

**What Dead Celebrities
can Teach Us About
Estate Planning**
Sioux Falls Estate Planning Council
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CAVEATS

- General Discussion – Exceptions Apply
- Particular Facts can Change the Advice
- Every Possible Issue is Not Discussed
- Always Discuss Particular Facts with Competent Tax Advisors
- State Laws Vary Widely!

More Information

- www.scrogginlaw.com
- John@scrogginlaw.com
- Materials are Intended as a Resource and to Add Value to your Client Representations

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Memorable Quotes

***“In the future,
everyone will be
world-famous for 15
minutes.”***

Andy Warhol

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DYING WITHOUT A WILL



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Central Point


**DYING WITHOUT A WILL
DOESN'T MUCH DAMAGE
THE DECEASED, BUT IT
SURE AS HELL MAKES IT
HARD ON THE SURVIVORS**



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Data & Demographics (LOOMING DEATH)

Year	Total Deaths
2010	2,400,000
2020	2,867,000
2030	3,316,000
2040	3,881,000
2050	4,249,000



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Data & Demographics (Will Signing)


A Lawyers.com study noted that in 2009 only **35%** of Americans had a Will



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Celebrities Dying without a Will


- Abraham Lincoln
- Andrew Johnson
- Ulysses S. Grant
- James A. Garfield
- Prince
- Sony Bono
- Jimi Hendrix
- Pablo Picasso
- Bob Marley
- Aretha Franklin



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Celebrity Examples

- Prince** – Does a “Love Child” inherit 100%?
- Bobbi Kristina Brown** - Whitney Houston’s Assets
- Steve McNair** – moving Mom out of her House
- Kurt Cobain** – a multi-million inheritance at 18
- Chris Benoit** – order of death governs inheritance
- Martin Luther King** – who’s in charge?
- Robin Williams** and **Rock Hudson** disinherited any unknown children




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Celebrity Examples

Increased Conflict & Cost from a Lack of Direction

- Prince** – 3 Administrators & \$9M in costs in 2 years
- Jimi Hendrix** – 46 years
- Bob Marley** – 33 years
- Jerry Garcia** – 16 years and \$38-50M in claims
- Pablo Picasso** – 6 Years & \$30 million in costs



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ANTICIPATING CONFLICT



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Central Point

If Conflict is such a Reoccurring Human Issue, why do we so Often Ignore it in Estate Planning?



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The New Reality
(Conflict in Estate Planning)

Estate & Trust Litigation is Increasing


- Failure to Properly Plan for Death or Incapacity
- More **Wealth**
- More **Blended Families**
 - Step-Parents
 - Step or Half Siblings
- More **Dysfunctional Families**
- In-Laws**
- Charitable Gifts**



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Data & Demographics
(Purpose of Estate Planning)

According to the Wealth Counsel 6th Annual Industry Trends Survey, the TOP Motivation for doing estate planning was to avoid the **Chaos** and **Conflict** among the client's heirs



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Celebrity Example

Sharon Disney Lund died in 1993 leaving behind three adult children and a large estate. Her Will provided subjective and ambiguous phrase that distributions (including principal distributions) could be withheld by the three Co-Trustees if the children do not show *“maturity and financial ability to manage and utilize such funds in a prudent and responsible manner.”* When the Co-Trustees exercised their discretion in ways beneficiaries did not appreciate, a flurry of criminal and civil litigation ensued.


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Document Drafting
Eliminate 3rd Party Claims

Consider: Eliminate Mandatory Payouts and Ascertainable Standards from Trusts in Favor of Discretionary Payouts

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Document Drafting
Increased Fiduciary Protection



- Broader **Indemnity** Provisions for Fiduciaries, Modifications of the normal **Fiduciary Standards & Investment Policies**
- Broader use of **No Contest** clauses
- Limited Liability** for Delegated Powers & Other Acts
- Limits (or increases) on **Disclosures** to Beneficiaries
- Disclosure of **Fiduciary Responsibility**
- Counter-Balancing Powers** designed to protect Beneficiaries

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PERSONAL PROPERTY




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Celebrity Example

“This petition complained that some property was ‘unilaterally removed’ from their home ‘days after Mr. Williams’s untimely death.’”

New York Times, February 3, 2015




The **GREATEST** Source of the Family Conflict

The **Forgotten Part** of Most Estate Plans




Central Point

WHEN A CLIENT DIES, THE FIRST PRIORITY MAY BE TO CHANGE THE LOCKS TO THE HOUSE



Planning for your Demise

In December 2018 Gerald Cotton (owner of a cryptocurrency platform) died unexpectedly at age 30 with **\$131 to \$190 million** in cryptocurrency (owned by over 100,000 people) held in “cold wallets” on his encrypted laptop – but without anyone else having the passwords to his computer.



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The New Reality
(Unique Personal Property Assets)

- ✓ Firearms
- ✓ Stored Reproductive Assets
- ✓ Frequent Flyer & Hotel Perks
 - ✓ Pets
- ✓ Digital Assets (e.g., Facebook)
 - ✓ Right of Publicity
 - ✓ Contraband

Value Added Materials

See the Married and Single Personal Property Disposition Forms at www.scrogginlaw.com




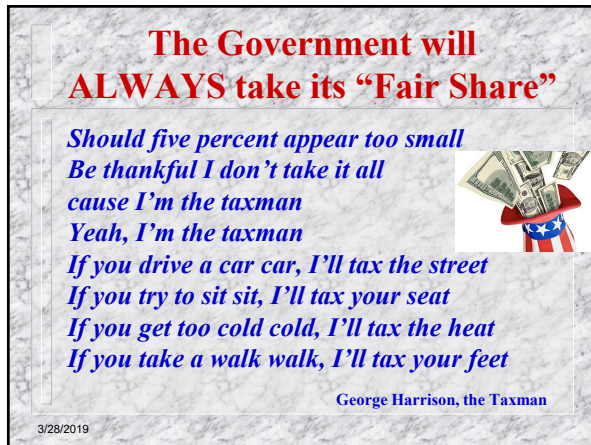
PLANNING FOR TAXES




The Government will ALWAYS take its "Fair Share"

*Should five percent appear too small
Be thankful I don't take it all
cause I'm the taxman
Yeah, I'm the taxman
If you drive a car car, I'll tax the street
If you try to sit sit, I'll tax your seat
If you get too cold cold, I'll tax the heat
If you take a walk walk, I'll tax your feet*


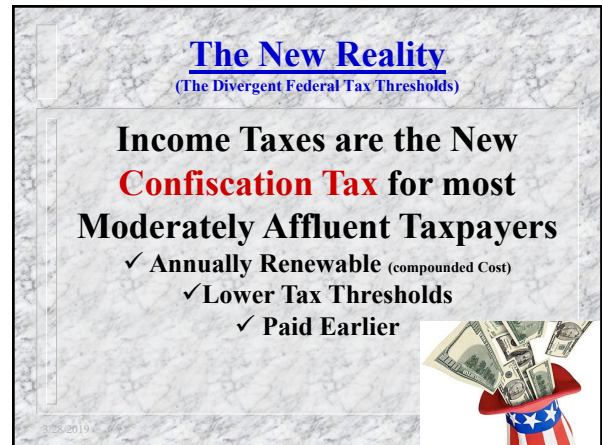
George Harrison, the Taxman

The New Reality
(The Divergent Federal Tax Thresholds)

Income Taxes are the New Confiscation Tax for most Moderately Affluent Taxpayers

- ✓ Annually Renewable (compounded Cost)
- ✓ Lower Tax Thresholds
- ✓ Paid Earlier

The New Reality
(The Focus of Tax Planning)

Planning for Death becomes more about Basis and Income Tax Planning




Trap for the Unwary
(Its Temporary)

NEVER, EVER, forget that the TCJA Increased Transfer Tax Exemptions are Temporary!

- ✓ January 1, 2026
- ✓ Democrats are in Control



Trap for the Unwary
(Its Temporary)

Proposals for Federal Tax Increases on the Wealthy

- ✓ Annual Wealth Tax
- Reduction of Transfer Tax Exemptions
- ✓ Increase in Transfer Tax Rates
- ✓ Increase in Capital Gain Rates
- ✓ Increased Social Security Taxes
- ✓ Increase in Income Tax Rates

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Celebrity Examples

Joe Robie's Family

- Sold the Miami Dolphins for \$109M in 1994
- In 2009 sold for \$1.0B

Wrigley Family

- Sold the Chicago Cubs for \$20.5M n 1981
- Estimated Team Value today is \$1.8B



Trap for the Unwary
Accumulating Wealth

Service businesses are limited in their use of the section 199A 20% tax deduction, which decreases their market value

Example: Paul Allen's ownership in the Seattle Seahawks and Portland Trail Blazers

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Celebrity Examples

Estate of Michael Jackson

- Estate's Estimated Value = \$7.0 Million
- IRS's Initial Estimated Value = \$1.0 Billion

The future value of his Income Expectations from his Inheritable Right of Publicity

The Robin Williams Solution



Celebrity Examples


Estate of Prince

- Estate's Estimated Value = **\$200 million plus**

The future value of his Income Expectations from his Inheritable Right of Publicity

Top Tax Rates:

- Federal: 40%
- Minnesota: 16%



Prince's Retroactive Inheritable ROP
Right of Personality

Minnesota's legislature considered enacting a **retroactive ROP statute**, with the result that could add significant value to *Prince's* estate. The bill was called the Personal Rights in Names Can Endure" (or "PRINCE Act"). The bill never passed.

What would have been the Estate Tax result?

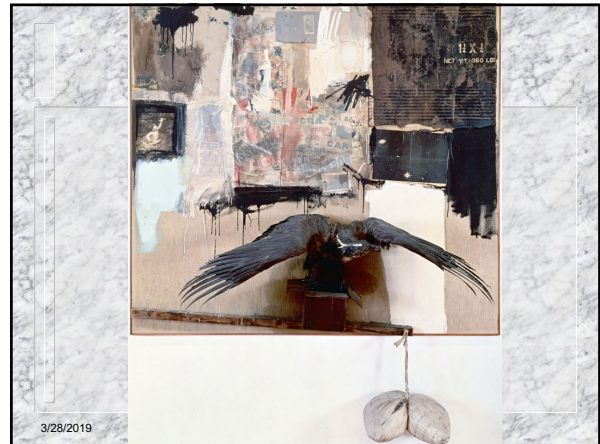
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Data & Demographics

(IRS Audits)

For the fiscal year ending September 30, 2012, the IRS reported that the effective audit rate for estates over \$10 million was

116%






\$65M “Fair Market Value”
\$29M in Estate Taxes
\$11.7M in Penalties

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PLR 9152005

“In the case of property that can be sold only in an illicit market, the fact that the market is illicit does not obviate the existence of that market for estate tax valuation purposes.”



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Tax Fact

It is anticipated that about **1,800 Estates** will pay an Estate Tax in 2018 & 2019

According to the IRS Data Book for Fiscal Year 2016:


Form	Returns Filed	Audits		Audit Rate
		Field	Letters	
1041	3,174,929	451	3,284	0.1%
709	238,324	1,843	-0-	0.8%
706*	3,631	1,365	-0-	37.6%

* Showing Gross Estate over \$10 million

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Prediction

TCJA will cause Increased Audits of Trust & Estate Income Taxes



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WHY DOMICILE MATTERS



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Celebrity Example

*“...the will of the bicoastal Joan [Rivers] unmistakably stated from the outset that she was a **resident of New York**, but then straightaway declared her **state of domicile** (“where I intend to reside indefinitely on a permanent basis”) to be in **California**”*

Charlie Douglas

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Why Domicile Matters

Joan Rivers died in 2014 with a Will that declared her domicile as California (where she lived in one bedroom of her daughter’s house), while she maintained a large penthouse in New York City. Her estate has been estimated to be worth up to \$150 million.

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Central Point


YOU CAN ONLY HAVE ONE STATE OF DOMICILE, BUT YOU MAY HAVE MULTIPLE RESIDENCES



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Data & Demographics (Determining a Domicile)

In 2009, the National Association of Homebuilders estimated that there were **6.9 million homes that qualify as **non-rental second homes****



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Why Domicile Matters

*Dr. John T. Dorrance (founder of Campbell’s Soup Company) died in 1930 with a \$115 million estate. The estate said that it was subject to the New Jersey inheritance tax (**\$12 million**), but Pennsylvania imposed a **\$17 million** inheritance tax, arguing that the deceased was a Pennsylvania resident. The US Supreme Court refused to get involved and the estate ultimately **paid both states** an inheritance tax.*

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Why Domicile Matters

- State and local income taxes
- State estate and/or inheritance taxes
- Unique issues with regard to estate administration and costs of administration
- Particular spousal benefits to a surviving spouse
- Major Liquidity Events
- The Right of Publicity rights of the deceased

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PLANNING OPPORTUNITY

State Income Taxes

Example:

Moving a Client out of an 8% Tax State before a \$10 million sale, Saves \$800,000.

Make Sure to Move the Residency the Tax Year BEFORE a Sale!

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State Income Taxation on Business Sales

Corrigan v. Testa

Ohio based LLC started business in 2000
LLC was sold in 2004 for \$27,563,977
Ohio assessed an income tax of \$674,924 on a percentage of the sale apportioned to Ohio (38.827%)

“Thus, if Mansfield Plumbing had made a bulk transfer of its business assets rather than having the business transferred through a sale of the L.L.C. ownership itself, then the gain from the sale would have been realized at the L.L.C. level, and the Ohio-apportioned share would have been taxed to Corrigan on a pass-through basis.”

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The Unexpected

“Just the Facts Please”

Matter of Blatt

*“In reviewing the factors of a change in domicile, historically, the move of items near and dear tend to demonstrate a person’s intention. As borne out by the evidence in this case, **Petitioner’s Dog** was his near and dear item which reflected his ultimate change in domicile to Dallas.”*

The Unexpected

“Just the Facts Please”

Ramos v Motamed

Pending a lawsuit, Michael Motamed declared himself a Florida resident with a Florida homestead.

The problem: his Gym Records from California show he worked out there **300 out of 365 days**

Sales Taxes on Inter-State Sales

South Dakota vs Wayfair, Inc.

(issued June 21, 2018)

“Quill is flawed on its own terms.... the physical presence rule of Quill is unsound and incorrect.”

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Memorable Quotes

“The federal government should not intrude on state tax policy. Although Congress has a constitutional responsibility to ensure the orderly function of interstate commerce, it is also obliged to respect the sovereignty of the state to determine their own sales and use tax policies.”

Democrat Jerrold Nadler, House Judiciary Committee Chair

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The Consequences of Wayfair

Result: Continuing Confusion & State Tax Aggression

Local Sales Tax Options & Tax Filing Minimal Associations with the State

State sales taxes on Services

Taxation of Non-Residents

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State Income Taxation of Trusts

Kimberley Rice Kaestner 1992 Family Trust

Trust created in New York

Sole Trustee is a New York resident

Beneficiary moves to North Carolina

No distributions to the NC Beneficiary

Beneficiary could not compel Distributions

North Carolina imposed an Income Tax on the Trust

North Carolina Trial Court: The tax violates the Due Process Clause and Commerce Clause

North Carolina Appellate Court and Supreme Court ruled in favor of the Taxpayer

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Valued Added Resource

Declaring your State of Tax Domicile Checklist at www.Scrogginlaw.com



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Valued Added Resources


To support your time of **residency** or **taxable travel** in another state consider these cell phone apps:

➤ <https://monaeo.com/>

➤ <https://www.taxday.com/>

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The Complexities of Co-Habitation



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Celebrity Examples
Cohabitation

Goldie Hawn & Kurt Russell have lived together since 1983

Oprah Winfrey & Stedman Graham since 1986

Spencer Tracy & Katharine Hepburn for 27 years



Demographic Trend
Cohabitation

In 2016, **18 Million** people were Cohabiting (a 29% increase from 2007)

From 2007-2016, the number of Cohabiting adults over age 50 increased by **75%**

Source: Pew Research Center

Trap for the Unwary
The Tax Cost of Co-Habitation

Is a Transfer of Assets under a Co-Habitation:

- **Compensation** for Services?
- A **Settlement** of Claims under Palimony?
- A **Gift** that uses the Lifetime Exemptions?
- **None of the Above?**

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The Tax Cost of Love

Blagaich

In the course of an 18 month relationship Lewis Burns (age 72) gave Diane Blagaich (age 54) \$743,819, a diamond ring and a \$70,000 Corvette.

When she broke up with him, he sued for recovery of the assets and filed a 1099-MISC with the IRS for \$743,819

The court awarded \$400,000 and he revised his 1099.

Tax Court ruled against Ms. Blagaich:

Despite repaying the \$400,000 there was no offset against the original 1099 because the payment was made three years later

The IRS was not bound by the local Court's determination

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Trap for the Unwary
Updating Documents after a Break-Up

Impact on the Estate Planning

- ✓ **No Automatic Termination** of Inheritance Rights under Wills
- **Continued Authority** under Medical Directives and Powers of Attorney

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DIVORCE & REMARRIAGE CONSEQUENCES



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Memorable Quotes

Marriage is often due to lack of judgment, divorce to lack of patience and remarriage to lack of memory

Celebrity Examples

The Complexities of Multiple Marriages

- Zsa Gabor* was married 9 times
- Elizabeth Taylor* was married 8 times
- Mickey Rooney* was married 8 times
- Lana Turner* was married 8 times
- Tony Curtis* was married 6 times
- Clark Gable* was married 5 times
- Boris Karloff* was married 5 times
- Henry Fonda* was married 5 times

Trap for the Unwary
Consequences of Remarriage

TCJA eliminates **Alimony Deductions & Income Taxation of Alimony Payments for Post-2018 Settlements**

PLANNING OPPORTUNITY
Funding a Buy-Out

Replacement for Alimony:

- **Marital Trusts**
- **By-Pass Trusts**
- **CRTs**

PLANNING OPPORTUNITY
Funding a Buy-Out

Qualified Contingencies and 664(f)

For purposes of this subsection, the term “qualified contingency” means any provision of a trust which provides that, upon the happening of a contingency, the payments described in paragraph (1)(A) or (2)(A) of subsection (d) (as the case may be) will terminate not later than such payments would otherwise terminate under the trust.

PLANNING OPPORTUNITY
CRT Contingencies

Normally, the existence of a Contingency on a trust bequest to a surviving spouse voids any estate or gift tax marital deduction. However, Code section 2056(b)(8) provides an exception for CRTs “If the surviving spouse of the decedent is the only beneficiary of a qualified charitable remainder trust ...” Similar language is contained in Code section 2523(g)

A CRT for the spouse (or soon-to-be-former-spouse) can contain a provision that terminates the CRT upon the remarriage of the spouse, a contest of the Will or upon other contingencies

The contingency is not taken into account in calculating the value of the charitable remainder interest and the resulting charitable deduction


PLANNING OPPORTUNITY
Divorce and Transfer Tax Exemptions

View the Less Wealthy Spouse's Transfer Tax Exemption as a Tradable Asset in Divorce Negotiations

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Data & Demographics
(Dad's New Romance)


61% of widowers are engaged in a new romantic relationship within 25 months of their wife's death, versus **19% of widows**. Widowers over age 65 are **10 times** more likely to marry than widows.



Celebrity Examples

- **Anna Nicole Smith** (age 24) married **J. Howard Marshall** (age 87) – a 63 year difference.
- In 2012 **Dick Van Dyke** (age 86) married Arlene Silver (age 40) – a 46 year difference.
- In 1963 Supreme Court Justice **William O. Douglas** (then age 65) married 23 year old Joan Martin, but they divorced in 1966. In 1966 he married 22 year old Cathleen Douglas Stone and they remained married until his death in 1980.
- In 1957 **Jerry Lee Lewis** was 22 years of age when he married his 13 year old first cousin, Myra Gale Brown. They divorced in 1970.

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Understanding the FIRST CASSEROLE RULE

Consequences

Dad's marriage to a woman 20 years his junior has created heartburn for a lot of children who have been anticipating a larger and quicker inheritance

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The New Reality
(Fear of Second Wives)

Wives are Increasingly concerned about Family Assets passing to their Widower/Husband's New Wife

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Central Point

HEIRS OF REMARRIED WIDOW/WIDOWERS HAVE MORE TO FEAR FROM THE REMARRIAGE THAN FROM TRANSFER TAXES



Consequences
(New Spouses)


Spousal Elective Share & Years Support (Georgia)

- Elections against the **Homestead**
- **Intestate Claims & Pre-Marriage Will**
 - **ERISA** Retirement Plans
- Elections against **Personal Property**
- Ownership of **Personal Property**
- **Decision Making Authority**
- **Filial Support Statutes**
- The Actions of **In-Laws**




Consequences
(New Spouses)

In 49 states a Spouse has a right to an “Elective Share**” and Other Rights against the Estate – EVEN if the Spouse is **Disinherited** by a Will!**



Consequences
(New Spouses)

Georgia Statute 53-4-48(c): “*If the will was made prior the [the marriage of the testator],and does not contain a provision in contemplation of such an event, the subsequent spouse shall receive the share of the estate he or she would have received if the testator had died intestate.”*



The New Reality
(Second & Third Marriages)

Even **Moderately Wealthy Clients** Need to Consider:


- ✓ Pre-Nuptial Agreements
- ✓ Post-Nuptial Waivers (ERISA Plans)
- ✓ Updated Estate Planning Documents
- ✓ Documented Ownership of Personal Property
- ✓ The Use of Conduit Trusts for Spouses

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Consequences
(STDs and the Elderly)

South Florida saw a 60% rise in **sexually transmitted infections** among people 55 and older from 2005 to 2009

As a result of this National Trend among seniors, Medicare is considering providing coverage for STD screenings for seniors



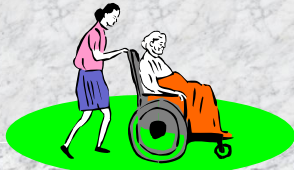
Value Added Materials

“Tax, Estate and Practical Issues in Divorce and Remarriage”
(98 pages)

at www.scrogginlaw.com

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INCAPACITY PLANNING



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Memorable Quotes


“Life is pleasant. Death is peaceful. It’s the Transition that’s Troublesome.”

Jimi Hendrix

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Central Point


EVERY ADULT OF EVERY AGE SHOULD EXECUTE A MEDICAL DIRECTIVE, AND A GENERAL POWER OF ATTORNEY



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Data & Demographics
(Prepared for Incapacity)


A Lawyers.com study reported that in 2009 only **29%** of Americans had either a Medical Directive or a General Power of Attorney



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Data & Demographics
(Looming Incapacity)


Year	Over age 65
2010	40,200,000
2020	54,600,000
2030	71,500,000
2040	80,000,000
2050	86,700,000



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Celebrity Example


Glenn Campbell announced in 2011 that he had been diagnosed with Alzheimer's. In 2015, two of his eight children filed suit in Nashville alleging that his fourth wife (married since 1982) was refusing to let them visit their father or let them participate in his health care.



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Celebrity Example


It has been reported that Travis Campbell has said: "We have turned over information to authorities, the FBI and district attorney in two different states to prove that she's mismanaging his finances. We need to find out some things about what she's doing with the cash."



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Celebrity Example

Brooke Astor's only child, Anthony D. Marshall (a former Marine, CIA officer and Ambassador), was convicted in 2009 of theft from his mother's \$185 million estate, conspiracy with regard to her new Will (to eliminate a \$60 million charitable bequest) and elder abuse. One of the key witnesses against Anthony Marshall was his own son, Phillip Marshall. Mr. Marshall was sentenced to one to three years in prison.



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The New Reality



(Plan for Incapacity)

Encourage Clients with Adult Children and Parents to have them execute **Medical Directives & Durable General Powers of Attorney**

DRAFTING DOCUMENTS

(General Power of Attorney)

- Detailed Authority
- Name the **Guardian**
- Authority to make **Gifts & Advance Bequests**
- Estate **Planning**
- Broad **Tax** Authority
- Safe Deposit **Boxes**
- Residence**
- Witness** and a **Notary**



The Unexpected

Planning for Guardianship


A January 26, 2015 article in the New York Times noted that it has become "routine" for Nursing Homes to attempt to gain Guardianship over Residents and to use that power to **pay bills to the nursing home**

Solution: Name Guardians in General Powers of Attorney and Medical Directives

Control of the Family Business

The Lesson from Sumner Redstone

View Medical Directives and General Powers of Attorney from a **Dispositional Perspective**



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Celebrity Example

Sumner Redstone's granddaughter said that her aunt Shari Redstone and her three adult children had ***"succeeded in reversing decades of my grandfather's careful estate planning and are poised to seize control of Viacom and CBS."***

New York Times, June 1, 2016

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The Law
(Testamentary Capacity)


"[a] man may believe himself to be the supreme ruler of the universe and nevertheless make a perfectly sensible disposition of his property, and the courts will sustain it when it appears that his mania did not dictate its provisions."

Fraser v. Jennison, 3 N.W. 882, 900 (Mich. 1879)

"gross eccentricity, slovenliness in dress, peculiarities of speech and manner or ill health are not facts sufficient to disqualify a person from making a will" In re' Estate of Frazier, 131 Neb. 61, 73, 267 N.W. 181, 187 (1936)

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LEGACY PLANNING



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Memorable Quotes



"The parent who leaves his son enormous wealth generally deadens the talents and energies of the son and tempts him to lead a less useful and less worthy life than he otherwise would."

Andrew Carnegie

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Central Point

MOST CLIENTS ARE MORE INTERESTED IN THE LEGACY THEY LEAVE BEHIND THAN IN ADDRESSING THEIR PERSONAL MORTALITY AND THE TAXES CREATED BY DEATH



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Memorable Quotes

“[The perfect inheritance is] enough money so that they feel they could do **anything**, but not so much that they could do **nothing**”

Warren Buffet

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Celebrity Examples

Living celebrities who have indicated that their children will receive little to nothing as an inheritance:

- Bill Gates
- Jackie Chan
- Sting
- Simon Cowell
- Warren Buffett
- George Lucas

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The New Reality
(The Fundamental Purpose of Estate Planning)



To Protect and Preserve Your FAMILY

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The New Reality
(The Fundamental Purpose of Estate Planning)

The two highest goals parents have for their children are finding a **satisfying career** and **supporting themselves** and their families. Financial success is a low priority.



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CHARITABLE PLANNING



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Planning Fact
(Charitable Giving)

A 2010 Bank of America Study of High Net Worth Philanthropy estimated that between **\$6.6 trillion** and **\$27.4 trillion** in charitable bequests would be made from 1998 to 2052

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Celebrity Examples

In June 2006, Warren Buffett announced that he was giving away his **\$40 billion** fortune to charity. Compare his gift to others:


Philanthropist	Gift	In 2006 Dollars
Andrew Carnegie	\$350 million	\$7.2 billion
John Rockefeller	\$530 million	\$7.1 billion
John Rockefeller, Jr.	\$475 million	\$5.5 billion

Source: Fortune, July 17, 2006

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The New Reality Charitable Control

Clients Increasingly Want Charitable Contributions to be Held in Entities Controlled by Family



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The New Reality IRS Scrutiny

Increased **IRS Scrutiny** of Charitable Income Tax Deductions

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Permanent Extender Bill IRA Direct Charitable Transfers - §408(d)(8)

Limits on the Rule

“is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70½.” ((§408(d)(8)(B)(ii).

Does not apply to Contributions to Donor Advised Funds & Supporting Organizations

Does not apply to Employer-Sponsored Plans

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Permanent Extender Bill IRA Direct Charitable Transfers - §408(d)(8)

The exclusion applies only if a charitable contribution deduction for the **entire distribution** would otherwise be allowable. *“for example, if the deductible amount is reduced because of a benefit received in exchange, or if a deduction is not allowable because the donor did not obtain sufficient substantiation, the exclusion is not available with respect to any part of the IRA distribution.”*

JCT Report, p. 19.

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PLANNING OPPORTUNITY Flexible Timing for Charitable Deductions

Two Statutory possibilities to Deduct a Trust or Estate Charitable Deduction in the current Year, but make the Payment Later

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PLANNING OPPORTUNITY
Charitable Deduction for Trusts – Deferred Payments

§642(c)(1): “If a charitable contribution is paid after the close of such taxable year and on or before the last day of the year following the close of such taxable year, then the trustee or administrator may elect to treat such contribution as paid during such taxable year. The election shall be made at such time and in such manner as the Secretary prescribes by regulations.”

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PLANNING OPPORTUNITY
Charitable Deduction for Trusts - Deferred Payments

§642(c)(2):“... there shall also be allowed as a deduction in computing its taxable income any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c)...”

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Charitable Income Tax Deduction

Harvey C. Hubbell Trust

Charities were to receive the Residuary Estate of Harvey C. Hubbell once all lifetime Beneficiaries were Deceased; Charitable payments were made during the Life Term.

“...the trust is not entitled to deduct the amount contributed because none of the contributions was made “pursuant to the terms of the governing instrument”, as required by section 642(c)(1).”

3/28/2019

Charitable Income Tax Deduction

An amount will not be deemed “permanently set aside” for a charitable purpose under section 642(c)(2) “*unless under the terms of the governing instrument and the circumstances of the particular case the possibility that the amount set aside, or to be used, will not be devoted to such purpose or use is so remote as to be negligible.*”

Treas. Regs. Sec. 1.642(c)-2(d)

3/28/2019

Charitable Income Tax Deduction

Estate of Belmont

Belmont Residuary Estate passed to Charity
IRD Assets of \$243,463 paid to the Estate
642(c) Deduction (after expenses): \$219,580
Brother contested Ownership of a Condo

“Although David was not contesting decedent’s will, his active litigation of his property rights to the Santa Monica condo created a real possibility that the funds set aside for the foundation would be depleted during the pendency of the lawsuit””

3/28/2019

Charitable Income Tax Deduction

Estate of Belmont

“The parties cite no previous Tax Court opinions that directly address the issue. Although this Court has not had occasion to consider the “so remote as to be negligible” standard in the context of section 642(c)(2), we have examined identical language in connection with the regulations prescribed under section 170.””

3/28/2019

Charitable Income Tax Deduction

Estate of John D. DiMarco

- John DiMarco died and passed his Residuary Estate to two churches he regularly attended
- 8 Cousins contested the Will
- Settlement: 1/3 to Cousins, 2/3 to Churches
- IRS: Denial of \$314,942 deduction on 1041


*"We find the negotiations here were tantamount to a legal controversy to the effect that the funds did not meet the **permanently set aside standard under Estate of Belmont**"*

3/28/2019

TRAP FOR THE UNWARY

Conflicts & Charitable Deductions

Effectively, these rulings put more pressure on Fiduciaries to settle conflicts before Charitable Income Tax Deductions are taken



3/28/2019

PLANNING OPPORTUNITY

Charitable Deduction for Trusts

Revenue Ruling 2004-5

"A charitable deduction under § 642(c) for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income is not prohibited even though the trust's governing instrument does not authorize the trustee to make charitable contributions."

3/28/2019

PLANNING OPPORTUNITY

Charitable Deductions vs. Marketing Expenses

Charitable Deductions by individuals and businesses are subject to numerous Limitations and Deduction requirements

- Business owners should consider having their business make Payments as **Marketing and Advertising**
- The central issue in distinguishing the two is *a reasonable expectation of a financial return commensurate with the amount of the advertising payment*

3/28/2019

PLANNING OPPORTUNITY

Advancements

Provide for the Advancement of Charitable Bequests for Terminally Ill Clients

*Example: Assuming a marginal federal income tax rate of 40%, replacing a \$100,000 charitable bequest with a 2017 gift could save up to **\$40,000** in federal income taxes*

3/28/2019

PLANNING OPPORTUNITY

Charitable Bequests

Consider having provisions in the Dispositive Documents that provide that Charitable Bequests are NOT made if the Estate is not Taxable

Instead, the Expectation is that the Heirs will make the Charitable Contribution and take the Income Tax Deduction

3/28/2019


MEMORABLE QUOTES

A tax lawyer is a person who is good with numbers but does not have enough personality to be an accountant

James D. Gordon, III

3/28/2019

RULING FROM THE GRAVE



3/28/2019

Celebrity Example

Harry Houdini's Will provided that a séance should be held on each anniversary after his death, with his surviving spouse having a secret 10 word code that Houdini hoped to use to prove that afterlife exists. Apparently the experiment failed.


3/28/2019

Celebrity Example

Leona Helmsley's Will her July 15, 2005 Will which created a 5% Charitable Unitrust for two of her grandsons, with the requirement that they must visit their Father's Mausoleum and sign a Record Book at least once per Year

3/28/2019

DYING INSOLVENT




3/28/2019

Dying Insolvent


“Jefferson lived perpetually beyond his means, spending large amounts of money on building projects, furnishings, wine, etc.

Monticello website




3/28/2019

Data & Demographics
(Unprepared for Retirement)



The Center for Retirement Research at Boston College estimates **that more than half of all American households** will not have enough retirement income to **maintain the living standards** they were accustomed to before retirement, even if the members of the household work until 65, two years longer than the average retirement age today

Data & Demographics
(Reduced Inheritance)



In “*Counting on an Inheritance? Count Again,*” it was noted that rather than inheriting significant sums, Baby Boomers may actually have to go out of pocket to support their parents who are living longer than expected.

Source: Wall Street Journal, June 11, 2012

The New Reality
(Filial Support Laws)

According to the **Statute of Frauds**, you cannot generally be held liable for the debts of another without agreeing to such liability.


24 states have adopted **Filial Support statutes** in which family members can be held legally liable for the support obligations of family members

In some states, failure to provide the necessary support to a spouse can be a **criminal Felony or Misdemeanor**



A THOUGHT TO REMEMBER

According to Benjamin Franklin, only **death** and **taxes** are inevitable.
So live your life **accordingly**.



3/28/2019

PARTIAL CHECKLIST OF ACTIONS AS A RESULT OF DIVORCE

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There are a multitude of practical issues which surround any divorce. This list is intended to provide a least a partial list of some of the issues which clients should address before and after their divorce is final. The list is not intended to cover every issue, but can help clients understand that the divorce involves far more than just the signing of a divorce decree.

Change Beneficiary Designations on:

- ERISA Qualified Plans (*ONLY after the divorce is finalized, or with signed spousal approval before divorce*)
- IRAs
- Deferred Compensation Plans
- Stock Option Plans
- Life Insurance Policies
- Accounts Paid to the Order of or Paid at your Death to the Ex-Spouse

Complete Any Title Transfers on Assets (*preferably before the divorce is finalized*), Such as:

- Residence Ownership
- Other Real Estate Ownership
- Automobiles
- Stock or Equity Rights in a Business or Investment (*make sure to get the original certificates*)
- Brokerage Accounts
- Life Insurance (e.g., ex-spouse owns policy)

Terminate Joint Liabilities, for example:

- Credit Cards
- Lines of Credit
- Personal Guarantees of Ex-Spouse's Liabilities (e.g., business interest)
- Mortgages (may not be permitted by the terms)
- Utilities

Terminate Joint Accounts (*and change direct deposits to these accounts*), for example:

- Banking (i.e., checking, savings, etc.)
- Brokerage
- Safety Deposit Boxes
- Terminate Automatic Withdrawals (*e.g. to ex-spouse's account or benefit*)

Remove Permitted Access or Signing Authority by an Ex-Spouse, for example

- Personal Banking (*i.e., checking, savings, etc.*)
- Business Payroll Service
- Business Checking Accounts
- Personal Brokerage Accounts

File a Change of Address and/or Name Change for (*Notice to Post Office and Notice to Each Party*), for example:

- Tax Filings (file IRS Form 8822 for address changes)
- Employer Payroll and Benefit Plans
- Creditor, Credit Card, Bank, Brokerage and other Financial Accounts
- Insurance Policies, particularly auto, property, casualty and umbrella
- Medical Coverage
- Driver's License

- Voter Registration
- Passport
- Military and Veterans Benefits
- Social Security Administration (go to www.ssa.gov for the form)
-

_____ **Redo All Estate Planning Documents** *(to the extent an ex-spouse is named)*

- Will *(especially if revoked by divorce under state law)*
- Revocable Trust(s)
- Medical Directive or Healthcare Power of Attorney
- General Power of Attorney
- Decide whether to Retain any Irrevocable Insurance Trusts which Name Spouse as Beneficiary
- If your Relatives have named your Ex-Spouse in their Documents, Alert them to the Need to make Changes

_____ **Enter a Modification for any Employee Benefit Cafeteria Plan**

_____ **Make Changes in Personal or Employer-Based Insurance Coverage That Names Ex-Spouse**
If permitted by the Divorce Decree (perhaps obtain a refund)

- Life Insurance
- Health Insurance
- Long Term Care Insurance
- Disability Insurance
- Property & Casualty (e.g., auto, home, umbrella)

_____ **Change Access Codes and Passwords**, for example:

- Web Based Access (e.g., bank, brokerage)
- Credit, Debit and ATM Cards
- Frequent Flyer Accounts
- Email Accounts
- Personal Safe
- Security Codes for Properties

_____ **Change the Locks to and Change the Location of any Hidden Keys** *(do not just take back keys)*

- Personal Home
- Studio Apartments
- Vacation Home
- Office
- Personal Safe
- Mailbox

_____ **Take Back Keys and Change the Location of any Hidden Keys**

- Rental Properties
- Vehicles

_____ **Obtain Signature of Ex-Spouse**

- Resigning an Officer or Director of any Business
- Signing over any Life Insurance, Long Term Care, Disability or Other Insurance Benefit
- To Permit any Continued Military or VA Benefits

- Relinquishment of any Rights to a Family Burial Plot

___ **Notify the School of any Minor Children of any Changes in Custody**

___ **Create Any Required Funding Arrangements Under the Divorce Decree** (e.g., new trust)

Personal Property Ownership & Disposition List

(married couple)

Definitions:

- "Asset" shall mean each particular tangible personal property listed below.
- "Heir" shall mean the person named below who is intended to receive the Asset upon the death of the Owner.
- "Owner" shall mean the person noted below who owns the particular listed Asset.
- "Non-Owner" shall mean the person who signed this instrument, but is not listed at the owner of the particular listed Asset.
- "Undersigned" shall mean each of the persons signing this instrument.

Agreement. The Undersigned(s) agree as follows:

- 1) That the ownership of their respective Assets is as shown below.
- 2) That except as disclosed in this statement:
 - a) the ownership rests exclusively with the named Owner, and
 - b) the Non-Owner does not have any collateral security or any other rights in the Asset.
- 3) That the Non-Owner will not challenge the ownership of any Asset, unless the Non-Owner has received a specific, signed statement from the Owner that the particular Asset has been transferred to the Non-Owner.
- 4) It is the desire of the Owner that any Executor or Personal Representative of the Owner's estate, in the exercise of such discretion as the fiduciary may have, convey the Asset to the Heir.

The Undersigned acknowledge that this instrument does not constitute a Last Will and Testament or similar dispositive document and may not legally convey the Asset under applicable state law. Consult with an estate planning attorney before using this instrument.

Detail Description of Asset *(add photo if possible)*

Owner

Heir

Effective this ___ day of _____, 201___ by the following Undersigned:

Name: _____

Name: _____

This instrument was signed before the Notary Public the date first above written.

Notary Public

(Notary Seal)

Declaring your State of Tax Domicile

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“You may have multiple Residences, but you can have only one State of Domicile.”

The Significance of Domicile. The state of your domicile can impact you and your family in a multitude of ways, including (but not limited to):

- State and local income taxes
- Differences in sales taxes
- State estate and/or inheritance taxes
- Unique issues with regard to estate administration and costs of administration
- Particular spousal benefits to a surviving spouse (e.g., a right of a second or third spouse to take a share of your estate even if they were disinherited in your Will)¹
- Increased or decreased costs of Insurance (e.g., hurricane coverage in Florida)
- Right of a Spouse to make Medical and Property decisions for their incapacitated Spouse
- Right to serve as the Estate Administrator, unless the Will provides otherwise
- The inheritable Right of Personality benefits accruing to heirs (mainly for celebrities)

Dr. John T. Dorrance (founder of Campbell's Soup Company) died in 1930 with a \$115 million estate. The estate said that it was subject to a New Jersey inheritance tax of \$12 million, but Pennsylvania imposed a \$17 million inheritance tax, arguing that the deceased was a Pennsylvania resident. The US Supreme Court refused to get involved and the estate ultimately paid both states an inheritance tax.

State of Domicile. The question of whether or not you have changed your residency is “**fact-driven**.” There are no absolute assurances of the state tax treatment. It is important to remember that the law understands that you can have multiple personal residences, but you can have only one state of domicile – and the state laws vary widely on whether a change of domicile has occurred.

A number of states, such as New York, North Carolina, Connecticut and New Jersey² can be very aggressive in pursuing tax claims against former residents.

Beware: Even if you are no longer a local resident for in your former state of residence for income tax purposes, you may still owe **state income taxes on state-based revenue sources**.

Starting Point: Review with a qualified advisor the laws of your soon to be former tax domicile state and your new state of domicile. Understand the legal requirements and facts necessary to become a non-resident of your former domicile state and a tax resident of your new state.

Facts Supporting Domicile. Here are some of the facts, you can create are (and the more facts on your side, the better your case):

¹ For example, Florida’s statutes provide for strong rights and beneficial interests to a surviving spouse that are not found in many other states. Particularly in second and third marriages, at your death these Florida laws can pass assets in ways that you did not intend. Consult with a Florida attorney.

² The loss of a former taxable resident can matter to the former state. For example, in 2016 New Jersey lost its wealthiest resident when a hedge-fund billionaire declared himself a resident of Florida. He also moved the hedge fund's official headquarters to Florida, resulting in an estimated annual revenue loss of hundreds of millions of dollars.

- _____ Be outside of your former state at least 183 FULL days in a calendar year (i.e., over half the year)³
- Review the laws governing residency in your soon-to-be former state of domicile before making your move to make sure you are in compliance with its rules.
 - Keep a calendar and try and attach one receipt per day showing that you were outside the state for that day as evidence of being outside of the state for 183 days.
 - You do not have to be in your new state for 183 days - just outside the former state for 183 days (i.e., vacations and visiting the grandchildren in other states does not work against you).
- _____ To support your time of residency or taxable travel in another state consider using these cell phone applications: <https://monaao.com/> and/or <https://www.taxday.com/>
- _____ Buy (preferably) or rent a local residence (and furnish it with furniture – empty residences don’t work well); refurbish the home as a place you would live in.
- _____ Declare a homestead exemption in your new state & terminate⁴ your former homestead exemption.
- _____ If possible, sell or transfer any real estate in your former state to family or other entities (e.g., an LLP or LLC). This is especially true of your former residence.
- _____ If permitted by state law in your new state (e.g., Florida), go to the local Court and make a “Declaration Domicile” or similar statement in the Court records of the county of your new residency.
- _____ If possible, have no salary or other earned income in your former state.
- _____ Change driver’s license to your new state and surrender your old license.
- _____ Change the address on your passport to your new state.
- _____ Change the address on your retirement plans, Social Security and Medicare to your new state.
- _____ Change all bank accounts to your new state and do not retain any bank accounts in the former state.
- _____ Move your only safe deposit box to your new state.
- _____ Change vehicle registration(s) and insurance to your new state.
- _____ Obtain a library card in your new state.
- _____ Change gym⁵, social clubs and service clubs to your new state (e.g., Kiwanis, golf club).

³ *Beware*: being outside of New York for more than half of tax year is not evidence of your non-residency status. See: NY Tax Law §605(b)(1)(A). Some other states have similar rules.

⁴ For example, according to Florida Statute 196.031(5), a Florida resident is not entitled to a Florida homestead exemption if they are receiving an ad valorem tax exemption or credit in another state where the other state requires permanent residency of the property owner. Florida courts have ruled that a “family unit” cannot claim homestead exemptions in multiple states even if the properties are owned solely by each spouse.

⁵ *Beware*: Pending a lawsuit, Michael Motamed declared himself a Florida resident with a Florida homestead. The problem: his California gym records from California show he worked out there 300 out of 365 days. See: *Ramos v Motamed*, 245 So.3d 735 (2018).

- _____ Serve on local Charitable Boards; shift localized charitable deductions to the new state.
- _____ Change voter registration to your new state and terminate your former voter registration.
- _____ Sign new wills, trusts, medical directives and powers of attorney under your new state's laws.
- _____ Engage a local doctor, dentist and/or chiropractor; have medical records moved to your local doctor.
- _____ Move your religious affiliation and membership to a local group in your new state; Make local contributions.
- _____ Have your federal tax returns go to your new state's address – never have them go to your former address or to an address in your former state of domicile (e.g., using your attorney's address in the old state)⁶
- _____ Have credit cards, brokerage statements and other financial related mail go to your new state address.
- _____ Have any minor children attend schools in your new state and have your spouse move to your new state of domicile.
- _____ If you have pets, make sure the pets are located in your new state with a local vet treating the animals; have vaccinations and shots done by the local vet.⁷
- _____ If you own an interest in any S corporations, Partnerships or LLCs that allocates you income that is taxable in the former state, determine if the former state's tax laws permit the entity to pay local based taxes for all non-residents and eliminate the requirement that the owners file a local non-resident tax return.⁸
- _____ Focus your social, economic and other activities in the new state of residency (e.g. join the local Rotary Club).
- _____ If possible, move your business and investment activities to the new state.⁹

⁶ State and federal tax authorities often share taxpayer information, such as taxpayer addresses.

⁷ See: Matter of Blatt (Determination DTA NO. 826504) where the location of the taxpayer's beloved dog was a principal reason (cited by the court) that the domicile had been changed from New York City to Dallas.

⁸ For example, see Georgia statute §48-7-129(b)(1) which reads (in part): "*As an alternative to the withholding requirement imposed by subsection (a) of this Code section, the commissioner may allow the filing of composite returns by partnerships, Subchapter "S" corporations, or limited liability companies on behalf of their nonresident members and may provide for the requirements of filing composite returns by regulation. For purposes of this subsection, the term "composite return" means a return filed by a partnership, Subchapter "S" corporation, or limited liability company on behalf of all of its nonresident members which reports and remits the Georgia income tax of the nonresident members.*"

⁹ Even if you are a non-resident of another state, local businesses and investments can create taxable income in that state. States are increasing targeting non-residents with local taxes. For example, in 2014, New York state noted that it collected \$6.2 billion in taxes from non-residents.

Personal Property Ownership & Disposition List

(single)

Definitions:

"Asset" shall mean each particular tangible personal property listed below.
 "Heir" shall mean the person named below who is intended to receive the Asset upon the death of the Owner.
 "Undersigned" shall mean each of the persons signing this instrument.

Agreement. The Undersigned represents as follows:

- 1) That except as disclosed in this statement:
 - a) the ownership of the Assets listed below rests exclusively with the named Undersigned, and
 - b) no other person has any collateral security or any other rights in the Asset.
- 2) It is the desire of the Undersigned that any Executor or Personal Representative of the Undersigned's estate, in the exercise of such discretion as the fiduciary may have, convey the Asset to the Heir.

The Undersigned acknowledge that this instrument does not constitute a Last Will and Testament or similar dispositive document and may not legally convey the Asset under applicable state law. Consult with an estate planning attorney before using this instrument.

Detail Description of Asset *(add photo if possible)*

Heir

Effective this ___ day of _____, 201___ by the following Undersigned:

 Name: _____

This instrument was signed before the Notary Public the date first above written.

 Notary Public (Notary Seal)

Personal Property Disposition Checklist

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Commentary: Personal property dispositions tend to be the greatest source of conflict when family members pass away. This checklist is intended to minimize those conflicts and other problems.

_____ Prepare a detailed document that confirms which assets are yours and which are your spouse's assets

_____ Prepare a detailed form that specifically disposes of your personal property

- If the designated recipient predeceases you, have you designated an alternative recipient?
- If you are passing assets to your spouse, have you considered the ultimate passage of those assets if the spouse dies proximate to your passing or remarries after your passing?

_____ Have you made special designations of any of the following unique assets?

- Firearms to persons legally entitled to possess them
- Digital Assets to appropriate family members (e.g., your Facebook account)
- Reproductive assets that are held in storage
- "Publicity Rights" (e.g., the right to use your image, persona, likeness, etc.)
- Frequent Flyer and other Travel Perks
- Wine or liquor collections
- Pets

_____ Have you made appropriate provisions on how any of your collections should be disposed of:

- Proper directions for storage and maintenance?
- Insurance information?
- Notes relevant to sale (i.e. other top collector if limited market)?

_____ Have you provided information to your proposed Personal Representative:

- To change the locks on your house as soon as possible after you pass away?
- On the insurance coverage of your valuable personal property?
- Copies of any agreement on loans to or from you of personal property (e.g., to museums or family members)?
- How you want your personal property that is not specifically passed to heirs to be disposed of?
- Whether there is a potential for conflict (e.g., sibling rivalry or in law issues) and how to minimize it?

_____ Have you directed in your Dispositive Documents:

- How any state and/or federal death taxes attributable to your personal property are to be paid?
- Who covers the costs of shipment, insurance, taxes, etc. on personal property you bequeath?

- That valuable personal property is appraised (at the cost of the estate) to establish its new tax basis?
- How the personal property disposition affects any formula gift?
- Whether the disposition includes any insurance proceeds from the loss or damage of such property?

_____ If you have a safe deposit box or home safe, have you:

- Designated another person who can open the safe/box when you are deceased? Have you given them all the information they need to open the safe/box (e.g., keys and codes)?
- Provided a statement about whether the assets of the safe/box belong to you or the other person having signature authority over the safe/box?
- Restricted access by unauthorized individuals (e.g., disinherited heir with access to home safe that contains Original Will).

_____ If you have used a Revocable “Living” Trust in your planning, have you created a detailed Bill of Sale that passes your personal property to the trust?

Recommendations: go to www.scrogginlaw.com and

- (1) Read the article on Personal Property dispositions
- (2) Use the Personal Property Disposition forms found on the Website (State Law Permitting).