section and a Fellow of the American College of Trust & Estate Council.

Mr. Evans earned his Bachelor of Arts at Stanford University and graduated cum laude from the University of Pennsylvania.

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PEPC Annual Holiday Celebration

The annual celebration was held in the Viennese Room of the Crystal Tea Room with 150 in attendance. Co-sponsors of the event were CBIZ and Philadelphia Financial. PEPC

collected monetary donations at the party to benefit Reach Out and Read. A great time was had by all who attended.



Jay Perlman, Mary Lefever and Vince Mitchell



Sheila Gorman, Laura Weiner and Amy Parenti



Past President Scott Small and Dan Marakowski



Amy Shkedy and President Rebecca Rosenberger Smolen



Jessica Chane, Director Adam Sherman and Past President Larry Chane



Mary Lisa O'Neill and Director Peggy Robus

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Holiday Celebration continued



Vice President Doug Simon with Past Presidents Al Gibbons and Alan Mittelman



Seane Baylor and Isabel Pryor



Kit McCarty and Cindy Diccianni



Marc Klebanoff and Past President Dave Watson



Beverly Bernstein Joie, Director Peggy Robus, Jeannette Leighton and Michael Schiff



John Linvill, Jordan Rosen and Vice President Doug Simon

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Holiday Celebration continued



Robert Rosenberg and Warren Vogel



Thomas Gudowicz, Tim Zeigler, Cindy Diccianni



Marc Klebanoff, Leslie Heffernen, Lou Horvath



Vince Mitchell, Kit McCarty, Past President Al Gibbons and Howard Soloway



Welcome New Members

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Elle Carolan
Jessica Chane
Chase Classen
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Mark Your Calendar

2014-2015 Luncheon Programs – 11:45 – 1:45 p.m.
All luncheon programs are held at The Union League,
140 South Broad Street, Philadelphia.

Register at www.philaepc.org



January 20, 2015

Topic: Topics in Wealth-Transfer and Philanthropic Planning

Speaker: Brian Wodar

Bernstein Global Wealth Management
West Palm Beach, FL

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February 17, 2015

Topic: Estate Planning Through an Asset Protection Lens

Speaker: Gideon Rothschild

Moses & Singer, LLP, New York, NY

Sponsor: Capital One

March 17, 2015

Topic: Trust Modifications

Speaker: Amy E. Heller

McDermott Will & Emery, LLP
New York, NY

Sponsor: The Law Offices of Peter L. Klenk & Associates

Thursday, May 7, 2015

Annual Meeting, Seminar & Reception

Philadelphia Museum of Art

3:00 – 3:30 p.m. Registration

3:30 – 6:00 p.m. Council Remarks & Program

6:00 – 7:30 p.m. Reception & Gallery Access

Speakers: Christopher Hoyt, University of

Missouri-Kansas City

Michael V. Bourland, Bourland Wall and

Wenzel, PC

*Topic: "Estate Planning for Business Owners –
Maximizing the Value of the Business to Benefit Both
Family and Charity"*

Wednesday, June 10, 2015

2015 Annual Golf & Tennis Outing

Golf: Sunnybrook Golf Club

Plymouth Meeting, PA

Golf Tee Time: 12:30 p.m.

Tennis: Philadelphia Cricket Club

St. Martins Clubhouse

415 W. Willow Grove Avenue

Philadelphia, PA 19118

Round Robin: 2:30 p.m.

Sign Up for a PEPC Committee

The Philadelphia Estate Planning Council offers many opportunities for member involvement. One of the most rewarding ways to get involved is through our many committees. The committees encompass all activities of the council including planning our social events, publishing our highly informative newsletter, enhancing our website and developing our education programs. All members are encouraged to actively participate on a committee. Committee participation provides the opportunity to expand your professional relationships and increase your leadership skills. To sign up, please contact the PEPC Office at staff@philaepc.org.

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