

**Silicon Valley Chapter
American Association of Individual Investors**

Financial Planning Workshops

Estate Planning and Philanthropy

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- Nothing on these sites should be considered solicitations or offers to buy or sell any financial instrument or specific trading advice for individuals
- Please note well
 - I am not an attorney. Please talk to an expert about your individual case before making any major decisions.

Silicon Valley Chapter American Association of Individual Investors

Please check us out!

- Chapter website: www.siliconvalleyaaii.org
- Meetups: www.meetup.com/AAll-Silicon-Valley-Meetup
- Facebook: www.facebook.com/sv.aa
- YouTube Channel: www.youtube.com
- AAI National website: www.aaii.com

Our Next Event and Special Interest Group Webcasts

- Monthly Event: Saturday September 9th at 9:00am; webcast only
 - Speaker and topic to be determined
- Financial Planning Discussion Group
 - Debra Stikes: Second Wednesday of each month at 6:30pm
- Investing Discussion Group
 - Lynn Gillette: Fourth Monday of each month at 6:30pm
- Computerized Investing Group
 - Don Mauer: First Thursday of each month at 6:30pm

Financial Planning Workshops

- Financial Planning ... The Big Picture
- Investing 1: Modern Portfolio Theory, Building a diversified portfolio
- Investing 2: Efficient Market Hypothesis; Can you beat the market?
- Taxes: TCJA, SECURE Act, Tax diversification, Asset location, QCDs
- Retirement Planning 1: Tax-advantaged plans, RMDs
- Retirement Planning 2: Safe withdrawal rates, Bengen's 4% rule
- Risk Management/Insurance: Annuities, Long-term care, Litigation
- Social Security and Medicare: Claiming strategies, Medicare traps
- Estate Planning: Probate, Executor/trustee duties, Philanthropy
- Wrap-up: Case study reviewing previous material

Today We Will Cover ...

- 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

Reasons People Avoid Estate Planning

- 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

Reasons People Avoid Estate Planning

- Don't want to appear greedy to parents
- Difficult to engage parents in their elder care and estate plan
 - Consider starting the discussion with thoughts on your estate plan and asking for their input.

Why Do We Need An Estate Plan?

- 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 Key Plan Elements

- Who should handle my finances if I become incapacitated?
 - Revocable trust?
- Who should make life-sustaining decisions for me if I cannot?
- What have I decided about organ donation?
- Who should inherit assets; how should they be divided?
- Who should administer the estate and distribute the assets?

Identify Key Plan Elements

- Who should care for minor/special needs children/adult disabled children?
 - Special needs trust?
- Who has access/possession of the original documents?
 - The successor trustee or executor need to know the location and have access to the original documents.
 - The issuer's safe deposit box is rarely a good choice

Take Inventory

- List current assets and liabilities
 - Home, vacation home, other property
 - Vehicles
 - Jewelry, artwork, other valuable objects
- Recent financial statements
 - Checking and savings accounts
 - Brokerage statements
 - Retirement accounts
- Safety deposit boxes, home safes

You May Need a Multi-Disciplined Team

- Financial planner
 - Coordinate with other team members
- Tax advisor
 - Help minimize taxes owed by the estate or beneficiaries
- Estate planning attorney
 - Write the will or trust
 - Ensure the plan meets all federal and state requirements

Property Ownership

- Joint Tenancy with Rights of Survivorship, JTWRORS
 - Must be equal share
 - 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 step-up in basis

Separate Property and Community Property

- 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?

- Legal document expressing a person's wishes
 - Distribution of their 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

Forms of a Bequest

- 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?

- Probate is the 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
- When there is no will, intestate, a judge appoints an Administrator to manage the estate
 - Administrator has the same duties as an Executor
 - Also known as Personal Representative

What Is Probate?

- Probate estate includes gross value of all property owned by the decedent except ...
 - ... property which passes by contract
 - Life insurance, Retirement accounts, POD account, etc.
 - ... property held in joint tenancy (JTWROS)
 - ... property held in a trust
- The account administrators will not notify the Executor/Administrator of the beneficiaries of assets which pass by contract
- CA Small estate probate < \$184,500
 - Simplified probate

Duties of the Executor under Probate

- 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

Duties of the Executor under Probate

- File tax returns as needed: personal income tax, estate income tax and estate tax return
 - Personal income ends at date of death
 - Estate income starts the day after death
 - Paperwork is easier the sooner assets are transferred to the estate's FEIN
 - An estate tax return is required:
 - When estate taxes are due
 - Establishing portability of unused estate tax exemption
 - Must be filed in a timely manner

Statutory Probate Fees

for Personal Representative and Attorney

California Probate Code: Sections 10800, 10810

Probate	Estate	Rate	Cumulative	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

Cons and Pros of Probate

- Disadvantages
 - Cost: Usually much higher than administering a trust
 - Based on total market value; not Net Asset Value
 - Complexity: Petitions, accountings, hearings, etc.
 - Time consuming: Can take 6 months to several years
 - Lack of privacy: Anyone can view the documents
- Advantages
 - Creditors must submit claims within 4 months
 - Court supervises distribution of estate assets
 - Transfers clear title to property
 - Court can settle disputes between heirs, executor

Everyone Has A Will

- If you die without writing your will, i.e. “intestate” the state writes one for you
 - May not follow your wishes for distribution of property
 - May not appoint your preferred guardian for minor children
- There will be no provision for bequests to any friends or charities
- The probate court appoints an administrator to manage the estate, and a guardian for any minor children

California Intestate Law

- If decedent was not married the estate goes to:
 - Decedent's children, if any; otherwise
 - Decedent's parents, if any; otherwise
 - Decedent's brothers and sisters and their children
 - More distant cousins, etc.
- If decedent was married:
 - Community property goes to the surviving spouse
 - Separate property is divided between the surviving spouse and children according to a complicated formula

What is a Revocable Living Trust?

- A written agreement to distribute the assets in an estate and care for minor children
 - Revocable/Irrevocable, Living/Testamentary
- Typically more flexible than a will
 - Can accommodate incapacity
- Particularly useful when there are young children, or children from a previous marriage
 - Spouses in a second or later marriage may have separate trusts to provide for their children from previous relationships

What is a Revocable Living Trust?

- Parties to a trust:
 - Grantor or Trustor: Person creating and funding the trust
 - Trustee: Person appointed to manage the trust assets for the benefit of the beneficiaries; Successor trustee(s)
 - Beneficiaries: People receiving the assets of the trust
 - Stretch retirement plan option has been eliminated for many beneficiaries making specifying a trust an option
 - 5 exceptions:
 - Spouse
 - Minor child
 - Disabled individual
 - Chronically ill individual
 - An other individual not more than 10 years younger than the decedent

What is a Revocable Living Trust?

- Avoids the need for Financial Conservatorship
 - Conservatorship is legal guardianship of an adult
 - Requires a court order
 - Expensive and significant reporting requirements
 - It can be Financial, Health or Full
 - When a person becomes incapacitated and there is no alternative arrangement, conservatorship maybe the only option

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
 - This has become less frequent
- A “pour-over will” is used to transfer assets into the trust at death if not already so titled
 - If these assets > \$184,500 full probate will be needed
 - Requires a court order
 - Can be contested when the beneficiaries of the will are different than the trust
 - Takes effect at death

Practical Aspects of the Trust

- Usually during the trustor(s)'s lifetime he/she acts as trustee(s)
- After death or incapacity of the primary trustee(s) successor trustees (relatives, friends, bank) manage the trust
- When incapacity is predictable such as with dementia, control can be easily transferred to the successor trustee(s)

Federal Estate Tax Rates

Year	Exclusion	Max Rate		Year	Exclusion	Max Rate
2002	\$1.0M	50%		2013	\$5.25M	40%
2003	\$1.0M	49%		2014	\$5.34M	40%
2004	\$1.5M	48%		2015	\$5.43M	40%
2005	\$1.5M	47%		2016	\$5.45M	40%
2006	\$2.0M	46%		2017	\$5.49M	40%
2007	\$2.0M	45%		2018	\$11.18M	40%
2008	\$2.0M	45%		2019	\$11.4M	40%
2009	\$3.5M	45%		2020	\$11.58M	40%
2010	Repealed	Repealed		2021	\$11.7M	40%
2011	\$5.0M	35%		2022	\$12.06M	40%
2012	\$5.12M	35%		2023	\$12.92M	40%

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 on signing)
or Springing (effective on determination of incapacity)
- Terminates on death

How Should You Pick an Agent in Financial Matters?

- 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!

Durable Power of Attorney for Health Care

- Authorizes an agent to make medical decisions for you if you 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
- Terminates on death except for the designation of the person authorized to handle disposition of decedent's remains

The Living Will

- 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
- POLST: Physician's Orders for Life-Sustaining Treatment
 - Most commonly for those in a long term care facility

Who Should You Appoint as Agents for Health Care?

- Choose your health care proxies carefully
 - Family, friends
 - 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
 - Make sure they understand and will respect your wishes
 - Proxies should maintain a copy of the document

A Letter of Intent

- Covers practical details
 - Not a legal document
 - 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, etc.

Typical Duties of a Trustee

Pre-Need Considerations

- Read and understand trust / will documents
- Consider carefully your decision to accept the job
 - Great honor
 - Hard work
 - Time consuming
 - Major responsibility
 - Legal liability
 - May be compensated
- Can only resign later after new trustee is installed

Typical Duties of a Trustee

Legal Issues

- 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 original trustee and beneficiaries

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
 - Accounts may be frozen by state for 40 days
 - File affidavits to open new accounts
 - Review and pay appropriate bills in a timely manner
 - Be careful until you know the liabilities of the estate
 - Manage the brokerage accounts in an appropriate manner (Prudent investor rule, diversified portfolio)

Typical Duties of a Trustee

Utilities

- File change of address with post office, utilities
- Work with essential utilities to maintain service
 - Gas and electricity
 - Water
 - Trash collection
 - Landscape service, etc.
- Cancel non-essential utilities
 - Telephone, cable service, etc.
- Pay all utility bills after new bank accounts are opened

Typical Duties of a Trustee

Real Estate

- Sale of home
 - Interview at least 3 realtors, sign listing agreement
 - Review property report, roof report, termite report, etc.
 - Prepare for an open house, retain staging consultant
- Estate sale
 - Interview estate sale agents; 40% commission typical
 - Donate unsold items; cart junk to city dump
 - Retain house cleaners in preparation for close of escrow
- Close of escrow
 - Review all offers
 - Review preliminary closing documents
 - Get beneficiaries' signed acceptance of terms where necessary
 - Warning: This can delay closing by weeks
 - Meet with title company to sign final closing documents

Typical Duties of a Trustee Real Estate

- Secure property
- Maintain insurance
 - “Homeowner” and liability insurance
 - There can be issues with maintaining insurance once the property has been unoccupied for several months
- If sale is closed within 6 months of death, the sale price can be used as the value for the estate

Typical Duties of a Trustee Vehicles

- Secure
- Maintain insurance
- The answer is no if anyone requests use
- Beneficiaries need to agree on the disposition of vehicles

Typical Duties of a Trustee

Accounting Issues

- Document the value of estate on day of death
 - If needed, engage an accountant to work with an estate lawyer
 - File report with all percentage beneficiaries
 - Do not distribute any assets until:
 - Current Federal and State tax returns are filed
 - Liabilities of the estate are verified
 - Past year tax liabilities
 - Credit
 - Lawsuits
- Maintain accounts and file tax returns for 3 years i.e. past any potential audit period

Accounting Issues

- Distributing trust assets can place the trustee personally responsible for liabilities of the estate
 - Once liabilities are verified, real property and vehicles are sold or readied for distribution, distribute 2/3 of the estate to the beneficiaries
 - Maintain accounts and file tax returns for 3 years
 - i.e. past any potential audit period
 - After 3 years, distribute all remaining funds to beneficiaries
 - Close out the estate
- Keep meticulous records
 - All meetings, communications, transactions

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

Practical Trustee Tips

- 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 beneficiaries in advance and get their written approval
- Specific beneficiaries do not have a need-to-know and are easier to handle unless the estate is insufficient

We Live in a Digital World

- 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.

Can Your Trustee Access Your Digital World When You Die?

- 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, and/or use a reliable password manager
- Make sure the individual is given authority in the trust
 - 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 list locked in secure place, or use password manager
- 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

California's End-of-Life Option Act Right-To-Die Law

- Signed into law by Jerry Brown in October 5, 2015
- Officially went into effect on June 9, 2016
- Updated 1/1/2022
- Legal challenge filed for injunction to halt implementation due to passage in Special Session
 - Injunction denied
- Sunset clause
 - Law officially sunsets on January 1, 2031 unless amended by further action

Right-To-Die Law

Practical Considerations

- Patient must:
 - Be an adult (age 18 or older)
 - Be a California resident
 - 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 > 48 hours apart, plus written request
 - Cannot be made through a POA or health care directive
 - Have physical capacity to self-administer the drug
- Important constraint
 - Not effective for patients with dementia or for comatose patients

Philanthropy: The Tools

- Simple bequest in the will/trust
- 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 from the gifted asset
 - At death the remainder interest reverts to the donor's heirs
- Private foundation: Consult an attorney

Five Key Philanthropic Questions

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
 - $QALY = (\text{Percentage improvement}) \times (\# \text{ years})$
e.g. \$4 mosquito net \rightarrow 10% improvement \times 5 years = \$8/QALY
3. Is this area neglected?
 - Less widely publicized disasters need more help
4. What would have happened otherwise?
 - Consider high-impact giving opportunities
5. What are the chances of success?
 - Earning to give may be more efficient than volunteering

Philanthropic Opportunities

with a nod to Abraham Maslow

Aspirations ^ ^						Environment Climate Animal Rights
^ ^ ^					Education Kindergarten	Primary Secondary
^ ^ ^				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 rd World	Ghettos				
	Immediate Needs	>>>	>>>	>>>	>>>	Long-term Needs

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

Your Exit Folder

Important Access

- Access to desktop and laptop computers, phones
- Account ID and passwords
 - Email accounts, Social media accounts
 - Bank and brokerage accounts
 - Photo websites, Personal websites, etc.
- Comprehensive contact list
 - Personal
 - Immediate family, Friends and neighbors
 - Professional
 - Estate attorney, Financial adviser, Insurance agents
Accountant

Your Exit Folder

Estate Planning Issues

- 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

Your Exit Folder

Financial Planning Records

- 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

Your Exit Folder

Health Care Issues

- 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 plan / Advantage plan, other

Your Exit Folder

Copies of Important Documents and Location of Originals

- Driver's license
- Social Security/Medicare cards
- Passport ID page
- Birth certificate
- Marriage certificate, Divorce decree
- Death certificate for a spouse
- Military records

Review The Plan Regularly

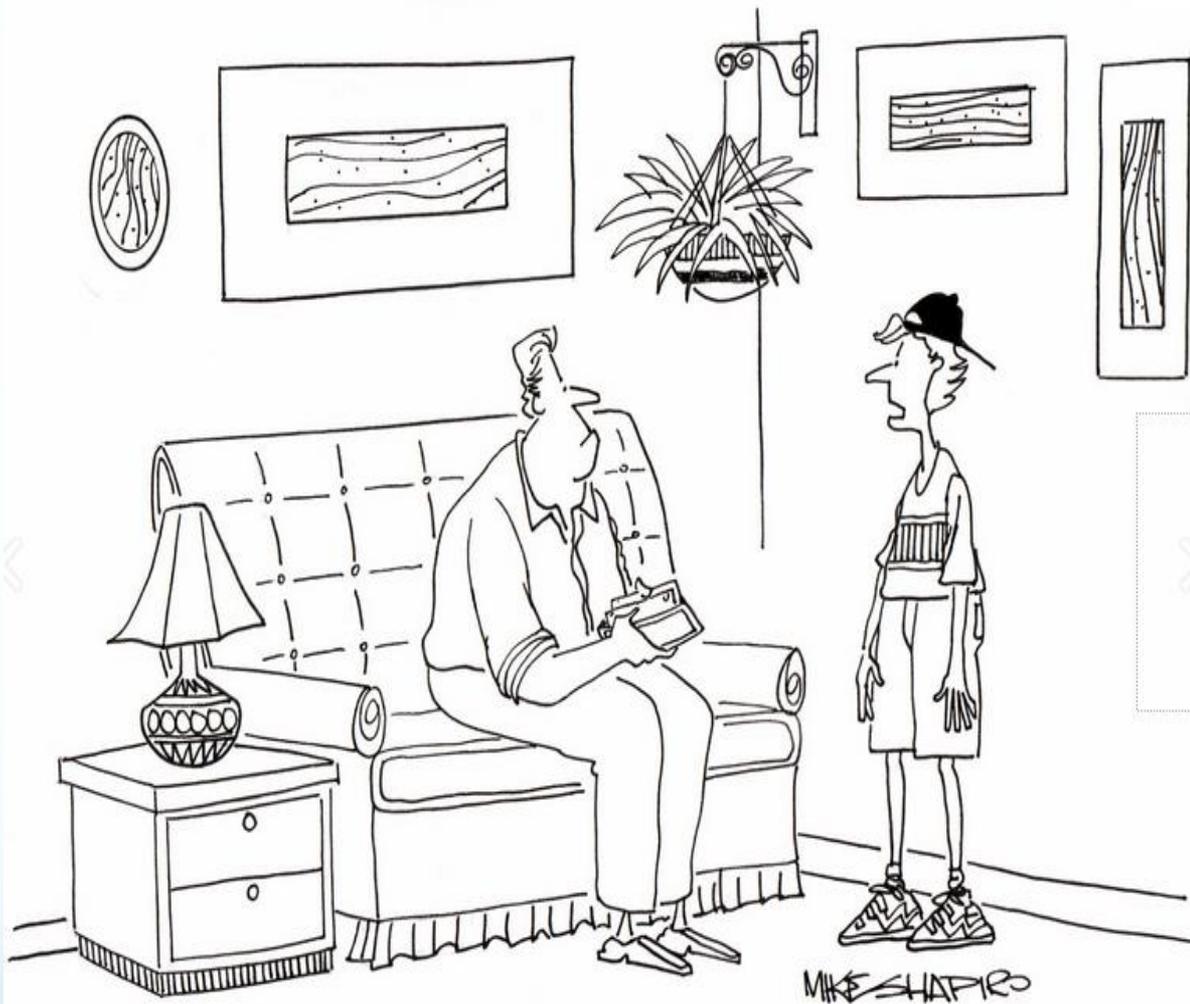
- Review/update the plan every 3 to 5 years, or ...
 - ... Death of a spouse
 - ... Divorce or remarriage
 - ... Birth or death of a beneficiary or fiduciary
 - ... If you, spouse, or a beneficiary become incapacitated
 - ... Move to another state or country
 - ... Significant change in financial situation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

Further Reading

- *Planning Essentials for a Modest Estate*, John Horn et al, AAll Journal, October 2019
- *Using Beneficiary-Directed Trusts to Protect Your Heirs*, John Horn et al, AAll Journal, October 2018
- *A Tale of Two Widows*, Steve Gresham, Financial Advisor Magazine, April 2019
- *Preparing Clients for Widowhood*, Bill Harris, Journal of Financial Planning, April 2017
- *When It's Time to Transfer Financial Decision-Making*, David Littrell, AAll Journal, September 2015
- *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

Useful Websites

- aaii.com Broad selection of financial planning material
- siliconvalleyaaii.org Previous presentations on various topics
- santaclaracountylib.org/Adults/Business
- letsmakeaplan.net Find a CFP professional
- estateplanning.com Comprehensive source of useful info
- consumerreports.org/cro/papershredders.htm How long to keep important documents
- ethicalwill.com Advice on writing an ethical will
- givewell.org Provides research-backed philanthropic ideas



"A raise in my allowance is fine, dad. But what I'm really after is power of attorney."