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Retirement Benefits and Lifetime Trusts

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The intersection of estate planning and retirement benefits[1] can be a daunting place to practice law, particularly when the client wants to direct his/her retirement assets to a lifetime trust for the benefit of a child or other family member. When these situations arise, it is important for attorneys to understand how the minimum distribution rules under Internal Revenue Code § 401(a)(9) and the corresponding Treasury Regulations will apply. The purpose of this article is to highlight and explain some general issues that attorneys should understand when they wade into these murky waters.

Retirement accounts are tax-favored investments because the income earned each year is not subject to income taxes until the funds are withdrawn from the account, thus allowing the owner to reinvest the funds that would have otherwise been used to pay income taxes. This tax-deferred growth will generally yield a significantly larger future value than an investment that is subject to (and reduced by) income taxes every year. The longer the funds can remain in the account, the more significant the impact of this tax-deferred growth. This is why many savvy retirement account owners will postpone distributions until they reach age 70½, also known as "the required beginning date"—the date that the IRS requires the owners to begin to withdraw funds out of the retirement account and pay the resulting income taxes.[2]

Many clients are surprised to learn that the minimum distribution rules that apply to an *inheritor* (i.e., "beneficiary") of a retirement account are different from those that apply to an *owner* of a retirement account. Rather than being allowed to wait until age 70½[3] to start withdrawing money from the account, a non-spouse[4] beneficiary of a retirement account must start taking distributions the year following the year of the owner's death, no matter the age of the beneficiary.[5] The amount the beneficiary is required to withdraw from the account (the minimum required distribution or "RMD") will depend on whether the beneficiary qualifies as a "Designated Beneficiary." For a Designated

1 The rules discussed in this article apply to many different types of retirement benefits, including IRAs, Roth IRAs, SEPs, 401(k) plans and 403(b) plans, but for convenience I will use the term "retirement account" throughout this article, which shall generally include all of these different types of retirement benefits.
2 Technically, the required beginning date is April 1st of the year following the year that the owner turns age 70½. IRC § 401(a)(9)(C). The minimum distribution rules do not apply to Roth IRAs until the owner's death so there is no required beginning date for distributions to the original owner of a Roth IRA.
3 *See* footnote 2.
4 Surviving spouses have a number of different options for withdrawing the funds out of the account, including treating the account as if it were their own retirement account. A discussion of the various options and nuances for surviving spouse beneficiaries is beyond the scope of this article.
5 Treas Reg § 1.401(a)(9)-2, A-5.

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Beneficiary, the RMD is calculated based on the Designated Beneficiary's age, not the owner's age.[6] This is usually an advantage when the Designated Beneficiary is younger than the owner because the RMDs are spread over the longer remaining life expectancy of the Designated Beneficiary. The longer life expectancy reduces the amount of the annual distributions and therefore reduces the corresponding income tax liability, which allows the balance of the funds to remain in the account and soak up all of that good tax-deferred growth.[7]

Only an individual and certain types of trusts (what I'll refer to as "See-Through Trusts") qualify as a Designated Beneficiary. No other entity—an estate, charity or "opaque" trust—will qualify.[8] If a beneficiary is not a Designated Beneficiary, or no beneficiary is named on the appropriate form with the financial company managing the retirement account, the distribution time period in which the funds will need to be withdrawn/distributed from the retirement account will depend on whether the owner died before or after the required beginning date.[9] If the owner died before the required beginning date, the distribution period is five years from the owner's death. If the owner died after the required beginning date, the distribution period is the owner's remaining life expectancy.[10]

The focus of this article is naming a trust as the beneficiary of a retirement plan. So, what trusts qualify as See-Through Trusts and therefore receive the Designated Beneficiary advantage described above? There are five requirements for a trust to qualify as a See-Through Trust: (1) The trust must be irrevocable; (2) the trust must be valid under state law; (3) a copy of the trust instrument must be provided to the financial institution managing the retirement account by October 30 of the year following the year of the owner's death; (4) all of the "countable" beneficiaries must be identifiable; and (5) all of the "countable" beneficiaries must be individuals.[11] As you can see, the first three requirements should be easy to satisfy. It is those last two requirements and what beneficiaries are "countable" that can be tricky to analyze in certain situations which I will discuss in more detail later in this article.

See-Through Trusts that meet these five requirements can be divided into two categories: "Conduit Trusts" and "Accumulation Trusts." Conduit Trusts use the age of the primary/lifetime beneficiary to calculate the RMD.[12] Conduit Trusts are drafted with specific language that requires the trustee to withdraw any RMDs from the retirement account (the required minimum distribution, "RMD") and immediately distribute the net proceeds of such withdrawn funds to the primary beneficiary of the trust.[13]

In this way, Conduit Trusts hold the RMD funds for a moment in time before distributing them to the beneficiary. The IRS views the primary beneficiary as the "true recipient" of the funds and therefore uses the primary beneficiary's age when calculating the RMD. The only "countable" beneficiary of a Conduit Trust is the primary beneficiary. Unlike the Accumulation Trust (see below), there is no need to consider the remainder beneficiaries in a Conduit Trust.[14] Conduit Trusts have the double advantage of allowing a trustee to control the retirement account but still use the primary beneficiary's life expectancy to calculate the RMD. However, the obvious disadvantage of Conduit Trusts for some clients is the required and automatic distributions of the RMD to the primary beneficiary. Because of those automatic distributions, special needs trusts, or any other type of lifetime trust where the clients wish to restrict the beneficiary's automatic access to money, should not be designed as Conduit Trusts. Those types of situations will require the attorney to consider whether the trust can qualify as an Accumulation Trust.

An Accumulation Trust uses the age of the *oldest countable beneficiary* of the trust to calculate the RMD. In contrast to the Conduit Trust situation, remainder beneficiaries are countable beneficiaries for an Accumulation Trust. Further, all of the countable remainder beneficiaries must be identifiable and individuals to satisfy See-Through Trust requirements #4 and #5.[15] But which remainder beneficiaries count? To answer this question, I employ a technique espoused by retirement rules guru Natalie Choate,[16] which I call the "chain test."[17]

Essentially, to determine the countable beneficiaries, you begin with the primary (lifetime) beneficiary or beneficiaries as your first "link" in the chain. Then you analyze all the potential remainder beneficiaries of the trust by counting all successive beneficiaries until you come to the beneficiary(ies) who will be entitled to receive the trust property immediately and outright upon the death of the prior beneficiaries. That "immediate and outright" beneficiary is the last link in the countable beneficiary chain. To make this even more complicated, this test

6 *See generally* Treas Reg §§ 1.401(a)(9)-3, 1.401(a)(9)-5.
7 *Id*.
8 Treas Reg § 1.401(a)(9)-4, A-3.
9 *See* footnote 2.
10 Treas Reg § 1.401(a)(9)-5, A-5(a)(2); § 1.401(a)(9)-3, A-4(a)(2).
11 Treas Reg § 1.401(a)(9)-4, A-5(b), A-3.
12 *See* Treas Reg § 1.401(a)(9)-5, A-7(c)(3), Example 2.
13 *Id*.
14 *Id*.
15 *See* footnote 11.
16 Her treatise *Life and Death Planning for Retirement Benefits* is a must-own book for anyone interested in learning more about this area of law.
17 *See* Natalie Choate, *Life and Death Planning for Retirement Benefits* § 6.3.08 (7th ed 2011); see also PLR 2004-38044.

will not be conducted until after the retirement account owner has died.[18] This technical analysis technique is best explained with a few examples.

Assume that Ned Stark directed one of his IRA accounts to a special needs trust for his son, Bran (age 14), who is experiencing a disability after falling from a castle tower. Assume further that the special needs trust is designed so that upon Bran's death, the remaining trust assets will pay out to Ned's other children: Rob (age 24), Jon (age 23), Sansa (age 18), Arya (age 15), and Rickon (age 10). Ned dies at age 50, survived by all of his children. In this simple example, the countable beneficiaries are: Bran (as the primary beneficiary) and the "immediate and outright" beneficiaries upon Bran's death, i.e., his siblings. All of these countable beneficiaries are identifiable (trust requirement #4) and individuals (trust requirement #5) so this special needs trust does qualify as an Accumulation Trust. The oldest beneficiary of these countable beneficiaries is Rob. Rob's age would be used to calculate the RMD that must be withdrawn by the trustee of the special needs trust each year.

Let's add on another layer of complexity. Assume the IRA is directed to a special needs trust for Bran, but upon Bran's death, the remaining trust assets are held in separate trusts for each of Ned's then-living children until they reach age 21. If a child dies prior to reaching age 21, the remaining assets of the "age 21 trust" are distributed to the child's descendants, by right of representation, or, if the child has no descendants, to Ned's favorite charity, the "Winter Is Coming Foundation." Again, Ned dies and is survived by all of his children. In this example, the countable beneficiaries start with Bran and include the next layer of beneficiaries, the other five children. However, since at the time of Ned's death, three of the children (Sansa, Arya and Rickon) would not receive their share outright, we must go to the next layer of beneficiaries, their descendants. But at the time of Ned's death, they don't have any descendants, so we must keep going to the next layer, which would be the charity. The countable beneficiaries in this example would be Bran, Rob, Jon, Sansa, Arya, Rickon, and the Winter Is Coming Foundation. The Foundation is not an individual and causes the special needs trust to fail trust requirement #5. The special needs trust would not qualify as an Accumulation Trust and the funds in the IRA would have to be completely withdrawn (and subject to income taxes) within five years of Ned's death.

As you can see with this example, embedded trusts (trusts that can come into existence for the benefit of remainder beneficiaries) can create complication to the analysis because we must analyze the potential remainder beneficiaries of those embedded trusts. Powers of appointment similarly create complication because all of the potential appointees, as well as the takers in default, are countable beneficiaries.[19] Essentially, the more layers of beneficiaries that must be counted, the longer the countable beneficiary chain, and the more chance of failing trust requirements #4 and #5.

There may be "hidden" beneficiaries that can wreak havoc on the analysis. Some practitioners warn that, because the term "descendants" includes adopted individuals under many state laws, including Oregon, there is a potential for failing trust requirement #4 (all countable beneficiaries must be identifiable).[20] To illustrate this, in the example above, because Sansa (or Arya or Rickon) could *at some point in the future* adopt a person who could be older than all of the other countable beneficiaries, that future adoptee is not identifiable at the time the trust is analyzed (after Ned's death) and the trust therefore fails requirement #4. There is also the argument that if, in our example, Bran's special needs trust is charged with its allocated share of estate taxes and is allowed to use the retirement funds to pay those taxes, the estate is also a countable beneficiary, thereby failing trust requirement #5.[21] To my knowledge, the IRS has never hinted at taking the analysis so far, but to override these concerns, cautious attorneys include provisions in their trusts such as defining the term "descendants" to exclude older adoptees and prohibiting the use of retirement funds to pay estate taxes.

Finally, it is important to recognize that whether the trust qualifies as a See-Through Trust depends on facts as they exist *after the death* of the retirement account owner, not at the time the trust is drafted.[22] While attorneys who design the lifetime trust as a Conduit Trust can be confident that the RMD will be based on the primary beneficiary's life expectancy, the same is not true for Accumulation Trusts. Because the analysis of a See-Through Accumulation Trust depends on the identity of remainder beneficiaries who may or may not be alive at the time of the retirement account owner's death, there are no guaranteed outcomes, and attorneys should tread lightly when advising clients about the income tax outcomes.

18 Treas Reg § 1.401(a)(9)-4, A-4(a).

19 *See, e.g.,* PLR 1999-03050, 200235038, 200438044.

20 *See* Choate, *supra* footnote 17, § 6.2.07.

21 *See*, e.g., PLR 9809059; Choate, *supra* footnote 17, § 6.2.010.

22 Treas Reg § 1.401(a)(9)-4, A-4(a).

Unfunded Trusts

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Dad died in 2003 with a taxable estate and a fully-funded joint revocable trust containing a formula funding clause that was intended to make use of his federal and state estate tax exemptions and the marital deduction in order to postpone any estate taxes until his wife subsequently died. His gross estate exceeded the exemption amount, but no tax was due because of the application of a combination of his exemption and the marital deduction. In 2018, Mom died, and their children have now shown up in your office to discuss the administration of the joint revocable trust. The problem is that Mom never took any action after Dad died; she never divided the trust into a decedent's bypass trust, a marital trust, and a survivor's trust, as was required by the joint revocable trust agreement. In short, she never funded those subtrusts. And she never filed an estate tax return. And she never filed fiduciary income tax returns. Instead, Mom treated all of the assets as if they were hers (or as if they were the property of her survivor's trust, which remained fully revocable until her death). And for more than a decade, she reported all of the income from the trust on her personal income tax returns, federal and state. And the value of the trust assets is now several times greater than the current estate tax exemption.

Whatcha gonna do?

Who ya gonna call?

The problem of the unfunded trust (or trusts) is not uncommon. As with many clients, the family didn't stop to think that after Dad died, the joint trust (or an individual revocable trust) needed to be properly administered in order to take advantage of the estate plan that was carefully crafted by the family's estate planning attorney. Mom was the sole successor trustee of the trust, but she did not realize that she had fiduciary duties to perform after the death of her husband to minimize the estate tax consequences of his death and of her later death. In essence, she did next to nothing. And no one called to tell the attorney that Dad had died, so the attorney was never asked to advise Mom regarding the post-mortem administration of the joint revocable trust. Now Mom and Dad are both gone, and the children, who are the successor co-trustees of the trust, would like to know how to properly administer the trust so that they can receive their inheritances. After all, the trust calls for outright distributions of the trust assets to the children upon the deaths of both parents. And the children, like everyone else, would like to receive their inheritances with a minimum of tax consequences. But it now appears that Mom's inertia caused Dad's estate tax exemption to be wasted.

This issue possibly invokes many legal theories. None of them presents a clear-cut answer. There is no hard-and-fast rule here. There is no answer that is clearly correct; most answers hover somewhere in the gray area between right and wrong. And every answer has both attributes and drawbacks. Every case is different, and the reported cases that offer possible solutions are heavily fact-dependent; thus their application to your particular case is not entirely clear.

Yet the law offers some possible solutions, or partial solutions, even though none of the solutions is entirely perfect. These solutions generally require that a valid cause of action exist and that a remedy be available.

One possible theory is that Mom, as sole successor trustee, had a continuing fiduciary duty to properly administer the trust by funding the various subtrusts. And she breached that fiduciary duty by doing nothing. And now that the children are the successor co-trustees, they have the same fiduciary duties that Mom had, and they need to divide the trust into the subtrusts, as required by the terms of the trust that govern its administration following the first death. Under ORS 130.800(2)(a), a trustee can be compelled to perform the fiduciary duties of the trustee. Presumably those duties include remedying breaches by a prior trustee, and ORS 130.800(1) provides that a failure to act can be a breach of a trust. And then, after that division, the assets of the subtrusts can be reported on Mom's estate tax return (in the case of the marital trust and the survivor's trust), or excluded from Mom's estate tax return (in the case of the decedent's bypass trust). But if all of the assets are treated as belonging to Mom (as Mom was mistakenly treating them during her lifetime), then Dad's estate tax exemption was essentially wasted because the bypass trust was never funded, and all of the assets will end up being reported on Mom's estate tax return. And taxed.

Another possible theory is to conclude that a constructive trust has been imposed on the assets, and the constructive trust has the same administrative and dispositive terms as the original trust. ORS 130.800(2)(i); *Stansbury v. United States*, 543 F Supp 154 (ND Ill 1982); *Estate of Bailey v. Comm'r*, 741 F2d 801 (5th Cir 1984). Of course, a constructive trust is a remedy, not a cause of action, so the imposition of a constructive trust is most likely to be viewed as a remedy for breach of fiduciary duty, which brings us back to the first theory (continuing breach of fiduciary duty).

Another possible theory is to conclude that a resulting trust has been imposed on the assets. PLR 9338011. The result would be the same as a constructive trust, since a resulting trust (like a constructive trust) is a remedy, not a cause of action. The difference between a constructive trust and a resulting trust is not significant for our purposes. A resulting trust is said to exist for the purpose of carrying out the intent of the grantor, who had intended to create a trust, but the intention was not properly carried out. A constructive trust is a tool used to create an equitable result when assets were improperly diverted, and the constructive trust is imposed to hold the assets for the benefit of the correct parties. For our purposes, these two remedies are largely the same. In our situation, both remedies would result in the notion that Mom did not own the assets that should have been placed in the bypass trust. Instead, the assets have been held in a resulting trust or a constructive trust. Thus they are not shown on Mom's estate tax return because they are not includable in her gross estate.

A third theory is that Mom has a debt payable to the subtrusts, because she improperly retained or misappropriated assets that should have been used to fund those subtrusts. ORS 130.800(2)(c). Under this theory, it might be possible to argue that the assets were all owned by Mom as of the date of her death, subject to a debt from Mom to the bypass trust. *Bailey*, 741 F2d 801. If that were the case, then all of the assets would be reportable on Mom's estate tax return (thus obtaining a stepped-up basis on all of the assets upon the death of Mom), and Mom's estate would be able to deduct under IRC § 2053(a)(3) a claim against her estate in an amount equal to the amount owing to the bypass trust. That's a pretty neat trick: protection from estate tax in the amount owing to the bypass trust, plus a stepped-up basis on all of the assets. Nice work if you can get it.

If you are thinking of taking a § 2053 deduction for a claim against Mom's estate, be sure to review the Regulations. Since 2009, the Regulations have included some very strict rules regarding the deductibility of claims. But the good news is that the Oregon Court of Appeals recently held that an improper transfer of assets out of a trust can lead to a valid claim for unjust enrichment. *Cumming v. Nipping*, 285 Or App 233 (2017).

For an example of a court that rejected the theory of a constructive trust and rejected the notion of a § 2053 deduction, see *Estate of Hester v. United States*, 99 AFTR2d 2007-1288 (WD Va 2007).

One alternative might be to simply treat the assets as if Mom owned them, without deducting a claim against her estate. After all, that is exactly how Mom treated the assets. A stepped-up basis would be obtained as of the date of Mom's death, and the tax authorities would not have a deduction to argue about. Under this approach, however, the reduction in capital gains would have to be weighed against the loss of Dad's estate tax exemption.

And then there is the problem of tracing. Mom basically commingled all of the assets. If the exemption was $1 million in the year in which Dad died, how much should now be treated as belonging to the bypass trust? $1 million? $1 million adjusted upward for inflation? Or should particular assets be identified as having had a value of $1 million as of 2003, then traced to their current form, and then placed in the bypass trust? For an example of complicated tracing, see *Estate of Olsen v. Comm'r*, TC Memo 2014-58.

And then there is the problem of the statute of limitations. Any cause of action needs to be enforceable in order to be valid. In Oregon, the statute of limitations for bringing suit against a trustee is six years, but fortunately the six-year period begins to run when the breach is discovered or should have been discovered. ORS 130.820(1). Late funding, by itself, is not fatal. *Estate of Richard v. Comm'r*, TC Memo 2012-173; PLR 201429009. If the trust was to be funded according to the provisions of a will, ORS 114.215(1)(a) provides that the assets of the estate vest immediately in the beneficiary (the trust), subject only to the administration of the estate. That helps to address the question of late funding by suggesting that the funding effectively took place on the date of Dad's death in 2003, assuming he died with a will and probate assets.

And then there is the problem of income taxes. Mom had been reporting all of the income (both ordinary income and capital gains) on her individual income tax returns. But that income should have been reported on a fiduciary income tax return if the assets are to be treated as if they were actually in a bypass trust. Assuming Mom withdrew (or spent) an amount at least equal to the ordinary income each year, then she properly reported that amount on her individual income tax returns. IRC § 662(a). But under the provisions of most bypass trusts, the bypass trust should have reported the capital gains and paid the capital gains tax. IRC § 643(a)(3); *United States v. De Bonchamps*, 278 F2d 127 (9th Cir 1960). And if the bypass trust called for annual mandatory net income distributions to Mom, Mom should have paid the tax on the net ordinary income whether she withdrew the income or not. IRC §§ 651(a), 652(a). Do you try to go back and amend Mom's individual income tax returns and file the missing fiduciary income tax returns? Since the fiduciary income tax returns were never filed in the first place, the statute of limitations on those returns has not yet begun to run. IRC § 6511. But Mom's individual income tax returns were actually filed, and there is little or no point in amending her returns after the statute of limitations has expired. IRC §§ 6501, 6511. After those statutes have expired, the tax authorities will not issue refunds or accept payment of tax. (If you try to pay tax after the statute has expired, the IRS will cash your check and then refund your tax a few months later. If you file a refund claim after the statute has expired, the claim will be disallowed.)

And then there is the problem of potential capital gain recognition on funding. If appreciated assets are used to fund a pecuniary bypass trust, capital gain will be recognized. Treas Reg § 1.661(a)-2(f); *Kenan v. Comm'r*, 114 F2d 217 (2d Cir 1940).

And then there is the problem of QTIP elections. Was the estate plan designed to employ a QTIP election in order to qualify the marital trust for the marital deduction? Does the failure to make a QTIP election at Mom's death trigger estate tax liability? A QTIP election can be made only on an estate tax return, but here no estate tax return was filed following the first death. Fortunately, Treas Reg § 20.2056(b)-7(b)(4) provides that the election can be made on "the first estate tax return filed by the executor after the due date." Keep in mind that a late-filed no-tax-due return generally incurs no penalty or interest, because both penalties and interest are a percentage of the tax, and the tax is zero.

So let's assume that all of these problems have been resolved, and all of the family members are in agreement that one particular solution is appropriate and should be carried out. Will the tax authorities agree with that result? Will they honor such an agreement? Neither the IRS nor the courts will respect a settlement based on "friendly" litigation where no bona fide dispute is present. For example, in *Grossman v. Campbell*, 368 F2d 206 (5th Cir 1966), the court held that a settlement agreement had been reached in a situation where no real dispute existed, and thus the settlement would be ignored for estate tax purposes. The Ninth Circuit reached a similar result in *Commissioner v. Estate of Vease*, 314 F2d 79 (9th Cir 1963), *rev'g* 35 TC 1184 (1961). In that case, the court concluded that a settlement agreement had not resulted from a bona fide will contest but instead had resulted from "nothing more than a voluntary rearrangement of property interests acquired under an admittedly valid will." *Id*. at 87; *see also Wolfsen v. Smyth*, 223 F2d 111 (9th Cir 1955); *Estate of Bath v. Comm'r*, TC Memo 1975-102. Other examples of settlements that were disregarded for tax purposes include *Estate of Aronson v. Commissioner*, TC Memo 2003-189; *Estate of Brandon v. Commissioner*, 86 TC 327 (1986), rev'd on other grounds, 828 F2d 493 (8th Cir 1987), on remand, 91 TC 829 (1988); *Simpson v. Commissioner*, TC Memo 1994-259; and CCA 201651013. *See also* Rev Rul 89-31, 1989-1 CB 277; PLR 9308032. It is important to clearly establish the validity of the underlying cause of action (breach of fiduciary duty) in order for the tax authorities to honor the settlement.

It is also important to establish that the agreed-upon result is within the range of what a local court could have awarded had the cause of action been litigated in that court. Under Treas Reg § 20.2053-1(b)(3), payments made pursuant to a settlement will be deductible only if the matter involved an enforceable claim, a bona fide dispute, an actual contest, and arm's-length negotiations. That regulation also requires that the settlement must be within the range of outcomes consistent with local law; the settlement of an unenforceable claim will not be honored. *See also* TAM 200306002; *Terre Haute First Nat'l Bank v. United States*, 67 AFTR2d 91-1217 (SD Ind 1991). Also, settlements among the decedent's family members are carefully scrutinized, but they will be honored if the family can offer competent evidence of a bona fide dispute or a valid cause of action. Treas Reg § 20.2053-1(b)(2)(ii); *Estate of Redstone v. Comm'r*, 145 TC 259 (2015).

The position taken by the IRS is consistent with *Commissioner v. Estate of Bosch*, 387 US 456 (1967), in which an estate, faced with an estate tax deficiency resulting from the disallowance of a marital deduction, sought and obtained an order from a state trial court that interpreted state law in a manner that supported the allowance of the deduction. The Supreme Court held that neither the IRS nor the federal courts are bound by a state trial court determination of state property law rights that affect the application of federal tax laws. The Supreme

Court reasoned that although "proper regard" must be given to the rulings of state trial courts and intermediate state appellate courts, only rulings of the highest court of the state will be binding on federal agencies and federal courts, partly due to the potential for non-adversarial ("friendly") litigation.

The situation is complicated considerably if the family is not in agreement. In some situations involving blended families, for example, the funding of a subtrust or the lack of such funding might substantially alter the economic value received by each beneficiary. If an agreement cannot be reached, litigation might be necessary to resolve the effect of the lack of timely funding.

It's all part of the adventure.

A Message from the Estate Planning Section Chair

I am the incoming chair of the Estate Planning and Administration Section of the Oregon State Bar. My job is to fill the shoes of the previous chair, Ian Richardson, who did an excellent job during 2018. I'd like to let you know what to expect from your section in 2019.

The section operates through three committees. The executive committee has overall control, and works on legislation and other matters not delegated to the other two committees. The members of the executive committee, who were elected at the annual business meeting in November, are listed on the section's page of the OSB website. This year the legislature will be in session, and so the executive committee will be watching out for legislation of interest to estate planners. The person on the executive committee primarily responsible for new legislation in 2019 is the chair-elect, Holly Mitchell.

This year, the executive committee is continuing work on a special project: the development of basic estate planning forms (including forms for taxable estates) for use by our members. This project was commenced in response to suggestions made by members of the section. We expect this project to be completed in 2020, and we are planning a one-day CLE program to introduce those forms to our members sometime that year.

The CLE committee has also been active. Every year, the CLE committee produces two CLE programs: an advanced program in June and a basic program in November. Both programs are co-sponsored by the section and the CLE Department of the Bar. This year the advanced program will held at the MAC Club in Portland on Friday, June 14. The basic program will be held on Friday, November 15, also at the MAC Club in Portland.

Both programs should be excellent, and we encourage you to attend. They are not only educational but also social: you get to meet in person your fellow estate planners. But the basic CLE program in November will be particularly special: In response to suggestions made by our members, we are planning to devote the entire day to the basics of planning for an Oregon taxable estate. This program will be aimed at new admittees and younger lawyers who would like to build a foundation of knowledge regarding estate tax planning in Oregon. It will also be aimed at any attorney who is now planning nontaxable estates and would like to make the leap into taxable estates, or more experienced attorneys who would like a refresher on the subject of Oregon taxable estate planning. This CLE program is a joint production of the CLE committee and the executive committee, and we believe it will be particularly valuable to the members of our section. The members of the CLE committee are listed in the CLE brochures mailed to you twice a year; Katharine West is the chair.

The third committee is the newsletter committee, which produces our quarterly newsletter with articles ranging from basic to advanced, including recent developments. As a section member, you receive an electronic copy of the newsletter in your mailbox four times a year at the end of January, April, July, and October. Back issues are available on the section's page of the OSB website. The editor, Chris Cline, works with the newsletter committee to produce the newsletter each quarter. The members of the newsletter committee are listed in each issue of the newsletter.

And then we have the section listserv, which is intentionally managed by no one. Every member of the section is free to ask questions and/or provide answers to the questions of others. The listserv is an invaluable source of information and current developments. Nearly all of our 1,300 members subscribe to the listserv; about 200 of our members have opted out of the listserv. If you are not currently receiving listserv posts, you should be. If you are not on the listserv but would like to join, visit the "manage your profile" page of the member login page of the Bar website. (You will be given the option to use a secondary email address if you'd rather not use your primary address.)

The listserv and the newsletter are the primary vehicles that our various committees use to communicate with our members. A few years ago, we started a conscious effort to increase the awareness of new developments in Oregon estate planning, including spreading the word about projects undertaken by other groups involved in legislation and other aspects of Oregon estate planning. We believe those efforts have been successful, and we plan to continue them.

But above all, we would like you to get involved. Post on the listserv, write articles for the newsletter, volunteer to speak at a CLE, and make suggestions to the executive committee. All of these will require some time and commitment on your part. If you make suggestions to the executive committee or any of the other committees, you should also offer to help implement your suggestions. The committee members are unpaid volunteers just like you, have busy practices just like you, and they cannot be expected to carry out your suggestions unless you are willing to roll up your sleeves and work alongside them.

We look forward to your involvement in the coming year.

Sincerely,

Phil Jones
2019 Chair
Estate Planning and Administration Section

Events Calendar

Estate Planning Council of Portland
48th Annual Estate Planning Seminar
Friday, February 1, 2019 at 8:30 AM
Oregon Convention Center

Central Oregon Estate Planning Council
Tuesday, February 12, 2019 at 5:30 PM
Awbrey Glen Golf Club
2500 NW Awbrey Glen Drive, Bend, OR 97702

Central Oregon Estate Planning Council
Tuesday, May 14, 2019 at 5:30 PM
Awbrey Glen Golf Club
2500 NW Awbrey Glen Drive, Bend, OR 97702

The Editors want to include announcements of upcoming events that are open to the public and may be of interest to our readers. If you know of an event, please send basic information, including point of contact information to Chris Cline at *chriscline@riverviewbank.com* for inclusion in the next issue of the Newsletter.