

How I'm Changing My Practice, Client Meetings, Client Planning, and More, to Address the Coronavirus

By: Martin M. Shenkman, and
Jonathan G. Blattmachr



**A KEY ESTATE
PLANNING GUIDE**

Law Easy

General Disclaimer

- The information and/or the materials provided as part of this program are intended and provided solely for informational and educational purposes. None of the information and/or materials provided as part of this power point or ancillary materials are intended to be, nor should they be construed to be the basis of any investment, legal, tax or other professional advice. Under no circumstances should the audio, power point or other materials be considered to be, or used as independent legal, tax, investment or other professional advice. The discussions are general in nature and not person specific. Laws vary by state and are subject to constant change. Economic developments could dramatically alter the illustrations or recommendations offered in the program or materials.

Introduction and Client Communication

**What Can Estate
Planners Do During
These Trying and
Uncertain Times?**

Coronavirus: Introduction for Estate Planners

- Coronavirus, novel Coronavirus, or COVID-19 is a novel viral infection that in the worst cases can cause severe pulmonary disease and respiratory failure and death. It may include a lower respiratory tract infection, which means that most of the symptoms are felt in the chest and lungs.
- It has been declared by the WHO to be a Pandemic.
- Its impact on the population and economy remains uncertain.
- The stock market has plunged, but the rollercoaster market performance may rise or drop further. These create incredible uncertainty.
- How can estate planners operate their practices through these trying times? How can they best help their clients?

Client Communications- What to Do?

- Practitioners should consider whether it is advisable to communicate to their clients, via email and/or hard copy mailings, about the impact of Coronavirus and its impact on planning and other matters.
- Consider the impact of work shutdowns on the ability to complete newsletter or paper mailings. An email blast can be orchestrated remotely and with little staff. However, many of our older clients do not use email. Some of our vulnerable clients may not have access to email if they are hospitalized or in self-quarantine.
- Email services like Mailchimp and Constant Contact may be a reasonable solution.
- Also, consider what is appropriate to say in the communication. It would seem the theme of any communication should be founded on: 1) take care of yourself and your loved ones; and 2) we are willing and able to help, perhaps with some limitations.

Client Communications – What Not to Say

- Consider what not to say. *“These are challenging, unsettling times. The COVID-19 (coronavirus) pandemic and the **fear** that accompanies it are **equally contagious**—affecting each of us, our families, our workplaces, and, indirectly, our sense of **financial security**. Yet, despite the pervasive uncertainty, of this you can be sure: We will get through this together.* [highlights added]”
- The above is a snippet from an email by a financial firm. Is it appropriate to tell a client that is over age 60 living with multiple chronic illnesses that the “fear that accompanies Coronavirus is equally contagious”? Consider the mortality rate of those over 80. Also, is it really the sense of “financial security” that many are worried about? Sure, but that is not the issue. My wife is 63 and living with multiple sclerosis. The medications for her disease modulate or suppress her immune system. Certainly the impact on the stock market is a concern, but an insignificant one relative to her safety and perhaps survival.
- Use sensitivity and compassion in any communication.

Client Communications – Sample Email Letter

- Dear client:
- We understand that you are concerned about the potential health impact of the coronavirus on yourself and your loved ones.
- While health issues are of no doubt of paramount importance for you we did want to take this opportunity to be certain that you were aware of certain legal, tax, financial and other implications that you might also choose to react to.
- Living Wills, do not resuscitate orders and other healthcare related documents may be crucial to review for several reasons. Many of these documents missed, and especially standard forms obtained online or elsewhere, may contain language that could be completely contrary to what you might wish to have done during the coronavirus. Some of these documents may prohibit intubation under all circumstances. If you are not presently in a terminal condition and contract coronavirus, since it is a lower respiratory tract infection with symptoms felt in the chest and lungs, it is possible that you would need to be intubated to survive it. Many people who sign such prohibitive forms have in mind an extended stay in a hospital connected to an array of tubes being artificially kept alive.

Client Communications – Sample Email Letter

- Many of our staff will be working remotely from home in order to limit social contacts as recommended by the CDC. We will still be reachable at your convenience by email and our office phones will be monitored regularly. Many of our staff have provided their cell phone numbers on email footers and can be reached in that fashion.
- The stock market has been adversely impacted. The impact on businesses, especially closely held businesses, could be dramatic and negative for many, although the actual impact will vary significantly by the type and nature of business. These changes might suggest revisiting retirement plans, estate plans, financial models, business succession plans, and much more. We certainly don't mean to capitalize on the adversity we are all experiencing, but we do want to let you know that we are here to help should you need it.
- The present uncertainty creates what could be an invaluable opportunity to pursue estate tax minimization strategies. While again worries of health and financial security matters should be paramount and we feel apologetic to be bringing up this matter, we would be remiss not to do so.

Client Communications – Sample Email Letter

- Should there be a Democratic victory in 2020 the proposals of a much harsher estate tax, and a capital gains tax on death (or carryover basis), dramatically change the planning environment. While we prefer to wait for the coronavirus to resolve, that delay may preclude you from being able to take valuable actions.
- During this difficult time, we hope that you and your family stay safe and healthy. Please let us know if there is anything we can do to advise or assist.
- Sincerely yours,
- Doe & Doe, PLLC

Client Communications – Sample Email 1 of 2

- Here's an excerpt of part of a well written email from Emily Martin of the Hook Law Center:
- In times of uncertainty like these, it can be reassuring to be certain about the fact that, if you are hospitalized or become incapacitated, your wishes will be met and the people you would want carrying out your wishes will have the authority to do so. Without these documents in place, it may be necessary for your loved ones to go to court and be appointed your guardian and conservator. Because of court closures and related issues, that is a process that could take several months. Having a power of attorney or medical directive in place ensures that your wishes are in effect without forcing your family to go through the expense, time, and stress of a court hearing.
- If you already have these documents in place, now is the time to take them out and review them to make sure they still reflect your wishes and your family circumstances. Typically, we recommend that our clients review their documents every three to five years, or when there is a major change in family circumstances or finances.

Client Communications – Sample Email 1 of 2

- It is important that you take a look at your documents to make sure they still line up with what your wishes would be today, if you became incapacitated or passed away.
- Hook Law Center remains open to meet with clients. If you prefer to meet over the phone or through an online video conference, we can do that as well. The only portion of our meetings that requires an in-person visit is your document signing. If you would like to make sure your affairs are in order, please call our office as soon as possible to schedule an appointment.

Client Communications – Sample Email Short Illustration

- To our clients and friends,
- We hope everyone is taking care and following all of the recommended precautions during these unprecedented times.
- We wanted to let you know that as of Tuesday March 10, our entire firm began to work remotely. Fortunately, we are very experienced with the remote workplace and we are pleased to inform you that we are working regular business hours. Given the situation, however, we do not believe that it is advisable at this time for in-person meetings. Each of our attorneys and staff members are accessible by phone, email, as well as through Zoom, Skype and FaceTime, so we welcome the opportunity to continue to meet with you, albeit virtually. We are following the status in each of our licensed jurisdictions regarding court filings; further, we are determining how best to proceed with document executions.
- On a separate note, we wanted to share with you that as of yesterday (March 17, 2020), the Secretary of the Treasury indicated that they are providing income tax payment relief for individuals and corporations in certain circumstances, by deferring up to \$1 million (for individuals and \$10 million for corporations) of required payments without charging interest and/or penalties for a 90-day period. We understand that the Treasury and IRS are discussing the deferral of the filing of tax returns, however, there is no confirmation of the deferred filing, yet.
- If you need us, we are here for you. We're all in this together and together we will get through this!
- Richard, George and Lester, Franklin Karibjanian & Law PLLC

Automatic Email Responses

- Do you need one if staff is working remotely during regular business hours?
- When emailing another law firm, we received the following automated email response:
- “Due to the current national health crisis, the attorneys and staff at Law Firm are working remotely. We continue to service all of our clients. I am responding to all e-mails and may be reached on my mobile phone at Phone Number. Thank you for your patience and understanding.”
- What is the point of this notification if attorneys working remotely are accessing their emails regularly?

Encourage Client Family Communications

- Remind clients about the importance of family connectedness now more than ever.
- If we had a national epidemic of loneliness, anxiety and depression before this thing hit, how much worse is it now? Families of wealth were already 2 to 5 times more likely to have these issues in their family before this hit.
- <https://shenkmanlaw.com/webinars-details/?id=2572> Family Meetings and Legacy Planning 12/3/2019.
- Encourage clients and family members to view the above webinar.
- Encourage parents to use this time of “Social Distancing” to keep the family together and grow family bonds even stronger.
- Acknowledgements to: Tom Rogerson - President and Chief Learning Officer (CLO) GenLeg Co., Inc. - www.GenLegCo.com

Tech Changes to Address Coronavirus

**Take advantage of
existing technologies
to continue work**

Remote Access

- Social distancing, mandated business closure and mandated self-quarantine are all pushing practitioners and staff to work from home, not the office.
- You will remain tethered to the office if all of your client files are analog/paper. Recognize that estate practices necessarily require that certain paper documents are signed, that doesn't mean that all your files, records and client information must be analog. In fact none of it must be – return all original signed documents.
- Building a complete electronic file and comfortably relying on it to the exclusion of a paper file will give you true practice portability.
- There are many software options to facilitate remote computing and work.
- Cloud based document management systems can be accessed and worked on remotely.
- Office computers can be accessed remotely using gotomypc, and a host of other products. The result is you can be at home on your laptop but working “as if” you are sitting at your office desktop computer.

Remote Access – Technologies to Consider 1

- Below are just a few different software or hardware packages that could be used to make remote working easier to deal with and more efficient.
- Web-based document/email management systems such as NetDocuments.
- Web-based matter management/accounting systems like Clio, CosmoLex, Actionstep or Centerbase.
- Client portals for securely trading documents electronically without using email – nearly all matter management systems offer this, but the functionality can be separately acquired through services such as ShareFile.
- Document assembly systems for drafting which will allow lawyers who don't feel tech savvy and/or who don't type well to draft their own documents without administrative help, e.g. Interactive Legal.
- Hosted VoIP phone systems which will allow your phone system to be wherever you are (for example with certain systems being connected to the internet you can be on your office phone system from anywhere in the world).
- Hosted servers – if the software you run requires a server, hosted servers allow full remote access to all programs – as an example, see www.Procirrus.com.

Remote Access – Technologies to Consider 2

- Hosted applications – for example, if your office uses Outlook, then you *need* Microsoft Exchange to provide full functionality. However, you no longer need to buy a server and Exchange for that. Today, hosted Exchange can be acquired from a variety of vendors, including as part of most Office 365 plans for as low as \$5/user/month.
- If you want the ability to print, copy or scan while visiting clients at their homes or offices, there are portable all-in-one devices such as the HP OfficeJet 250. There are also many portable printers like the Canon PIXMA iP110 and portable scanners like the Fujitsu ScanSnap S1300i.
- Administrative documents can be executed by clients without meeting face-to-face by using digital signature services such as RightSignature, DocuSign, or HelloSign.
- Easy to use web-meeting services can be used even with non-tech savvy clients such as Zoom Meetings, or GoToMeeting.

Remote Access- Is It Safe?

- Security issues that should be addressed for remote access:
 - Any laptops, tablets or phones that contain or have access to confidential data must be encrypted.
 - If you transmit confidential information or documents via email, then you must have an email encryption service such as ShareFile, Rmail, zixmail or Trustify.
 - You must have antivirus software, even if you use a Mac.
 - If you're connecting to ad hoc WiFi and transmitting confidential data, then you should have a virtual private network service such as NordVPN, IPVanish or PureVPN.
 - In order to create and remember/access strong passwords, a password manager is highly recommended such as Dashlane or LastPass.
- Remote computers that are being accessed should not be left fully logged in and running when no one is at the office. They should be at a “lock” screen. For a Windows computer, you get to that by holding down on the Windows logo key on the keyboard and hitting the L key. You have to enter the login password to get back in, but you don't have to close any programs before you do it. It isn't like logging out or rebooting. You just want to make sure that if someone broke into your office, they wouldn't be able to use anyone's computer. After you're done using GoToMyPC, you should hit Windows key + L again before you log off.
- From GoToMyPC's website: Your GoToMyPC remote access sessions are completely private and secure. All data, including screen images, file transfers, keyboard and mouse input and chat text, is fully encrypted from end to end using 128-bit Advanced Encryption Standard (AES) encryption. No unencrypted information is ever stored on your system.

Remote Access- are Employee Laptops Safe?

- It is important not to lose sight of security. This is a vulnerable time, and hackers will try to leverage that.
- Employee computers should have appropriate virus and other protective software. Kaspersky is highly rated. Norton 360 is also good. No Anti-Virus can protect you from everything, but most infections occur because someone got tricked into opening an infected email attachment or clicking on a link in an email. The programs that typically rank the highest in antivirus comparisons are Norton, Kaspersky, McAfee, and Bitdefender.
- Remote computing is safer than permitting staff to save client sensitive documents on unsecured laptops. Be wary of the consequences of that.

Remote Access – Other Issues

- Employee's home networks should be secured from malware or ransomware attacks. They should have sufficient password protection.
- Consider whether employees working remotely should be prohibited from using public networks.
- Employees should be warned not to use personal email for transferring documents or information.
- No work documents should be on the employee computer as they may be inadvertently synced to cloud based backups for that device.
- If employees take any client sensitive documents home, they should be returned. A better approach may be to have all remote work done in a totally paperless environment working solely on with a service like GoToMyPC.

No or Inadequate Admin Assistance While Remote? Outsource

- Do you face no, or inadequate, administrative assistance while working remotely and staff is on a rotational basis or even more limited? Outsource.
- You can easily email a document overseas, have typing corrections, proofreading and more done without taxing staff that is struggling with the current circumstances.
- Using an outsourcing service in a distant time zone can permit you to email something at the end of the day and have completed documents in your in box the next morning.
- We use Outsourcing to Israel
YFreilich@OutsourcingtoIsrael.com;
www.OutsourcingtoIsrael.com

No Secretarial or Typing Staff? Dictate!

- With the growing trend of remote working many practitioners use to dictating or having administrative staff prepare letters will have to do so on their own. There's a very simple, inexpensive, robust solution. Purchase dictation software, as one example Dragon, install it on your laptop and simply dictate emails, letters, memoranda, and other items that you would otherwise have delegated to administrative staff that may not be available.
- Learning all the commands of Dragon, or any other speech recognition software, is quite complex, but there's really no need to. The software is incredibly intuitive and powerful and basic commands like “new paragraph” are obvious and built into the software. You can basically be up and running in 20 minutes and supplant much of your administrative staff that you no longer have available.

Video/Web Conferencing

- One firm's email communication: "We know that the need for in-person meetings and attorney touchpoints differs from client to client, based on your business and the kinds of service we provide. If you have an in-person meeting scheduled, one of the attorneys involved will reach out to you to discuss arrangements that meet your needs. We would also encourage you to reach out directly if you need to speak sooner about an upcoming meeting. Of course, your relationship partner is available at any time to discuss our business continuity plans, or you can simply email us, and we will get back to you."
- The circumstances are evolving and in some locations in person meetings may not longer be permitted.
- "In order to combat the spread of the COVID-19 virus, Bergen County [New Jersey] issued an Executive Order that limits most business activity in the county. It exempts law firms ...to the degree necessary to participate in Superior Court trials or other ancillary court proceedings or emergent matters or transactions."
- Web meetings may just be the way to go.

Video/Web Conferencing

- We have made it a policy to have non-essential meetings via web-conference only.
- While a web conference is perhaps not as effective a means of communication as an in-person meeting, it certainly is far better than a phone call. Video conferencing can be used to create a more personal interaction. Documents can be shared and reviewed. While we prefer in-person meetings for new clients, we are simply not doing any until the Coronavirus situation resolves.
- We have used web-conferences for years to review documents with existing clients and have found it more efficient than an in-person meeting where the social formalities, etc. extend the time of the meeting beyond what is required to accomplish the same review via web conference.

Video/Web Conferencing

- We have frequently combined other technology with web conferences for further efficiencies.
- For example, most web conference services readily permit recording the web conference.
- Some of these services also have transcription services. If the web conference service you use does not, there are inexpensive online transcription services that are quick, inexpensive and helpful. <https://scribie.com/transcription/pricing> .You merely email the recording from the web conference to the online transcription services (you need to set up an account first) and in short order receive back an email with a link to the Word document.
- We email the raw transcription overseas for editing and clean up. The resulting document, while still always in need of work, is incredibly informative and less costly to a client than an attorney drafting a memorandum of a conference from scratch. Make sure it's secure.

Photo to PDF

- With practitioners and clients working from home in light of Coronavirus restrictions this could be a really useful app to have. There are many available. The idea is that you can shoot a photo with your smart phone camera and the app converts the photo/image into a PDF that can then be emailed.
- One such app is Digiset LLC. It is available on the App Store at no charge.
- A client that is going to have a web meeting needed to get us a completed questionnaire. She had planned on bringing it to the initial meeting, but that will now be a web meeting. She did not have a scanner at home. But the app sufficed to photograph and send us PDFs of her information.
- If you are going to convert the PDF to a word document try to shoot directly down on the image and not on an angle. But it is quite remarkable how well the App and Word conversion work even for not such a great shot.

Practice Changes to Address Coronavirus

**Take advantage of
existing technologies
to continue work**

Sanitation and Other Obvious Steps

- Only essential client meetings (a will signing or other special circumstance) are permitted in our office.
- Clients that will come in (see above discussion of shift to web meetings) – when confirming the meeting we confirm that no one coming is ill, is under quarantine or self-quarantine, etc.
- Hand soap is available in the kitchen and all employees are encouraged to wash after returning to the office from public areas or meeting with anyone. Hand sanitizers are on all desks and conference room tables.
- No handshaking is permitted, and including no elbow bumping. We focus and encourage that everyone maintain distance, observing the recommended six feet of distancing. We treat this with appropriate seriousness.
- After a meeting we spray sanitizer around the area of the meeting.

Take Credit Cards

- Taking credit cards could be vital. If your firm does not already take credit cards for payment consider setting that up immediately.
- If you have initial meetings by web conference how will you get paid? Taking a credit card payment in advance assures you get paid.
- Processing while working remotely can be an issue. If payments are made by credit card they can flow directly into your firm checking account helping cash flow during what will be a more difficult time.
- Clients may not have the facilities to mail and stamp a payment at home, they might be working from home to. A credit card is quick and easy for them as well.

Documents, Letters and Administrative Matters

- With staff working remotely is it feasible to print letters on letterhead and mail them? Is it really necessary?
- We are sending letters as PDFs via email and typing on the top of letters: “**Letterhead not used as we are working remotely due to Coronavirus.**” I doubt any client or colleague will object, and this avoids the complexity of staff working remotely to print and send letters, or to print sign, scan and email letters on letterhead.
- Letters may also be signed: “**/s/Lawyer Name [not signed because of working remotely due to coronavirus]**”. No one should raise an issue and it acknowledges the reality we are all dealing with.

Firm Finances

- What will happen with your business? Will client matters decline substantially during the coming months?
- Does the firm have adequate liquidity or resources to get through a possible slowdown for a time period of unknown duration?
- Does the firm have lines of credit or other cash sources to tap?
- If you don't need these resources now, might you in two months? What if the slow down persists for four months?
- Might your practice have issues meeting payroll or rent?
- Are there steps you can take to reduce expenses during this period of uncertainty?

Review Insurance Coverage

- Do you have any insurance coverage that may be helpful?
- Will business interruption insurance provide any benefit?
- Pandemic exclusions in insurance policies may be an issue.

Document Signing

**How Can You
Remote Sign a
Document for a
Client at Risk?**

Uniform Electronic Wills Act (UEWA)

- Will Executions (e.g., Cannot Travel or Enter the Facility Where the Testator Resides).
- Uniform Electronic Will Act.
- Uniform Probate Code Section 2-502.
- Line of Sight v. Physical Presence.
- Telephone communication v. Skype/Zoom presence.
- Through a Looking Glass.

Florida Electronic Wills

- “The bill authorizes and provides oversight for the use of Remote Online Notarizations (RON) by Florida notaries public. Remote Online Notarizations are possible because of audio-video communication technologies, such as FaceTime and Skype, where two or more people may be able to both see and hear one another in real time using a computer or mobile device, even from different states. This also means that a notary public can view the face of the principle signer and any witnesses using audio-video technology while simultaneously reviewing the identification and other credentials of each person.”
- <https://www.flsenate.gov/Committees/BillSummaries/2019/html/1960>

Sign Through Window via Cell Phone

- Hypothetical: Client with age and health concerns needs to sign a will. Can the lawyer and witnesses stand outside the client's window, talk through the will signing ceremony while the client is visible through the window and can hear, and pass the document through the front door mail slot for signing? Will this suffice to create a valid will but also protect all that is involved?

Sign via e-Signature on Web Meeting Recorded

- Statutes on lost or stolen wills may provide some guidance.
- The few places electronic wills are permitted the requirements and procedures are stringent. Will those really help in the current environment?

Might NJ Case Law Provide A Framework?

- NJ case where an unsigned copy of a will was admitted to probate. Estate of Ehrlich 47 A.3d 12 (N.J. Super Ct. App. Div. 2012). The unexecuted copy of Decedent's Will, which had purportedly been executed by the Decedent and sent to his attorney-executor for safe-keeping, sufficiently represented the Decedent's final testamentary intent allowing the document to be admitted to probate as a writing intended as a Will under N.J.S.A. 3B:3-3.
- The trial court appointed a temporary administrator and ordered a thorough search of Decedent's home and law office for any other Wills of Decedent to no avail. The unexecuted copy proffered by Decedent's nephew was a detailed 14-page document entitled "Last Will and Testament," which was prepared by the Decedent and written on traditional legal paper, with Decedent's name and law office address in the margin of each page. The document did not contain the signature of Decedent. It did, however, include a notation in Decedent's handwriting on the cover page, "Original mailed to H.W. Van Scriver, 5/20/2000," an attorney who was the named executor.
- The trial court admitted the unexecuted Will to probate, finding that Decedent's handwritten notation on the cover page of the Will provided clear and convincing evidence of Decedent's final assent that he intended the original document to constitute his Last Will and Testament.
- A summary of the case can be accessed at <https://www.saul.com/publications/alerts/unsigned-copy-will-admitted-probate-new-jersey>

Might NJ Case Law Provide A Framework?

- Relying on the harmless error doctrine under *In re Probate of Will and Codicil of Macool*, 416 N.J. Super. 298, 311 (App. Div. 2010), the Appellate Division affirmed the trial court's decision, holding that a writing need not be signed by the testator in order to be admitted to probate. Some states permit oral trusts although with scanning, mail deliveries, etc., using an oral trust may be unnecessary.
- In order to be admitted as a writing intended as a Will under N.J.S.A. 3B:3-3, the proponent must prove by clear and convincing evidence that: (1) the decedent actually reviewed the document in question; and (2) thereafter gave his or her final assent to it.

Modify Self-Proving Affidavit

- Will modifying the affidavit and procedure suffice to make an electronic/remote will valid? What choice might a practitioner have with an at risk client? What choice is there if there is no access to a hospitalized client?
- Reflect Witnessing by web meeting.
- Modify affidavit in will to say in presence of testator via web meeting using Skype, etc. and that this was done because Testator has underlying health risks for Coronavirus [specify them] and deemed it to risky to sign in an in-person meeting.
- Would a recorded web meeting where the client shows the camera each page of the document, confirms that the client read and understood the document and signs it all while recorded, meet the two requirements in Macool (1) the decedent actually reviewed the document in question; and (2) thereafter gave his or her final assent to it.

A Call For Action

- There is an extraordinary need for people to be able to execute legal documents remotely right now, particularly estate and incapacity planning documents. The federal and state legislatures obviously have more pressing matters at hand for the moment, but it seems this is going to be an issue for at least the next few months, and the government will need to address it in some manner, whether it is through legislative or administrative action now, or later in the courts.
- We believe it is imperative that those of us in this profession bring awareness to this issue, and urge the government to address it. Consider being involved in a “call to action” to contact your representatives about the need to provide a mechanism for remote witnessing/notarization, if your jurisdiction does not already permit it.
- Calls have been made and action is starting. See the next slide as an example.

Legislative Changes are Happening

- Iowa attorneys can now rethink document review and signing ceremonies for clients. See <https://www.kwqc.com/content/news/Iowa-Gov-569012091.html>
- REMOTE NOTARIZATION AND WITNESSING
- SECTION SIXTEEN. Pursuant to Iowa Code § 29C.6(6), I temporarily suspend the personal appearance requirement in Iowa Code § 9B.6, but only to the extent that the notarial act complies with the requirements of section 6 of 2019 Iowa Acts chapter 44 (Senate File 475) and any additional guidance provided by the Iowa Secretary of State regarding approved communication technology.
- SECTION SEVENTEEN. Pursuant to Iowa Code § 29C.6(6) and Iowa Code § 135.144(3), and in conjunction with the Iowa Department of Public Health, I temporarily suspend the regulatory provisions of Iowa Code §§ 144B.3, 633.279, and 633B.105, to the extent that they require the physical presence of a testator, settlor, principal, witness, or other person, if the person is present in a manner in which the witness or other person can see and hear the acts by electronic means, such as video conference, Skype, Facetime, Zoom, or other means, whether or not recorded.
- Acknowledgements to Len Sandler, Clinical Professor of Law, Director, Law and Policy In Action Clinic, University of Iowa College of Law.

Retainers and Retainer Agreements

**Web Meetings
Change the
Dynamic**

Getting Retained and Paid in the Current Environment

- Our practice has been to mail out retainer agreements with a cover letter (proving they were mailed) in advance of an initial client meeting. Then at the meeting a client would sign the documents engaging us and make a payment.
- With the shift to new clients having initial web meetings that opportunity for a physical meeting to sign documents and make a payment is lost. Consider:
 - Emailing and/or mailing retainer agreements in advance and having them signed and mailed or scanned and emailed back.
 - Using e-signature for billing/retainer documents to facilitate signing when a client has no scanner at home and will meet by web.
 - Accepting credit cards to facilitate payments electronically and not by check in person.
 - Exercise caution having a web meeting without having been formally retained. If not, what is your relationship?

Estate Planning Generally

**Start with the
Basics**



Coronavirus Impact and Basic Documents

- The global average death rate is currently between 3-4%.
<https://www.cnn.com/2020/03/13/americas/coronavirus-us-italy-south-korea-lessons-intl/index.html>
- Whereas about 0.1% of people who get the flu die, the coronavirus' death rate is now at about 3.4%, based on the current numbers of cases and deaths. <https://www.businessinsider.com/coronavirus-compared-to-flu-mortality-rates-2020-3>
- Those at highest risk, those over age 60 or with an underlying health condition should take steps to be certain that their planning and documents are in order.
- Make sure clients have documents in order and understand that they need to do so: health care proxies, living wills, powers of attorney, wills, etc.

Estate Basics

- Addressing essential estate planning documents with clients facing potentially terminal circumstances and other difficult issues is nothing new to estate planners. At this juncture it is critical that we all inform clients of the importance of making certain that their estate planning documents are in place. There's no doubt that thousands of Americans will die from the coronavirus. Educating clients to do what's right to protect their loved ones is not capitalizing on a difficult situation but rather helping the people we are responsible for, our clients. As all practitioners know of living wills and healthcare proxies, HIPAA releases, powers of attorney and wills should all be current and reflect the clients wishes.
- It is all too common for clients to leave in place wills for decades. Given the number of our clients that are elderly or infirm, the statistics on the current course of coronavirus, it behooves every practitioner in every one of the allied disciplines to educate clients that this matter needs to be tended to.

Modify HIPAA Releases, Living Wills, and Health Proxies

- All clients, especially those 60 and over or with a chronic underlying condition should immediately review their healthcare related documents including: living will, DNR, healthcare proxy, and HIPAA release.
- Practitioners are well familiar with the need to have a current document that reflects the client's current wishes, to list an agent who is able and willing to act as well as several successors, and so forth. Even though many clients also are familiar with these obvious steps reminding them at this very difficult time to address these matters will prove helpful to many.
- Apart from the obvious concerns, there are several critical issues with respect to these documents that may warrant immediate revision of these documents for many clients. These issues are specific to the current circumstances of the Coronavirus pandemic.

Modify HIPAA Releases, Living Wills, and Health Proxies

- In many instances in the past an agent would be in the hospital with the individual who appointed them, document in hand when prepared to act. Given quarantines and the need for social isolation this may not only be impractical, but may not be permitted. Language should be expressly added to all healthcare related documents wherein the client executing the document expressly authorizes the agent to give directions by telephone, web conference, email and other forms of communication. Further, it should expressly permit medical providers to accept those indirect forms of communication and decision-making by a health care agent and expressly hold harmless and indemnify all medical care providers from any liability whatsoever for relying on those indirect means of communication by the agent to them. This is a unique situation that has never arisen before and is not contemplated in many of the forms and documents in use.

Modify HIPAA Releases, Living Wills, and Health Proxies

- **Sample Clause to Consider**: I expressly authorize my Agent to communicate decisions to any medical provider verbally, in person, by telephone, via email, via web conference including but not limited such services as Skype, FaceTime, or in any other manner appropriate to the circumstances. Further, I expressly hold harmless any medical provider for relying on such communications by my Agent. The express purpose of this provision is to foster decision making by my Agent in remote or indirect manners that may be necessary or advisable given whatever circumstances accompany such decision making.

Dangerous Free Internet Living Will Form - 1

- HEALTH CARE DIRECTIVE (LIVING WILL)
- I want everyone who cares for me to know what health care I want, when I cannot let others know what I want.
- SECTION 1:
- I want my doctor to try treatments that may get me back to an acceptable quality of life. However, if my quality of life becomes unacceptable to me and my condition will not improve (is irreversible), I direct that all treatments that extend my life be withdrawn.
- A quality of life that is unacceptable to me means (check all that apply):
 - Unconscious (chronic coma or persistent vegetative state)
 - Unable to communicate my needs
 - Unable to recognize family or friends
 - Total or near total dependence on others for care
 - Other:

Dangerous Free Internet Living Will Form - 2

- Check only one:
- Even if I have the quality of life described above, I still wish to be treated with food and water by tube or intravenously (IV).
- If I have the quality of life described above, I do NOT wish to be treated with food and water by tube or intravenously (IV).
- SECTION 2: (You may leave this section blank.)
- Some people do not want certain treatments **under any circumstance, even if they might recover**. Check the treatments below that you do not want under any circumstances:
 - Cardiopulmonary Resuscitation (CPR)
 - **Ventilation (breathing machine)**
 - Feeding tube
 - Dialysis
 - Other:

Modify HIPAA Releases, Living Wills, and Health Proxies

- Many standard documents and forms include absolute prohibition of intubation, which could prove to be a death sentence if that clients contracts coronavirus. In most instances, what clients had in mind when signing such documents was that if they are in a terminal condition and there is really no hope they do not want to be “hooked up to a bunch of tubes” while being kept artificially alive. For somebody who has an underlying medical condition, such as diabetes, and is deemed old (60+ is deemed old for purposes of coronavirus) if they contract the virus it would almost assuredly want to be intubated if that meant that they would survive the virus.
- Many people age 60 with diabetes might be very likely to survive coronavirus, but may have to be intubated. This is a very different situation than that contemplated in many living wills and other healthcare documents. Clients with documents that prohibit intubation in all circumstances should immediately revise those documents and execute new documents expressly superseding the old documents that contain more reasonable proscriptions for intubation that are based upon the current circumstances.

Estate Tax Planning

**Now May be an Ideal
Planning Window**

Coronavirus Impact on Planning Environment

- The coronavirus has created a confluence of a number of significant factors making this perhaps one of the most opportune times in history to plan for estates.
- The gift and GST exemption amounts remain high. As all practitioners know these exemptions are temporary and will be cut in half in 2026.
- Some may view stock market and economic performance and handling of the coronavirus situation by the current administration is something that may enhance the potential for Democratic victory in the 2020 election. It seems clear that if there is a sufficient Democratic sweep that harsh estate and transfer tax legislation will be enacted. Thus, the current high exemption amounts may be reduced well before 2026.
- Accept that it virtually certain taxes will rise and consider Sanders' bill for the 99.8%. Higher rates; lower exemptions; loss of step up in basis; elimination or reduction in discounts; recapture of all profits in a grantor trust (will there be any grandfathering?); essentially an elimination of GRATs, and more...
- Get your firm into a position primarily through technology to service clients. And if you haven't done so, really consider software drafting systems.

Coronavirus Impact on Planning Environment

- Interest rates were already near historic lows but the Federal Reserve Board's efforts to bolster the economy during this difficult time has led to a reduction in interest rates that will produce perhaps the lowest rates in history for estate planning purposes.
- Valuations of securities has clearly been depressed, although it is uncertain how long that may remain the situation. This has also impacted valuation of a wide range of businesses and other properties because of the slowing economy due to mandatory closures and quarantines and other factors. Thus, this is an opportune time to transfer assets out of any wealthy client's estate.
- The combination of use it or lose it high exemptions, the availability of discounts and other planning techniques which the Democrats have proposed restricting or eliminating in the future, low valuations and incredibly low interest rates creates a planning scenario that should not be missed by wealthy clients.
- But the question remains whether clients will undertake appropriate planning under the current situation.

Some Historical Perspective

- A similar situation arose to some degree in the mid 80s when oil and stocks and real estate fell in value. Great opportunities for estate tax planning existed. I had virtually no takers because folks were feeling poor and worried.
- Today, it might be different on account of SLATs, DAPTs and SPATs.
- We are in a war economy. FDR said war means more bonds and more taxes and more taxes and more bonds. Taxes, even if Trump wins, will have to go up to get the economy going so the government can spend, spend, spend. So protect your exemption now. One problem is that the property owner will never have an estate tax issue, only his heirs will. But consider, what if a wealth tax is implemented?
- Transferring wealth now might soften that blow.

Psychologically How to Get Clients to Move Forward

- Be aware that, because virtually everyone feels financially vulnerable now, they likely will not cotton to estate tax planning.
- Focus on the opportunity.
- Removing the assets from your estate without losing “control”/use of them. Advantage of getting both the principal and what should be huge upside outside of your estate, but not outside of your control should you ever need them.
- Play to the fact that we have never recommended to our clients removing things from their use. Our clients are not impacted by this downturn in a loss of assets from previous estate planning.
- Opportunity, opportunity...
- Acknowledgements to Marc A. Pasquale of Pioneer Wealth Partners

Psychologically How to Get Clients to Move Forward

- It is appropriate to emphasize standard non-tax estate planning to help clients move forward.
- Current will/revocable trust, including identity of appropriate fiduciaries with at least two back ups
- Durable powers of attorney (with at least one back up).
- Health care proxies (normally permitting only one agent but with a back up).
- Living wills.
- HIPAA Releases.
- Be sure to address current critical issues:
 - Remote notarization and witnessing.
 - Authorizing agents to act remotely e.g. FaceTime, Skype, email, etc.
 - Address realities of coronavirus and prohibitions on intubation.

Consider Having Grantor Trusts able to Turn-off Grantor Status - 1

- If and only if the Trust Protector is acting in a non-fiduciary capacity, the power to take any such actions as may be necessary or advisable to eliminate the federal income tax status of this trust, or any part thereof, as a grantor trust, i.e. to convert this trust, in whole or part into a non-grantor trust. These powers may include by way of example and not limitation the power to prohibit the Trustee from paying for life insurance premiums on the life of the Grantor or the Grantor's spouse on life insurance held in this trust, eliminating the right of any person to loan funds to the Grantor without adequate security, the right of any person acting in a non-fiduciary capacity to add a charitable beneficiary, the right of the Grantor to swap or substitute assets in this Trust, etc. Provided, however, this may not be achieved by removing the spouse as beneficiary but solely by adding a requirement that an adverse party approve any distributions to the spouse. The Trust Protector may, but shall not be required to, consider any negative tax consequences including but not limited to the negative consequences of the loss of a power to substitute on the loss of possible basis adjustments, the triggering of gain on negative basis property, or the tax consequence of a sale of assets to the trust by the Grantor.

Consider Having Grantor Trusts Able to Turn-off Grantor Status - 1

- The Trust Protector shall have no liability whatsoever for acting or not acting pursuant to this power. This provision shall not permit the Trust Protector to modify the rights of the Grantor's spouse under a trust intended to qualify for the marital deduction. This provision shall not permit the Trust Protector to modify the grantor trust status of a grantor trust holding S corporation stock (but the trust protector may divide the trust into separate trusts with one or more of such separate trusts holding S corporation stock and being characterized as a QSST or ESBT).

GRATs

- Grantor retained annuity trusts (“GRATs”) that were created in the past year or two may fail due to the dramatic decline in stock market and other asset values. In these instances, practitioners may want to proactively recommend to clients that the plan is not a failure but rather the assets merely need to be “re-GRATed” once distributed out of the GRAT as part of an annuity payment. In the alternative, practitioners may want to be proactive and recommend that clients swap assets out of the GRAT, which has no adverse tax consequences as it is a grantor trust, and re-GRAT them immediately to take advantage of current low values and low interest rates.
- For clients that have not yet begun GRATs, now may be an ideal time to do so. Again with low interest rate and low stock market and other valuations transferring assets into a GRAT may be a valuable estate planning step.

GRATs

- Consideration should be given, however, the potential for Democratic victory and how that might impact the structure of a GRAT. If the Democrats gains sufficient power in Washington after the 2020 election GRATs may for all intents and purposes be eliminated. Proposals by Senator Sanders and Congressman Gomez included a mandate of a minimum gift amount and minimum 10-year term, thus emasculating the GRAT technique.
- In planning new GRATs practitioners might consider using longer-term GRATs so that if the ability to re-GRAT is eliminated there may be more leveraging and benefit out of the GRAT technique even without that continued availability. Longer-term GRATs create greater mortality risk and different issues in terms of immunization which will have to be addressed.

Asset splitting/Granular GRATs

- Instead of a single GRAT structure a tier of GRATs with the assets as granular as possible.
- Each GRAT with a different asset class is much better than a single GRAT with a diversified portfolio.
- The ideal may be each GRAT with a separate stock.
- Remember tails the taxpayer wins. Heads the taxpayer doesn't lose.

99 Year GRAT – Is this the Time?

- Is not a time to consider the very long term GRAT? Interest rates cannot be lower in the future can they?

Intra-Family Loans

- With historically low interest rates a common and simple wealth transfer technique is for a client to make a low interest loan that a trust or family member, or family entity, which could then use the assets to invest to seek a greater return. If historic patterns of eventual market recovery hold true, a simple loan to an irrevocable trust that can be used to invest in equities at the depressed values may provide a valuable estate transfer technique. That being said, obviously the clients must understand the risk and uncertainties of market performance.
- See Zeydel, “Estate Planning in a Low Interest Rate Environment,” 46 Estate Planning 17 (2009).

Refinancing Intra-Family Loans

- The dramatic decline in the applicable interest rates provides an opportunity for practitioners to review prior transactions to determine whether or not notes can be renegotiated with a lower interest rate. This could be useful for cash flow planning and perhaps in certain transactions to reduce the negative income tax impact of interest payments that may not be deductible by the payer or may be taxable to the payee. There is certainly the potential for an issue that a mere change in interest rate could be viewed as a gift in a family context. However if the lender receives other benefits such as a shortened payment term, additional collateral, or other benefits it may be feasible to re-negotiate the terms of a note without triggering gift tax consequences.
- See Blattmachr, Crawford & Madden, “How Low Can You Go? Some Consequences of Substituting a Lower AFR Note for a Higher AFR Note,” 109 J.Tax 22 (2008).

Note Sales to IDGTs

- A commonly used planning technique has been for a client to create a grantor trust (so – called defective trust) and to sell assets to that trust. The historic low interest rates make the payments due on the notes the trust typically uses to purchase the assets from the settlor much lower than they would've been when rates were higher. This enhances the leverage in the value of the overall wealth shifting technique. Note sales are particularly important to consider because some Democratic proposals have suggested that the use of grantor trusts may be eliminated, discounts eliminated along with a host of other restrictions enacted that will hinder or prevent this planning technique. While there is certainly no assurance that a client engaging in a transaction to sell assets to a grantor trust today will be the grandfathered under forthcoming legislation, should that even occur, it may prove to be worthwhile to secure this benefit now.

Late Allocation of GST Exemption

- For many clients the current high temporary GST exemption provides a planning opportunity to make a late allocation to trusts to which GST was not allocated when the gifts were previously made. The recent stock market declines may provide an opportune time to make those late allocations when the amount of GST exemption necessary to provide a trust, for example, with a zero-inclusion ratio is much lower.

Short Sale to Grantor Trust?

- Wild idea: have a grantor trust (which is out of the estate) do a short sale to the grantor.
- You sell shares you do not own to a grantor trust. If the stock goes down the trust pays less for the share.
- Grantor trust sells short to you, e.g. I'm giving trustee \$100 and Trustee much deliver stock to me.
- Security considerations.
- Should it not be a dry trust? Should it have the 10:1 ratio of assets?

Life Insurance and Private Placement Life Insurance

- Taxes will increase.
- Keep life insurance in place (coverage for the death benefit and a likely higher return...at least for now)
- PPLI takes time to set up. Might it work if law changes? Consider starting a plan now.

Valuation Considerations

How Might Values Be Impacted?



Values of Closely Held Businesses May be Reduced

- How have the valuations of private equity and family businesses been impacted by the Coronavirus, stock market decline and uncertainty? Risk is a factor to be evaluated by the appraiser and which can have a significant impact on the determination of value. How does and will the coronavirus affect the future prospects and earnings of a particular business? The uncertainty may require lower cash flow forecasts, higher discount rates and hence lower values. This may serve to make the present time an opportune time for gifts where values may be lower.

Alternate Valuate Date

- The tax laws permit the use of an alternate valuation date six months following the date of death value assets of the overall value the estate is less and there's a reduction in the estate tax. For much of the last decade the upward march of the stock market indices has obviated the need to consider alternate valuation date other than in the rarest of circumstances. Depending on the duration of the current market decline practitioners handling estates should be alert the potential benefits of an alternate valuation date.

Income Tax Considerations

Coronavirus Impact

Roth IRA Conversions

- Converting a regular or traditional IRA to a Roth IRA has been a regular part of tax planning considerations. The enactment of the Secure Act has some practitioners reconsidering the benefits of a Roth conversion, perhaps a serial conversion in increments over a number of years as a possible means of reducing the negative tax impact of the 10 year rule under the Secure act. In other words, rather than waiting to the 10th year end following the death of the plan holder to find all plan assets distributed and taxed in for example an accumulation trust at the highest tax bracket, consider converting in small increments to IRA predeath to Roth IRA status which may reduce the overall tax cost. While market values are depressed as a result of the recent stock market decline, it's an opportune time to convert traditional IRAs into Roth IRAs because the value is lower and hence the income tax cost is lower.
- Practitioners should be mindful that when guiding clients to convert to a Roth because of market declines should the market decline further the optimal benefit will not have been received. Recharacterization of an IRA will no longer permit circumventing the decision once made.

Harvesting Gains and Losses

- Traditional income tax planning for investment and other assets is always included endeavoring to offset capital gains with capital losses to minimize current income tax impact. While this is certainly something that practitioners are well aware of given the almost constant upward march of the stock indices for a decade it has not been a matter that has received the attention that will certainly be due now.

Extension for Payments

- Notice 2020-17
- Payment relief on account of Coronavirus Disease 2019 (COVID-19) emergency. The Treasury Department and IRS are extending the due date for Federal income tax payments due April 15, 2020, to July 15, 2020, for payments due of up to \$10 million for corporations and up to \$1 million for individuals - regardless of filing status – and other unincorporated entities. Associated interest, additions to tax, and penalties for late payment will also be suspended until July 15, 2020.
- Payment Deadline Extended to July 15, 2020
- The filing deadline for tax returns remains April 15, 2020.

Extension for Payments

- Individuals: Income tax payment deadlines for individual returns, with a due date of April 15, 2020, are being automatically extended until July 15, 2020, for up to \$1 million of their 2019 tax due. This payment relief applies to all individual returns, including self-employed individuals, and all entities other than C-Corporations, such as trusts or estates. IRS will automatically provide this relief to taxpayers. Taxpayers do not need to file any additional forms or call the IRS to qualify for this relief.
- Treasury Secretary Mnuchin announced today that the filing deadline for federal tax returns originally due April 15th will be extended 90 days until July 15th, 2020 as an additional step aimed at providing relief to taxpayers. This action followed a previous announcement that the deadline to make tax payments had been extended to July 15th.
- Taxpayers will have additional time to focus their efforts on more critical health and safety issues. Those with potential refunds may still want to file their tax returns as early as possible to the extent all information is available to do so.

Extension for Payments

- In Notice 2020-18, the IRS announced that for any “person”, including an individual, a trust, estate, partnership, association, company or corporation, the due date for filing Federal income tax returns and making Federal income tax payments due April 15, 2020, is automatically postponed to July 15, 2020. Bob Keebler reports. The text of Notice 2020-18 can be found at <https://www.irs.gov/pub/irs-drop/n-20-18.pdf> .

Extension for Payments

- Corporations: For C Corporations, income tax payment deadlines are being automatically extended until July 15, 2020, for up to \$10 million of their 2019 tax due.
- This relief also includes estimated tax payments for tax year 2020 that are due on April 15, 2020.
- Penalties and interest will begin to accrue on any remaining unpaid balances as of July 16, 2020. If you file your tax return or request an extension of time to file by April 15, 2020, you will automatically avoid interest and penalties on the taxes paid by July 15.

Financial Planning

**Liquidity, Caution
and More**



Financial Planning

- Many clients should, both personally and for their businesses, build liquidity. No one knows how long the restrictions will last or how far the ripple effects of Coronavirus might spread.
- Review insurance policies and make certain payments are up to date. If you may have a challenge making premium payments because of economic hardships resulting from the Coronavirus evaluate grace periods, financing options, etc. Be proactive, don't wait for a default.
- Evaluate investment allocations with your wealth adviser. Should you stay the course? Should you buy into what appears to be a down market? Should you reduce your risk level? All these decisions may be different because of the uncertainty over how Coronavirus might impact your salary, business and other resources.

Conclusion and Additional Information

The New Normal



Conclusion

- Coronavirus has affected the very fabric of our society. Our lives depend on how we handle the situation.
- Financial impacts are substantial.
- Many critical aspects of estate planning and how planners operate their practices have been impacted.

Additional information

- Jonathan Blattmachr jblattmachr@hotmail.com
- Martin M. Shenkman
shenkman@shenkmanlaw.com