Estate Planning for Financial Planners: Beyond the Basics

FPA Utah

November 7, 2019

1

EP: Beyond the Basics – The Next Layer

Strategy: Limited Liability Companies (LLC's),

Strategy: Family Limited Partnerships (FLPs),

Strategy: Special Needs Trusts

Strategy: Stand-alone Retirement Trust (SRT).

2

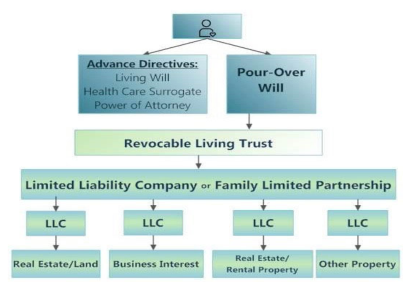
Layers of Strategies

Strategy : Using LLCs in an Estate Plan

- A limited liability company ("LLC") specifically allows for the corporate veil and efficient management of assets, and operations.
  - Potential tax benefits of running a business.

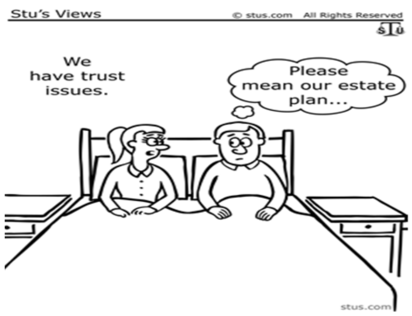
3

Revocable Trust w/ Layered LLC



4

Trusts?



5

Layers of Strategies

Strategy : Using LLCs in an Estate Plan

- A series LLC is a unique form of limited liability company ("LLC") in which it specifically allows for unlimited segregation of membership interests, assets, and operations into independent series.
- States that allow: Delaware, Illinois, Iowa, Nevada, Oklahoma, Tennessee, Texas, **Utah** and Puerto Rico.

6

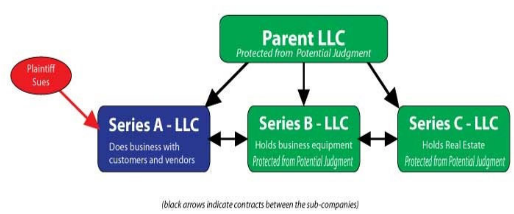
Layers of Strategies

Strategy : Series LLC and the Corporate Veil

7

Layers of Strategies

Strategy : Series LLC and the Corporate Veil



8

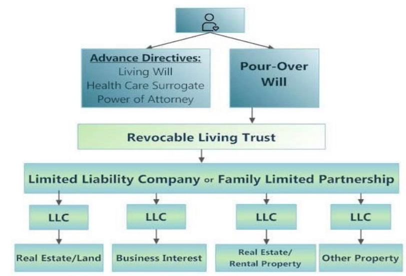
Layers of Strategies

Strategy : Family Limited Partnerships

- **family limited partnership** (**FLP**) is a holding company owned by two or more **family** members, created to retain a **family's** business interests, real estate, publicly traded and privately held securities, or other assets contributed by its members.

9

Revocable Trust w/ Layered FLP



10

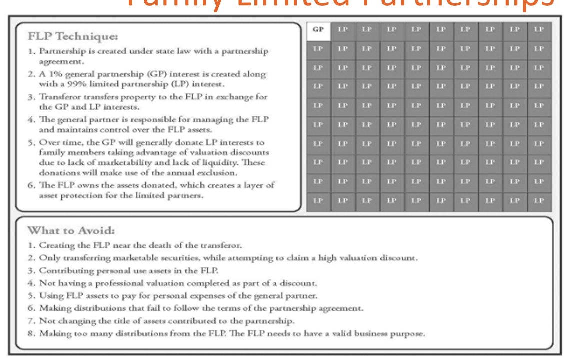
Family Limited Partnerships (FLP)

- Partnership created to transfer assets to the younger generation
- There are two interests: general and limited
- 1% general partner – transferor
- 99% limited partner – gift these to the child (make use of annual exclusion)
- Takes advantage of business discounts
- Used when transferor is intent on gifting the assets while maintaining control of the entity

11

11

Family Limited Partnerships



12

12

Question 1

In a FLP, there may be special valuation discounts available to enable wealth to pass to younger generations at a significantly lower tax cost than would otherwise be possible. One of these is the "lack of marketability" discount. What is the other?

a. The "limited partner" discount.
b. The "succession of generations" discount.
c. The "minority interest" discount.
d. The "property right" discount.

13

Question 1

– The correct answer is c.

- The other discount is called the minority interest discount.

14

Question 2

- A FLP offers all of the following advantages except:
  a. Significant discounts in valuing transfers of partnership interests.
  b. A convenient way to gift assets that are generally difficult to break into easily giftable pieces.
  c. A method of keeping appreciation of the FLP assets taxable to the older generation rather than heirs.
  d. A means of giving away property while still maintaining control.

15

Question 2

– The correct answer is c.

- A FLP provides just the opposite - a method of shifting future appreciation in the value of assets to the next generation, who would likely be in a lower tax bracket.

16

Question 3

- Which of the following entities does not have the benefit of pass-through taxation?
  a. FLP.
  b. LLC.
  c. C corporation.
  d. S corporation.

17

Question 3

  – The correct answer is c.
- A C corporation is a separate taxable entity.

18

Question 4

- In a typical family limited partnership:
  a. The owners of the closely held business immediately upon the creation transfer general partnership interests to their children or grandchildren.
  b. A discount is allowed on the gifts only if the children's interest as a group will be less than 50%.
  c. The children or grandchildren receive limited partnership interests.
  d. The family limited partnership should be funded with assets that are not expected to appreciate faster than the 7520 rate.

19

Question 4

- The correct answer is c.
- The parents/grandparents retain general partnership interests while transferring limited partnership interests to children/grandchildren. A discount for minority interest/marketability can be used in valuation purposes. FLP's are particularly useful with assets expected to appreciate since the post-gift appreciation will be removed from the estate, and any appreciation on interests not gifted will generally receive valuation discounts.

20

Layers of Strategies

Strategy : Special Needs Trusts / Planning

- **Medicare** is a federally funded health insurance program primarily designed for individuals over the age of 65.
- **Medicaid** is also a health insurance program sponsored by the federal government and administered by the states, but it is primarily intended to benefit certain low-income individuals and families.
  - ➢ Long-term care is one of the primary benefits of Medicaid.
  - ➢ Asset & income tests
  - ➢ Look back period

21

Question 5

- Which of the following statements is correct concerning Medicaid?
  - a. Medicaid is the government's medical insurance program for those age 65 and older.
  - b. Medicaid is the government's medical and assisted living program for the poor.
  - c. Medicaid only pays for care in approved, skilled nursing homes after a hospital stay.
  - d. Medicaid coverage is limited to 100 days per episode of illness.

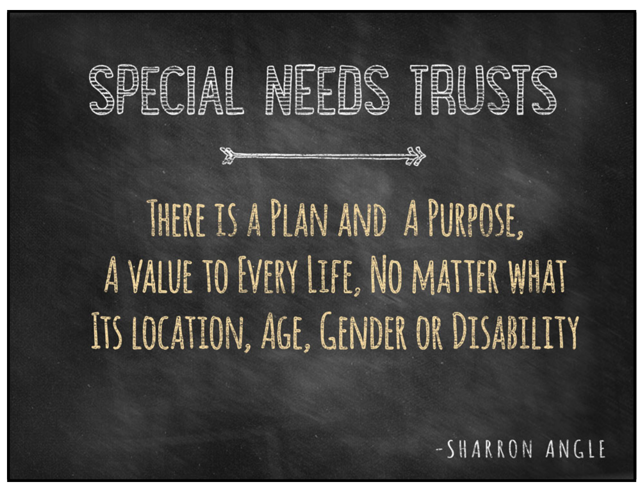
22

Question 5

– The correct answer is b.

- Medicaid is the government's medical and assisted living program for the poor. The remaining options apply to
- Medicare.

23



24

Common Misconceptions

- Too many practitioners focus exclusively on preservation of public benefits in their Special Needs Trusts

Miss Big Picture:

- Not poverty planning
- Affluent families also have disabled loved ones
- Benefits are merely a tool
- **Objective is quality of life**

25

First / Primary Party Trust

- Source: funds benefits recipient
- Sole benefit of special needs beneficiary
- Under more scrutiny – federal regulations
  - Medicaid recovery upon death of beneficiary

26

Third Party Trust

Source: funds from someone other than benefits recipient

- More latitude
  - Multiple beneficiaries
  - Turn on/off
- No recovery upon death of benefits recipient

27

Choosing a Trustee

- Must:
  - Use discretion in best interest of disabled beneficiary
  - Must understand public benefits and keep up with changes in law
  - Can wisely invest and conform to all statutory fiduciary requirements
  - Understands taxes
  - Keeps perfect books
  - Provides advocacy and prevents abuse
  - Is immortal

28

Robinson Case Study 1 of 3

- Mark and Susan Robinson come to you with terrible news
  - Mark diagnosed with cancer
  - Prognosis 6 months to live
- Daughter, Joy
  - Joy has severe birth injuries
  - Been a struggle for family to provide for her care
- Susan terrified of losing Mark and providing for Joy
  - Joy's care will cost a minimum of $60,000 a year
- Primary Assets:
  - Substantial resources, including several million dollars in life insurance, and
  - Each have substantial IRAs

29

Robinson Case Study 2 of 3

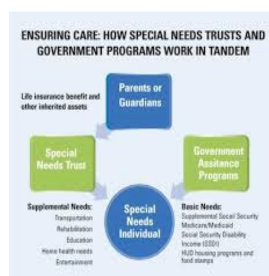
- Plan:
- Divert portion of IRA to Special Needs Trust for Joy
  - Rather than to Susan
- Beneficiary designation forms updated on IRA:
  - Primary beneficiary: Susan
  - Contingent beneficiary: Joy's SNT
  - Upon Mark's death,
  - Susan disclaims ½ of IRA to Joy's special needs trust.

30

Robinson Case Study 3 of 3

- $50,000 a year transferred from IRA to SNT
  - $50,000 paid directly to caregiver
- Since Care giving is tax deductible, almost all expenditures will be tax free, after the applicable taxable floor
- Money remains under management for a long time
- Susan gets the relief she needs
  - Joy gets superior care.

31



32

Layers of Strategies

Strategy : Stand-alone Retirement Trust (SRT).

- A **Stand Alone** Retirement **Trust** is a separate **trust** established for the primary benefit of being named as the beneficiary of a client's retirement account, in the event the client passes away.

33

Why Retirement Planning Techniques are Important?

1. Qualified retirement benefits, IRAs, and life insurance proceeds = 75-80% of intangible wealth of most middle-class Americans.*
   – Equals 2/3 of all household financial assets**
2. The law makes retirement benefits subject to estate AND income taxes at death.
3. Applies to most all clients – both blue & white collar clients

*L. Mezzullo, An Estate Planner's Guide to Qualified Retirement Plan Benefits (ABA Publications, 4th ed. 2007) at 1. **2007 Investment Company Institute study

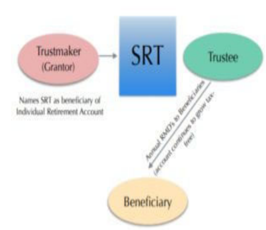
34

Why Retirement Trusts are Important?

1. Tax avoidance not primary goal.
2. Protecting/structuring the assets is the goal
3. Applies to almost all clients – both blue to white collar
4. Percentage of estate is significance, not actual dollar amount
5. US Supreme Court case – Clark v. Rameker

35

How does an SRT work?



36

Clark v. Rameker (2014)

- Facts
- Ruth Heffron established an IRA in 2000
- Heffron died in 2001. Her daughter, Heidi Heffron-Clark, was sole designated beneficiary
- Beneficiary withdrew distributions totaling
  - $150,000 between 2001 and 2010
- In 2010, beneficiary and her husband filed for bankruptcy in Wisconsin
- As part of the bankruptcy, debtors sought to exempt the IRA assets worth - $300,000 from creditors.

37

Clark v. Rameker (2014)

- Decision:
  - Unanimous
  - Funds in an inherited IRA are not considered "retirement funds", and thus, are not exempt from the debtor's bankruptcy estate.
- Result:
  - A debtor's bankruptcy trustee may consider the inherited IRA to be an asset of the bankruptcy estate, and thus, is available to satisfy creditors' claims.

38

Clark v. Rameker (2014)

- Characteristics of inherited IRAs as the basis for its decision:

1.Inherited IRAs prohibit any additional contributions

2. The owner of an inherited IRA can liquidate the entire account at any time and for any purpose, without penalty.

3. An inherited IRA owner is required either to withdraw all account funds within five years of inheriting or to take annual RMDs

39

Clark v. Rameker (2014)

Public Policy rationale:

- Nothing about the inherited IRA's legal characteristics would prevent or discourage the individual from using the entire balance of the account on a vacation home or sports car immediately after bankruptcy proceedings are complete.
- Allowing that kind of exemption would convert Bankruptcy Code's purposes to preserving debtor's ability to meet their basic needs and ensuring that they have a "fresh start", into a "free pass".

40

Naming Trust as a Beneficiary of Retirement Accounts

- Maximize Stretch for Beneficiaries
  - Pass Wealth to Beneficiaries
- Provide Structure for Beneficiaries
  - Name Trust as Beneficiary
  - Protect minor and spendthrift children

41

Advantages of a SRT

- Asset protection in the event of a divorce
- Asset protection from creditors
- Generation-skipping tax benefits
- Protects the beneficiary with respect to government needs-based benefits
- Alerts the beneficiary to the tax consequences of an immediate cash out
- Allows for the beneficiary's tax obligations to be stretched over a period of time
- Alleviates the need for a court appointed guardian for minor beneficiaries
- Asset protection in the event the beneficiary becomes incapacitated
- Allows for successor beneficiaries

42

Conclusion (The End)

- Questions?

43