# WEALTH MANAGEMENT

## ESTATE PLANNING ISSUES AND OUTLOOK

The COVID-19 pandemic underscored the importance of estate planning, as individuals realized their own mortality—perhaps more than ever before. Four Chicago-area executives involved with the process shared their insights on creating (or revising) a comprehensive estate plan so that in the event of incapacity or death, one's wishes can be heard and carried out.

### How is your organization involved with estate planning?

**Kathryn Kennedy:** As a comprehensive wealth management firm, Cerity Partners believes estate planning is integral to the complete financial health of a family. We encourage our clients to address estate planning issues and we work with them to determine their goals for their assets in the event of their death or incapacity. As financial advisors, we're in a unique position to have a deeper understanding of a client's entire financial picture, so we can help facilitate the conversation between clients and attorneys, review and monitor the entire process and oversee the implementation of the final plan.

**Karen R. Mills:** Aronberg Goldgehn's estate planning and probate litigation attorneys work closely with clients to create a comprehensive plan ensuring that their wishes are put into effect upon incapacity and death. We design estate plans to avoid litigation during the client's lifetime and after they pass away, and where litigation is unavoidable, we have significant experience in estate and trust disputes. Finally, we work closely with our clients' other trusted advisors to clarify and facilitate estate planning wishes to give them and their families peace of mind.

**Phil Zielinski:** Mercy Home is a children's charity in the heart of Chicago that offers solutions for kids affected by abuse, neglect, violence, homelessness or other traumatic experiences. As a nonprofit, we receive donations from a variety of sources, including a large number of charitable bequests from donors' estates. In fact, posthumous gifts make up nearly 25 percent of Mercy Home's operating budget each year—a significant sum driven by a strong belief in our mission and the desire to leave a legacy for children in need. We have a team of philanthropic advisors committed to showing donors how to leave a charitable bequest and still provide for their own families, while also limiting tax exposure for their heirs.

**Rebekah Berry:** Baird's estate planning department has evolved over the last two years, doubling the number of estate planners and increasing the focus on education and "qualitative" estate planning. Prior to the higher estate tax exemptions that came into effect in 2018, our team was more focused on the quantitative results on a client's death. Today's higher exemptions mean that fewer clients have estate tax issues, but those same clients are still transferring a meaningful amount of wealth. Regardless of whether an estate tax exists, making sure that our clients understand how their plans are designed and the options available give them the confidence to make informed decisions regarding their estate planning documents.

### What's the most common question or concern you hear about the process?

**Mills:** Clients want to know how to address family issues. Blended families, past relationships, a special needs child or an addicted family member can seem unresolvable to clients. Not knowing where to start can paralyze a client and we communicate the importance of creating a plan that works for them and their family members. Occasionally, spouses don't agree and as such, they want to avoid dealing with conflict. During client meetings, we listen, acknowledge what we've heard and assure them that we can develop appropriate solutions for their particular needs.

**Berry:** People wonder how they'll know if the attorney captured everything that they wanted inside their estate plan. We review draft documents with clients to ensure that their wishes are being addressed. Breaking down the legalese of estate planning documents can be challenging. One advantage of working with our estate planners is their ability to make it easier for clients to understand the documents. While reviewing drafts with clients, our estate planners ask questions to make sure clients know what the plan is stating and to confirm that it accurately reflects what they want.

**Kennedy:** People often assume that estate planning only needs to be done once. But the reality is an estate plan may change over time. To accommodate the inevitable changes in life, most of the documents that we help to create are very flexible. No estate plan can anticipate every single possibility, but a strategic and well-drafted plan will have significant flexibility to help a family negotiate the challenges ahead. With that in mind, there's great value to having one's wishes memorialized. We monitor established estate plans to ensure that they're still achieving the clients' goals as both legislative environments and family dynamics may shift.

> "THE UNPREDICTABILITY OF THE PAST YEAR AS WELL AS THE PROXIMITY—AND DISTANCE—OF FAMILY HAS BROUGHT SPECIAL FOCUS ON THE NEED TO PLAN."
> —KATHRYN KENNEDY, CERITY PARTNERS

**Zielinski:** Most people who reach out to discuss their estate plan are looking to add a charity to their list of beneficiaries and are wondering how best to go about this. Often, it's as simple as adding their favorite charities as "residual beneficiaries" in the trust—in other words, after all friends and family receive specific gifts, the rest falls to charity. But others ask how best to divvy specific assets between loved ones and charities. It's usually best to leave untaxed assets such as a brokerage account to family members, and name a nonprofit as the beneficiary of any highly-taxed assets, such as a retirement plan. This way, children will receive the full value of their parents' stock portfolios. And the

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favorite tax-exempt nonprofit, rather than Uncle Sam, will receive the entirety of the IRA or 401(k).

**What typically motivates people to begin the estate planning process? Has that changed since the COVID-19 pandemic began?**

**Berry:** The conversation is typically motivated by a life event such as a marriage, birth of a child, a major trip or death of a close friend or family member. With COVID, there's certainly been an uptick in clients reviewing their circumstances. Advanced health care directives have become a hotter topic—so much so that it's become the momentum starter for many clients to create or update their estate plans.

**Kennedy:** People frequently begin the process after the passing or incapacity of a family member or friend. The unpredictability of the past year as well as the proximity—and distance—of family has brought special focus on the need to plan. The pandemic also brought restrictions around access to medical care and made advocating for loved ones a challenge. Estate planning is that practical step people can take now to ensure that their families are taken care of and that their wishes are met. In particular, COVID-19 made us realize that a "healthy" person can suddenly get struck with adversity. So having a plan in place is important for everyone.

**Zielinski:** Big life events will always be drivers of estate planning. But what we saw at the outset of the pandemic was a new kind of milestone—people across all stages of life were contemplating their own mortality, including how to provide for loved ones and how to make the world a better place for future generations. The past year has been painful and challenging in many ways, but it's allowed us to take stock of what's important. At Mercy Home, we're seeing our own donors recommit to living a life with meaning, and that shows in their estate planning as well.

**Mills:** Sometimes people are motivated by the fact that they've come into a substantial amount of money, or they read about changes in tax laws and are concerned about how those changes might affect them and their families. The COVID-19 pandemic has significantly increased the number of calls we've received regarding estate planning and estate litigation—so much so that we recently expanded our practice group and opened a second office. The pandemic cast a shadow of uncertainty over our daily lives, and many of us spent time thinking about getting their affairs in order in the event of sickness or worse. COVID produced a rise in estate planning, but we believe many more people still need to plan. Many individuals believe they have too few assets to warrant a will. Others assume their money will automatically pass to their family members. Both those assumptions are incorrect. Pandemic or no pandemic, the importance of estate planning cannot be overstated.

**How can charitable organizations be integrated into estate plans?**

**Zielinski:** If you're charitably inclined, you should absolutely include your favorite nonprofits in your estate plan. This is the easiest way to make a substantial gift to the causes near to your heart. These transformational gifts cost you nothing now, can reduce taxes for your estate and are a terrific way to leave a legacy for future generations. You can name a nonprofit in your will or trust, or as the beneficiary of your IRA, brokerage or bank account. I also recommend talking with your family about your philanthropic plans. When you invite younger generations into the conversation, you're telling them what's important to you, and what you're doing to make the world a better place after you're gone. You're also inviting them to think of something greater than themselves, and to support causes that they believe in.

**Kennedy:** In lieu of a direct bequest, there are also trust vehicles created during the lifetime of a client that produce either a stream of income to a charity or a pool of money at a specific term of years to a charity. These options have specific income and estate tax benefits. Alternatively, a residual portion of an estate may be earmarked for a designated charity, a family foundation or a donor-advised fund. In the latter two cases, structuring the plan in this manner is a great way for individuals and families to continue a legacy of charitable giving.

**Berry:** Simplicity would say that it's easiest to just name the charity as a beneficiary of an account, preferably a 401(k) or traditional IRA, since the charity doesn't pay income taxes on the distribution. However, simplicity may not achieve the client's goal, especially if the charity is the beneficiary of an account that declines in value over time. Therefore, the attorney may prefer to build the charity into the governing document to ensure that the charitable goal is achieved.

**Mills:** We often suggest naming the charity as the beneficiary of part or all of their IRA or other pension plan. At death, the client's estate will get a charitable deduction for the money going to the charity and the charity, because it's a tax-exempt organization, will not have to pay any income tax when the money is withdrawn.

> "IF YOU'RE CHARITABLY INCLINED, YOU SHOULD ABSOLUTELY INCLUDE YOUR FAVORITE NONPROFITS IN YOUR ESTATE PLAN."
> —PHIL ZIELINSKI, MERCY HOME FOR BOYS & GIRLS

A ROUNDTABLE DISCUSSION

# WEALTH MANAGEMENT

## ESTATE PLANNING ISSUES AND OUTLOOK

**Will factors such as recent changes in the tax laws and the current low-interest-rate environment affect estate planning?**

**Zielinski:** The 2019 SECURE Act significantly changed how retirement assets can be left to heirs. As a result of this law, non-spousal IRA or 401(k) beneficiaries will now need to withdraw all funds from retirement accounts within 10 years of the account holder's death. Because these beneficiaries have a shorter timeline to receive IRA distributions, they also miss out on tax deferral for these assets, and compress their tax liability into a decade or less. The good news is that naming your favorite nonprofit as a beneficiary of your retirement account instead of a child or grandchild can be a win-win. You can give a substantial gift to a tax-exempt nonprofit, receive a charitable deduction for your estate and leave other tax-advantaged assets to your loved ones instead.

**Berry:** More than ever, clients are evaluating lifetime wealth transfer planning strategies, with the expectation that the tax laws will change in 2022. Wealth transfer in a low-interest-rate environment often entails making loans to younger family members at low interest rates. This allows younger family members to use the funds to purchase real estate or marketable securities and have an opportunity to outpace the IRS issued rate, building wealth beyond the repayment amount. Individuals can also use the low-interest-rate environment to generate wealth beyond the IRS assumed rate of return for a certain period. If the investments outperform the assumed interest rate for that particular period, then additional wealth can be transferred to heirs without any gift or estate taxes.

**Mills:** Recent changes that increased the federal estate and gift tax exemption to over $23 million for a married couple reduced the number of families subject to federal estate taxes. But in Illinois, estate taxes begin at $4 million for individuals and $8 million for couples—so a much lower exemption amount. Current low interest rates provide many opportunities to shift income and capital to junior generations without an estate or gift tax cost. Current inflation concerns may cause interest rate increases which will reduce the effectiveness of many of today's popular strategies. This puts an increased emphasis on taking current action to take advantage of these lower rates while they are still available.

> **"CLIENTS ARE EVALUATING LIFETIME WEALTH TRANSFER PLANNING STRATEGIES, WITH THE EXPECTATION THAT THE TAX LAWS WILL CHANGE IN 2022."**
>
> — REBEKAH BERRY, BAIRD

**Kennedy:** Significant changes to estate tax laws are part of proposed tax legislation for individuals and families. These changes, combined with the current low-interest-rate environment create an urgent opportunity to plan now for issues such as a reduction in the lifetime estate and gift tax exemption. Tools like interfamily loans, grantor-retained annuity trusts and intentionally defective grantor trusts are at risk of being diminished as attractive opportunities to reduce estate tax. Every client with a current or potential net worth above $7 million should sit down with their team to evaluate how to best meet their needs and goals.

**What planning measures should small business owners, in particular, have in place to protect their business and the assets?**

**Kennedy:** Business owners often focus on running the day-to-day operations of their business and overlook making plans to best preserve their legacy upon death, retirement or disability. We establish a succession plan with our clients—whether it's a transfer of ownership through an outright sale or an agreement with partners or employees. Plans like these can include life insurance on key employees, buy-sell agreements and other ownership arrangements that can be tailored to your business needs.

**Mills:** Business owners should take steps to ensure that business liabilities don't put their personal assets at risk. First and foremost, they should utilize business entities to separate their personal assets from business liabilities. In connection with estate planning, they should consider comprehensive asset protection planning which may include setting up a family limited partnership or family limited liability company in which other family members—or trusts for their benefit—are partners/members.

**Berry:** Business owners should consider a "base" comprehensive estate plan layered with additional documents such as articles of incorporation, buy-sell agreement(s), and shareholder agreement(s). They should discuss asset protection planning strategies with their estate-planning attorney prior to the business creation, so that the attorney can weigh options such as a domestic asset protection trust to prevent creditors from being able to attach themselves to the trust assets.

**Zielinski:** We have a number of family businesses interested in creating a charitable remainder trust. These vehicles allow you to provide a steady stream of income for yourself or your loved ones during life, and leave a charitable bequest to your favorite charity upon your passing. And because a CRT is an irrevocable gift, you'll be eligible for a charitable deduction in the year of the gift as well.

**Estate planning can be an overwhelming topic; how should an individual begin?**

**Berry:** We focus on a four-stage, iterative process that begins with an in-depth education phase followed by a review of draft documents. Once the client's estate plan has been updated or implemented, we create a flow chart of the estate plan to be used in future annual meetings and future family meetings. My advice to individuals is to get educated and set up a meeting with an attorney, and to give yourself a deadline. I recommend having a net worth statement generated out of your financial plan and preparing a contact list of family members, friends and charities that you want to include in your estate plan. Also, be prepared to discuss your family values and goals, as this information will guide the attorney in drafting the documents.

**Zielinski:** The first thing to remember is that estate planning is for everyone – not just the wealthy. Step two is to reach out to an estate planning attorney to discuss your needs and build a team of advisors, if needed. In the past decade, a number of online resources have become available for basic estate planning. But for the vast majority of people, an attorney is the way to go. There's a cost associated with this on the front end, of course, but because you'll receive individualized service and expertise, it's almost always worth it.

**Kennedy:** The first step is to start the conversation. We believe that estate planning is important to address in our first year of work with a new client. At Cerity

## ABOUT THE PANELISTS

**REBEKAH BERRY** is associate branch manager at the Elgin office of Baird, a multinational independent investment bank and financial services company. She provides private wealth management strategic direction—from the development of the plan itself to the execution of the action steps necessary to achieve a successful outcome. She has more than 20 years of industry experience and is a certified financial planner (CFP) and certified divorce financial analyst (CDFA).

**KATE KENNEDY** is a Chicago-based partner at Cerity Partners, a wealth management and retirement consulting firm with offices nationwide. She leads the firm's Midwest executive financial counseling practice, providing comprehensive wealth management services to corporate executives and high-net-worth individuals and families. She has more than 27 years of industry experience, including financial counseling, taxes, investments, wealth transfer plans and charitable initiatives. She is a certified public accountant (CPA), a certified financial planner (CFP) and a member of the Illinois Bar.

**KAREN R. MILLS** is a member of Aronberg Goldgehn, a full-service business law and litigation firm with offices in Chicago and Wheaton. She concentrates her practice on estate planning, trust and estate administration, probate litigation, special needs planning, asset protection and guardianships for minors and disabled adults. Earlier in her career, she spent nearly 20 years at JPMorgan Chase and BMO Harris Private Bank advising clients on trusts, estates, guardianships and wealth management issues.

**PHIL ZIELINSKI** is director of philanthropy for Mercy Home for Boys & Girls, a residential care facility that has served kids in crisis since 1887. He advises donors on the most tax-efficient ways to support their favorite charitable causes, whether with outright gifts of cash or through planned giving vehicles. His work emphasizes charitable bequests, retirement assets, donor advised funds and gifts of stock. He has 15 years of experience in the nonprofit sector, and is a certified fund-raising executive (CFRE).

Partners, we want you as our client to understand the complexities of the current financial, legal and tax landscape. We believe our role is to see the big picture and ultimately keep your team of professionals in sync with your goals and needs.

**Mills:** We like to remind our clients that a well-planned estate plan is one of the most thoughtful gifts they can give their loved ones. We work closely with clients to ensure that their wishes are heard, that their questions are adequately addressed and that sound decisions are made surrounding their plan. While creating an estate plan may seem like an overwhelming process, the burden can be eased by the individual identifying who they'd like to help them if they're incapacitated and after they pass away, what their estate consists of, who their beneficiaries are and what they'd like them to receive upon their death.

"BUSINESS OWNERS SHOULD TAKE STEPS TO ENSURE THAT BUSINESS LIABILITIES DON'T PUT THEIR PERSONAL ASSETS AT RISK."

– KAREN R. MILLS, ARONBERG GOLDGEHN

**What long-lasting effects will the coronavirus pandemic have on estate planning?**

**Mills:** COVID-19 has caused many people to realize that life is precious, circumstances can change quickly and they need to be prepared. At a minimum, individuals recognize that they should have powers of attorney for health care and property. The pandemic has brought the realities of incapacity and death front and center for many clients.

**Zielinski:** Since the beginning of the pandemic, we've seen a dramatic increase in the number of donors interested in leaving a legacy gift to the kids at Mercy Home. This past year has given us all a chance to think about our own lives, values and legacies, and reflect on what's most important to us. After all, a core question your estate plan should seek to answer is, "How will you define your own legacy?"

**Kennedy:** The COVID-19 pandemic highlighted the importance of being prepared in the event of a catastrophic life event. We all know someone the virus impacted, and we witnessed the adversity that little to no planning had on those individuals. The pandemic brought important health care decisions to the forefront of people's minds. Establishing these health care documents now, and talking with family members about your wishes has an immediate benefit, giving you—and them—peace of mind.

**Berry:** The long-lasting effect will surely be in the charitable giving space. More than ever, communities need the support of their charitable partners. As we've seen with the CARES Act, the government is providing tax breaks for individuals and corporations that are making cash donations to public charities. A mental health crisis is looming and charities will be asking for even more support in the coming years to combat the downstream impacts of the pandemic. The creation of rainy-day funds has never been so important and I'd anticipate that clients will try to create long-term trusts for their heirs to provide a source of funds in the event of the unknown. Long-term trusts have historically been created to pass on wealth to the next generation and avoid a beneficiary's predators. Now these trusts will be favored for providing cash flow during extreme economic and world events.