**72nd Annual Taxation Conference**
**University of Texas at Austin**

**ESTATE PLANNING WORKSHOP**
**December 6, 2024**

**Panelists:**
**Steve Akers, Dallas**
**Keri Brown, Houston**
**Mickey Davis, Houston**
**R. Shaun Rainey, Midland**
**Charles A. "Clary" Redd, St. Louis**
**Melissa Willms, Houston**

**Moderator: Stanley Johanson, Austin**

A. **Permissive personal notice to estate creditors.** This issue came up near the end of my recently completed Wills & Estates course. The Texas Estates Code, borrowing from the Uniform Probate Code, authorizes a personal representative to give "permissive" personal notice to creditors, shortening the period for presenting claims to four months. This issue does not come with most creditors; the AT&T and Spectrum bills come like clockwork every month. Have you ever had cases in which you advised the executor to give permissive personal notice to a creditor? If so, what were the circumstances?

B. **Sunset??? What sunset?** Hey! There was an election last month! Donald Trump is President, the Senate is Republican, and the House is (barely) Republican. This means f***or sure*** [the Professor says] there ain't gonna be a sunset for the Tax Act and Jobs Act of 2017. Will the 2017 Act be extended? Are there any thoughts (or hints) as to whether there might there be other legislation affecting the estate and gift tax beyond tax rates and the exemption? (And can we put the 2025 Greenbook in the shredder?) At this point, we of course don't know. But clients are going to start asking YOU: "What should I be doing, or at least think about with respect to my estate planning—or should I wait and see how things play out before even thinking about making major (or minor) moves?"

    1. To give one example, would this be a good time for (*e.g.*) creating a SLAT if you want to do a non-reciprocal SLAT at a later date, etc.), or at least getting other pre-2026 planning arrangements lined up?

    2. Or is it best to follow the advice of noted philosopher Alfred E. Neumann: "What, me worry?"

C. **Gifts from a qualified plan or IRA.** I have a client (the Professor says, making this a hypothetical) who wants to make a [$100,000] [$200,000] gift to his alma mater's alumni fund drive out of his 401(k) qualified plan or IRA. The client is [68 years old] [74 years old and is taking required minimum distributions]. How should he go about it? Make a withdrawal from the 401(k) or IRA and then cut a check for the charity? Direct the 401(k) or IRA trustee or custodian to make a distribution directly to the charity? And does it make a difference whether the gift will be from a 401(k) (subject to ERISA) or an IRA? How should I tell my client to proceed?

D. **Speaking about charities**… How do you bring up the topic of charitable gifts (if the clients don't bring it up) for clients with seriously taxable estates? How do you get clients to think about philanthropy? Do you quote Warren Buffett, who has decided to leave his descendants "enough money so that they would feel they could do anything, but not so much that they could do nothing"?

1. Steve Saunders sent me this message: "Nearly every single client we have with taxable estates made their money. We don't have a lot of multi-generational wealth [in Austin]. And, ironically, pretty much all our clients who have inherited large amounts of wealth were seriously successful before they inherited wealth. So, most of them don't worry that their kids won't get enough; they worry that their family will become the Kennedys—whole generations of people who have serial problems with drugs, sex, alcohol (murder?), and don't have productive lives. Joe Kennedy's estate planning must've been brilliant from a tax standpoint, but it's left a lot of human wreckage in its wake."

2. Many well-off clients almost always want to make charitable bequests if only on a contingent basis. Also, all clients are philanthropists—although they don't think of it that way—by making donation to their church, synagogue or alma mater. At what point on the scale do you bring up family foundations, or the Austin (or whichever) Community Foundation—and how do you broach the topic?

E. **Blending a bypass trust with proceeds from a 401(k) plan or IRA**. I have a client who wants her will to create a bypass trust for her spouse, to be followed by trusts for the client's children. (Or, the client is divorced and wants to create a bypass trust for the children—same issue.) The client has a very substantial 401(k) or IRA that she also wants to be in (or alongside) the bypass trust. It used to be tough enough when payouts could be stretched out for the life expectancy of beneficiaries. It is now even more challenging thanks to SECURE-1's limiting the stretch-out to 10 years for non-spouse beneficiaries. How should this be handled? What special dos and don'ts apply to the drafting and preparation if such trusts?

F. **Conversion to a Roth IRA?** A client called me on Monday, telling me that the Sunday edition of the Wall Street Journal devoted an entire page to the pros and cons of converting 401(k)s and conventional IRAs to Roth IRAs. The client, who is [45 years old] [55 years old] has a [401(k)] [IRA] whose current value is [$500,000, up from $350,000 two years ago] [$900,000, up from $750,000 two years ago]. I will be meeting with the client next week for general estate planning advice, but he wants my "take" on the pros and cons or his making a conversion. What should I tell him—or at least what should we be talking about?

G. **What steps (if any) can be taken to prevent brokerage firms (with the passive, unthinking consent of clients) from screwing up estate plans?** I am reminded of *Holmes v. Beatty*, 290 S.W.3d 852 (Tex. 2009), where H and W, each with children by former marriages, had $10 million in securities (community property) with several brokerage accounts in Austin. All the accounts were in "Joint Tenants with Right of Survivorship" form. W died; H died six months later. End result: W's one-half community interest passed by right of survivorship to H, and six months later the entire $10 million pass under H's will to his children.

3. Earlier in the year, Texas ACTEC members received this email message from a Fort Worth attorney: "I am very disheartened because two separate high net worth clients who are doing some sophisticated estate planning that requires the execution of Partition Agreements just provided me with current financial statements, and all of their bank, investment and brokerage accounts are titled as "Joint Tenants with Right of Survivorship." Some even have a TOD arrangement on them as well as JTWROS. And both sets of clients have a joint revocable trust! I have discussed the titling of accounts with both sets of clients, orally and in writing, many times before. I have also sent dozens of newsletters to all my clients over the years on the topic of titling accounts to the point that I am so tired of warning people about this (mostly because my warnings seem not to be doing any good). The people who work in financial institutions who open accounts for customers seem to have "no clue" regarding the legal effect of the way they title or register their customers' accounts, and they don't even seem to care or want to try to understand what they are doing to their customers' estate plans. And it isn't just the high net worth clients whose estate plans are ruined by these "inappropriate" forms of title or registration used on accounts. I am just so disheartened and frustrated. I imagine that all my letters and memos to clients and notes from meetings with clients indicating that we discussed these matters would probably 'save me' from legal malpractice, but that doesn't seem to be enough somehow. Maybe it should be enough?"

4. How about this approach? In preparing for the first client interview, have the clients (husband and wife) bring along a copy of their Paine Webber or Schwab securities account agreement. Have a legal assistant read over the agreement and identify the "joint tenancy with right of survivorship" language. (It is likely to be there; the firm's account agreements were drafted and prepared in Philadelphia or Chicago or somewhere.) Then get a yellow highlighter, and in the clients' presence boldface the problematic language and tell the clients, "If you open a new securities account or move your account to a new broker, read over the account agreement. If the agreement contains this or similar language, (i) your estate plan will be ruined, (ii) your family will suffer economically, and (iii) you will have wasted the $____ you paid me in fees for developing your estate plan."