Greater Boca Raton Estate Planning Council

“Intergenerational Philanthropy”

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*Slides two through five courtesy of Community Foundation for Palm Beach and Martin Counties

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Transfer of Wealth & Charitable Giving

The most cited figure is “the low-growth minimum estimate of $41 trillion (in 1998 dollars) during the 55-year period from 1998 through 2052.”

A previous study by Avery/Rendall cited about $10.4 trillion as a transfer from the WWII generation to Baby Boomers rather than the entire adult population.

Follow-up report/analysis in 2003 following pushback of results found that the “principal conclusion is that the $41 trillion estimate remains valid as a 2% growth estimate, even in light of recessionary growth, depressed stock market, and several other criticisms discussed in the new report.”

Millionaires and the Millennium: New Estimates of the Forthcoming Wealth Transfer and the Prospects for a Golden Age of Philanthropy by the Social Welfare Research Institute at Boston College in 1999 (Schervish/Havens)

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Estimated that around 60% will go directly to heirs with the remainder going to charities, taxes and fees.

Takes into consideration wealthy and non-wealthy spending habits in retirement, average lifespan, labor force participation, etc. and still the effects would minimally decrease the projected $41 trillion.

Additional studies are currently under commission to analyze the effects of the Great Recession and the fallout from major fraud schemes, include statewide and hyperlocal research.

While numbers of bequests may be down, Schervish/Havens have noted that inter vivos giving has increased. Additionally, the utilization of giving vehicles such as private foundations and donor advised funds has also increased.

As recently as October 2009, Schervish/Havens indicated the trend was still on track. While vehicles, may change the estimates may actually be conservative.

Transfer of Wealth & Charitable Giving

The Center on Philanthropy Panel Study forms the dataset used for analysis. In this nationally representative sample of households:

- 33% of households headed by a Millennial gave, and the average total contributions were $557
- 59% of households headed by a member of Gen X gave, and the average total contributions were $1,488.
- 69% of households headed by a Boomer gave, and the average total contributions were $2,613.
- 77% of households headed by someone born before 1946 gave, and the average total contributions were slightly lower than Boomers' average, at $2,540.

"Because the majority of Millennials and even Gen Xers (born 1964 to 1980) have lower income than their parents and grandparents, they tend to give smaller amounts of money to charitable causes, whether secular or not, the study found. One conclusion? Engage the younger generation now as volunteers."

"Charitable Giving and the Millennial Generation" published by Giving USA Foundation and researched and written by the Center on Philanthropy at Indiana University December 2010

Transfer of Wealth & Charitable Giving

Upcoming generations of philanthropists tend to be:

- Deeply engaged in the social causes they care about.
- More interested in short-term project based volunteer projects than long-term repetitive tasks.
- More likely to research an organization online before giving
- More likely to use online giving/donation options.
- Reflect and look for cultural diversity.
- Likely to participate in "flash giving" – immediate response to disasters, conflict, etc.
- More interested in giving now rather than building endowment.

"Donors of the Future Scan: 12 Key Trends and What They Mean for the New Giving Landscape"commissioned by New Ventures in Philanthropy, Forum of Regional Associations of Grantmakers and the Council on Foundations Community Foundation Leadership Team

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Private Foundations

- Private family foundations are popular vehicles used to further the philanthropic interests of a family.
- Private foundations provide families privacy and <u>control</u>.
- A Private foundation can be used to as a vehicle to convey a donor's charitable convictions.

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Private Foundations Continued

- Families use foundations as charitable giving vehicles because they provide:
  - An ongoing commitment for family members;
  - Roles and responsibilities for heirs;
  - Relationship developments across generations and throughout the years;
  - Reduce income and estate taxes;
  - Provide an employment opportunity for younger generations who have shown an inclination to be involved in charitable activities; and
  - Family recognition.
- Private Foundations are expensive to maintain and have numerous restrictions.

Donor Advised Funds

- Families frustrated by the costs and up keep of private foundations are increasingly unwinding their private foundation into donor advised funds. "Family Charities Shift Assets to Donor Funds" *Wall Street Journal, 4/22/09*
- A donor advised fund resembles a private foundation, but is considered a component of a sponsoring organization (public charity, ie- Community Foundation).

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Donor Advised Funds Continued

- Allows donors to achieve a current charitable income tax deduction while establishing a charitable fund that provides donors with a flexible, personalized way to support their philanthropic interests.
- Can be established quickly and easily.
- Lower setup and ongoing administrative costs.
- Provides mechanisms for continuing a family's philanthropic philosophy.

Family Trust Companies

- For families that require an independent trustee and traditional trustee options (corporate or individual trustees) do not suit the families circumstances.
- At least 14 other states have statutes governing the establishment and operation of Family Trust Companies ("FTC"), and while the Florida Statutes do not expressly authorize FTC, legislation is in the works.

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Family Trust Companies Continued

- Compelling Reasons to Use FTC:
  - Reduction of liability for family members individually named;
  - Provides continuity in family trust administration;
  - Enhanced family governance;
  - Enhanced flexibility and efficiency to administer and operate illiquid family assets;
  - Family succession planning and wealth education for younger generations; and
  - Oversee intergenerational family giving.

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Hypothetical 1

- Patriarch and head of Family Foundation passes away.
  - Mother, three children and grandchildren remain.
  - Issues in connection with operating the foundation:
    - Who is going to control operations?
    - How will the foundation continued to be funded?
    - How should non-lineal descendants be treated (spouses)?

Hypothetical 1 Discussion Points

- Vehicles to bring family and friends closer together.
- Relationship of funding family members to family members operating the foundation.
- Relationship of siblings in family foundation versus business.
- Benefits & risks of appointing non-lineal descendants.

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Hypothetical 2

- Succession planning with younger generations.
  - How does a family continue to operate a private foundation when younger generations cannot work together, have different financial positions or have varying philanthropic philosophies or interests?

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Hypothetical 2 Discussion Points

- Possible Solution 1: Create a separate Private Foundation for each child and their descendants.
- Possible Solution 2: Bifurcate the Private Foundation by transferring part of the assets of the private foundation to a new foundation to be formed by one of the family parties.
  - Issue: Staying in compliance with the private foundation rules under the Internal Revenue Code.

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Hypothetical 2 Discussion Points Continued

– Steps Required to Effectuate Transfer of Assets to a new Private Foundation:

1. Creation of a new Private Foundation;
2. Determine which Foundation should retain the name of the existing Private Foundation;
3. If transferring less than 25%, can avoid "significant disposition" rules under IRC Section 507, and transfer of assets to the new Private Foundation as a Grant;
4. If treated as a grant, exercise expenditure responsibility for 3 years (reporting on 990-PF would be required); and
5. Do not count the grant to the new foundation as a qualifying distribution to avoid the "out of corpus" rules.

Hypothetical 3

- Successful parents with entitled children:
  - How do you use a family philanthropic entity as an educational tool for younger generations?
    - How do you make children feel as though they are part of the entity?
    - What governance mechanisms can be utilized to encourage involvement of the younger generations?

Hypothetical 3 Discussion Points

- Combine annual meetings with family reunions or retreats.
- Have younger generations attend meetings and participate.
- Children's involvement can help senior generations keep an open mind and fresh perspectives.
- Creation of Junior Boards comprised of young adults and delegate responsibilities.
- Creation of incentives to encourage younger generation family members to contribute to the foundation.
- Find internship opportunities for children to familiarize them with foundation management.
- Hire a consultant to facilitate and make sure it gets done.

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Hypothetical 4

- Can you pay family members compensation as an inducement to participate?
  - What issues arise in paying compensation to children serving on charitable boards or as trustees of charitable trusts?

Hypothetical 4 Discussion Points

- Payment of unreasonable compensation is one of the "prohibited transactions" listed in IRC 503(c), which will result in loss of exemption.
- *IRS Technical Advice Memorandum (9008001):*
  - The IRS National Office advised in technical advice that a foundation's directors engaged in self-dealing as a result of receiving excessive compensation by comparing the directors' compensation to the average reported for foundations of its size by the Council on Foundations. Determining that the total compensation of the directors was 75% higher than average, the National Office advised that most of the directors were receiving excessive compensation and engaging in self-dealing.
    - *See Kermit Fischer Foundation v. Commissioner, 59 T.C.M. 898 (CCH) (1990)*

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Hypothetical 4 Discussion Points Continued

- IRC 4941 provides that payment of compensation to a disqualified person is an act of self-dealing, unless the compensation for services is reasonable and necessary to carry out the exempt purpose of the private foundation, and is not excessive. Reg. 53.4941(d)-3(c) states that excessive compensation is determined under Reg. 1.162-7. The portion of the compensation determined to be excessive is the portion subject to tax.
- Consideration should be given to using a reasonable compensation survey by an independent consultant to substantiate the compensation of family members.
- Be ready for an adverse reaction from clients when you advise them to reduce their compensation as a result of compensation studies.

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