

## Silicon Valley Chapter American Association of Individual Investors

Financial Planning Workshops

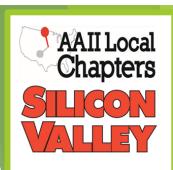
**#9 Estate Planning** 

### Our Next Event and Special Interest Group Webcasts

AAII Local Chapters SILICON VALLEY

- Saturday May 9<sup>th</sup> at 9:00am; webcast only
  - A Holistic Approach to Real Estate
     Brian Schwatka, Realtor & Transition Specialist
  - Navigating Biotech Investing in 2020
     John McCamant, Editor, Medical Technology Stock Letter
- Computerized-Mechanical Investing Group
  - ▶ Bill Paseman: Thursday May 7<sup>th</sup> at 6:30pm
- Financial Planning Discussion Group
  - ► Fred Smith: Wednesday May 13<sup>th</sup> at 6:30pm
- Investing Discussion Group
  - ▶ Lynn Gillette: Monday May 25<sup>th</sup> at 6:30pm
- Fintech Discussion Group
  - Roland Chow: Larry Williams, Thursday May 28th at 5:30pm





#### Please check us out!

- Chapter website: www.siliconvalleyaaii.org
- Meetups: www.meetup.com/AAII-Silicon-Valley-Meetup
- Facebook: www.facebook.com/sv.aa
- YouTube Channel: www.youtube.com/channel/UC4GepcU8lzx8rZMaWNBeJtA
- ► AAII National website: www.aaii.com
- My email address: fred.svaaii@gmail.com

#### Disclaimer

I am not an attorney! Please talk to an estate planning attorney before making any major decisions.

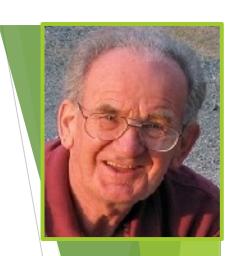


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- ► The opinions expressed here are not necessarily those of AAII or the AAII Silicon Valley Chapter, whose only intent is to provide a background for understanding investment, personal finance and wealth management theory and practice.
- Nothing on these sites should be considered solicitations or offers to buy or sell any financial instrument or specific trading advice for individuals.

#### Cycle of Financial Planning Workshops

We cover a full range of topics in the cycle:

- ► The Five Pillars of Financial Planning
- Investing I: Modern Portfolio Theory, Building a diversified portfolio
- Investing II: Efficient Market Hypothesis; Can you beat the market?
- Retirement Planning I: Accumulation/Distribution phases, RMDs
- ▶ Retirement Planning II: Safe withdrawal rates, Bengen's 4% rule
- ► Taxes: Tax diversification, Asset location
- ► Risk Management/Insurance: Annuities, Long-term care, Litigation
- Social Security and Medicare: Claiming strategies, Medicare myths
- Estate Planning: Probate, Executor/trustee duties, Philanthropy
- Wrap-up: Case study reviewing previous material



#### Overview

- Important estate planning documents
  - ▶ Will
  - Revocable living trust
  - Durable power of attorney
  - Advance health care directive
  - Letter of intent
- Practical considerations for an executor/trustee
- Dealing with your digital legacy
- California's End of Life Option Act
- Philanthropy
- Your "All About Me" exit folder

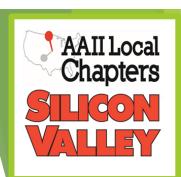






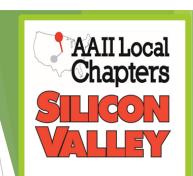
- Don't want to think about death
- Don't want to discuss money with heirs
- ► Too busy
- ► Think the estate is not large enough
- Haven't figured out how to distribute their assets or who should be guardians for minor children
- Don't want to dredge up family conflicts
- Believe estate planning is complicated/expensive





- Designate to whom our assets will go ...
  - ... and under what circumstances
- Provide for management of affairs if incapacitated
- Appoint guardians for minor children
- Provide for beneficiaries with special needs
- Decide whether to probate the estate
- Minimize taxes
- ► Fulfill philanthropic desires

# Identify the Key Plan Elements ... the hard part!



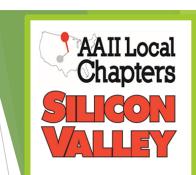
- Who should handle my finances if I become incapacitated?
- Who should make life-sustaining decisions for me if I cannot?
- What have I decided about organ donation?
- Who should inherit assets and how should they be divided?
- Who should administer the estate and distribute the assets?
- Who should care for minor/special needs children?

### Implement the Plan



- Take Inventory
  - ▶ List current assets: Home, vehicles, jewelry, etc.
  - Recent financial statements: Banks, brokerages, etc.
  - Safety deposit boxes, home safes
- May need to assemble a multi-disciplined team
  - ► Financial planner
    - ► Coordinate with other team members
  - Estate planning attorney
    - ▶ Write the will or trust
    - Ensure the plan meets all federal and state requirements
  - ▶ Tax advisor
    - ▶ Help minimize taxes owed by the estate or beneficiaries





- Joint Tenancy with Rights of Survivorship, JTWROS
  - Must be equal share(s)
  - Cannot be willed; passes by operation of law to the survivor(s) outside probate
  - Not recommended for a married couple owning appreciating assets because only half the property receives a step-up in cost basis on the death of the first spouse
- ► Tenancy in Common, TIC
  - Can be unequal shares
  - Distributed by will or trust
  - Only the interest owned by a deceased co-tenant gets a stepup in basis





- Separate property is anything acquired by a spouse before the marriage, during the marriage as a gift or bequest, or after the parties separated
- Community property is anything acquired during the marriage from earnings or salary
  - Cannot be sold or gifted by one spouse without the consent of the other
  - Will be split equally unless there is an agreement to the contrary
  - ► The surviving spouse gets a step-up in cost basis to the fair market value at the date of death of the other spouse.

#### What Is a Will?

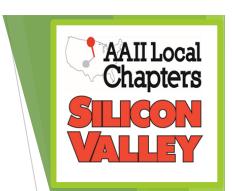
- AAII Local Chapters SILICON VALLEY
- ► Legal document expressing a person's wishes
  - Distribution of his property at death
  - ▶ Who will oversee the distribution
  - ► May state who is to care for minor children
- Effective on death
  - Cannot provide for incapacity
- Parties to a will
  - ► Testator: Person making the will
  - Executor: Personal representative nominated by the testator to administer the will
  - ► Heirs: People who inherit the assets



### Everyone Has A Will.

- If you die without writing your will, i.e. "intestate" the state writes one for you
  - The probate court appoints an administrator to manage the estate, and a guardian for any minor children
  - May not follow your wishes for distribution of property
  - May not appoint your preferred guardian for minor children
- ▶ No provision for bequests to any friends or charities
  - ▶ If decedent was not married the estate goes to decedent's children, parents, siblings and their children, cousins.
  - ▶ If the decedent was married
    - Community property goes to the surviving spouse
    - Separate property is divided between the surviving spouse and children (complicated formula)





- Specific property: real estate, personal property
- Pecuniary bequest: specific dollar amount
- Fractional share bequest: percentage interest
- Residuary bequest: balance of the estate
- ▶ Be careful!
  - ▶ Where there's a will there's a way ...

... to make a mistake.



#### What Is Probate?

- Judicial process of administering the estate of a decedent
- Judge determines the validity of the will and appoints an executor to manage the estate
  - Executor usually represented by estate attorney
- Probate estate includes gross value of all property owned by the decedent except ...
  - ... property which passes by contract
    - e.g. Life insurance, Retirement account, POD account
  - ... property held in joint tenancy (JTWROS)
  - ... property held in a trust
- Estates < \$166,250 can use simpler Small Estate Probate</p>





- File petition with Superior Court asking to be appointed as executor and open probate case
- Create inventory of probate assets; appraisal
- Locate creditors, pay bills
- File tax returns
- Manage estate assets
- Petition court to allow distribution of assets to heirs
- File final tax returns





Probate	Estate	Rate	Cumulative	Total Fee
First	\$100,000	4.0%	\$100,000	\$4,000
Next	\$100,000	3.0%	\$200,000	\$7,000
Next	\$800,000	2.0%	\$1,000,000	\$23,000
Next	\$9,000,000	1.0%	\$10,000,000	\$113,000
Next	\$15,000,000	0.5%	\$25,000,000	\$188,000
Next	>\$25,000,000		Reasonable	amount





#### Advantages

- Court supervises distribution of estate assets
- Creditors must submit claims within 4 months
- Transfers clear title to property
- Court can settle disputes between heirs, executor

#### Disadvantages

- ► Complexity: Petitions, accountings, hearings, etc.
- ► Lack of privacy: Anyone can view the documents
- ► Time consuming: Can take 6 months to several years
- Cost: Usually much higher than administering a trust





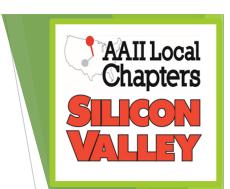
- A written agreement to distribute the assets in an estate and care for minor children
- Typically more flexible than a will
  - Can accommodate incapacity
  - Particularly useful when there are young children, or children from a previous marriage
- Parties to a trust:
  - Grantor or Settlor: Person creating and funding the trust
  - Trustee: Person appointed to manage the trust assets for the benefit of the beneficiaries
  - Beneficiaries: People receiving the assets of the trust



### Practical Aspects of the Trust

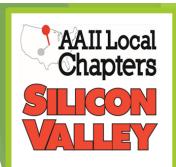
- Must transfer title of assets to the trust when the documents are prepared
- When refinancing a mortgage it may be necessary to temporarily remove the home from the trust
- A "pour-over will" is used to transfer assets into the trust at death if not already so titled
  - ▶ If these assets > \$166,250 probate will be needed
- Usually during the trustor's lifetime he/she acts as trustee
- After death or incapacity of the primary trustee successor trustees manage the trust.





- In the past estate tax has varied all over the map!
  - Exclusion: \$675,000 in 2001 to \$5,490,000 in 2017
  - ▶ Rate: 0% in 2010, Otherwise 35% to 55% maximum
- Current estate tax set by Tax Cuts and Jobs Act (Dec. 2017)
  - Exclusion: \$11.580M in 2020
  - ► Rate: 40% maximum in 2020
  - Sunsets on December 31, 2025; then reverts to 2017 law
- California does not have an estate or inheritance tax

### Durable Power of Attorney, DPA



- Power of attorney for financial/legal matters
- Nominates someone (your agent, attorney-in-fact) to manage your affairs if you are unable to do so
  - Write checks, pay bills, etc.
  - Access your online accounts
  - Manage your investments
- Immediate (effective immediately)
   or Springing (effective on determination of incapacity)
- Terminates on death

# How Should You Pick an Agent in Financial Matters?

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- Relative or trusted friend
- Financial institution, bank
  - Many require you to use their DPA form
- Important characteristics
  - Trustworthy
  - ► Competent, knowledgeable
  - Understands and respects your philosophy
- Can name co-trustees
  - ▶ But beware major differences of opinion!





- Authorizes an agent to make medical decisions for you if your are unable to do so yourself
- Empowered to speak on your behalf
- Preferable to name at least one alternate agent
- Typically activated when two doctors affirm you are no longer capable of making decisions for yourself
- Expires on death
  - Exception: Some Health Care POA forms can specify who has the right to dispose of the deceased remains





- Allows you to state what kind of care you want, or don't want, if you are seriously incapacitated
- Can specify your wishes regarding wishes ...
  - Resuscitation / DNR (Do Not Resuscitate)
  - Artificial respiration
  - Forced feeding
  - Use of antibiotics, pain relief, etc.
  - Donation of organs
- ► POA for healthcare and the living will are typically combined in an Advance Health Care Directive





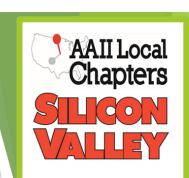
- Choose your health care proxies carefully
  - Family, friend
  - ► Competent, knowledgeable
  - Assertive but not overly controlling
- ► Include a HIPPA release
  - ► Health Insurance Portability and Accountability Act
- Discuss your wishes with your proxies at the time your documents are prepared
- Proxies should maintain a copy of the document





- Covers practical details
  - ▶ Not a legal document but can be referenced in the will
  - ▶ Intended to be used in case of incapacity or death
- ► How to access your electronic data
- ▶ Type of funeral you prefer
- Any prearrangements you have made
- An obituary listing your name, place and date of birth, immediate relatives, accomplishments, etc.
- People to contact:
  - ▶ Relatives, friends, professional advisors, etc.





- Read and understand trust and will documents
- Carefully consider your decision to accept the job
  - Great honor
  - ► Hard work
  - Time consuming
  - Major responsibility
  - Legal liability
  - May be compensated
- Can resign later <u>after</u> new trustee is installed
  - ▶ May be difficult and time-consuming in practice

# Typical Duties of a Trustee: Immediate Tasks



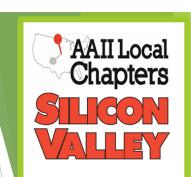
- Mortuary
  - Verify details for death certificate; Order 5-20 copies
  - Sign off on burial/cremation documents
  - Arrange for burial or scattering of ashes
  - Review scattering documents and distribute to family members
- Miscellaneous
  - Notify Social Security Administration/Medicare
  - Notify pensions and annuities
  - Notify bank and brokerage accounts
  - Close out nursing home account

### Typical Duties of a Trustee: Legal Issues

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- Retain estate attorney
  - Often drafting attorney, but not necessary
  - Coordinate all legal issues with him
  - Provide supporting documentation as required
- ► File for new Tax ID for trust
- ► Sign documents as "Your Name, Trustee"
- Irrevocable trust of pre-deceased spouse
  - Review document to determine trustee
  - Consider requesting trustee to vacate trust
    - Requires consent of beneficiaries and original trustee

## Typical Duties of a Trustee: Financial Issues



- Collect, sort and store all financial documents
  - ► Transfer boxes of documents to a safe site
  - Review all documents
    - Shred unwanted documents
    - Organize and store remaining documents for 3-7 years
- Bank and brokerage accounts
  - All accounts frozen by state for 40 days
  - Then file affidavits to open accounts with new tax ID
  - Review and pay all bills in a timely manner
  - Manage the brokerage accounts in an appropriate manner
     Prudent investor rule, diversified portfolio





- Consider retaining accounting firm to work with estate attorney
  - Have accounting firm document value of estate on day of death
  - File report with all percentage/residual beneficiaries
  - ► File Federal and State tax returns in a timely manner
  - Distribute 60% 80% of estate to beneficiaries
  - Maintain accounts and file tax returns for 3 years, i.e. past any potential audit period
  - Distribute all remaining funds to beneficiaries
  - Close out the estate
- ► Keep meticulous records; meetings, communications, transactions

## Typical Duties of a Trustee: Sale of Home



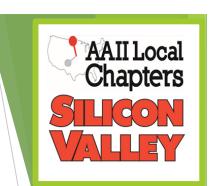
- Interview at least 3 realtors; Sign listing agreement
  - ▶ Review property report, roof report, termite report
- Prepare for an open house
  - ► Retain a staging consultant, rearrange furniture
  - Ship small items to family members as specified
  - ► Move all other items to garage or off-site
  - Schedule house cleaners
- Review all offers, Notify percent/residual beneficiaries of terms
  - Need consent before close of escrow
- Arrange estate sale; Typical commission ~40% of total proceeds
  - Donate unsold items to charity, junk to city dump
- Document, document, document !!!

## How Long Should I Keep Financial Records?



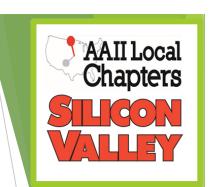
- Forever
  - ► Estate planning documents, trusts, wills, etc.
  - ► Tax returns (in case of fraud)
- 3 to 7 years
  - ▶ Bank statements, Brokerage statements
  - ► Tax returns (typically)
- At least 3 years after sale
  - Escrow closing statements (both purchase and sale)
  - Property improvements
  - Stock trade confirmations





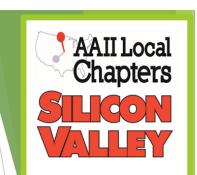
- Document everything
  - ▶ If it isn't written down it never happened !!!
- Communicate status frequently with beneficiaries
  - Annual report plus other significant events
- Be careful to disclose all major transactions to percentage and residual beneficiaries in advance, and get their written approval
- Specific beneficiaries do not have a need-to-know and are easier to work with





- ► Files stored on desktop computer, laptop, smart phone, MP3 player, cloud, etc.
- Letters, documents, spreadsheets, presentations
- Email accounts
- Social media: Facebook, LinkedIn, Twitter, etc.
- Online bill payments
- Photo files
- Music, movies, books, etc.





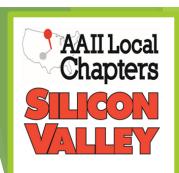
- Which files/accounts do you want your trustee to access when you die?
  - What should happen to your Schwab account? Facebook?
- Does your trustee know your logon ID and password?
- Against all security rules (!)
  - Keep written list of all IDs and passwords in clear text in a safe place known to your DPA agent or trustee, or use a digital password safe
- Make sure the individual is given authority in the will
  - Allows your trustee to access those accounts which will remain active (e.g. bill paying) and to close out the others in an orderly manner.

### A Long-Term Digital Strategy



- Take Inventory
  - Organize your files
- Back up your data
  - ► CDs, DVDs, Flash cards, etc. Will the drives be available?
  - Local hard drive, Cloud, e.g. Google Drive, Carbonite, etc.
- Make sure the data is protected
  - Use strong passwords
  - Keep a list locked in a secure place
- Include a specific section in your DPA authorizing your agent's access to your digital files
  - Make sure your agent knows where to find your list of logon IDs and passwords





- Signed into law by Jerry Brown in October 5, 2015
  - Officially went into effect on June 9, 2016
  - Sunset Clause: Law officially sunsets on January 1, 2026 unless amended by further action
- Legal challenge filed in May 2018 for injunction to halt implementation due to passage in Special Session
  - Reinstated by state supreme court
- California is fifth state to to enact a death-with-dignity law
  - ► Early states: Oregon, Washington, Montana and Vermont

# California's Right-To-Die Law: Practical Considerations



#### Patient must:

- Be a California resident
- ▶ Be an adult (age 18 or older)
- ► Have mental capacity to make own decisions
- Be diagnosed by two physicians with a terminal illness with six months or less to live
- Make a voluntary request to the attending physician
- Two oral requests >15 days apart, plus written request
- Cannot be made through a POA or health care directive
- Have physical capacity to self-administer the drug
- Not effective for Alzheimer's patients or comatose patients

#### Philanthropy: The Tools

- Simple bequest in the will
- Donor-advised funds
  - Funded by donor, managed by trustee for benefit of a charity
  - Can take immediate tax deduction for contribution
  - Donor decides where and when to make grant to charity
- Charitable trusts: Consult an attorney
  - Charitable remainder trust, CRT
    - Donor receives an income interest for life
    - ► At death the remainder interest is paid to the charity
  - ► Charitable lead trust, CLT
    - ► Charity receives the income for the gifted asset
    - ▶ At death the remainder interest reverts to the donor's heirs
- Private foundation: Consult an attorney



# Five Key Philanthropic Questions

- AAII Local Chapters SILICON VALLEY
- 1. How many people benefit, and by how much?
  - ▶ 100x multiplier for poor countries
- 2. Is this the most effective thing I can do?
  - Quality Adjusted Life Year, QALY, Measure of health benefits
  - QALY = (Percentage improvement) x (# years)
     e.g. \$4 mosquito net → 10% improvement x 5 years = \$8/QALY
- 3. Is this area neglected?
  - Less widely publicized disasters need more help
- 4. What would have happened otherwise?
  - ► Earning to give may be more efficient than volunteering
- 5. What are the chances of success?
  - Consider high-impact giving opportunities

# Philanthropic Opportunities

with a nod to Abraham Maslow



	Immediate Needs	>>>	>>>	>>>	>>>	>>>	>>>	Long term Goals
Aspirations ^								Legacy Charities
^							Environment Climate	Animal rights
^						Self Esteem	Financial independence	
^					Education Kindergarten	Primary, Secondary	College	Post graduate
^				Health care Medicaid	Medicare	Concierge plans		
^			Food, Water Food truck	Soup kitchen	Food security			
^		Shelter Tent camp	FEMA trailer	Apartment	Single family home			
Basic Needs	Safety 3 <sup>rd</sup> World	Ghettos						

#### Your "All About Me" Exit Folder



- Best gift you can leave your loved ones!
- Collect all the documents needed into a large folder or ring-book
- Store in a secure place
  - Do not store in a bank deposit box unless owned jointly or in trust
- Make certain your executor/trustees and powers of attorney know where to find your exit folder.





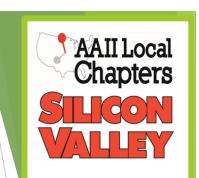
- Location of original legal documents, and key or combination to any safe or lock box
  - Durable power of attorney for financial matters
  - Advance directive for health care issues
  - Will and revocable living trust
- ▶ Letter of intent, ethical will
- Funeral wishes, desired obituary wording
- Pre-need funeral arrangements already made



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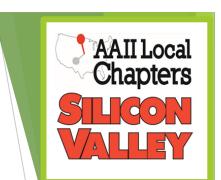
- Personal Investor Profile, PIP
- Investment Policy Statement, IPS
- Cost basis for Non-deductible IRA
- Net worth statement
- Bank and brokerage statements
  - Account numbers, contact information
  - ► Websites, ID and passwords
- List of credit cards with contact information



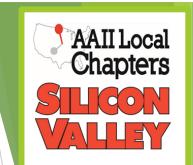


- Copy of health care directive, HIPPA release
  - ► Location of original
- Primary care doctor, specialists
  - ► Contact information: Phone #, email address
- ► Health issues, medications
- Health care insurance information
  - ► Medicare / Medigap / Advantage Plan, other

# Your Exit Folder: Other documents



- Comprehensive contact list
  - Personal: Immediate family, Friends and neighbors
  - Professional: Financial adviser, Estate attorney, Accountant Insurance agent
- Account IDs and Passwords
  - Access to desktop/laptop computers, phones, etc.
  - Email accounts, bank/brokerage accounts, photo files, etc.
- Copies and location of other documents
  - Driver's license, passport, Social Security/Medicare cards
  - ▶ Birth/marriage certificates, divorce decree, etc.



#### Review The Plan Regularly

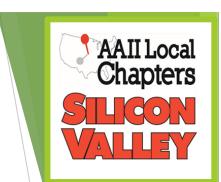
- Review/update the plan every 3 to 5 years, or ...
  - ... Death of a spouse
  - ... Divorce or remarriage
  - ... Birth or death of a beneficiary or fiduciary
  - ... If you, spouse, or beneficiary become incapacitated
  - ... Move to another state or country
  - ... Significant change in financial situation
  - ... Purchase or sale of a business



#### Further Reading

- Key End-of-Life Planning Tasks to Complete, Michael Falk, AAII Journal, March 2020
- Planning Essentials for Modest Estates, John Horn and Dera Johansen-Tracy, AAII Journal, October 2019
- Using Beneficiary-Directed Trusts to Protect Your Heirs, Dera Johansen-Tracy and John Horn, AAII Journal, October 2018
- Preparing Clients for Widowhood, Bill Harris, Journal of Financial Planning, April 2017
- Steps to Smoothly Transfer Control of Your Family's Finances, Karen Altfest, AAII Journal, May 2016
- Digital Assets: Why They Need To Be Part of Your Estate Plan, Matthew McClintock, www.estateplanning.com, January 22, 2015
- Plan For Your Digital Afterlife, Consumer Reports Money Advisor, April 2015
- Doing Good Better, William MacAskill, Gotham Books, 2015





- www.aaii.com Broad selection of financial planning material
- www.siliconvalleyaaii.org Previous presentations on various topics
- www.santaclaracountylib.org/Adults/Business & Money
- www.letsmakeaplan.net Find a CFP professional
- www.estateplanning.com Comprehensive source of useful info
- www.martindale.com Martindale-Hubbell database of attorneys
- www.aaepa.com American Academy of Estate Planning Attorneys
- www.nnepa.com National Network of Estate Planning Attorneys
- www.ethicalwill.com Useful tips
- www.charitynavigator.org Provides historical data and ratings
- www.givewell.org Research-backed philanthropic ideas



