

# NOW + NEXT

NP TRUSTS & ESTATES BLOG | NIXON PEABODY LLP

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## What's trending on NP Trusts & Estates

**Estate planners' thoughts on their own estate plans**, what happens to your season tickets when you die, April economic highlights and more. Here's what's trending in estate planning and wealth management.

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### Estate Planning

#### *Estate planners' thoughts on their own estate plans*

As estate planners, we ask our clients a lot of questions and answer a lot of questions to help craft an estate plan that meets the needs of the client's family and situation. We each have our own families and our own situations that need careful thought as well. Here are some of the thoughts that we have considered as we have created our own estate plans.

#### **Entering the work world**

As someone who recently entered the "real world," there are many new responsibilities, including maintaining an apartment, investments, health insurance, bills and taxes. As a single adult with no dependents, an estate plan seemed unnecessary initially. However, part of my new responsibilities include being prepared for the unexpected as well. Taking the time to ensure my loved ones have a clear understanding of my wishes, in the case of an unexpected event, is another responsibility I have now. Health care proxy, power of attorney and will, here I come.

#### **Young adult**

I do not have an estate plan or incapacity documents (i.e., power of attorney and health care proxy), which is not good for an estate planning attorney. I do anticipate putting a formal estate plan into place in the next year or so. For now, all of my financial accounts

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have transfer-on-death instructions and/or beneficiary designations, which name my parents as the primary beneficiaries and my sibling as the secondary beneficiary. I do not own real estate and do not expect to be purchasing real estate any time soon either.

### **Single adult**

It's time for me to review my own plan. My concerns are: Are my health care proxy, durable power of attorney, will and trust up to date? Do they work with the recent changes to state and federal laws? Are the agents, executor and trustee I picked still good choices? Are all my assets titled in the name of my trust so that my estate avoids the expense and delay of probate at my death? Do my life insurance and retirement plan designations still work with my plan?

### **Newly engaged**

As I approach my wedding date, I am thinking about updating my transfer-on-death instructions and beneficiary designations to reflect my fiancé as the primary beneficiary and my parents as the secondary beneficiaries. My fiancé and I have discussed but do not plan to sign a prenuptial agreement as neither of us has any substantial assets or expects a substantial inheritance from our parents.

### **Newly married**

Prior to getting married, my (now) spouse and I were starting our careers as attorneys. We thought, "How can we advise clients all day long that they need an estate plan when we, ourselves, do not have one?" Despite not being married, we executed our powers of attorney, living wills, health care proxies and wills. In going through the process of drafting our own estate planning documents, we realized that we had appointed people who would not have been our default agents by law. Additionally, we realized that it was even more important for individuals who are engaged (and not married) to have these documents in place. Without them, my fiancé would have had no say in my medical or financial affairs.

### **Starting a family**

As we begin to think about starting a family, we know it will be especially important to have proper wills in place that will allow us to appoint guardians of our minor children and

provide that their distributions be held in trust, for health and education purposes, rather than given to them outright.

### **Young and growing family**

As a parent of teenagers, I am getting my first glimpses of what my children might be like as adults. This has made me consider whether I want their inheritance to pass outright to them or remain in trust for a long or short period of time. I have also reconsidered which family members to name as guardians because I feel it is now important for them to remain in the Boston area. I have also thought about whom I would name as trustee of assets because I want someone in that role who is wise financially but can also relate to my children as they mature into adulthood.

### **Parent of an 18-year-old**

As my daughter was preparing for college, I thought about how I would no longer be able to do things for her just because I was her mother. No longer would the doctors talk to me without her permission. No longer could I handle her financial matters. It was now time for her to take over these matters herself (even if I wasn't sure she was 100% ready). What if she was injured and couldn't make medical decisions for herself? What if she was too far away to take care of a financial transaction at our local bank? She needed a health care proxy and power of attorney before she headed off to college.

### **Parent of young adult children**

My kids have graduated from college and started their careers. I have made sure they have health care proxies, durable powers of attorney and wills, that they are investing in their employer-provided 401(k) and that they understand how to think about their beneficiary designations for their retirement plans and employer-provided life insurance. I also put some money in their IRA accounts every year for which they will thank me when they are my age!

### **Divorced parent**

I want my kids to benefit from whatever I can pass to them, not my ex-spouse. Does my plan ensure that my kids are benefitted but that no unforeseen circumstance would result in my hard-earned money passing to my ex-spouse (or an ex-spouse of my child's down

the road)? In addition, are my kids able to handle money? They are good, hardworking and kind but I am not sure they are ready (sorry kids!).

### **Blended family**

As grandparents, we look at our grandchildren's young lives and their need for money for education, necessities and buying a home someday. In doing our estate plan, we established a trust for the benefit of our children and grandchildren. The trust gives the trustees the discretion to distribute income and principal to both children and grandchildren with the primary purpose of providing for the education and support of our grandchildren. By having the assets held in a trust, they are protected from the creditors of both our children and grandchildren, including divorcing spouses.

### **Married with grandkids**

It is a lucky parent who does not have to worry about paying a full college tuition for four years for each child. A relatively painless and tax efficient way for a grandparent to help out is by starting to make contributions to a 529 plan for each grandchild as soon as possible after they are born. Now that such plans can be used toward the payment of private school tuitions, they provide additional flexibility if the parents are concerned about having the resources to afford both a private school and a private college.

### **Families needing special planning**

My sibling is in recovery from serious addictions. Although our grandparents wanted to treat my sibling equally, it was important that money not be left outright to my sibling. Our grandparents updated their estate planning documents so that my sibling's share would be held in trust with our aunt serving as trustee. With this arrangement, my sibling has access to funds, and can use the money for worthy causes in his life, but they are restricted enough that they do not pose the same risk to his sobriety as an outright distribution may have.

— *Trusts and Estates Editorial Team*

### ***Joint ownership in real property — What happens at death?***

There are three ways to own title to real property between two or more individuals—as tenants in common, joint tenants or tenants by the entirety. How you hold title to real

property with another individual is important when it comes to your estate plan and knowing what will happen after death.

**Tenants in common:** Each owner has a separate interest in the property. If the type of ownership is not expressly stated in the deed, and the parties are not husband and wife, this creates ownership by tenants in common. Upon the death of an owner, his or her share passes pursuant to the deceased's will, or if there is no will, to the deceased's heirs via intestacy laws.

**Joint tenants:** A joint tenancy must be specifically declared in a deed. Upon the death of a joint tenant, his or her interest automatically passes to the surviving joint tenant. This tenancy may also be referred to as "joint tenants with right of survivorship."

**Tenants by the entirety:** This type of ownership is unique to married persons. Upon the death of a spouse, the property becomes owned in full by the surviving spouse. The deed should state that ownership is by "tenants by the entirety" or between "husband and wife," although if it is silent and the parties are legally married at the time, the ownership will be automatic. Alternatively, married persons can own property as joint tenants or tenants in common, provided it is expressly stated in the deed.

— Nicole A. Place

### ***What happens to your season tickets when you die?***

Die-hard fans of football, baseball, basketball, hockey and soccer should think about what they want to happen to their season tickets as well as what limitations will be imposed by the team at the death of the season ticket holder. Transfer policies are set up on a team-by-team basis.

Examples of team policies relating to the transfer of season tickets include:

- Season ticket holder has no authority to transfer and the tickets go to a waitlist holder
- Season ticket holder completes a transfer form during his/her life, which designates who gets the tickets
- Season ticket holder can transfer tickets to a surviving spouse or immediate family member only
- Season ticket holder can designate who gets the tickets in his/her will
- Season ticket holder's heirs, if no designation by will is made, must agree on who gets the tickets
- A transfer fee may be imposed in addition to meeting the limitations of a transfer policy

With such a wide range of transfer rules, season ticket holders should understand the team's policy on transfer, and should not assume that the tickets will be passed to a younger generation fan.

Determining what you want to happen with your tickets, and what the team will allow to happen, can save a lot of heartache and avoid disputes among loved ones after death.

— Mary-Benham B. Nygren

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## Wealth Management

### **Market Pulse: April 2019 Economic Highlights**

*What's happening: highlights from the NP Investment Team*

**This past March we marked the 10-year anniversary of the current bull market. The market reached a low on March 9, 2009 after a punishing bear market triggered by the global financial crisis. This has led to the longest equity market expansion in the last 100 years, extending beyond the prior record, which was set during the 1990–2000 technology boom.**

This bull market is now in its 121st month with the S&P 500 returning over 400% during this time period. The average bull market going back to 1928 has been 62 months in duration with an average return of 175%. This bull market stands out due to the outperformance of the U.S. market relative to global indices and for the slower pace of economic growth when compared to prior cycles. While the real economic growth has lagged equity markets and the U.S. has far outpaced the rest of the world, it does not mean the bull market is set to end anytime soon. The U.S. labor market remains strong; solid payroll growth and low unemployment have given households the confidence to spend. Wage growth was slow to improve earlier in the cycle but that has picked up as of late, though it still is not at levels that typically cause the economy to overheat. Business investment was also slow for much of this cycle but that too has picked up in recent years. A combination of higher business and consumer spending should lead to continued positive economic growth here in the U.S.

*Leaders and Laggards: What's Up and Down in the Stock Market?*

ECONOMIC SECTORS	MARCH 2019	YEAR-TO-DATE 2019 (THROUGH 3/31/19)
Energy	2.11%	16.43%

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Health Care	0.49%	6.59%
Consumer Discretionary	4.11%	15.73%
Information Technology	4.83%	19.86%
<b>S&amp;P 500</b>	<b>1.94%</b>	<b>13.65%</b>
Industrials	-1.14%	17.20%
Consumer Staples	4.09%	12.01%

Stock market leadership year to date has been led by the technology, energy and industrial sectors as concerns around slowing global growth and trade wars have eased through the first three months of the year. The health care sector has come under pressure due to regulatory concerns surrounding drug prices as we head into the election season, but we remain positive on this group over the long-term.

[Click here](#) for more information about NP's investment capabilities.

— NP Investment Team

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## Taxes

### ***IRS has developed a strategy to modernize IRS information technology systems and build critical infrastructure for the future***

On April 20, 2019, the IRS outlined a plan that provides a six-year strategy to modernize IRS information technology systems and build critical infrastructure needed for the future of the nation's tax system. The plan is anticipated to cost between \$2.3 billion and \$2.7 billion over six years through fiscal year 2024.

The IRS Commissioner, Chuck Rettig stated that “a critical component of the plan involves the IRS's ongoing efforts to secure their systems and protect taxpayer data.”

The announcement made by the IRS stated that the initiative, including those underway and others, will enhance taxpayer service and enforcement activities over the next several years.

The plan, as outlined, envisions the IRS being able to:

- Significantly improve the taxpayer experience by standardizing customer workflows and by expanding access to information.

- Reduce call wait and case resolution times.
- Simplify identity verification to expand access to online services while protecting data.
- Increase systems availability for taxpayers and tax practitioners.
- Make implementation of new tax provisions more straightforward.

For more information on the IRS plan, see the [IRS Integrated Modernization Business Plan](#).

— *Deborah J. Wilcox Mabry*

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## **NP TRUST & ESTATES BLOG**

Achieving success in estate planning, wealth management and tax minimization.